

§ 478.36

(4) A statement informing the parties of their appeal rights, including the information concerning what must be included in the request for hearing, the amount in controversy, locations for submitting a request for an administrative hearing and the time period for filing a request.

(b) *Notice to payers.* (1) A QIO must provide written notice of its reconsidered determination to the appropriate Medicare intermediary or carrier within 30 days if the initial determination is modified or reversed.

(2) This notice must contain adequate information to allow the intermediary or carrier to locate the claim file. This must include the name of the beneficiary, the Health Insurance Claim Number, the name of the provider, date of admission, and dates or services for which Medicare payment will not be made.

§ 478.36 Record of reconsideration.

(a) *QIO requirements.* A QIO must maintain the record of its reconsideration until the later of the following:

(1) Four years after the date on the notice of the QIO's reconsidered determination.

(2) Completion of litigation and the passage of the time period for filing all appeals.

(b) *Contents of the record.* The record of the reconsideration must include:

(1) The initial determination.

(2) The basis for the initial determination.

(3) Documentation of the date of the receipt of the request for reconsideration.

(4) The detailed basis for the reconsidered determination.

(5) Evidence submitted by the parties.

(6) A copy of the notice of the reconsidered determination that was provided to the parties.

(7) Documentation of the delivery or mailing and, if appropriate, the receipt of the notice of the reconsidered determination by the parties.

(c) *Confidentiality.* The record of a QIO reconsideration is subject to prohibitions against disclosure of information as specified in section 1160 of the Act.

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§ 478.38 Effect of a reconsidered determination.

A QIO reconsidered determination is binding upon all parties to the reconsideration unless—

(a) A hearing is requested in accordance with § 473.40 and a final decision rendered; or

(b) The reconsidered determination is later reopened and revised in accordance with § 473.48.

[50 FR 15372, Apr. 17, 1985; 50 FR 41887, Oct. 16, 1985, as amended at 62 FR 25855, May 12, 1997; 62 FR 49938, Sept. 24, 1997. Redesignated at 64 FR 66279, Nov. 24, 1999]

§ 478.40 Beneficiary's right to a hearing.

(a) *Amount in controversy.* If the amount in controversy is at least \$200, a beneficiary (but not a provider or practitioner) who is dissatisfied with a QIO reconsidered determination may obtain a hearing by an administrative law judge (ALJ) of the Office of Hearings and Appeals of the SSA.

(b) *Subject matter.* A beneficiary has a right to a hearing on the following issues:

(1) Reasonableness of the services.

(2) Medical necessity of the services.

(3) Appropriateness of the setting in which the services were furnished.

(c) *Governing provisions.* The provisions of subpart G, Reconsiderations and Appeals under the Hospital Insurance Program, of part 405 of this chapter apply to hearings and appeals under this subpart unless they are inconsistent with specific provisions in this subpart. References in subpart G to initial and reconsidered determinations made by an intermediary, carrier, or CMS should be read to mean initial and reconsidered determinations made by a QIO.

[50 FR 15372, Apr. 17, 1985; 50 FR 41887, Oct. 16, 1985. Redesignated at 64 FR 66279, Nov. 24, 1999]

§ 478.42 Submitting a request for a hearing.

(a) *Where to submit the written request.* A beneficiary who wants to obtain a hearing under § 473.40 must submit a written request to one of the following:

(1) The office of the QIO or QIO subcontractor that made the initial determination.

- (2) A SSA District Office.
- (3) An office of the Office of Hearings and Appeals of SSA.
- (4) An office of the Railroad Retirement Board, in the case of a beneficiary who is a railroad retiree.

(b) *Time limit for submitting a request for a hearing.* (1) The request for a hearing must be filed within 60 days of receipt of the notice of the QIO reconsidered determination, unless the time is extended for good cause as provided in § 473.22.

(2) The date of receipt of the notice of the reconsidered determination is presumed to be five days after the date on the notice, unless there is a reasonable showing to the contrary.

(3) A request is considered filed on the date it is postmarked.

§ 478.44 Determining the amount in controversy for a hearing.

(a) After an individual appellant has submitted a request for a hearing, the ALJ determines the amount in controversy in accordance with § 405.740(a) of this chapter for Part A services or § 405.817(a) of this chapter for Part B services. When two or more appellants submit a request for hearing, the ALJ determines the amount in controversy in accordance with § 405.740(b) of this chapter for Part A services and § 405.817(b) of this chapter for Part B services.

(b) If the ALJ determines that the amount in controversy is less than \$200, the ALJ, without holding a hearing, notifies the parties to the hearing that the parties have 15 calendar days to submit additional evidence to prove that the amount in controversy is at least \$200.

(c) At the end of the 15-day period, if the ALJ determines that the amount in controversy is less than \$200, the ALJ, without holding a hearing, dismisses the request for a hearing without ruling on the substantive issues involved in the appeal and notifies the parties to the hearing and the QIO that the QIO reconsidered determination is conclusive for Medicare payment purposes.

[50 FR 15372, Apr. 17, 1985, as amended at 59 FR 12184, Mar. 16, 1994. Redesignated at 64 FR 66279, Nov. 24, 1999]

§ 478.46 Departmental Appeals Board and judicial review.

(a) The circumstances under which the DAB will review an ALJ hearing decision or dismissal are the same as those set forth at 20 CFR 404.970, (“Cases the Appeals Council will review”).

(b) If \$2,000 or more is in controversy, a party may obtain judicial review of an Departmental Appeals Board decision, or an ALJ hearing decision if a request for review by the Departmental Appeals Board was denied, by filing a civil action under the Federal Rules of Civil Procedure within 60 days after the date the party received notice of the Departmental Appeals Board decision or denial.

[50 FR 15372, Apr. 17, 1985, as amended at 61 FR 32349, June 24, 1996; 62 FR 25855, May 12, 1997. Redesignated at 64 FR 66279, Nov. 24, 1999]

§ 478.48 Reopening and revision of a reconsidered determination or a hearing decision.

(a) *QIO reopenings*—(1) *General rule.* A QIO or QIO subcontractor that made a reconsidered determination, or conducted a review of a DRG change as described in § 473.15, that is otherwise binding, may reopen and revise the reconsidered determination or review, either on its own motion or at the request of a party, within one year from the date of the reconsidered determination or review.

(2) *Extension of time limit.* A QIO or QIO subcontractor may reopen and revise its reconsidered determination, or its review of a DRG change as described in § 473.15, that is otherwise binding, after one year but within four years of the date of the determination or review if—

- (i) The QIO receives new material evidence;
- (ii) The QIO erred in interpretation or application of Medicare coverage policy;
- (iii) There is an error apparent on the face of the evidence upon which the reconsidered determination was based; or
- (iv) There is a clerical error in the statement of the reconsidered determination.

(b) *ALJ and Departmental Appeals Board Reopening*—Applicable procedures.