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HEALTH AGENCY

HPOS

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CHANGE 143
6010.56-M
MARCH 24, 2015

PUBLICATIONS SYSTEM CHANGE TRANSMITTAL
FOR
TRICARE OPERATIONS MANUAL (TOM), FEBRUARY 2008

The TRICARE Management Activity has authorized the following addition(s)/revision(s).

CHANGE TITLE: LIMITED APPEAL RIGHTS FOR EXCLUDED SERVICES/SUPPLIES

CONREQ: 17266

PAGE CHANGE(S): See page 2.

SUMMARY OF CHANGE(S): This change directs the contractor to not offer appeals in reconsideration determinations when the basis of the denial is a statutory or regulatory exclusion.

EFFECTIVE DATE: April 24, 2015.

IMPLEMENTATION DATE: April 24, 2015.

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ATTACHMENT(S): 9 PAGES
DISTRIBUTION: 6010.56-M

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, FILE THIS TRANSMITTAL WITH BASIC DOCUMENT.

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REMOVE PAGE(S)

CHAPTER 12

Section 3, pages 5 - 8, 13 - 16

INSERT PAGE(S)

Section 3, pages 5 - 8, 13 - 17

2.1 Extraordinary Circumstances Are Limited To:

2.1.1 Administrative Error

2.1.1.1 Administrative error (misrepresentation, mistake or other accountable action) of an employee of the contractor performing functions under TRICARE and acting within the scope of that individual's authority. For example, an administrative error would occur when a request for reconsideration was filed with the contractor after the expiration of the appeal filing deadline but the envelope containing the reconsideration request was misplaced by the contractor. In such a case, the misplacement of the envelope by the contractor would constitute an extraordinary circumstance over which the appealing party had no practical control, thereby permitting late filing of the appeal, unless it could be determined that:

- The appealing party used a means other than the **USPS** to deliver the reconsideration request to the contractor, or
- The letter requesting the reconsideration was dated after the reconsideration filing deadline, or
- Other circumstances would lead to the conclusion that the reconsideration request could not have been postmarked on or before the reconsideration filing deadline (for example, the reconsideration request was received by the contractor 30 days after the reconsideration filing deadline).

2.1.2 Mental Incompetency

Mental incompetency of the appealing party (this includes the inability to communicate as a result of physical disabilities).

2.2 Requests For Extension

There must have been a denial of an appeal, due to lack of timely filing, before an extension can be considered. Contractors and the TQMC shall return all requests for extension of the appeals filing deadline to the requesting party if an appeal has not been denied due to lack of timely filing. The contractor and the TQMC shall inform the requesting party that the request for extension may not be considered until a request for reconsideration has been received.

3.0 RECEIPT AND CONTROL OF APPEALS

3.1 Date Stamp

All reconsideration requests shall be stamped with the actual date of receipt within three workdays of receipt by the contractor.

3.2 Control

The contractor shall establish a single centralized appeals department and establish and maintain a single automated system for the control, location, and aging of appeals received. Appeals may be processed at more than one location but all appeals shall be managed and

controlled by the centralized appeals department. The contractor's ability to respond to inquiries on a timely basis shall be measured from the actual date of receipt of the inquiry by the contractor, rather than from the date the inquiry was received in the appropriate responding department or from the date the inquiry was imaged by the contractor.

3.3 Acknowledgment Of Receipt Of Request For Reconsideration

The contractor shall provide an interim written response for all reconsiderations not processed to completion by the date required, advising the appealing party of the estimated date of issuance of the reconsideration determination. A preprinted postcard may be used if information covered by the Privacy Act is not disclosed. Electronic mail may be used to respond to the appealing party, provided the contractor first obtains written permission from the appealing party to use electronic mail for communicating information regarding his or her appeal.

3.4 Timeliness Standards

Sections 4, 5, and 6 include standards relating to timely issuance of reconsideration determinations and timely submission of appeals case files to the TQMC and to the Appeals and Hearings Division. Standards are expressed in either calendar days or working days. To determine whether timeliness has been met relating to a standard expressed in working days, the first working day following receipt by the contractor or TQMC of the request for reconsideration, or request for the appeal file, is counted as day one of the timeliness requirement. To determine whether timeliness has been met relating to a standard expressed in calendar days, the first calendar day following receipt by the contractor or TQMC of the request for reconsideration is counted as day one of the timeliness requirement.

4.0 RECONSIDERATION REVIEWER QUALIFICATIONS AND ADMINISTRATIVE REQUIREMENTS

4.1 Reviewer Qualifications

If the reconsideration determination is based on lack of medical necessity or other reason relative to reasonableness, necessity or appropriateness, the reconsideration reviewer must be someone who is: (1) qualified under [Chapter 7, Section 1, paragraph 3.0](#) to make an initial determination, (2) not the individual who made the initial denial determination, and (3) a specialist in the type of services under review. Exception: A reconsideration determination fully overturning the initial denial determination can be made by the reviewer who issued the initial denial determination.

4.2 Administrative Requirements

Each review shall be dated and include the signature, legibly printed name, clinical specialty, and credentials of the reviewer. Each reviewer shall include rationale for his or her decision (i.e., a complete statement of the evidence and the reasons for the decision). In addition, the name and title of the individual issuing the reconsideration determination shall be included in the Appeal Summary Log ([Addendum A, Figure 12.A-2](#)). If the appeal file is forwarded to [Defense Health Agency \(DHA\)](#), a completed "Professional Qualifications" form ([Addendum A, Figure 12.A-3](#)) must be included in the file for each reviewer.

4.3 Additional Documentation

The contractor and the TQMC shall request and make every reasonable effort to obtain any documentation required to arrive at a proper reconsideration determination. This includes follow-up letters or documented telephone calls if requested information is not received. An appeal involving inpatient admission or Length-Of-Stay (LOS) may require obtaining the entire hospital record. Whenever records are required, the contractor or the TQMC shall request such records directly from the provider. Written or verbal statements made by beneficiaries regarding their medical conditions are not a substitute for medical records. If there are no extenuating circumstances alleged and no added information furnished or referenced, the contractor or the TQMC may make the determination on the information available in its records. Improperly developed or incomplete appeal files received by DHA may be returned to the contractor or the TQMC for additional development, completion, and, if appropriate, issuance of a revised reconsideration determination. Due to the time constraints involved in expedited preadmission/preprocedure appeals, fully documenting a case file may not be possible. Requirements for documenting case files for expedited preadmission/preprocedure appeals is addressed in [Section 4](#).

4.4 File Documentation (In Other Than Provider Termination Cases)

The contractor and the TQMC shall carefully review the initial determination and all pertinent evidence and documentation obtained at reconsideration in light of the applicable provisions of 32 CFR 199, the TOM, the TPM, the TRICARE Reimbursement Manual (TRM) and all other relevant guidelines and instructions issued by DHA. The reconsideration determination shall be based on the facts of the case as shown in the evidence and shall be supported by appropriate citations from 32 CFR 199, which shall be cited in the reconsideration determination.

4.5 File Content, Requirements, And Structure

4.5.1 The contractor and the TQMC shall document all determinations made at the reconsideration level in sufficient detail so that, if the next level of appeal is pursued, a subsequent reviewer shall be provided with a clear and complete picture of all actions taken on the case to that point. All material related to the reconsideration shall be made part of the permanent claim file. The copy of the appeal file provided by the contractor to the TQMC or DHA must be complete, including the Appeal Summary Log ([Addendum A, Figure 12.A-2](#)) and the Professional Qualifications form ([Addendum A, Figure 12.A-3](#)). Likewise, the copy of the appeal file provided by the TQMC to DHA must be complete and include the file received by the TQMC from the contractor. In addition, the TQMC must complete and include its portion of the Appeal Summary Log.

4.5.2 The contractor and the TQMC shall retain and completely document the file or files for all claims involved in the appeal. The contractor can either establish a separate appeal file containing all documents related to the appeal, or can gather all documents related to the appeal, including the completed Appeal Summary Log and Professional Qualifications Statement, into an appeal file when the file is requested by the TQMC or DHA. Irrespective of the method, the contractor and the TQMC shall be responsible for furnishing the required appeal file to the entity performing the next level of appeal within required time periods, if an appeal request is filed. The contractor is not required to submit to the TQMC, the professional qualifications of the medical reviewers referenced in [paragraph 4.5.3](#).

4.5.3 Appeal Case File

4.5.3.1 Case files shall be assembled and forwarded to the office conducting the next level of appeal in the format described herein. Failure to comply may result in return of the case file for assembly consistent with this paragraph. A table of contents shall be the first page of the case file and will describe the contents of each tabbed section and subsection. All documents within sections shall be arranged in chronological order based on document date, not date of receipt. Summary Explanations of Benefits (EOBs) shall be redacted to remove information not associated with the beneficiary relevant to the appeal. However, all other documents shall be complete and legible. Documents in landscape orientation shall be assembled with the heading on the left. Except as detailed in the following note, the case file shall not contain duplicate copies of documents.

Note: It may be necessary to copy documents to ensure each section contains a complete set of relevant documents. For example, at times, documents such as claims or EOBs contain handwritten notes. A copy or copies should be made of such documents, originals returned to the appropriate sections (such as the claims or EOB sections), and the copy or copies placed in the section(s) appropriate for the notes. Likewise if a document contains an attachment or enclosure, if the attachment or enclosure falls within the category of documents under a separately tabbed section or sections, the document shall be copied and the copies placed in the appropriate sections, ensuring originals remain with the document to which they were attached or enclosed.

4.5.3.2 Documents within the appeal case file shall be organized by the following tabbed sections, as applicable:

4.5.3.2.1 Appeal Summary Log (see).

4.5.3.2.2 Determinations. Include requests for preadmission/pre-procedure authorization, if any. Include requests for reconsideration, and the envelope in which they were delivered. Include acknowledgments of requests for reconsideration.

- Initial
- Reconsideration
- TQMC reconsideration

4.5.3.2.3 Peer reviews. Signed peer review opinions as referenced in [paragraph 4.2](#). Include requests for peer review. Attach the professional qualifications of each peer reviewer (see [Addendum A, Figure 12.A-3](#)).

- Initial
- Reconsideration
- TQMC reconsideration

4.5.3.2.4 Documentation. Do not add claims, EOB forms, or medical records to this section. Documents appropriate for this section include, but are not limited to, records of telephone contacts, requests for medical and/or other documentation received or obtained prior to rendering the initial or reconsideration determination, other documentation received or obtained prior to rendering the initial or reconsideration determination, requests for additional evidence/

6.8.2 Factual Reconsideration Determination Based on Statute or Regulation

6.8.2.1 If the reconsideration determination upholds the denial based on a statutory or regulatory exclusion, further appeal shall not be offered to challenge the statutory or regulatory exclusion. Further appeal is available, however, to challenge whether the exclusion was appropriately applied. For other adverse determinations, if the reconsideration is less than fully favorable and \$50 or more remains in dispute, the contractor shall include a statement explaining the rights of the beneficiary (or representative) and the non-network participating provider to request a formal review with DHA. A request for formal review must be postmarked or received by DHA within 60 days from the date of the notice of the reconsideration determination issued by the contractor.

6.8.2.2 The following wording is for the appeal rights section of reconsideration determinations upholding denials based on statutory or regulatory exclusions:

"An administrative reconsideration review is available under the TRICARE appeal process when a denial is based on a requirement of law or regulation. However, because disputes challenging a requirement of law or regulation do not present an appealable issue, they are ineligible for appeal to a formal review or hearing. Since the disputed care in this case is excluded by law or regulation, further appeal is not authorized. This reconsideration determination completes the administrative appeal process under 32 CFR 199.10, and no further administrative appeal is available.

Although disputes challenging a requirement of law or regulation are not appealable to a formal review or hearing, further appeal to a formal review or hearing is available to dispute whether the law or regulation was properly applied if other requirements are satisfied, such as the requisite amount in dispute. For example, services and supplies related to treating obesity are excluded by law and regulation when obesity is the only or the major condition being treated. If a service or supply was provided to treat hypertension, but the obesity exclusion was erroneously applied, an appeal may be filed to challenge the erroneous application of the obesity exclusion. As a further example, if law or regulation excludes durable medical equipment, but the actual service provided was for a prosthetic device, an appeal may be filed on the grounds that the durable medical equipment exclusion was incorrectly applied to the prosthetic device coverage determination."

6.8.3 Reconsideration Determinations Issued By The TQMC

If the reconsideration determination issued by the TQMC is less than fully favorable and \$300 or more remains in dispute, the contractor shall include a statement explaining the right of the beneficiary (or representative) and the non-network participating provider to file a request for hearing with DHA. A request for hearing must be postmarked or received by DHA within 60 calendar days from the date of the notice on the reconsideration determination issued by the TQMC. Refer to [paragraph 7.2](#) regarding hearings in preadmission/preprocedure cases in which the requested service(s) have not commenced.

6.8.4 When the Amount Required to File an Appeal Remains in Dispute

The following wording is suggested if the amount required to file an appeal remains in dispute. (See [Section 2, paragraph 4.0](#) for required amount in dispute):

6.8.4.1 Nonexpedited Reconsideration Determination

"An appropriate appealing party (i.e., (1) the TRICARE beneficiary, (2) the non-network participating provider of care or (3) a provider of care who has been denied approval under TRICARE), or the appointed representative of an appropriate appealing party, has the right to request a **(insert level of appeal)**. The request must be in writing, be signed, and postmarked or received by **(insert the TQMC name, postal address, e-mail address, and fax number or the Appeals and Hearings Division, DHA, 16401 East Centretch Parkway, Aurora, Colorado 80011-9066)**, within **(insert number of calendar or working)** days from the date of this decision and must include a copy of this reconsideration determination. For the purposes of TRICARE, a postmark is a cancellation mark issued by the United States Postal Service.

Additional documentation in support of the appeal may be submitted. However, because a request for **(insert level of appeal)** must be postmarked or received within **(insert number)** days from the date of the reconsideration determination, a request for **(insert level of appeal)** should not be delayed pending the acquisition of any additional documentation. If additional documentation is to be submitted at a later date, the letter requesting the **(insert level of appeal)** must include a statement that additional documentation will be submitted and the expected date of submission.

Upon receiving your request, all TRICARE claims related to the entire course of treatment will be reviewed."

6.8.4.2 Expedited Preadmission/Preprocedure Reconsideration Determination (include in addition to the suggested wording above)

"The TRICARE beneficiary, or the appointed representative of the beneficiary, has the alternative of requesting an expedited reconsideration. The request must be in writing, be signed and must be received by **(insert the TQMC name, postal address, e-mail address, and fax number)** within three working days after the receipt of this denial determination, and must include a copy of this denial determination. A request for an expedited reconsideration filed after the three day appeal filing deadline will be accepted as a nonexpedited request for reconsideration. It is recommended that any additional documentation you may wish to submit be submitted with the request for expedited reconsideration. Upon receiving your request, all TRICARE claims related to the entire course of treatment will be reviewed."

6.8.5 Amount In Dispute Less Than The Amount Required To File An Appeal

For those cases in which the amount in dispute is less than the amount required to file an appeal (refer to [Section 2, paragraph 4.0](#) for Required Amount in Dispute), the contractor or the TQMC shall notify the appealing party or representative that the reconsideration determination is final and no further administrative appeal is available. The following is suggested wording:

“Because the amount in dispute is less than (**insert required amount in dispute**), this reconsideration determination is final and there are no further appeal rights available.”

7.0 EFFECT OF THE RECONSIDERATION DETERMINATION

7.1 The reconsideration determination is final and binding upon all parties unless:

7.1.1 The amount in dispute meets the jurisdictional requirements required to file an appeal (refer to [Section 2, paragraphs 3.3](#) and [4.0](#) regarding requirements for an amount in dispute), appeal rights were offered in the notice of denial at the reconsideration (or second reconsideration) level, and a request for a second reconsideration, formal review, or hearing, as applicable, is either postmarked or received by the appeal filing deadline, or

7.1.2 The contractor’s reconsideration (or TQMC’s second reconsideration) decision is reopened and revised by the contractor or the TQMC, either on its own motion or at the request of a party, within one year from the date of the reconsidered determination, or

7.1.3 The contractor’s reconsideration (or the TQMC’s second reconsideration) is reopened and revised by the contractor or the TQMC, after one year but within four years, because: new and material evidence is received; a clerical error in the reconsideration determination is discovered; the contractor or the TQMC erred in an interpretation or application of TRICARE coverage policy; or an error is apparent on the face of the evidence upon which the reconsideration (or second reconsideration) determination was based, or

7.1.4 The contractor’s reconsideration (or the TQMC’s second reconsideration) is reopened and revised by the contractor or the TQMC at any time, if the reconsideration (or second reconsideration) determination was obtained through fraud or an abusive practice, e.g., describing services in such a way that a wrong conclusion is reached; or

7.1.5 The contractor’s reconsideration (or the TQMC’s second reconsideration) is reversed upon appeal at a hearing in accordance with the provisions of [32 CFR 199.10](#) and [199.15](#).

7.1.5.1 Beneficiaries may appeal an TQMC reconsideration determination to **DHA** and obtain a hearing on such appeal to the extent allowed under the procedures in [32 CFR 199.10\(d\)](#).

7.1.5.2 A non-network participating provider may appeal an TQMC reconsideration determination to **DHA** and obtain a hearing on such appeal to the extent allowed under the procedures in [32 CFR 199.10\(d\)](#). The issue in a hearing requested by a provider is limited to waiver of liability (i.e., whether the provider knew or could reasonably have been expected to know that the services were excludable) (refer to [Section 4, paragraph 4.0](#)). Because waiver of liability applies only to services retrospectively determined to be potentially excludable, waiver of liability will not

apply in concurrent review or preadmission/preprocedure cases (i.e., non-network participating providers may request hearings only in cases involving retrospective determinations with the issue being limited to waiver of liability.)

7.2 Further appeal of a preadmission/preprocedure denial to the hearing level is not permitted unless the requested services have commenced. An appeal to a hearing where the services have not commenced is not allowed because there would not be an adequate remedy should the hearing final decision hold in favor of the beneficiary. This is because the issue at hearing would be whether the medical documentation at the time of the request for preadmission/preprocedure demonstrated medical necessity for the services requested. A final decision issued as a result of the hearing process (which may take several months to complete) holding that the beneficiary met the requirements for preadmission/preprocedure on the date the preadmission/preprocedure request was made could not be implemented as the circumstances that warranted the services at the time of the initial request would unquestionably have changed.

8.0 CASES RETURNED WITHOUT DHA REVIEW

At the discretion of DHA, certain cases appealed may be returned to the contractor for processing without the issuance of a formal review or hearing decision. These cases will normally involve instances in which a processing error has resulted in a denial or partial denial of a claim; instances in which the contractor has failed to obtain additional documentation as required by paragraph 4.3; instances in which the contractor has failed to address the entire EOC; instances in which the contractor has erroneously identified a medical necessity issue as a factual issue and visa-versa; instances in which the contractor has failed to complete the Appeal Summary Log; and instances in which the contractor has failed to offer appropriate appeal rights. Also, DHA, in doing normal development associated with the appeal process, may obtain information that resolves the issues without further review by DHA. If the case is returned for reprocessing, for record purposes the case will be treated as a new request for reconsideration (i.e., Chapter 1, Section 3, paragraph 4.0, will apply and the returned case will be reported for workload purposes). Development for additional documentation, if necessary, will be performed as it would in any reconsideration case. The contractor shall issue a revised reconsideration determination based on the merits of the claim. If applicable, additional appeal rights shall be offered by the contractor.

9.0 RECORD OF RECONSIDERATION

The contractor shall ensure maintenance of records incorporating the following requirements:

9.1 The contractor shall maintain the record of its reconsideration determinations in accordance with the requirements of Chapter 2, Section 2, paragraph 1.16.

9.2 The record of reconsideration shall be assembled and maintained in the format prescribed by paragraph 4.5.3.

10.0 CONTRACTOR PARTICIPATION IN THE FORMAL REVIEW AND HEARING

10.1 Contractor participation in the formal review and hearing is limited to submission of written documentation to DHA to be considered in the adjudication of the appeal. DHA will notify the contractor, by requesting the contractor's appeal file, when a request for formal review or hearing is

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received. The contractor shall advise **DHA** within 10 calendar days of receiving notification that a formal review or hearing request has been received, that it intends to participate in the formal review or hearing through submission of additional documentation. The additional documentation shall be received by **DHA** within 20 calendar days following the notice to the contractor of the receipt of the formal review or hearing request.

10.2 The contractor may appear at the hearing as a witness and offer testimony in such capacity. **DHA** will notify the contractor when a request for hearing is received by requesting the contractor's appeal file. The contractor shall advise **DHA**, within 10 calendar days of receiving notification that a hearing request has been received, that it intends to appear at the hearing as a witness. If the contractor has advised **DHA** that it intends to appear at the hearing as a witness, **DHA** will advise the contractor of the time and place of the hearing.

10.3 If, after receiving notice from **DHA** that a formal review or hearing request has been submitted, the contractor and the TQMC receive additional claims or documentation related to the formal review or hearing, the contractor and the TQMC shall notify **DHA** of the receipt of the additional claims or documentation and submit copies of the claims or documentation to **DHA**, as well as copies of any written response the contractor or TQMC may have issued resulting from the receipt of additional claims or documentation.

- END -

