

§ 423.600 Reconsideration by an independent review entity (IRE).

(a) An enrollee who is dissatisfied with the redetermination of a Part D plan sponsor has a right to a reconsideration by an independent review entity that contracts with CMS. The prescribing physician or other prescriber (acting on behalf of an enrollee), upon providing notice to the enrollee, may request an IRE reconsideration. The enrollee, or the enrollee's prescribing physician or other prescriber (acting on behalf of the enrollee) must file a written request for reconsideration with the IRE within 60 calendar days of the date of the redetermination by the Part D plan sponsor.

(b) When an enrollee, or an enrollee's prescribing physician or other prescriber (acting on behalf of the enrollee) files an appeal, the IRE is required to solicit the views of the prescribing physician or other prescriber. The IRE may solicit the views of the prescribing physician or other prescriber orally or in writing. A written account of the prescribing physician's or other prescriber's views (prepared by either the prescribing physician, other prescriber, or IRE, as appropriate) must be contained in the IRE record.

(c) In order for an enrollee or a prescribing physician or other prescriber (acting on behalf of an enrollee) to request an IRE reconsideration of a determination by a Part D plan sponsor not to provide for a Part D drug that is not on the formulary, the prescribing physician or other prescriber must determine that all covered Part D drugs on any tier of the formulary for treatment of the same condition would not be as effective for the individual as the non-formulary drug, would have adverse effects for the individual, or both.

(d) The independent review entity must conduct the reconsideration as expeditiously as the enrollee's health condition requires but must not exceed the deadlines applicable in § 423.590, including those deadlines that are applicable when a request for an expedited reconsideration is received and granted.

(e) When the issue is the denial of coverage based on a lack of medical necessity (or any substantively equivalent term used to describe the concept

of medical necessity), the reconsideration must be made by a physician with expertise in the field of medicine that is appropriate for the services at issue. The physician making the reconsideration need not, in all cases, be of the same specialty or subspecialty as the prescribing physician or other prescriber.

[70 FR 4525, Jan. 28, 2005, as amended at 74 FR 1548, Jan. 12, 2009; 74 FR 65363, Dec. 9, 2009; 77 FR 22171, Apr. 12, 2012]

§ 423.602 Notice of reconsideration determination by the independent review entity.

(a) *Responsibility for the notice.* When the IRE makes its reconsideration determination, it is responsible for mailing a notice of its determination to the enrollee and the Part D plan sponsor, and for sending a copy to CMS. When the prescribing physician or other prescriber requests the reconsideration on behalf of the enrollee, the IRE is also responsible for notifying the prescribing physician or other prescriber of its decision.

(b) *Content of the notice.* The notice must—

(1) State the specific reasons for the IRE's decision in understandable language;

(2) If the reconsideration determination is adverse (that is, does not completely reverse the adverse coverage determination by the Part D plan sponsor), inform the enrollee of his or her right to an ALJ hearing if the amount in controversy meets the threshold requirement under § 423.1970;

(3) Describe the procedures that must be followed to obtain an ALJ hearing; and

(4) Comply with any other requirements specified by CMS.

[70 FR 4525, Jan. 28, 2005, as amended at 74 FR 65363, Dec. 9, 2009; 77 FR 22171, Apr. 12, 2012]

§ 423.604 Effect of a reconsideration determination.

A reconsideration determination is final and binding on the enrollee and the Part D plan sponsor, unless the enrollee files a request for a hearing under the provisions of § 423.1972.

[70 FR 4525, Jan. 28, 2005, as amended at 74 FR 65363, Dec. 9, 2009]