Centers for Medicare & Medicaid Services, HHS

§ 411.124 Administrator’s review of hearing decision.

(a) Request for review. A party’s request for review of a hearing officer’s decision must be in writing (not in facsimile or other electronic medium) and must be received by the Administrator within 25 days from the date on the decision.

(b) Office of the Attorney Advisor responsibility. The Office of the Attorney Advisor examines the hearing officer’s decision, the requests made by any of the parties or CMS, and any submission made in accordance with the provisions of this section in order to assist the Administrator in deciding whether to review the decision.

(c) Administrator’s discretion. The Administrator may—

(1) Review or decline to review the hearing officer’s decision;

(2) Exercise this discretion on his or her own motion or in response to a request from any of the parties; and

(3) Delegate review responsibility to the Deputy Administrator. (As used in this section, the term “Administrator” includes “Deputy Administrator” if review responsibility has been delegated.)

(d) Basis for decision to review. In deciding whether to review a hearing officer’s decision, the Administrator considers—

(1) Whether the decision—

(i) Is based on a correct interpretation of law, regulation, or CMS Ruling;

(ii) Is supported by substantial evidence;

(iii) Presents a significant policy issue having a basis in law and regulations;

(iv) Requires clarification, amplification, or an alternative legal basis for the decision; and

(v) Is within the authority provided by statute, regulation, or CMS Ruling; and

(2) Whether review may lead to the issuance of a CMS Ruling or other directive needed to clarify a statute or regulation.

(e) Notice of decision to review or not to review. (1) The Administrator gives all parties prompt written notice of his or her decision to review or not to review.

(2) The notice of a decision to review identifies the specific issues the Administrator will consider.

(f) Response to notice of decision to review. (1) Within 20 days from the date on a notice of the Administrator’s decision to review a hearing officer’s decision, any of the parties may file with
§ 411.126  Reopening of determinations and decisions.

(a) A determination that a GHP or LGHP is a nonconforming GHP or the decision or revised decision of a hearing officer or of the CMS Administrator may be reopened within 12 months from the date on the notice of determination or decision or revised decision, for any reason by the entity that issued the determination or decision.

(b) The decision to reopen or not to reopen is not appealable.

§ 411.130  Referral to Internal Revenue Service (IRS).

(a) CMS responsibility. After CMS determines that a plan has been a nonconforming GHP in a particular year, it refers its determination to the IRS, but only after the parties have exhausted all CMS appeal rights with respect to the determination.

(b) IRS responsibility. The IRS administers section 5000 of the IRC, which imposes a tax on employers (other than governmental entities) and employee organizations that contribute to a nonconforming GHP. The tax is equal to 25 percent of the employer’s or employee organization’s expenses, incurred during the calendar year in which the plan...