

# FILING AN APPEAL



## PERM RC FAST FACTS

### UNDERSTANDING THE APPEALS PROCESS

States may choose to file an appeal to CMS if they disagree with the review contractor's Difference Resolution (DR) decision. States initiate appeal requests in the State Medicaid Error Rate Finding (SMERF) system. States may appeal all DR decisions for Eligibility Reviews (ER), Medical Reviews (MR) (except MR1), and Data Processing (DP) deficiencies and review errors including multiple errors per claim. No appeal is available, or can be submitted, if a DR was not submitted by the state or not submitted timely by the state.

Requirements:

The federal regulation, [42 C.F.R. § 431.998](#), provides specific requirements for appeals including:

- ❖ *The State may appeal to CMS for final resolution by filing an appeal within **15 business days** from the date the review contractor's finding as a result of difference resolution is shared with the State.*
- ❖ *There is no minimum dollar threshold required to appeal a difference in findings.*
- ❖ *The State must be able to demonstrate all of the following:*
  - *Have a factual basis for filing the request.*
  - *Provide CMS with valid evidence directly related to the finding(s) to support the State's position.*

### FILING THE APPEAL IN SMERF

States should carefully review the contractor's DR decision. If the state disagrees with the DR decision, the state may appeal the contractor's decision to CMS. States have 15 business days from the date of the DR result notification to file an appeal to CMS. The day of the notification counts as day one of the timeframe. If states do not submit an appeal request in SMERF within 15 business days of notification of the DR decision, the finding is considered final. The state has no other opportunity to appeal the finding.

States should request an appeal to CMS when the state:

- Disagrees with the error finding or deficiency after the contractor’s DR decision and has a factual basis for requesting the appeal.
- Has located additional information for the Review Contractor (RC) or Eligibility Review Contractor (ERC) to consider.

Although appeals are processed by CMS, if new information is submitted with the appeal request, the contractor will review the new information and re-open the DR if the new information changes the decision. If the new information does not change the original DR decision, the contractor forwards the information to CMS to consider with the appeal.

To locate review errors available for appeal in SMERF, the user clicks **Errors** on the SMERF main menu, then selects the review type (**Data Processing**, **Medical Review**, or **Eligibility**), then **Appeal**, and then **Available**. See Figure 1 below.

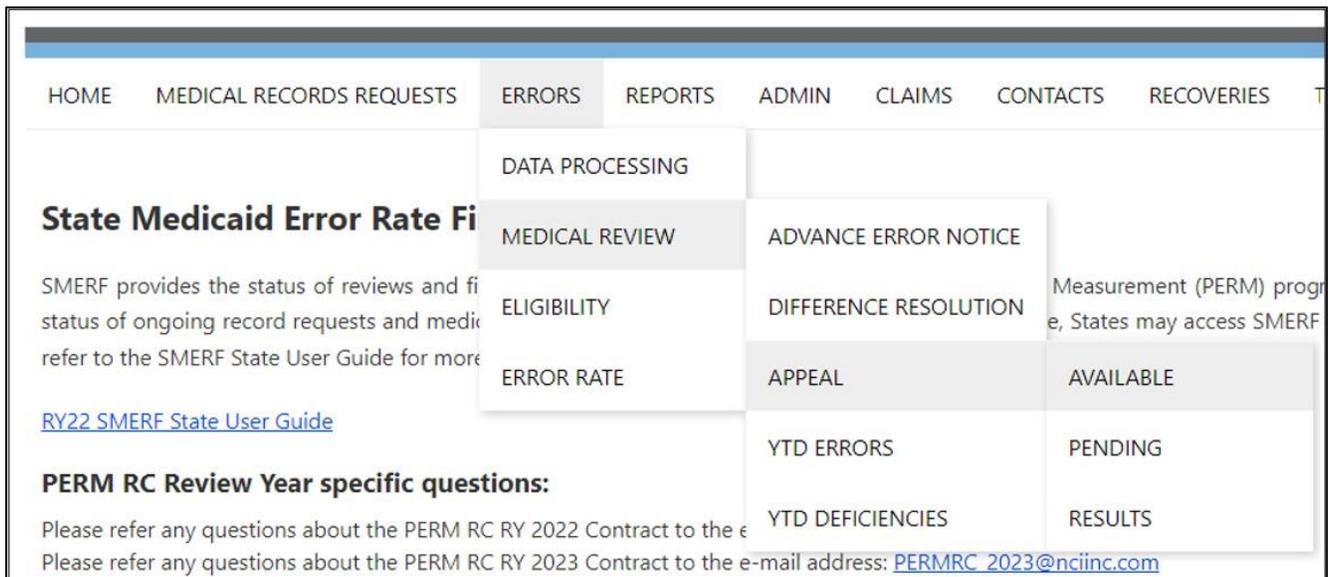


FIGURE 1: APPEALS MENU

The **Reviews Available for Appeal** page displays. See Figure 2 on the next page. Search for the preferred PERM ID by selecting the **YEAR** (defaults to current reporting year), **Quarter** (defaults to ALL), **Program** (defaults to ALL), and **Category** (defaults to ALL). To view all PERM IDs available for appeal, leave all these categories on the default settings and click **Find**. The table displays a list of claims available for appeal with the following information: **PERM ID**, **State Claim ID**, **Source Location**, **Category**, **Findings**, **Completed Date**, **State Notice Date**, and **Appeal Request Deadline**.

Open or collapse the claim detail using the + and – buttons on the left side of the list. When the claim detail is open, SMERF displays additional information including the **Finding Code, Qualifier, Error Amount, Over/Under** (overpayment or underpayment), a description of the **Reviewer Decision**, and the **Policy Reference**. This information appears for each finding if the PERM ID has multiple findings. See Figure 2 below. Each finding displays as a separate line item. This allows the state the ability to appeal each finding separately.

To reach the review tab screen to initiate an appeal for a particular finding on a particular PERM ID, follow the PERM ID row all the way to the right side of the screen and click the **pencil icon** as shown in Figure 2 below.

**MR Reviews Available for Appeal**

The grid below shows all reviews for which Appeal was requested by the state and that are currently pending appeal.

Year	Quarter	Program	Category	Action
2023	ALL	ALL	ALL	Find

	PERM ID	State Claim ID	Source Location	Category	Findings	RC Completed Date	State Notice Date	Appeal Request Deadline	
+	2301F452		MMIS	06	MR10	03/15/2022	03/15/2022	03/18/2022	
+	2301F452		MMIS	06	MR5	03/15/2022	03/15/2022	03/18/2022	
+	2301F452		MMIS	06	MR7	03/15/2022	03/15/2022	03/18/2022	
+	2301F454		MMIS	04	MR5	03/15/2022	03/15/2022	03/18/2022	
+	2301F455		MMIS	04	MR6	03/15/2022	03/15/2022	03/18/2022	

**FIGURE 2: REVIEWS AVAILABLE FOR APPEAL PAGE**

SMERF then displays the review page where the state begins the process of requesting an appeal for the specific finding on the specific PERM ID. See Figure 3 on the next page.

A state must submit an appeal request with supporting evidence for each applicable error finding for each PERM ID. SMERF does not support submitting one appeal request for multiple PERM IDs. SMERF does not support submitting one appeal request for multiple errors on a single PERM ID. A state must also submit an appeal request for each review type for the applicable PERM ID. That is, if the state disagrees on the findings of the DP, MR, and ER reviews for a specific PERM ID, the state must submit three separate appeals.

Click the **Request Appeal** tab to begin the appeal request. Only the finding for the line selected from the list will display on the **Request Appeal** tab. See Figure 3 on the next page.

RC Review Details | DR Request Summary | DR Result Details | Request Appeal

Enter reasons why you're requesting the Appeal. Insert specific reasons in the text box below for the error you are disputing. **(Do not include PHI)**. If you need to see the RC's State Instructions for Submitting Records. Please be advised that Word documents can be copied (CTRL+C) and pasted (CTRL+V) into the sections below.

**Request Appeal:** Yes

**Finding Code:** MR8 - Policy Violation Error

**Qualifier:** Documentation has been altered.

**Comments (Do not include PHI/PII):**

Save | Cancel | Submit

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**FIGURE 3: APPEAL REQUEST PAGE**

SMERF then displays the Request Appeal screen as shown in Figure 3 above. States must enter the reason(s) (i.e., the factual basis) for requesting the appeal in the Comments section shown in Figure 4 above. The reason should include the state’s factual basis for filing the appeal rather than only stating that the state is submitting documentation to support appeal. **Never enter protected health information (PHI) or personally identifiable information (PII) in SMERF.**

The Comments field on the Request Appeal tab has a 2000-character limit, and a character counter displays above the field. CMS requests that the states ensure the appeal filing includes a write-up in the Comments field describing what the state is providing and/or contesting in a clear and concise manner. See Figure 4 on the next page which identifies the character counter and PHI reminder.

Any characters in the Comments field in excess of 2000 characters will be truncated. The character counter changes to display “you have reached the limit” when the character limit is reached or exceeded prior to the state clicking the Save or Submit buttons. See an example of the message displayed when the character limit is reached in Figure 5 on the next page.

RC Review Details | DR Request Summary | DR Result Details | Request Appeal

Enter reasons why you're requesting the Appeal. Insert specific reasons in the text box below for the error you are disputing. (Do not include PHI). If you need to submit documentation containing PHI please refer to the RC's State Instructions for Submitting Records. Please be advised that Word documents can be copied (CTRL+C) and pasted (CTRL+V) into the sections below.

**Request Appeal:** Yes

**Finding Code:** DP1 - Duplicate Claim Error

**Qualifier:** DOS of the sampled claim overlaps with the DOS of a previously paid claim for the same services

**Comments (Do not include PHI/PII):** Note 2000-character comment counter information to the left and reminders to left and above not to include PHI/PII in the comments field.

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requesting the Appeal. Insert specific reasons in the text box below for the error you are disputing. (Do not include PHI). If you need to submit documentation containing PHI please refer to the RC's State Instructions for Submitting Records. Please be advised that Word documents can be copied (CTRL+C) and pasted (CTRL+V) into the sections below.

Save Cancel Submit

**FIGURE 4: APPEAL REQUEST PAGE CHARACTER COUNTER**

**Request Appeal:** Yes

**Finding Code:** DP1 - Duplicate Claim Error

**Qualifier:** DOS of the sampled claim overlaps with the DO

**Comments (Do not include PHI/PII):** Comment counter changes to note when limit reached or exceeded.

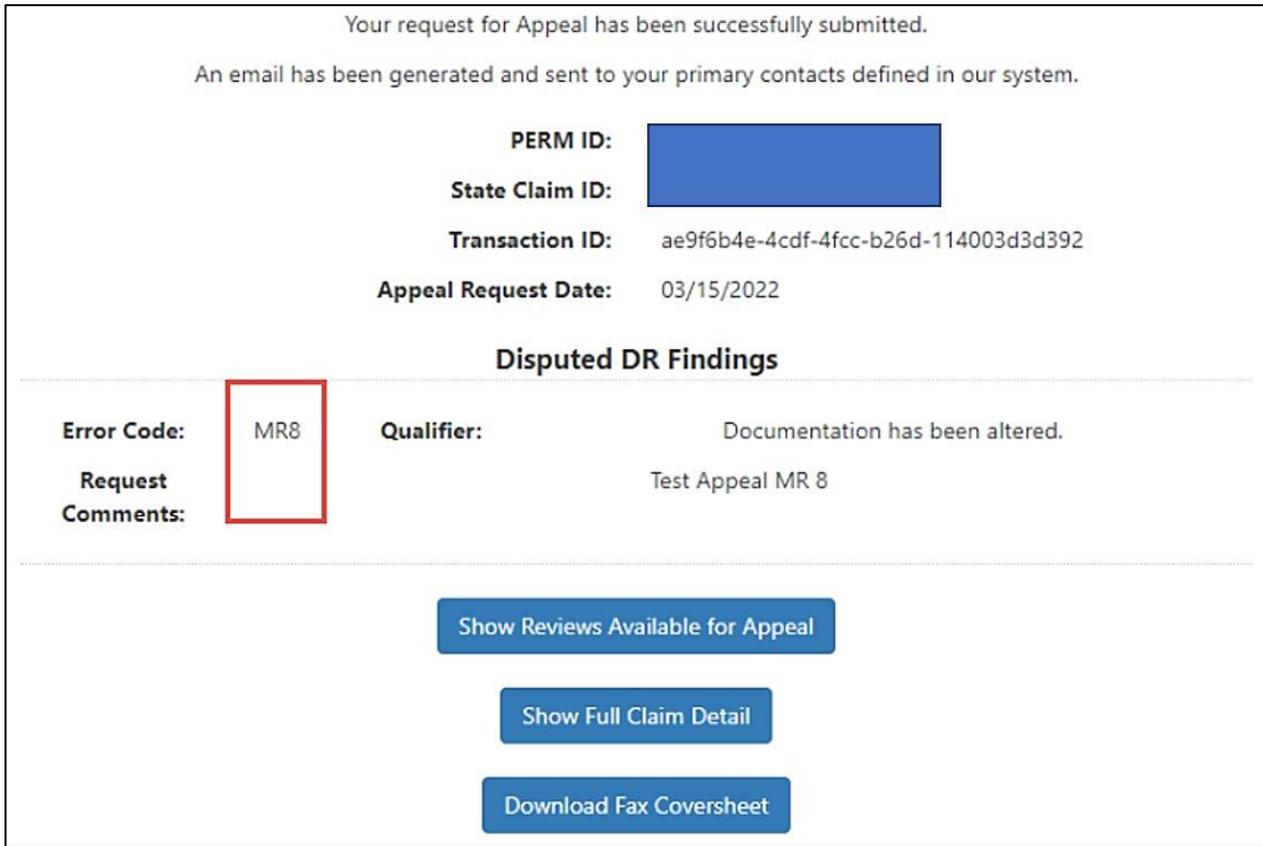
you have reached the limit

specific reasons in the text box below for the error you are disputing. (Do not include PHI). If you need to submit documentation containing PHI please refer to the RC's State Instructions for Submitting Records. Please be advised that Word documents can be copied (CTRL+C) and pasted (CTRL+V) into the sections below.

Save Cancel Submit

**FIGURE 5: APPEAL REQUEST PAGE CHARACTER COUNTER LIMIT REACHED**

If you reach or exceed the character limit, the state must edit the language in the Comments field as needed. Once the state ensures the text in the Comments field does not exceed 2000 characters, click the **Submit** button to submit the appeal request as shown in Figures 3, 4, and 5. A pop-up message then appears confirming the appeal request was submitted in SMERF. See Figure 6 on the next page.



**FIGURE 6: APPEAL REQUEST SUCCESSFULLY SUBMITTED SCREEN**

## SUBMITTING DOCUMENTATION TO SUPPORT APPEAL REQUESTS

States must provide valid evidence (documentation) to support the appeal request. States submit documentation to support ER appeal requests to the ERC. If submitting documentation to the ERC, please refer to the ERC’s instructions for document submissions. The ERC’s fact sheet for document submissions, *PERM ERC SFTP Access for External Clients*, is available in SMERF under Tools > State Educational Resources.

States submit documentation to support DP and MR appeal requests to the RC. When submitting documents to the RC, the state should clearly indicate the PERM ID on each document submission, and states should submit separate supporting documentation for each PERM ID. While the RC accepts documents in many formats, the RC prefers documentation in Microsoft Word or Adobe PDF formats if possible. The state may submit documentation via fax or secure file transfer. Transmit the documentation response by faxing to 804-515-4220 and including a cover sheet that indicates the documents are in support of an appeal request, indicates the review type (i.e., DP or MR), and the PERM ID. A state sending documents via the RC’s secure file transfer will direct the transmission to [PERMRC\\_DOCS@empower.ai](mailto:PERMRC_DOCS@empower.ai).

Refer to the Fast Facts flyer *RC Secure File Transfer via Kiteworks* for information on using and requesting access to Kiteworks, the RC's secure file transfer solution.

## APPEAL DECISION PROCESS

SMERF sends an alert to the ERC or RC when states submit appeals requests. The contractor reviews the state's factual basis and supporting evidence for the appeal. (Reminder: If the state provides new documentation not previously considered during initial review or the DR request, the ERC or RC handles the request as a DR.) The contractor forwards the appeal to CMS for review and decision. CMS convenes a panel of PERM clinical and policy experts to review the appeal and usually reaches a decision within 45 days.

To reach an appeal decision, CMS considers the claim detail, the original decision made by the ERC or RC, the state's DR request, the DR decision made by the ERC or RC, and the state's appeal request. CMS issues a decision upholding, modifying, or overturning the DR decision. CMS records the appeal decision in SMERF. SMERF auto-generates a decision notice that is sent via a PERM alert email to the state's designated DP, MR, or ER contacts. The CMS review panel's decision is final and binding on states as it is not reversible and marks the final step in the dispute process.

State users may find appeal decisions in SMERF. To view appeal results in SMERF, the user clicks **Errors** on the SMERF main menu, then selects the review type (**Data Processing, Medical Review, or Eligibility**), then **Appeal**, and then **Results**. See Figure 1 on page 2.

The **Appeal Completed** page displays. See Figure 7 on the next page. The table displays completed appeal requests with the following information: **PERM ID, State Claim ID, Source Location, Category, Error Code, Completed Date, and Appeal Decision**. The list shows a line item for each appealed finding on the PERM ID for the review type. If the state appealed multiple findings on the review, the PERM ID displays multiple times with the results for each finding. If the state submitted an appeal on only one finding for a given PERM ID and review type, only one line appears on the list. Search the appeal results by **YEAR** (defaults to current reporting year), **Quarter** (defaults to ALL), **Program** (defaults to ALL), and **Category** (defaults to ALL). To view all appeal decisions, leave all these categories on the default settings and click **Find**. Use the + and – buttons to collapse and open the appeal results details.

## MR Reviews Appeal Completed

The grid below shows all reviews completed for appeal.

Year	Quarter	Program	Category	Action
2023	ALL	ALL	ALL	Find

	PERM ID	State Claim ID	Source Location	Category	Error Code	Completed Date	Appeal Decision	
+	2301F452		MMIS	06	MR10	03/15/2022	Modified	
+	2301F452		MMIS	06	C1	03/15/2022	Overturned	
+	2301F454		MMIS	04	MR5	03/15/2022	Upheld	
+	2301F456		MMIS	04	MR8	03/15/2022	Modified	
+	2301F456		MMIS	04	MR9	03/15/2022	Modified	

**FIGURE 7: APPEAL COMPLETED PAGE**

Note: Federal regulation [42 C.F.R. § 431.998](#) specifies that all differences, including those pending in CMS for final decision that are not overturned in time for improper payment rate calculation, will be considered as errors in the improper payment rate calculation in order to meet the reporting requirements.

For more information on the DR process, please see the Fast Facts flyer titled *Filing a Difference Resolution*.