

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-04 Medicare Claims Processing	Centers for Medicare & Medicaid Services (CMS)
Transmittal 1671	Date: JANUARY 16, 2008
	Change Request 6157

SUBJECT: Clarification of Requirements for New and Material Evidence as Good Cause for Reopening

I. SUMMARY OF CHANGES: This instruction clarifies what evidence constitutes new and material evidence as good cause for reopening a claim.

NEW / REVISED MATERIAL

EFFECTIVE DATE: February 16, 2009

IMPLEMENTATION DATE: February 16, 2009

Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
R	34/Table of Contents
R	34/10/10.11/Good Cause for Reopening
R	34/10/10.11.1/What Constitutes New and Material Evidence
R	34/10/10.11.2/Policies Related to Good Cause Reopenings for New and Material Evidence
N	34/10/10.11.3/What Constitutes Error on the Face of the Evidence

III. FUNDING:

SECTION A: For Fiscal Intermediaries and Carriers:

No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

SECTION B: For Medicare Administrative Contractors (MACs):

The Medicare administrative contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the contracting officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the contracting officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

Business Requirements

Manual Instruction

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

Attachment - Business Requirements

Pub. 100-04

Transmittal: 1671

Date: January 16, 2009

Change Request: 6157

SUBJECT: Clarification of Requirements for New and Material Evidence as Good Cause for Reopening

Effective Date: February 16, 2009

Implementation Date: February 16, 2009

I. GENERAL INFORMATION

A. Background: As described in 42 CFR §405.980(b) and (c), and §405.986, a contractor may reopen an initial determination made on a claim between 1 year and 4 years from the date of the initial determination when good cause exists. Good cause exists when there is new and material evidence or there was an error on the face of the evidence used to make the initial determination. This instruction offers clarification as to what constitutes new and material evidence, as it relates to good cause for reopening.

B. Policy: New and material evidence includes any evidence that:

1. was not readily available or known to the person or entity requesting/initiating the reopening at the time of the initial determination or redetermination; **and**
2. may result in a conclusion different from that reached in the initial determination or redetermination.

A contractor's decision to reopen based on the existence of good cause, or refusal to reopen after determining good cause does not exist, is not subject to appeal.

Evidence may include any record used in the provision of medical care that supports whether or not the service was covered, medically necessary, and provided as billed.

In determining whether good cause exists for reopening a determination or decision, the contractor considers whether evidence is new and material from the perspective of the person or entity requesting or initiating the reopening.

When a party requests a reopening of an initial determination or redetermination for good cause based on the submission of new and material evidence, the information must be "new," (i.e., not readily available or known to exist at the time of the initial determination) as well as material (i.e., may result in a different conclusion). A party should explain how the information constitutes new and material evidence that establishes good cause. If the contractor is unable to determine whether the information submitted with a reopening request constitutes new and material evidence, the contractor may decide not to grant the reopening.

When a request for reopening is submitted with new and material evidence, but additional information or evidence is needed before a proper revised determination or decision can be made, the contractor may contact the party seeking the reopening and request that they obtain and submit the additional information. If the person or entity requesting the reopening cannot obtain the additional information, the Medicare contractor assists to the extent that it is reasonably able to do so.

When a Medicare contractor initiates a reopening of an initial determination or redetermination for good cause based on the existence of new and material evidence, the contractor is responsible for clearly documenting in

the case file the new and material evidence that represents good cause for reopening. If a medical record or other supporting documentation was not utilized when a contractor made an initial determination because it was not requested or was not provided, then the content of any medical records or supporting documentation which are subsequently requested by the contractor during the course of its review would constitute new evidence.

II. BUSINESS REQUIREMENTS TABLE

Use "Shall" to denote a mandatory requirement

Number	Requirement	Responsibility									
		A / B M A C	D M A C	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER RAC, PSC, ZPIC
							F I S S	M C S	V M S	C W F	
6157.1	The contractor may reopen an initial determination or redetermination within 4 years from the date of the initial determination or redetermination when good cause exists.	X	X	X	X	X					X
6157.2	The contractor's decision that good cause to reopen an initial determination or redetermination does or does not exist shall not be subject to appeal.	X	X	X	X	X					X
6157.3	The contractor shall consider evidence that: <ol style="list-style-type: none"> 1. was not readily available or known to the person or entity requesting/initiating the reopening at the time of the initial determination or redetermination decision; and 2. may result in a conclusion different from that reached in the initial determination or redetermination decision to be new and material evidence. 	X	X	X	X	X					X
6157.4	The contractor may consider any record used in the provision of medical care that supports whether or not the service was covered, medically necessary, and provided as billed to be evidence.	X	X	X	X	X					X
6157.5	The contractor shall consider whether evidence is new and material from the perspective of the person or entity requesting or initiating the reopening in determining whether good cause exists for reopening an initial determination or redetermination.	X	X	X	X	X					X
6157.6	When a party requests a reopening of an initial determination or redetermination for good cause based on the submission of new and material evidence, the contractor should require that the person or entity requesting the reopening explain how information constitutes new and material evidence that establishes good cause.	X	X	X	X	X					X
6157.6.1	Where there is a need for good cause to reopen, the contractor may decide not to grant a reopening, in the	X	X	X	X	X					X

Number	Requirement	Responsibility									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER RAC, PSC, ZPIC
							F I S S	M C S	V M S	C W F	
	event that the contractor is unable to determine whether information submitted with a reopening request constitutes new and material evidence.										
6157.7	When a request for reopening is submitted with new and material evidence, but additional information or evidence is needed before a proper revised determination or decision can be made, the contractor may contact the party seeking the reopening and request that they obtain and submit the additional information.	X	X	X	X	X					X
6157.8.1	If the person or entity requesting the reopening cannot obtain the additional information, the Medicare contractor assists to the extent that it is reasonably able to do so.	X	X	X	X	X					X
6157.9	When a Medicare contractor initiates a reopening of an initial determination or redetermination for good cause based on the existence of new and material evidence, the contractor is responsible for clearly documenting in the case file the new and material evidence that represents good cause for reopening.	X	X	X	X	X					X
6157.10	When a Medicare contractor initiates a reopening of an initial determination or redetermination for good cause and a medical record or other supporting documentation was not utilized when a contractor made an initial determination because it was not requested or was not provided, then the contractor shall consider the content of any medical records or supporting documentation which are subsequently requested by the contractor during the course of its review to be new evidence	X	X	X	X	X					X

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I	C A R R I E R	R H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
	None										

IV. SUPPORTING INFORMATION

X-Ref Requirement Number	Recommendations or other supporting information:
6157.3	One example of new and material evidence is data analysis that identifies a high error rate or pattern of potential overutilization on the part of a provider or supplier and causes the contractor to believe its initial determinations for the claims of the provider or supplier were incorrect.
6157.10	One example where this might occur is the situation in which the claim was initially adjudicated without manual intervention and a contractor chooses to conduct postpay complex medical review.

V. CONTACTS

Pre-Implementation Contact(s): Kim Spalding (kimberly.spalding@cms.hhs.gov)

Post-Implementation Contact(s): For FIs, carriers, and MACs: regional offices

For MACs, PSCs, and RACs: project officers

VI. FUNDING

Section A: For *Fiscal Intermediaries (FIs), Carriers, and Regional Home Health Carriers (RHHs)*:

No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

Section B: For *Medicare Administrative Contractors (MACs)*:

The Medicare administrative contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the contracting officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the contracting officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

Medicare Claims Processing Manual

Chapter 34 - Reopening and Revision of Claim Determinations and Decisions

(Rev. 1671, 01-16-09)

*10.11.2 – Policies Related to Good Cause Reopenings for New and
Material Evidence*

[10.11.3 - What Constitutes Error on the Face of the Evidence](#)

10.11 - Good Cause for Reopening

(Rev. 1671, Issued: 01-16-09; Effective/Implementation Date: 02-16-09)

On its own initiative or at the request of party (see IOM Pub. 100-4, Chapter 29, §110 for the definition of a party), a contractor may reopen an initial determination or redetermination within 4 years from the date of the initial determination or redetermination when good cause exists. However, good cause is not required for reopening of claims for up to 1 year from the date of the initial determination or redetermination. Under §405.986, good cause exists when:

- There is new and material evidence that was not available *or known* at the time of the determination or decision and may result in a different conclusion; or
- The evidence that was considered in making the determination or decision clearly shows on its face that an obvious error was made at the time of the determination or decision.

A contractor's decision to reopen based on the existence of good cause, or refusal to reopen after determining good cause does not exist, is not subject to appeal. See 42 CFR §§ 405.926(1), 405.980(a)(5).

NOTE: Third party payer error *in making a primary payment determination* does not constitute good cause *for the purposes of reopening an initial determination or redetermination when Medicare processed the claim in accordance with the information in its system of records or on the claim form.* Contractors may only reopen for third party payer error under the “within one year for any reason” standard. This is true for both contractor *initiated* reopenings as well as reopenings requested by a party. *All providers and suppliers have a legal obligation to determine the correct primary payer when billing Medicare. Failure to do so, regardless of third party payer error, does not constitute “good cause” that will permit reopening beyond one year. Information regarding such error does not constitute “new and material evidence.”*

10.11.1 - What Constitutes New and Material Evidence

(Rev. 1671, Issued: 01-16-09; Effective/Implementation Date: 02-16-09)

New and material evidence is one of the means for establishing good cause to reopen an initial determination or redetermination. New and material evidence is evidence that:

1. *was not readily available or known to the person or entity requesting/initiating the reopening at the time of the initial determination or redetermination; and*
2. *may result in a conclusion different from that reached in the initial determination or redetermination.*

For example, data analysis that identifies a high error rate or pattern of potential overutilization on the part of a provider or supplier is one example of evidence that is not readily available or known to a contractor at the time it made its initial determination, and may cause the contractor to believe its initial determinations for the claims of the provider or supplier were incorrect.

Evidence may include any record used in the provision of medical care that supports whether or not the service was covered, medically necessary, and provided as billed. This includes medical records, progress notes, orders, procedure reports, invoices, proofs of delivery, or other documentation as required by CMS policy. However, as explained further below, any such evidence submitted by a party must satisfy the good cause standard set forth in §405.986 (i.e., that it is new and material evidence (as described above), or demonstrates that the evidence considered in making the initial determination or redetermination clearly shows on its face that an obvious error was made at the time of the determination or decision).

10.11.2 – Policies Related to Good Cause Reopenings for New and Material Evidence

(Rev. 1671, Issued: 01-16-09; Effective/Implementation Date: 02-16-09)

In determining whether good cause exists for reopening an initial determination or redetermination, the contractor considers whether evidence is new and material from the perspective of the person or entity requesting or initiating the reopening.

When a party requests a reopening of an initial determination or redetermination for good cause based on the submission of new and material evidence, the following policies apply:

- *The mere submission of additional evidence is not necessarily sufficient to establish good cause to reopen an initial determination or decision. The information must be “new,” (i.e., not readily available or known to exist at the time of the initial determination) as well as material (i.e., may result in a different conclusion). A party should explain how the information constitutes new and material evidence that establishes good cause. If the contractor is unable to determine whether the information submitted with a reopening request constitutes new and material evidence, the contractor may decide not to grant the reopening.*

- *When a request for reopening is submitted with new and material evidence, but additional information or evidence is needed before a proper revised determination or decision can be made, the contractor may contact *the party seeking the reopening, and request that they obtain and submit the additional information.* If the person or entity requesting the reopening cannot obtain the additional information, the *Medicare contractor assists to the extent that it is reasonably able to do so.**

When a Medicare contractor initiates a reopening of an initial determination or redetermination for good cause based on the existence of new and material evidence, the following policies apply:

- The contractor is responsible for clearly documenting in the case file the new and material evidence that represents good cause for reopening.*
- In order to promote administrative efficiency, Medicare does not generally require that a party submit supporting medical documentation with the initial claim. Therefore, if a medical record or other supporting documentation was not utilized when a contractor made an initial determination, because it was not requested or was not provided, then the content of any medical records or supporting documentation which are subsequently requested by the contractor during the course of its review would constitute new evidence*

10.11.3 - What Constitutes Error on the Face of the Evidence
(Rev. 1671, Issued: 01-16-09; Effective/Implementation Date: 02-16-09)

Error on the face of the evidence exists if it is clear that the determination or decision was incorrect based on all evidence in file on which the determination or decision was based, or any evidence of record anywhere in the contractor's Medicare file or in CMS files at the time such determination or decision was made.