

## Chapter 12

## Section 5

# Appeal Of Factual (Non-Medical Necessity) Determinations

Revision:

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The contractor shall provide for an appeal system allowing full opportunity for proper appealing parties to appeal adverse factual determinations. Factual determinations are issued in cases involving: coverage issues, provider authorization (status) requests, hospice care, foreign claims, denials based on sections other than [32 CFR 199.4](#), and both medically necessity and factual determinations. Medical or peer review may be necessary to reach a factual determination; e.g., for advice on whether regulation or policy criteria are met. Waiver of liability is not applicable.

### 1.0 INITIAL DETERMINATION

An initial factual determination is a written decision that is other than a medical necessity determination under [Section 4](#). For further information relating to initial determinations, refer to [Section 1, paragraph 3.1](#). The initial denial determination is final and binding unless the initial determination is reversed by the contractor or revised upon appeal.

### 2.0 TIME LIMIT

A request for reconsideration must be filed by the appealing party within 90 calendar days after the date of the notice of the initial denial determination. The contractor shall complete the review and issue its reconsideration determination to all parties within 60 calendar days after the date of receipt of the reconsideration request.

### 3.0 NOTICE

The contractor shall issue a written reconsideration determination. Refer to [Section 3, paragraph 6.0](#) for the required content of the notice to the appealing party of the results of the reconsideration determination.

### 4.0 RECORD

Refer to [Section 3, paragraph 9.0](#) for the record of the factual reconsideration determination to be maintained by the contractor.

### 5.0 EXAMPLES OF FACTUAL DETERMINATIONS

#### 5.1 Determinations Related To Coverage Issues

Denial determinations based on coverage limitations contained in 32 CFR 199, the TRICARE Policy Manual (TPM), and other TRICARE guidance, are considered factual determinations. If it is

determined that a service or supply is covered, but is not medically necessary, is at an inappropriate level of care, is custodial care, or other reasons relative to reasonableness, necessity or appropriateness, the denial will be a medical necessity determination under [Section 4](#) (see Example 1). The following are examples of denials based on coverage limitations:

**Example 1:** A woman received an abortion and although the services were found to be medically necessary (i.e., generally accepted by qualified professionals to be reasonable and adequate for the treatment of her condition), the coverage criteria set forth in the TPM were not met. Although the care was determined to be medically necessary, since the coverage criteria were not met, benefits must be disallowed and appeal rights offered under this section. (Note: If the facts were reversed such that coverage criteria were met but the care was found not to be medically necessary, benefits would be disallowed and appeal rights offered under the [Section 4](#).)

**Example 2:** Payment is denied for surgical evacuation of hematomas following removal of breast implants from a previous noncovered augmentation mammoplasty because the beneficiary's hematomas do not constitute a separate medical condition under [32 CFR 199.4\(e\)\(9\)](#). Removal of the hematomas is medically necessary, but the denial is based on a coverage limitation because the complication is not a separate medical condition from the noncovered augmentation mammoplasty. This is an example of a case where medical review may be required to determine whether regulation or policy criteria are met. Notwithstanding the necessity for involvement of a medical reviewer, because the denial is based on a coverage limitation, a factual determination results that is appealable to a formal review conducted by the Defense Health Agency (DHA) Appeals and Hearings Division.

## **5.2 Termination Of A Provider**

Contractor requirements for terminating a provider's status as a TRICARE-authorized provider are found in [Chapter 13, Section 5, paragraph 9.0](#). Under [32 CFR 199.10\(c\)](#) and [\(d\)](#), an initial determination issued by the contractor terminating a provider is appealed directly to a hearing conducted by the DHA.

## **5.3 Provider Status**

An initial determination denying a provider's request for approval as an authorized TRICARE provider is a factual determination. Under [32 CFR 199.10\(c\)](#), a reconsideration determination issued by the contractor denying a provider's request for approval as an authorized TRICARE provider is appealable to a formal review conducted by the DHA.

## **5.4 Hospice Care**

An initial determination denying hospice care is a factual determination. Under [32 CFR 199.4\(e\)\(19\)\(vii\)](#), a beneficiary or provider is entitled to appeal rights for cases involving a denial of hospice care benefits in accordance with the provisions of [32 CFR 199.10](#). An adverse reconsideration determination issued by the contractor denying TRICARE cost-sharing for hospice care is appealed to a formal review conducted by the DHA.

## **5.5 Circumvention Of The TRICARE DRG System**

A hospital dissatisfied with a determination regarding circumvention of the TRICARE Diagnosis Related Group (DRG) system may obtain a reconsideration. Circumvention is defined as an action that results in unnecessary multiple admissions of an individual or other inappropriate medical practices. An adverse reconsideration determination issued by the contractor finding circumvention of the TRICARE DRG system is appealed to a formal review conducted by the DHA.

## **5.6 Extended Care Health Option (ECHO)**

**5.6.1** A determination that a TRICARE beneficiary is ineligible for the ECHO is considered a factual determination based on a requirement of the law or regulation and as such is not appealable. Denial of ECHO services and supplies to an ineligible beneficiary is also not appealable. ECHO services and supplies that are denied to a registered ECHO beneficiary are appealable; the beneficiary or sponsor shall be advised of the right to file a request for a formal review with the DHA.

**5.6.2** The waiver of liability under the TRICARE Basic Program ([32 CFR 199.4](#)) is inapplicable to the ECHO ([32 CFR 199.5](#)).

## **5.7 TRICARE Overseas Program (TOP)**

Denials of authorizations, services and supplies under the TOP, are considered factual determinations. If the reconsideration determination is less than fully favorable, the appealing party shall be advised of the right to file a request for a formal review with the DHA.

## **5.8 Pharmaceuticals Prescribed Outside the Guidelines Issued by the Department of Defense (DoD) Pharmacy and Therapeutics Committee**

A determination regarding pharmaceuticals prescribed outside the guidelines issued by the DoD Pharmacy and Therapeutics Committee is a factual determination.

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