

§ 498.1

- 498.4 NFs subject to appeals process in part 498.
- 498.5 Appeal rights.
- 498.10 Appointment of representatives.
- 498.11 Authority of representatives.
- 498.13 Fees for services of representatives.
- 498.15 Charge for transcripts.
- 498.17 Filing of briefs with the ALJ or Departmental Appeals Board, and opportunity for rebuttal.

Subpart B—Initial, Reconsidered, and Revised Determinations

- 498.20 Notice and effect of initial determinations.
- 498.22 Reconsideration.
- 498.23 Withdrawal of request for reconsideration.
- 498.24 Reconsidered determination.
- 498.25 Notice and effect of reconsidered determination.

Subpart C—Reopening of Initial or Reconsidered Determinations

- 498.30 Limitation on reopening.
- 498.32 Notice and effect of reopening and revision.

Subpart D—Hearings

- 498.40 Request for hearing.
- 498.42 Parties to the hearing.
- 498.44 Designation of hearing official.
- 498.45 Disqualification of Administrative Law Judge.
- 498.47 Prehearing conference.
- 498.48 Notice of prehearing conference.
- 498.49 Conduct of prehearing conference.
- 498.50 Record, order, and effect of prehearing conference.
- 498.52 Time and place of hearing.
- 498.53 Change in time and place of hearing.
- 498.54 Joint hearings.
- 498.56 Hearing on new issues.
- 498.58 Subpoenas.
- 498.60 Conduct of hearing.
- 498.61 Evidence.
- 498.62 Witnesses.
- 498.63 Oral and written summation.
- 498.64 Record of hearing.
- 498.66 Waiver of right to appear and present evidence.
- 498.68 Dismissal of request for hearing.
- 498.69 Dismissal for abandonment.
- 498.70 Dismissal for cause.
- 498.71 Notice and effect of dismissal and right to request review.
- 498.72 Vacating a dismissal of request for hearing.
- 498.74 Administrative Law Judge's decision.
- 498.76 Removal of hearing to Departmental Appeals Board.
- 498.78 Remand by the Administrative Law Judge.

42 CFR Ch. IV (10–1–06 Edition)

Subpart E—Departmental Appeals Board Review

- 498.80 Right to request Departmental Appeals Board review of Administrative Law Judge's decision or dismissal.
- 498.82 Request for Departmental Appeals Board review.
- 498.83 Departmental Appeals Board action on request for review.
- 498.85 Procedures before the Departmental Appeals Board on review.
- 498.86 Evidence admissible on review.
- 498.88 Decision or remand by the Departmental Appeals Board.
- 498.90 Effect of Departmental Appeals Board decision.
- 498.95 Extension of time for seeking judicial review.

Subpart F—Reopening of Decisions Made by Administrative Law Judges or the Departmental Appeals Board

- 498.100 Basis, timing, and authority for reopening an ALJ or Board decision.
- 498.102 Revision of reopened decision.
- 498.103 Notice and effect of revised decision.

AUTHORITY: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

SOURCE: 52 FR 22446, June 12, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 498.1 Statutory basis.

(a) Section 1866(h) of the Act provides for a hearing and for judicial review of the hearing for any institution or agency dissatisfied with a determination that it is not a provider, or with any determination described in section 1866(b)(2) of the Act.

(b) Section 1866(b)(2) of the Act lists determinations that serve as a basis for termination of a provider agreement.

(c) Sections 1128 (a) and (b) of the Act provide for exclusion of certain individuals or entities because of conviction of crimes related to their participation in Medicare and section 1128(f) provides for hearing and judicial review for exclusions.

(d) Section 1156 of the Act establishes certain obligations for practitioners and providers of health care services, and provides sanctions and penalties for those that fail to meet those obligations.

(e)–(f) [Reserved]

(g) Although § 1866(h) of the Act is silent regarding appeal rights for suppliers and practitioners, the rules in this part include procedures for review of determinations that affect those two groups.

(h) Section 1128A(c)(2) of the Act provides that the Secretary may not collect a civil money penalty until the affected entity has had notice and opportunity for a hearing.

(i) Section 1819(h) of the Act—

(1) Provides that, for SNFs found to be out of compliance with the requirements for participation, specified remedies may be imposed instead of, or in addition to, termination of the facility's Medicare provider agreement; and

(2) Makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on SNFs.

(j) Section 1891(e) of the Act provides that, for home health agencies (HHAs) found to be out of compliance with the conditions of participation, specified remedies may be imposed instead of, or in addition to, termination of the HHA's Medicare provider agreement.

(k) Section 1891(f) of the Act—

(1) Requires the Secretary to develop a range of such remedies; and

(2) Makes certain provisions of section 1128A of the Act applicable to civil money penalties imposed on HHAs.

[52 FR 22446, June 12, 1987, as amended at 59 FR 56251, Nov. 10, 1994; 61 FR 32349, June 24, 1996]

§ 498.2 Definitions.

As used in this part—

Affected party means a provider, prospective provider, supplier, prospective supplier, or practitioner that is affected by an initial determination or by any subsequent determination or decision issued under this part, and “party” means the affected party or CMS (or the OIG), as appropriate.

ALJ stands for Administrative Law Judge.

Departmental Appeals Board or *Board* means a Board established in the Office of the Secretary to provide impartial review of disputed decisions made by the operating components of the Department.

OHA stands for the Social Security Administration's Office of Hearings and Appeals.

OIG stands for the Department's Office of the Inspector General.

Provider means a hospital, critical access hospital (CAH), skilled nursing facility (SNF), comprehensive outpatient rehabilitation facility (CORF), home health agency (HHA), hospice, or religious nonmedical health care institution (RNHCI) that has in effect an agreement to participate in Medicare, that has in effect an agreement to participate in Medicaid, or a clinic, rehabilitation agency, or public health agency that has a similar agreement but only to furnish outpatient physical therapy or outpatient speech pathology services, and prospective provider means any of the listed entities that seeks to participate in Medicare as a provider or to have any facility or organization determined to be a department of the provider or provider-based entity under § 413.65 of this chapter.

Supplier means an independent laboratory, supplier of portable X-ray services, rural health clinic (RHC), Federally qualified health center (FQHC), ambulatory surgical center (ASC), an entity approved by CMS to furnish outpatient diabetes self-management training, or end-stage renal disease (ESRD) treatment facility that is approved by CMS as meeting the conditions for coverage of its services, and *prospective supplier* means any of the listed entities that seeks to be approved for coverage of its services under Medicare. (However, for purposes of the sanctions and penalties that may be imposed by the OIG, the term *supplier* has the meaning specified in § 1001.2 of this title.)

[52 FR 22446, June 12, 1987, as amended at 53 FR 6551, March 1, 1988; 57 FR 24984, June 12, 1992; 58 FR 30677, May 26, 1993; 59 FR 6579, Feb. 11, 1994; 59 FR 56251, Nov. 10, 1994; 61 FR 32350, June 24, 1996; 62 FR 46037, Aug. 29, 1997; 65 FR 18549, Apr. 7, 2000; 65 FR 83154, Dec. 29, 2000; 68 FR 66721, Nov. 28, 2003; 71 FR 31054, May 31, 2006]

§ 498.3 Scope and applicability.

(a) *Scope.* (1) This part sets forth procedures for reviewing initial determinations that CMS makes with respect to the matters specified in paragraph (b) of this section, and that the OIG makes with respect to the matters