

§ 201.14 Reconsideration under section 1116(d) of the Act.

(a) *Applicability.* This section applies to any disallowance of any item or class of items for which FFP is claimed under title I, IV, X, XIV, XVI(AABD), or XX of the Act, with respect to which reconsideration was requested prior to March 6, 1978, unless the State by filing a written notice to that effect with the Executive Secretary, Departmental Grant Appeals Board (with proof of service on the head of the constituent agency), within 30 days after mailing of the confirmation of the disallowance by the agency head, elects to have the reconsideration governed by 45 CFR part 16.

(1) Reduction of the Federal share of assistance payments under title IV-A, for failure to certify WIN registrants (section 402(e) of the Act);

(2) Reduction by one per centum of the quarterly amount payable to a State for all expenditures under title IV-A for failure, in certain cases, to carry out the provisions of section 402(a)(15) of the Act which require the offering of and arrangement for the provision of family planning services (section 402(f) of the Act);

(3)-(5) [Reserved]

(6) Any other decision pursuant to sections 3, 403, 422, 455, 1003, 1403, 1603, or 2003, of the Act.

(b) *Notice of disallowance determination.* (1) When the Regional Administrator, determines that a State claim for FFP in expenditures for a particular item or class of items is not allowable, he shall promptly issue a disallowance letter to the State.

(2) This disallowance letter shall include where appropriate:

(i) The date or dates on which the State's claim for FFP was made;

(ii) The time period during which the expenditures in question were made or claimed to have been made;

(iii) The date and amount of any payment or notice of deferral;

(iv) A statement of the amount of FFP claimed, allowed, and disallowed and the manner in which these amounts were calculated;

(v) Findings of fact on which the disallowance determination is based or a reference to other documents previously or contemporaneously furnished to the State (such as a report of a financial review or audit) which contain the findings of fact on which the disallowance determination is based;

(vi) Pertinent citations to the law, regulations, guides and instructions supporting the action taken; and

(vii) Notice of the State's right to request reconsideration of the disallowance under this section and the time within such request must be made.

(c) *Request for reconsideration.* (1) To obtain reconsideration of a disallowance of an item or class of items for FFP, a State shall, within 30 days of the date of the disallowance letter, request reconsideration by the Administrator, with copy to the Regional Administrator, and enclose a copy of the disallowance letter.

(2) The request for reconsideration must be accompanied by a brief statement of the issues in dispute, including an explanation of the State's position with respect to each issue.

(d) *Reconsideration procedures.* (1) The Administrator will promptly acknowledge receipt of a State's request for reconsideration.

(2) Upon receipt of a copy of the request for reconsideration, the Regional Administrator, shall, within 30 days of the request, provide to the Administrator a complete record of all material which he believes to have a bearing on the reconsideration, including any reports of audit or review which were the basis for his decision.

(3) The Administrator shall promptly forward to the State a list of all items currently in the record, including those received from the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director and make available for examination, inspection and copying any such items not previously received by the State.

(4) Within 60 days from the date of the Administrator's transmittal to the State under paragraph (d)(3) of this section, the State shall submit in writing to the Administrator any new relevant evidence, documentation, or argument and shall simultaneously submit a copy thereof to the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director.

(5) The Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director shall, within 60 days of submittal by the State, submit to the Administrator (with a copy to the State) an analysis of the issues relevant to the disallowance including:

(i) A restatement of the findings on which the disallowance was based;

(ii) A response to each issue raised by the State with respect to such findings;

(iii) A response to any other issues raised by the State, providing additional documentation when necessary; and

(iv) Any additional documentation which he deems relevant.

(6) The State may respond to the material submitted by the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director by submitting to the Administrator within 15 days any supplemental material the State wishes to have entered into the record.

(7) At the time of submitting any additional material pursuant to paragraph (d)(4), the State may obtain, upon request to him, a conference with the Administrator, during which it may discuss with the Administrator its position on the issues. The State may, at its own expense, have such conference transcribed; the transcript shall become part of the administrative record.

(8) In reconsidering the disallowance, the Administrator may request any additional information or documents necessary to his decision.

(9) New relevant evidence received into the record by the Administrator pursuant to paragraph (d)(8) of this section which is not received from, or previously otherwise made available to, the State shall promptly be made available to the State for examination, inspection, and copying and the State will be given appropriate additional time for comment.

(10) All documents, reports, correspondence, and other materials considered by the Administrator in reaching his decision shall constitute the record of the reconsideration proceedings.

(11) After consideration of such record and the laws and regulations pertinent to the issues in question, the Administrator shall issue a written decision, based on the administrative record, which summarizes the facts and cites the regulations or statutes that support the decision. The decision shall constitute final administrative action on the matter and shall be promptly mailed to the head of the State agency.

(12) Either the state or the Regional Administrator, or with respect to the medical assistance program under title XIX, Regional Medicaid Director may request from the Administrator, for good cause, an extension of any of the time limits specified in this section.

(13) No section of this regulation shall be interpreted as waiving the Department's right to assert any provision or exemption in the Freedom of Information Act.

(e) *Implementation of the decision.* If the decision requires an adjustment in the Federal share, either upward or downward, this will be reflected in subsequent grant awards.

(f) For purposes of this section, the Administrator includes the Deputy Administrator, except that whichever official conducts the conference requested pursuant to paragraph (d)(7) of this section will also issue the final administrative decision pursuant to paragraph (d)(11) of this section.

Appendix—Reconsideration of Disallowances Under Section 1116 (d) of the Social Security Act transfer of functions

Under the authority of Reorganization Plan No. 1 of 1953, and pursuant to the authorities vested in me as Secretary of Health and Human Services, I hereby order that, with respect to reconsiderations of disallowances imposed under titles I, IV, VI, X, XIV, XVI (AABD), XIX and XX of the Social Security Act, 42 U.S.C. 301 *et seq.*, 601 *et seq.*, 801 *et seq.*, 1201 *et seq.*, 1351 *et seq.*, 1381 *et seq.* (AABD), 1396 *et seq.* and 1397 *et seq.*, all references to “Administrator” appearing in 45 CFR 201.14 shall be deemed to read “Chairman, Departmental Grant Appeals Board” and all references to “Deputy Administrator” appearing therein shall be deemed to refer to one or more members of the Departmental Grant Appeals Board, designated by the Chairman to

decide a reconsideration. States which have previously had or requested a conference pursuant to 45 CFR 201.14(d)(7) will be entitled to a conference with the Chairman of the Departmental Grant Appeals Board acting (as provided above) as successor to the Administrator of the Social and Rehabilitation Service (SRS), or with a member or members of the Board designated by the Chairman to decide the matter, acting as successor to the Deputy Administrator of SRS. The Chairman may, at his option, utilize a Grant Appeals Panel, designated pursuant to 45 CFR 516.4(b), to decide the matter, and may supplement the § 201.14 procedures by utilizing the procedures of 45 CFR part 16 including the authority provided in 45 CFR 16.51 to waive or modify any procedural provision upon a determination that no party will be prejudiced and that the ends of justice will be served.

[40 FR 34592, Aug. 18, 1975; 40 FR 44326, Sept. 26, 1975, as amended at 41 FR 42205, Sept. 27, 1976; 42 FR 43977, Sept. 1, 1977; 42 FR 51583, Sept. 29, 1977; 43 FR 9266, Mar. 6, 1978; 51 FR 9202, Mar. 18, 1986; 53 FR 36579, Sept. 21, 1988]