

B. Intermediary Hearing Officer Decision.--An intermediary hearing officer's decision (§2916) becomes final and binding as of the date of the notice of the intermediary hearing decision.

C. Board Hearing Decision.--A decision of the Provider Reimbursement Review Board (§2925.6) becomes final and binding upon all parties to the hearing upon expiration of 60-calendar days after the date of receipt of the Board's decision unless, within that time, the provider requests judicial review or the Secretary reviews and modifies, reverses or remands or affirms the Board decision.

D. Secretary Decision.--A decision of the Secretary resulting from his modification, reversal, remanding or affirmation of a Board decision becomes final and binding upon all parties to the Secretary's decision upon expiration of 60 calendar days after the date of receipt of the Secretary's decision unless, within that time, the provider files a request for judicial review (§2928) with the appropriate United States District Court or the District Court for the District of Columbia.

The above-listed determinations and decisions, otherwise final, may nevertheless be reopened and corrected when the specific requirements for reopening and correction set out in §2931 are met.

2931. REOPENING AND CORRECTION

A. Reopening.--For the purposes of this section, the term "reopening" means an affirmative action taken by an intermediary, an intermediary hearing officer, the PRRB, the Health Care Financing Administration, or the Secretary, to reexamine or question the correctness of a determination or decision otherwise final. Such action may be taken:

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1 On the initiative of the appropriate authority within the applicable time period (§2931.1); or

2. In response to a written request of the provider or other entity filed with the intermediary, the intermediary hearing officer, the PRRB (provider only), or the Secretary within the applicable time period (§2931.1).

B. Correction.--For the purposes of this section, the term "correction" includes a revision (adjustment) in an intermediary's determination or intermediary hearing officer decision, Board hearing decision, or Secretary decision, otherwise final, which is made after a proper reopening.

The mode used to correct a cost report pursuant to a reopening is discretionary with the intermediary.

An intermediary may itself correct the cost report, or it may require the provider or other entity to file an amended cost report. When a correction is made following the reopening of a hearing officer decision, a Board decision, or a Secretary decision, the intermediary will correct the cost report.

2931.1 Time Limits for Reopening.--

A. Reopening an Intermediary Determination.--An intermediary's initial determination on the amount of program payment contained in a notice of amount of program reimbursement, which is otherwise final, may be reopened by the intermediary within 3 years of the date of such notice.

B. Reopening a Hearing Officer Decision.--A decision of a hearing officer or panel, otherwise final, may be reopened by such hearing officer or panel within 3 years of the date of the notice of the hearing decision to correct any matter in issue at the hearing. Issues which were not raised at the hearing may not be reopened by the hearing officer. If the hearing officer (or a majority of a panel of hearing officers) is unavailable for reasons including death, termination of employment, illness, or a leave of absence, the intermediary may select another hearing officer or, where a panel is involved, such number of hearing officers as may be necessary to constitute a full panel.

C. Reopening Upon Review and Notification by HCFA.--A determination and a decision will be reopened and corrected by an intermediary if within 3 years of the date of the intermediary's notice of amount of program reimbursement or the hearing officer decision (see paragraphs A or B above), as the case may be, HCFA notifies the intermediary in writing that such determination or such decision is inconsistent with the applicable law, regulations, or general instructions issued by HCFA.

D. Reopening a PRRB Decision.--A decision of the PRRB otherwise final may be reopened by the Board within 3 years of the date of the notice of the PRRB decision to correct any matter in issue at the Board hearing. Issues which were not raised at the Board hearing may not be reopened by the Board.

E. Reopening the Secretary's Decision.--A decision of the Secretary, which is otherwise final, modifying, reversing, remanding or affirming a decision of the PRRB may be reopened by the Secretary within 3 years of the date of the notice of the Secretary's review. Issues which were not reviewed by the Secretary may not be reopened by the Secretary.

F. Reopening at Any Time Because of Fraud.--Notwithstanding the provisions of paragraphs A, B, C, D, or E above, a determination or decision will be reopened and corrected at any time if it is found that such determination or decision was procured by fraud or similar fault by any party to the determination or decision.

G. When Reopening Period Begins to Run.--The time period during which a determination or decision may be reopened under the above 3-year rules commences on the date of the notice of amount of program reimbursement containing the intermediary's determination, or the date of the notice of intermediary hearing decision, PRRB decision or Secretary's decision, as the case may be. The 3-year period ends on the third anniversary of that date. Where the period for reopening expires on a Saturday, Sunday, legal holiday or any other day all or part of which is a non-workday by Federal statute or Executive order, the period is extended to the next full workday.

2931.2 Reopening Final Determination.--Whether or not the intermediary will reopen a determination, otherwise final, will depend upon whether new and material evidence has been submitted, or a clear and obvious error was made, or the determination is found to be inconsistent with the law, regulations and rulings, or general instructions. Information submitted in support of an amended cost report or the audit findings on a previously unaudited cost report could provide new and material evidence on which to base a reopening.

A. Filing Amended Cost Reports.--Ordinarily, a cost report filed in a manner consistent with regulations and policy governing its preparation is intended to be final when settlement has been made or following an audit when determined to be necessary by the intermediary. However, a cost report may also be considered final when initially delivered to the intermediary although the intermediary may not have performed its desk review and, if necessary, its audit.

Under limited circumstances, the program will accept an amended cost report. An amended cost report is one which is intended to revise information submitted on a cost report which has previously been filed by the provider.

A provider may file or an intermediary may require an amended cost report to:

1. correct material errors detected subsequent to the filing of the original cost report.
2. comply with the health insurance policies or regulations, or
3. reflect the settlement of a contested liability;

a. Where the liability resulting in increased costs is recognized by the provider but the amount is in question at the time of filing a cost report, the minimum obligation, if it can be determined, may be included in cost when the provider files. When the final amount of liability is determined, if the difference between the amount initially claimed and the actual amount is minor the difference may be reflected in the current period. Where this difference exceeds these limits, an amended cost report must be filed.

b. Where the contested liability is questionable, no amount may be included in cost for the period. If a liability develops, it must be treated in accordance with a. above.

Once a cost report is filed, the provider is bound by its elections. Except in 2 above, a provider may not file an amended cost report to avail itself of an option it did not originally elect. For example, a provider which has filed a cost report using a more sophisticated method of cost finding cannot file an amended report using the step-down method of cost finding for that period.

B. Adjustments in Depreciation.--Action by the intermediary to recover accelerated depreciation after a termination or decrease in the ratio of HI utilization does not constitute a reopening of prior determinations. Also, action to adjust depreciation for gains or losses on disposal of assets does not constitute a reopening. Thus, the limitation on reopening of a determination would not be a factor in recovery of accelerated depreciation, as no reopening results from the recovery action. The basis for this policy is that at the time of the past determination, the known facts and circumstances were such that the amount of accelerated depreciation was correctly determined and a later termination from the program or a decrease in the ration of HI utilization would not change the facts and circumstances existing at that time. Since the subsequent change does not affect that which had been previously considered, the determination is not reopened. Instead, a current determination is made of the correct amount of depreciation that can be claimed. Since this determination is based on current circumstances, and is made for the current period, i.e., the cost report period ending with the date of the provider's termination or a decrease in the ratio of HI utilization, there is no barrier to the calculation of depreciation for the entire past life of the depreciated items. A current determination would include a determination of the correct amount of depreciation for all years based on the current period. This current depreciation determination does not change the correctness of earlier determinations, and therefore does not reopen them.

Final determinations will not be reopened simply because a different view is taken with respect to the import of the evidence upon which the determination was made. The same criteria apply, of course, to the reopening of a decision of a hearing officer, the PRRB or the Secretary.

2932. NOTICES (INCLUDING NOTICES OF REFUSAL) RELATED TO REOPENING AND CORRECTION.

A. Requirements of the Notice.--When any determination or decision is reopened as provided in §2931 or it is decided not to reopen, notice of such reopening (or refusal to reopen--see §2931.1 below) will be mailed to the provider or other parties to the determination or decision at their last known address. The notice of reopening will be issued by the intermediary, intermediary hearing officer, the PRRB, or the Secretary making the reopening as required by §2931.1. The provider or other party will be advised in the notice as to the circumstances surrounding the reopening, i.e., why it was necessary to take such action, and the opportunity to comment, object, or submit evidence in rebuttal. Where a decision is to be reopened by a hearing officer, PRRB or the Secretary, the hearing officer, PRRB or Secretary may in his discretion hold a hearing to receive additional evidence and any oral testimony thereon of the provider or other party.

When a correction is made in a determination or decision following the reopening, a notice of correction will be similarly mailed and addressed. The notice will bear the legend "Notice of Correction-Program Reimbursement" if required to be issued by the intermediary on a determination, and "Notice of Correction-Hearing Decision" if required to be issued by the intermediary, intermediary hearing officer, PRRB or Secretary on a decision, and will refer to the previous program payment notice or hearing decision, respectively. It should also advise that the provider has a right to a hearing where the amount of program payment is corrected.

The correction notice will explain the basis of the correction with as much of the detail as is required in the case of the notice of amount of program reimbursement (§§2906) or hearing officer decision. (See §2916.)

If, after a notice of reopening had been issued, it is determined that no correction is warranted, the provider or other party will be notified accordingly. (See §2932.1.)

B. Effect of a Correction.--Where a correction is made by an intermediary in a determination on the amount of program payment which it has reopened, such correction shall be considered a separate and distinct determination to which the hearing provisions of this chapter apply; i.e., if as a result of the correction there is a sufficient amount of title XVIII program payment in dispute, the provider or other entity has a right to a hearing on such correction if it files a request for one within 180-calendar days of the date of the notice of correction (but see the exception discussed below).

C. Finality of a Correction.--The correction of a determination or decision will be final and binding on the provider unless the provider files a written request for a hearing on the corrected determination as authorized by paragraph B above and in accordance with §2911 or §2921.

2932.1 Notice of Refusal to Reopen or Correct.--A provider has no right to a hearing on a finding by an intermediary or hearing officer that a reopening or correction of a determination or decision is not warranted. Accordingly, a hearing paragraph should not be included in any letter or notice setting forth such a finding. The notice will, however, explain the basis for refusing to reopen or correct the determination or decision and will be issued by the intermediary, hearing officer, PRRB or the Secretary having responsibility for the reopening according to §2931.