

# Medicare Managed Care Manual

## Chapter 14 - Contract Determinations and Appeals

---

### Table of Contents

**Rev. 69, 09-02-05**

- 10 - Medicare Advantage Contract Determinations and Appeals
    - 10.1 - Contract Determinations
      - 10.1.1 - Contract Determination Notice
      - 10.1.2 - Effect of the Contract Determination
      - 10.1.3 - Postponement of the Contract Determination's Effective Date
    - 10.2 - Reconsiderations
      - 10.2.1 - Time Frames for Filing a Reconsideration Request
      - 10.2.2 - Withdrawal of a Reconsideration Request
      - 10.2.3 - Opportunity to Submit Evidence
      - 10.2.4 - Notice of a Reconsideration Determination
      - 10.2.5 - Effect of a Reconsideration Determination
    - 10.3 - Hearings
      - 10.3.1 - Requesting a Hearing
      - 10.3.2 - Hearing Officers
      - 10.3.3 - Time and Place of Hearing
      - 10.3.4 - *Parties to the Hearing***
      - 10.3.5 - Representatives Appointed by Parties to a Hearing
      - 10.3.6 - Pre-Hearing Discovery and Conference
      - 10.3.7 - Conduct ***and Record*** of a Hearing
      - 10.3.8 - Admission of Evidence
      - 10.3.9 - Witnesses at the Hearing
      - 10.3.10 - The Hearing Officer's Decision
    - 10.4 - Review by the CMS Administrator
  - 20 - Reopening of Contract or Reconsidered Determination or Decision of a Hearing Officer or the Administrator
    - 20.1 - Requesting a Reopening
    - 20.2 - Notice of Reopening and Any Revisions to Determinations
    - 20.3 - The Effect of a Revised Determination
-

## **10 - Medicare Advantage Contract Determinations and Appeals**

**(Rev. 1, 07-02-01)**

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

- A contract determination;
- A reconsideration;
- A hearing; and
- For MA contract terminations, a review by the CMS Administrator.

### **10.1 - Contract Determinations**

**(Rev. 1, 07-02-01)**

This section 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 to terminate a contract with an MA organization; and
- A determination by CMS not to authorize a renewal of a contract with an MA organization.

#### **10.1.1 - Contract Determination Notice**

***(Rev. 69, Issued: 09-02-05, Effective: 09-02-05)***

CMS sends a written notice for every contract determination. The notice includes:

- The reasons for the contract determination;
- The right to request reconsideration of the contract determination; and
- Instructions on how to request a reconsideration.

*For CMS-initiated terminations, CMS mails the notice at least 90 days before the anticipated effective date of the termination. For terminations based on initial determinations described at 42 CFR §422.510(a)(5), however, where the health of enrollees is at imminent and serious risk, CMS immediately notifies the MA organization of its decision to terminate the MA organization's contract. When CMS determines that it will not renew its contract with an organization, CMS will notify the organization by May 1 of the current contract year.*

#### **10.1.2 - Effect of the Contract Determination**

**(Rev. 1, 07-02-01)**

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

- The applicant/organization files a valid request for a reconsideration as described in [§10.2](#) of this chapter; or

- The applicant/organization files a timely request for a hearing as described in [§10.3](#); or
- CMS reopens and revises an initial or reconsidered determination as described in [§20](#) of this chapter.

### **10.1.3 - Postponement of the Contract Determination's Effective Date**

*(Rev. 69, Issued: 09-02-05, Effective: 09-02-05)*

The MA contract termination date, as stated in the notice to terminate an MA contract, is postponed if the organization requests a review of the hearing decision by the CMS Administrator. Written notice is issued by the Administrator notifying the organization of the Administrator's decision. The administrator may uphold, reverse, or modify the hearing officer's decision.

*If the contract determination (termination) is based on 42 CFR §422.510(a)(5), concerning the imminent and serious health risk to enrollees, the effective date cannot be postponed even if the MA organization requests a review by the Administrator.*

The effective date of a contract determination to non-renew an MA contract may be extended by CMS if CMS finds that a contract extension is consistent with the purpose of Title XVIII of the Social Security Act (the Act) and for as long as CMS and the organization agree with the extension.

## **10.2 - Reconsiderations**

*(Rev. 69, Issued: 09-02-05, Effective: 09-02-05)*

Reconsideration is the first step for a contract applicant/MA organization to appeal contract determinations described at [§10](#) of this chapter. *A reconsideration determination is a new determination that affirms, reverses, or modifies an initial contract determination.* This reconsideration process must be completed before the contract applicant/MA organization has a right to a hearing under [§10.3](#) of this chapter.

CMS bases the reconsideration determination on the evidence and findings used to make the contract determination and any other written evidence the applicant/organization submits to CMS before CMS mails its response to the request for reconsideration to the MA organization.

*Only an authorized official of the applicant/organization that was the subject of the contract determination may file a request for reconsideration of a contract determination. The request must be in writing and the official may send the request to any CMS office.*

### **10.2.1 - Time Frames for Filing a Reconsideration Request**

*(Rev.1, 07-01-05)*

An organization or MA contract applicant must file the request for reconsideration in writing within 15 days from the date of the initial MA contract determination notice. Only an authorized official of the contract applicant or MA organization that is a subject of a contract determination may file a request for reconsideration.

*NOTE: Notice of any redetermination favorable to the MA organization applicant, including those resulting from a hearing or Administrator review conducted under 42 CFR Part 422, subpart N, must be issued by July 15 for the contract in question to be effective on January 1 of the following year.*

### **10.2.2 - Withdrawal of a Reconsideration Request**

**(Rev. 1, 07-02-01)**

An MA organization or contract applicant may withdraw a request for reconsideration at any time before CMS mails the notice of its reconsideration determination. The request for withdrawal must be in writing and filed with CMS. If CMS agrees, it approves the withdrawal.

### **10.2.3 - Opportunity to Submit Evidence**

**(Rev. 1, 07-02-01)**

CMS provides the MA organization or contract applicant and the CMS official or officials who made the contract determination reasonable opportunity, not to exceed 15 days, to present as evidence any documents or written statements that are relevant and material to the matters at issue.

### **10.2.4 - Notice of a Reconsideration Determination**

**(Rev. 1, 07-02-01)**

After CMS makes a reconsideration determination it sends a written notice to the contract applicant/MA organization. The notice includes:

- The findings concerning the applicant's qualifications to enter into or remain under an MA contract;
- The specific reasons for the reconsideration determination; and
- The applicant's or organization's hearing rights if it is dissatisfied with the reconsideration determination.

### **10.2.5 - Effect of a Reconsideration Determination**

**(Rev. 1, 07-02-01)**

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

- The applicant or organization files a request for a hearing under §3.3 of this chapter; or
- CMS reopens and revises the reconsideration determination under §4 of this chapter.

## **10.3 - Hearings**

**(Rev. 1, 07-02-01)**

A hearing is the final appeal available to new applicants that CMS has determined are not qualified to enter into an MA contract, and organizations appealing CMS' decision not to renew an MA contract. A hearing is the third of four levels of appeals available to

organizations whose MA contracts are being terminated by CMS. Organizations appealing contract terminations must complete a hearing before proceeding to their last level of administrative appeal, which is review by the CMS Administrator.

A hearing may be requested in writing by:

- A MA contract applicant that has been found in a reconsidered determination to be unqualified to enter into an MA contract; and
- An MA organization whose contract with CMS has been terminated or has not been renewed as a result of a contract determination and reconsideration determination; and
- At the discretion of the hearing officer, any interested parties who make a showing that their rights may be prejudiced by the decision to be rendered at the hearing.

### **10.3.1 - Requesting a Hearing**

**(Rev. 1, 07-02-01)**

A request for a hearing must be made in writing and filed by an authorized official of the contract applicant or MA organization that was the party to the determination under appeal. The request for a hearing may be filed with any CMS office. CMS will acknowledge all requests for a hearing in writing, including those not filed timely. The request must be filed in writing within 15 days after the notice of the reconsidered determination in order to be considered a valid request for a hearing.

### **10.3.2 - Hearing Officers**

**(Rev. 1, 07-02-01)**

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 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.

### **10.3.3 - Time and Place of Hearing**

**(Rev. 1, 07-02-01)**

The hearing officer appointed to a particular hearing, 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 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 parties' right to present evidence and witnesses; 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 hearing officers are required to give reasonable notice to all the parties of any change in time or place, or of postponement or adjournment of the hearing.

### **10.3.4 - *Parties to the Hearing***

***(Rev. 69, Issued: 09-02-05, Effective: 09-02-05)***

The parties to a hearing are:

- A contract applicant that has been determined in a reconsidered determination to be unqualified to enter into a contract with CMS under Part C of the Act;
- A MA organization whose contract with CMS has been terminated or has not been renewed as a result of a contract determination; and
- The Centers for Medicare and Medicaid Services.

### **10.3.5 - Representatives Appointed by Parties to a Hearing**

**(Rev. 1, 07-02-01)**

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. The party may not appoint individuals disqualified or suspended from acting as a representative in dealings before the Secretary or who law otherwise prohibits.

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 the hearing or any administrative actions that take place after the hearing; 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.

### **10.3.6 - Pre-Hearing Discovery and Conference**

**(Rev. 1, 07-02-01)**

Pre-hearing discovery is permitted upon timely request of a party. A request is timely if it is made before the beginning of the hearing. Discovery is a formal method of obtaining documents and information in possession of another party to the hearing, such as interrogatories, depositions, and requests for the production of documents before the hearing begins. Hearing officers will rule on all discovery requests. If discovery is permitted, the hearing officer provides reasonable time for inspection and reproduction of any requested documents. A reasonable time for inspection and reproduction of documents is provided by order of the hearing officer. The hearing officer's order on all discovery matters is final.

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

### **10.3.7 - Conduct and Record of a Hearing**

*(Rev. 69, Issued: 09-02-05, Effective: 09-02-05)*

The hearing is open to the parties and the public. The hearing officer will inquire into all the matters at issue, receives 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 hearing officer also decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

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.

### **10.3.8 - Admission of Evidence**

**(Rev. 1, 07-02-01)**

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

### **10.3.9 - Witnesses at the Hearing**

**(Rev. 1, 07-02-01)**

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.

### **10.3.10 - The Hearing Officer's Decision**

**(Rev. 1, 07-02-01)**

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/MA organization and on CMS. There is no further appeal unless the matter under appeal is an MA contract termination. However, the decision may be reopened or revised in accordance with [§20](#) of this chapter.

## **10.4 - Review by the CMS Administrator**

**(Rev. 1, 07-02-01)**

An MA organization that has received a hearing decision upholding a contract termination determination may request review by the CMS Administrator within 15 days of receiving the hearing decision. The Administrator will review the hearing officer's decision and determine, based upon this decision, the hearing record, and any written arguments submitted by the MA organization, if the termination decision should be upheld, reversed, or modified. The Administrator then issues a written decision and furnishes it to the MA organization requesting the review.

A decision by the CMS Administrator under this section is final and binding unless it is reopened and revised under [§20](#) of this chapter.

## **20 - Reopening of Contract or Reconsidered Determination or Decision of a Hearing Officer or the Administrator**

***(Rev. 69, Issued: 09-02-05, Effective: 09-02-05)***

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 MA organization believes it has a basis for reopening a decision, 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 Federal Regulations at [42 CFR Part 405, Subpart R, Provider Reimbursement Determinations and Appeals](#).

CMS may reopen and revise an initial or reconsidered determination upon its own motion within one year of the date of the notice of determination. A decision of a hearing officer may be reopened and revised by another hearing officer designated by CMS within one year of the notice of the hearing decision if the hearing officer who issued the initial decision is unavailable. A decision by the Administrator that is otherwise final may be reopened and revised by the Administrator upon the Administrator's own motion within one year of the notice of the Administrator's decision.

### **20.1 - Requesting a Reopening**

**(Rev. 1, 07-02-01)**

The following are the guidelines for requesting a reopening:



- The request for a reopening by a party or its authorized representative must be in writing;
- The purpose for the reopening must be clearly stated. It must be clear that a reopening is being requested, not further appeal; and
- The request for a reopening must be made within one year of the date of the initial or reconsidered determination notice, the hearing officer decision notice, or an Administrator's written determination.

The individual or entity which made the determination decides whether to reopen the determination. When a decision to not reopen a determination is made, the party requesting the reopening may not appeal the decision.

## **20.2 - Notice of Reopening and Any Revisions to Determinations**

**(Rev. 1, 07-02-01)**

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

## **20.3 - The Effect of a Revised Determination**

**(Rev. 1, 07-02-01)**

The revision of a contract or reconsidered determination is final unless a party files a written request for hearing of the revised determination in accordance with [§10.3.1](#) of this chapter.