

CY 2022 Parts C & D Dismissal and Withdrawal Qs & As
December 9, 2021

1. **Question:** Will CMS develop a notice for plans to use for notifying an enrollee (or other party) of a plan dismissal?

Response: Yes, CMS has developed model notices that plans may use to notify an enrollee (or other party) when a request is dismissed. There is a single model notice for dismissals at the initial determination level (organization determinations/coverage determinations) and separate model notices for dismissals of Part C and Part D level 1 appeals. The Part C model notices can be found at <https://www.cms.gov/Medicare/Appeals-and-Grievances/MMCAG/Notices-and-Forms> and the Part D model notices can be found at <https://www.cms.gov/Medicare/Appeals-and-Grievances/MedPrescriptDrugApplGriev/PlanNoticesAndDocuments>. These are model notices and may be modified by plans as necessary.

42 CFR §§ 422.2267(c), 422.2267(e)(29), 423.2267(c).

Content requirements for notices of dismissal issued by Part C and Part D plans are in:

42 CFR §§ 422.568(h), 422.570(g), 422.582(g), 422.584(g), 422.631(f), 422.633(i), 423.568(j), 423.570(f), 423.582(f), and 423.584(f).

2. **Question:** If a plan dismisses an initial determination request (Part C organization determination or Part D coverage determination) and an enrollee (or other party) requests a review (appeal) of the dismissal, how should the plan process the request?

Response: A dismissal of an initial determination request is binding unless it is modified or reversed by the plan upon appeal or vacated (if the plan finds good cause to vacate a dismissal). In the scenario presented in this question, the enrollee has requested an appeal (reconsideration or redetermination) of the plan's dismissal. If, upon appeal, the plan determines that its dismissal was in error, the plan reverses the dismissal and processes the request for coverage in accordance with the adjudication timeframes and notice requirements at 42 CFR §§ 422.568, 422.572, 422.631(d), 423.568, and 423.572; the timeframe for the initial determination begins on the date/time of the plan's decision to reverse its dismissal. If the plan upholds its dismissal on appeal, there is no further right to appeal the dismissal. Also see: 42 CFR §§ 422.568(i) and (j); 422.570(g); 422.631(g) and (h); 423.568(k) and (l); and 423.570(f).

3. **Question:** If a plan dismisses a level 1 appeal request and an enrollee (or other party) appeals the dismissal to the IRE, how is the request processed?

The plan's decision regarding its dismissal of a level 1 appeal request is binding unless the enrollee or other party requests review by the IRE or the decision is vacated by the plan. If an enrollee requests IRE review of the dismissal and the IRE determines that the plan's dismissal was in error, the IRE vacates the dismissal and remands the case to the plan for reconsideration or redetermination (level 1 appeal). If the Part C independent review entity vacates an MA plan dismissal and remands the case to the plan for

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reconsideration, the reconsideration must be conducted by the MA plan consistent with § 422.590, including adjudication timeframes. Similarly, if the Part D independent review entity vacates a Part D plan sponsor's dismissal and remands the case to the Part D plan sponsor, the redetermination must be conducted by the plan sponsor consistent with § 423.590, including adjudication timeframes. The adjudication timeframe begins when the plan receives the IRE's remand order vacating the plan's dismissal. The IRE's decision regarding a plan's dismissal of a level 1 appeal request is binding and not subject to further review.

42 CFR §§ 422.582(h) and (i); 422.584(g); 422.592(i); 422.634(j) and (k); 423.582(g) and (h); 423.590(j); 423.604.

4. **Question:** If an enrollee (or other appropriate party) submits a timely request to withdraw a pending initial determination or level 1 appeal request, does the plan issue a written dismissal notice?

Response: Yes. If an enrollee (or other appropriate party) requests that an initial determination or level 1 appeal request be withdrawn before the plan issues a decision, the plan dismisses the pending initial determination or level 1 appeal request and must mail or otherwise transmit a written notice of the dismissal to the parties. The dismissal notice must state: (1) the reason for the dismissal; (2) the right to request an appeal of the dismissal; and (3) the right to request that the plan vacate the dismissal.

42 CFR §§ 422.568(g)(4) and (h); 422.570(g); 422.574; 422.582(f)(5) and (g); 422.584(g); 422.631(e)(4) and (f); 422.633(h)(5) and (i); 423.566(c); 423.568(i) and (j); 423.570(f); 423.582(e) and (f); 423.584(f).

5. **Question:** Should withdrawal requests be reported as dismissals beginning in 2022?

Response: As noted in the final rule, withdrawn requests and dismissals should continue to be reported separately in their distinct categories per existing reporting requirements. (86 FR 5959). Please refer to the 2022 Reporting Requirements for additional information on the reporting of dismissals and withdrawals. Submit any questions specific to reporting requirements to:

For Part C: PartCplanreporting@cms.hhs.gov

For Part D: PartD-planreporting@cms.hhs.gov

6. **Question:** If, for example, an enrollee requests an appeal of a plan's dismissal of an initial determination request and the plan upholds the dismissal upon

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redetermination/reconsideration (level 1 appeal), does the enrollee have the right to request another review of the dismissal with the IRE?

Response: No. There is one level of appeal/review of an adjudicator's dismissal. In this example, if a plan dismisses an initial determination request and the enrollee requests a level 1 appeal and the plan upholds its dismissal, the enrollee cannot request that the IRE also review the plan's dismissal of the initial determination request. However, in addition to the right to request review of a dismissal, a party also has the right to request that the plan vacate the dismissal action.

42 CFR §§ 422.592(i) and 423.600(k).

The final rule (CMS-4190-F2) that includes the dismissal provisions can be found at:

<https://www.govinfo.gov/content/pkg/FR-2021-01-19/pdf/2021-00538.pdf>