
CMS Manual System

Department of Health &
Human Services (DHHS)

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Centers for Medicare &
Medicaid Services (CMS)

Transmittal 122

Date: 05-27-16

Transmittal 122, dated May 27, 2016, is being re-issued because the Transmittal Sheet was not included when the CR was originally communicated. The Transmittal Sheet is now attached. All other information remains the same.

SUBJECT: Chapter 14, Contract Determinations and Appeals

I. SUMMARY OF CHANGES: Chapter 14 was updated to reflect improved operational procedures used by CMS and Medicare Advantage organizations and has been reformatted in order to outline the contract determination and appeal process in a clear, instructive manner. Chapter 14 has had numerous changes from the previous published chapter, which was published in September 2005. Consequently, there are no red italics indicating differences between the current version and the previous version.

NEW/REVISED MATERIAL - EFFECTIVE DATE: June 28, 2016

IMPLEMENTATION: June 28, 2016

Disclaimer for manual changes only, There are no red italics indicating differences between the current version and the previous version.

**II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual not updated.)
(R = REVISED, N = NEW, D = DELETED)**

R/N/D	CHAPTER/SECTION/SUBSECTION/TITLE
R	14/Entire Chapter

III. FUNDING: No additional funding is currently provided by CMS; contractor activities are to be carried out within their own FY and/or future operating budgets determined by the organizations.

IV. ATTACHMENTS:

	Business Requirements
X	Manual Instruction
	Confidential Requirements
	One-Time Notification
	One-Time Notification -Confidential

	Recurring Update Notification
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*Unless otherwise specified, the effective date is the date of service.

Medicare Managed Care Manual

Chapter 14 - Contract Determinations and Appeals

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Medicare Advantage Contract Determinations and Appeals

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

This chapter discusses Medicare Advantage (MA) contract determinations and appeals as outlined in 42 CFR § 422.641-696. Please also note, per 42 CFR § 417.640, the rights, procedures, and requirements relating to contract determinations and appeals set forth in part 422 subpart N of the regulations also apply to Medicare cost reimbursement contracts with health maintenance organizations (HMOs) or competitive medical plans (CMPs) under section 1876 of the Act.

There are generally four possible steps in the MA contract appeals process. These steps are:

1. A contract determination;
2. A hearing;
3. A review by the CMS Administrator; and,
4. In some cases, a reopening of the contract determination, hearing officer decision, or CMS Administrator decision.

10 - Contract Determinations

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

Subpart N of part 42 provides procedures for making and reviewing the following MA contract determinations:

- A determination by CMS that an entity is not qualified to enter into an MA contract with CMS;
- A determination by CMS that an entity is not qualified to offer a Special Needs Plan (SNP);
- A determination by CMS that an entity is not qualified to complete a Service Area Expansion (SAE);
- A determination by CMS to terminate a contract with an MA organization (MAO); and
- A determination by CMS not to authorize a renewal of a contract with a MAO.

Note that SAE determinations are subject to the procedures for making and reviewing MA contract determinations because, at this time, CMS treats SAE applications as new MA contract applications for the newly added areas and they are therefore subject to the same approval standards.

10.1 – Notice of Contract Determination

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

CMS sends a written notice to the MAO for *every* contract determination. The notice includes the reasons for the determination and specifies the MAO's right to request a hearing. Also included are explicit instructions for filing a hearing request.

For CMS-initiated contract terminations, before providing the MAO with notice of CMS' intent to terminate, CMS will provide the MAO with a reasonable opportunity of at least 30 days to develop

and implement a corrective action plan to correct the deficiencies. In addition, CMS mails the termination notice at least 45 days before the anticipated effective date of the termination. However, if there is imminent and serious risk to the health of the individuals enrolled in the MAO, CMS does not need to provide the MAO with an opportunity to correct and notifies the MAO of its decision to terminate the MAO's contract as of a day set forth in its notification letter, with no set period of notice required.

When CMS determines that it will not renew its contract with an organization, CMS will notify the organization by August 1 of the current contract year.

10.2 - Effect of the Contract Determination

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

The contract determination is final and binding on all parties unless:

- The MAO files a timely request for a hearing as described in section 20.1 below; or
- CMS reopens and revises an initial determination as described in section 40 of this chapter.

10.3 - Postponement of the Contract Determination's Effective Date

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

For a determination by CMS to terminate a contract with an MAO, the MA contract termination date, as stated in the notice to terminate an MA contract, is stayed if the MAO files a timely request for a hearing. CMS will stay the proposed effective date of the contract determination until a decision is reached by a hearing officer, and, in instances where a CMS Administrator review has been requested and accepted, affirmed by the CMS Administrator. Written notice is issued by the CMS Administrator notifying the MAO of the CMS Administrator's decision. The CMS Administrator may uphold, reverse, or modify the hearing officer's decision.

If the contract determination (termination) is based on 42 CFR §422.510(b)(2)(i), concerning the imminent and serious health risk to enrollees, the effective date of the termination will not be stayed even if the MAO requests a hearing.

Note, for an initial contract, if a final decision is not reached on CMS' determination by July 15 then CMS may not enter into a contract with the applicant for the following year.

20 - Hearings

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

A hearing is the method by which MAOs appeal an unfavorable contract determination. The following parties are entitled to a hearing:

- An applicant that has been determined to be unqualified to enter into a contract with CMS; and
- An MAO whose contract with CMS has been terminated or has not been renewed; and
- An applicant that has been determined to be unqualified to offer a SNP.

During a hearing to review a contract determination, the applicant has the burden of proving by a preponderance of the evidence that CMS's determination was inconsistent with established regulatory requirements.

20.1 - Requesting a Hearing

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

A request for a hearing must be made in writing and filed by an authorized official of the contract applicant or MAO that was the party to the determination under appeal.

Hearing requests must be filed in accordance with the requirements specified in the contract determination notice.

The request must be filed in writing within 15 calendar days after the receipt of the notice of the contract determination in order to be considered a valid request for a hearing.

20.2 - Hearing Officers

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

CMS appoints a hearing officer to conduct the hearing. The hearing officer does not need to be an administrative law judge (ALJ). In exercising his or her authority, the hearing officer must comply with the provisions of Title XVIII and related provisions of the Act, the regulations issued by the Secretary, and general instructions issued by CMS in implementing the Act.

Hearing officers may not conduct a hearing in any case in which they are prejudiced or partial about any of the parties involved, or if they have any interest in the matter before them. If a party to the hearing objects to the hearing officer conducting the case, they must inform the officer in writing at the earliest opportunity. The hearing officer will consider the objections and decide whether to proceed with the hearing or withdraw. Vesting the hearing officer with the authority to make his or her own determination regarding the ability to be fair and impartial, subject to appeal only after the matter at hand is heard on the merits, is the same approach used with respect to judges in court proceedings.

If the hearing officer withdraws, CMS will appoint a different hearing officer. If the officer does not withdraw when a party has made objections, the objecting party may present post-hearing objections to CMS, and request a revision of the decision or a new hearing before a different hearing officer. Any requests by the objecting party must be made in writing to CMS.

20.3 - Time and Place of Hearing

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

The hearing officer will fix the time and place for the hearing and notify the parties in writing. The hearing will be set for no later than 30 calendar days from the date of the receipt of the request for the hearing. The notice includes the following information:

- The time and place for the hearing;
- The issues to be resolved;

- The burden of proof; and
- The hearing procedures.

On their own motion or at the request of a party, hearing officers may change the time and place for the hearing and they may also adjourn or postpone a hearing.

The MAO or CMS may request an extension by filing a written request no later than 10 calendar days prior to the scheduled hearing. The hearing officer will then provide a one-time 15 calendar day extension.

Additional extensions may be granted at the discretion of the hearing officer.

20.4 - Parties to the Hearing

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

The parties to a hearing are:

- An entity that has been determined to be unqualified to enter into an MA contract with CMS;
- An entity that has been determined to be unqualified to offer a SNP;
- An entity that has been determined to be unqualified to complete a SAE;
- A MAO whose contract with CMS has been terminated or has not been renewed as a result of a contract determination; and
- CMS.

Additionally, any interested parties who make a showing that their rights may be prejudiced by the hearing decision may be added as a party to the hearing at the discretion of the hearing officer.

20.5 - Representatives Appointed by Parties to a Hearing

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

A party to the hearing may appoint a representative for the hearing. CMS must be notified in writing of the appointed representative's name and address. Representatives may be anyone not disqualified or suspended from acting as a representative before the Secretary or otherwise prohibited by law.

Representatives appointed by parties to a hearing may on behalf of the represented party:

- Give or accept any notice or request pertinent to the appeal hearing;
- Present evidence and allegations as to facts and law in any proceedings affecting that party; and
- Obtain information to the same extent as the party.

When a party to a hearing has duly appointed a representative, any notice or request by the representative has the same force and effect as if it had been sent directly by the party.

20.6 - Pre-Hearing Conference and Summary Judgment

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

Pre-hearing discovery is not permitted.

Hearing officers may schedule a pre-hearing conference if they believe a conference would more clearly define the issues involved.

Either party to the hearing may ask the hearing officer to rule on a motion for summary judgment.

20.7 - Conduct and Record of a Hearing

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

The hearing is open to the parties and the public.

The hearing officer will inquire fully into all the matters at issue, receive in evidence the testimony of witnesses and any documents that are relevant and material. If any party objects to the inclusion of any document as evidence, the hearing officer hears the objections.

The MAO bears the burden of going forward and must first present evidence and argument before CMS presents its evidence and argument.

A complete record of the proceedings at the hearing is made and transcribed and made available to all parties upon request. A party requesting the transcribed record must pay for its transcription and reproduction.

The record may not be closed until a hearing decision has been issued.

20.8 - Admission of Evidence

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

The hearing officer rules on the admissibility of evidence and may admit evidence that would be inadmissible under the rules applicable to court procedures.

20.9 - Witnesses at the Hearing

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

The hearing officer may examine witnesses and the parties or their representatives are permitted to examine their witnesses and cross-examine witnesses of other parties.

Witness lists and documents must be identified and exchanged at least 5 calendar days before the scheduled hearing.

20.10 - The Hearing Officer's Decision

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

The hearing officer issues a written decision notice as soon as practical after the close of a hearing and provides a copy of the written decision to each party. The decision must:

- Be based upon the evidence presented at the hearing or otherwise included in the hearing record; and
- Contain separately numbered findings of fact and conclusions of law.

The hearing decision is final and binding on the contract applicant/MAO and on CMS unless it is reversed or modified by the CMS Administrator following review or reopened and revised. Additionally, the decision is made public.

Notice of any decision favorable to the MAO appealing a determination that is not qualified to enter into a contract with CMS must be issued by September 1 to guarantee that the contract in question will be effective on January 1 of the following year.

30 - Review by the CMS Administrator

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

CMS or a MAO that has received a hearing decision may request review by the CMS Administrator within 15 calendar days of receiving the hearing decision. Both CMS and the MAO may provide written arguments to the CMS Administrator for review.

The CMS Administrator has the discretion to elect to review the hearing decision or not. The CMS Administrator will notify both parties of his or her determination regarding review within 30 calendar days after receipt of request for review.

If the CMS Administrator declines to review the hearing decision or the CMS Administrator does not make a determination regarding review within 30 calendar days, the decision of the hearing officer is final.

If the CMS Administrator elects to review the hearing decision, s/he will determine, based upon this decision, the hearing record, and any written arguments submitted by the MAO, if the hearing decision should be upheld, reversed, or modified. The CMS Administrator then issues a written decision and furnishes it to the MAO requesting the review.

A decision by the CMS Administrator under this section is final and binding unless it is reopened and revised as described in section 40 below.

40 - Reopening of Contract Determination or Decision of a Hearing Officer or the CMS Administrator

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

A reopening is not an appeal right. It is an administrative procedure that permits reexamination of an existing determination for a specific reason. If an applicant or MAO believes it has a basis for a decision to be reopened, it may request that the decision-maker reopen the matter. The decision whether to act on such a request, however, is committed to the decision-maker's discretion, and is not subject to appeal or further review of any kind. This policy is consistent with our general policies on reopening decisions, as discussed in 42 CFR Part 405, Subpart R, *Provider Reimbursement Determinations and Appeals*.

The notice of reopening and any revisions following the reopening is mailed to the parties and specifies the reasons for revisions.

40.1 – Contract Determination

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

CMS may reopen and revise initial determinations upon its own motion.

40.2 – Decision of Hearing Officer

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

A decision of a hearing officer that is unfavorable to any party and is otherwise final may be reopened and revised by the hearing officer upon the officer's own motion within one year of the notice of the hearing decision.

Another hearing officer designated by CMS may reopen and revise the decision if the hearing officer who issued the decision is unavailable.

40.3 – Decision of the CMS Administrator

(Rev.122, Issued: 05-27-16, Effective: 06-28-16, Implementation: 06-28-16)

A decision by the CMS Administrator that is otherwise final may be reopened and revised by the CMS Administrator upon the CMS Administrator's own motion within one year of the notice of the CMS Administrator's decision.