

§ 405.912

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

the item or service for which the assignment of appeal rights is made. If the assignment is revoked under paragraph (g)(2) or (g)(3) of this section, the waiver of the right to collect payment nevertheless remains valid. A waiver of the right to collect payment remains in effect regardless of the outcome of the appeal decision.

(2) The assignee is not prohibited from recovering payment associated with coinsurance or deductibles or when an advance beneficiary notice is properly executed.

(e) *Duration of a valid assignment of appeal rights.* Unless revoked, the assignment of appeal rights is valid for all administrative and judicial review associated with the item or service as indicated on the standard CMS form, even in the event of the death of the assignor.

(f) *Rights of the assignee.* When a valid assignment of appeal rights is executed, the assignor transfers all appeal rights involving the particular item or service to the assignee. These include, but are not limited to—

(1) Obtaining information about the claim to the same extent as the assignor;

(2) Submitting evidence;

(3) Making statements about facts or law; and

(4) Making any request, or giving, or receiving any notice about appeal proceedings.

(g) *Revocation of assignment.* When an assignment of appeal rights is revoked, the rights to appeal revert to the assignor. An assignment of appeal rights may be revoked in any of the following ways:

(1) *In writing by the assignor.* The revocation of assignment must be delivered to the adjudicator and the assignee, and is effective on the date of receipt by the adjudicator.

(2) By abandonment if the assignee does not file an appeal of an unfavorable decision.

(3) By act or omission by the assignee that is determined by an adjudicator to be contrary to the financial interests of the assignor.

(h) *Responsibilities of the assignee.* Once the assignee files an appeal, the assignee becomes a party to the appeal. The assignee must meet all require-

ments for appeals that apply to any other party.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37702, June 30, 2005]

INITIAL DETERMINATIONS

§ 405.920 Initial determinations.

After a claim is filed with the appropriate contractor in the manner and form described in subpart C of part 424 of this chapter, the contractor must—

(a) Determine if the items and services furnished are covered or otherwise reimbursable under title XVIII of the Act;

(b) Determine any amounts payable and make payment accordingly; and

(c) Notify the parties to the initial determination of the determination in accordance with § 405.921.

§ 405.921 Notice of initial determination.

(a) *Notice of initial determination sent to the beneficiary.* (1) The notice must be written in a manner calculated to be understood by the beneficiary, and sent to the last known address of the beneficiary;

(2) *Content of the notice.* The notice of initial determination must contain—

(i) The reasons for the determination, including whether a local medical review policy, a local coverage determination, or national coverage determination was applied;

(ii) The procedures for obtaining additional information concerning the contractor's determination, such as a specific provision of the policy, manual, law or regulation used in making the determination;

(iii) Information on the right to a redetermination if the beneficiary is dissatisfied with the outcome of the initial determination and instructions on how to request a redetermination; and

(iv) Any other requirements specified by CMS.

(b) *Notice of initial determination sent to providers and suppliers.* (1) An electronic or paper remittance advice (RA) notice is the notice of initial determination sent to providers and suppliers that accept assignment. The electronic RA must comply with the format and content requirements of the standard adopted for national use