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(2) A State agency in accordance with § 405.908;

(3) A provider or supplier that has accepted an assignment of appeal rights from the beneficiary according to § 405.912;

(4) A non-participating physician not billing on an assigned basis who, in accordance with section 1842(1) of the Act, may be liable to refund monies collected for services furnished to the beneficiary because those services were denied on the basis of section 1862(a)(1) of the Act; and

(5) A non-participating supplier not billing on an assigned basis who, in accordance with sections 1834(a)(18) and 1834(j)(4) of the Act, may be liable to refund monies collected for items furnished to the beneficiary.

(c) *Appeals by providers and suppliers when there is no other party available.* If a provider or supplier is not already a party to the proceeding in accordance with paragraphs (a) and (b) of this section, a provider of services or supplier may appeal an initial determination relating to services it rendered to a beneficiary who subsequently dies if there is no other party available to appeal the determination.

§ 405.908 Medicaid State agencies.

When a beneficiary is enrolled to receive benefits under both Medicare and Medicaid, the Medicaid State agency may file a request for an appeal with respect to a claim for items or services furnished to a dually eligible beneficiary only for services for which the Medicaid State agency has made payment, or for which it may be liable. A Medicaid State agency is considered a party only when it files a timely redetermination request with respect to a claim for items or services furnished to a beneficiary in accordance with 42 CFR parts 940 through 958. If a State agency files a request for redetermination, it may retain party status at the QIC, ALJ, MAC, and judicial review levels.

§ 405.910 Appointed representatives.

(a) *Scope of representation.* An appointed representative may act on behalf of an individual or entity in exercising his or her right to an initial determination or appeal. Appointed rep-

resentatives do not have party status and may take action only on behalf of the individual or entity that they represent.

(b) *Persons not qualified.* A party may not name as an appointed representative, an individual who is disqualified, suspended, or otherwise prohibited by law from acting as a representative in any proceedings before DHHS, or in entitlement appeals, before SSA.

(c) *Completing a valid appointment.* For purposes of this subpart, an appointment of representation must:

(1) Be in writing and signed and dated by both the party and individual agreeing to be the representative;

(2) Provide a statement appointing the representative to act on behalf of the party, and in the case of a beneficiary, authorizing the adjudicator to release identifiable health information to the appointed representative.

(3) Include a written explanation of the purpose and scope of the representation;

(4) Contain both the party's and appointed representative's name, phone number, and address;

(5) Identify the beneficiary's Medicare health insurance claim number;

(6) Include the appointed representative's professional status or relationship to the party;

(7) Be filed with the entity processing the party's initial determination or appeal.

(d) *Curing a defective appointment of representative.* (1) If any one of the seven elements named in paragraph (c) of this section is missing from the appointment, the adjudicator should contact the party and provide a description of the missing documentation or information.

(2) Unless the defect is cured, the prospective appointed representative lacks the authority to act on behalf of the party, and is not entitled to obtain or receive any information related to the appeal, including the appeal decision.

(e) *Duration of appointment.* (1) Unless revoked, an appointment is considered valid for 1 year from the date that the Appointment of Representative (AOR) form or other conforming written instrument contains the signatures of both the party and the appointed representative.

(2) To initiate an appeal within the 1-year time frame, the representative must file a copy of the AOR form, or other conforming written instrument, with the appeal request. Unless revoked, the representation is valid for the duration of an individual's appeal of an initial determination.

(3) For an initial determination of a Medicare Secondary Payer recovery claim, an appointment signed in connection with the party's efforts to make a claim for third party payment is valid from the date that appointment is signed for the duration of any subsequent appeal, unless the appointment is specifically revoked.

(f) *Appointed representative fees*—(1) *General rule.* An appointed representative for a beneficiary who wishes to charge a fee for services rendered in connection with an appeal before the Secretary must obtain approval of the fee from the Secretary. Services rendered below the ALJ level are not considered proceedings before the Secretary.

(2) *No fees or costs against trust funds.* No award of attorney or any other representative's fees or any costs in connection with an appeal may be made against the Medicare trust funds.

(3) *Special rules for providers and suppliers.* A provider or supplier that furnished the items or services to a beneficiary that are the subject of the appeal may represent that beneficiary in an appeal under this subpart, but the provider or supplier may not charge the beneficiary any fee associated with the representation. If a provider or supplier furnishes services or items to a beneficiary, the provider or supplier may not represent the beneficiary on the issues described in section 1879(a)(2) of the Act, unless the provider or supplier waives the right to payment from the beneficiary for the services or items involved in the appeal.

(4) *Special rules for purposes of third party payment.* The Secretary does not review fee arrangements made by a beneficiary for purposes of making a claim for third party payment (as defined in 42 CFR 411.21) even though the representation may ultimately include representation for a Medicare Secondary Payer recovery claim.

(5) *Reasonableness of representative fees.* In determining the reasonableness of a representative's fee, the Secretary will not apply the test specified in sections 206(a)(2) and (a)(3) of the Act.

(g) *Responsibilities of an appointed representative.* (1) An appointed representative has an affirmative duty to—

(i) Inform the party of the scope and responsibilities of the representation;

(ii) Inform the party of the status of the appeal and the results of actions taken on behalf of the party, including, but not limited to, notification of appeal determinations, decisions, and further appeal rights;

(iii) Disclose to a beneficiary any financial risk and liability of a non-assigned claim that the beneficiary may have;

(iv) Not act contrary to the interest of the party; and

(v) Comply with all laws and CMS regulations, CMS Rulings, and instructions.

(2) An appeal request filed by a provider or supplier described in paragraph (f)(3) of this section must also include a statement signed by the provider or supplier stating that no financial liability is imposed on the beneficiary in connection with that representation. If applicable, the appeal request must also include a signed statement that the provider or supplier waives the right to payment from the beneficiary for services or items regarding issues described in section 1879(a)(2) of the Act.

(h) *Authority of an appointed representative.* An appointed representative may, on behalf of the party—

(1) Obtain appeals information about the claim to the same extent as the party;

(2) Submit evidence;

(3) Make statements about facts and law; and

(4) Make any request, or give, or receive, any notice about the appeal proceedings.

(i) *Notice or request to an appointed representative*—(1) *Initial determinations.* When a contractor takes an action or issues an initial determination, it sends the action or notice to the party.

(2) *Appeals.* When a contractor, QIC, ALJ, or the MAC takes an action or

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issues a redetermination, reconsideration, or appeal decision, in connection with an initial determination, it sends notice of the action to the appointed representative.

(3) The contractor, QIC, ALJ or MAC sends any requests for information or evidence regarding a claim that is appealed to the appointed representative. The contractor sends any requests for information or evidence regarding an initial determination to the party.

(4) For initial determinations and appeals involving Medicare Secondary Payer recovery claims, the adjudicator sends notices and requests to both the beneficiary and the appointed representative.

(j) *Effect of notice or request to an appointed representative.* A notice or request sent to the appointed representative has the same force and effect as if was sent to the party.

(k) *Information available to the appointed representative.* An appointed representative may obtain any and all appeals information applicable to the claim at issue that is available to the party.

(l) *Delegation of appointment by appointed representative.* An appointed representative may not designate another individual to act as the appointed representative of the party unless—

(1) The appointed representative provides written notice to the party of the appointed representative's intent to delegate to another individual. The notice must include:

(i) The name of the designee; and

(ii) The designee's acceptance to be obligated and comply with the requirements of representation under this subpart.

(2) The party accepts the designation as evidenced by a written statement signed by the party. This signed statement is not required when the appointed representative and designee are attorneys in the same law firm or organization.

(m) *Revoking the appointment of representative.* (1) A party may revoke an appointment of representative without cause at any time.

(2) *Revocation.* Revocation is not effective until the adjudicator receives a

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signed, written statement from the party.

(3) *Death of the party.* (i) The death of a party terminates the authority of the appointed representative, except as specified in paragraph (m)(3)(ii) of this section.

(ii) A party's death does not terminate an appeal that is in progress if another individual or entity may be entitled to receive or obligated to make payment for the items or services that are the subject of the appeal. The appointment of representative remains in effect for the duration of the appeal except for MSP recovery claims.

§ 405.912 Assignment of appeal rights.

(a) *Who may be an assignee.* Only a provider, or supplier that—

(1) Is not a party to the initial determination as defined in § 405.906; and

(2) Furnished an item or service to the beneficiary may seek assignment of appeal rights from the beneficiary for that item or service.

(b) *Who may not be an assignee.* An individual or entity who is not a provider or supplier may not be an assignee. A provider or supplier that furnishes an item or service to a beneficiary may not seek assignment for that item or service when considered a party to the initial determination as defined in § 405.906.

(c) *Requirements for a valid assignment of appeal right.* The assignment of appeal rights must—

(1) Be executed using a CMS standard form;

(2) Be in writing and signed by both the beneficiary assigning his or her appeal rights and by the assignee;

(3) Indicate the item or service for which the assignment of appeal rights is authorized;

(4) Contain a waiver of the assignee's right to collect payment from the assignor for the specific item or service that are the subject of the appeal except as set forth in paragraph (d)(2) of this section; and

(5) Be submitted at the same time the request for redetermination or other appeal is filed.

(d) *Waiver of right to collect payment.* (1) Except as specified in paragraph (d)(2) of this section, the assignee must waive the right to collect payment for