

In exercising the authority provided to them under the final rule, the Appeals Officers will be required to apply the same criteria as the AAJs in determining whether to deny a request for review. The Appeals Officers will apply the standards set forth in §§ 404.970 and 416.1470, which specify when the Appeals Council will review a case, in deciding the appropriate action. The Appeals Officers will continue to receive guidance, direction and supervision from the AAJs, including instructions as to specific issues or kinds of cases requiring the attention of the AAJ.

While an Appeals Officer will have authority to deny a request for review of an ALJ decision, he or she also may refer a case to an AAJ with a recommendation if the case involves complex factual issues or complicated interpretative issues of law and/or regulation. In addition, the analysts in OHA's Office of Appellate Operations will submit all recommendations to grant review directly to the AAJs for disposition.

We believe that the amendment of § 422.205, which will provide Appeals Officers a specific and limited authority, will allow the Appeals Council to give the public a more timely response to their requests for review, increase the ability of the AAJs to carry out their important function of providing review of many ALJ decisions, and improve the quality and efficiency of the service the Appeals Council is able to provide. The revised process will expedite bringing the "close cases," which are normally more complex, to the attention of the AAJs and also allow the AAJs to focus on cases raising significant issues.

#### Public Comments on the Proposed Rule

We published a proposed rule to amend § 422.205 with a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on January 10, 1994, 59 FR 1363. We provided interested persons and organizations 60 days to comment. A correction to the preamble to the proposed rule was subsequently published on March 16, 1994, 59 FR 12211. We received two comments on the proposed rule from a single commenter, a legal services organization that represents Medicare beneficiaries. We have carefully considered the comments and the changes proposed by the commenter. As discussed below, we have adopted one of the changes recommended by the commenter in the final rule.

*Comment:* The commenter believed that the proposed rule would result in some cases being processed more quickly, but also thought that it would

add a step to the process in instances in which the Appeals Officer decides not to deny a request for review and an AAJ must then decide whether to deny or grant review. The commenter perceived this as an additional step that could actually add more time to the process and suggested that if the proposed rule were adopted, there should be time limits within which Appeals Officers must make their decisions.

*Response:* We are not making this suggested change. We believe the modified process involves no additional step, even in the situation of concern to the commenter, and that the process will expedite disposition of the Appeals Council's workload.

Under the regulations as amended by this final rule, AAJs will receive cases to consider for possible review in two ways. As in the past, where an analyst believes a case should be reviewed under the applicable standards, the analyst will submit a recommendation for review directly to an AAJ for disposition. In addition, where an analyst recommends denial of review and the Appeals Officer believes that the Council should review the case, or that an AAJ should consider the case for possible review, the Appeals Officer will submit the case to an AAJ with a recommendation.

Under the regulation in effect prior to the publication of this final rule, AAJs were required to consider all the cases in which analysts recommended denial of review in an effort to identify those in which review might be appropriate notwithstanding the analyst's recommendation to the contrary. Under the final rule, the AAJs will focus their attention on cases in which analysts recommend review and those additional cases that Appeals Officers decide should be brought to their attention. Where the Appeals Officer refers a case, the issues in it will be focused for the AAJ by virtue of the recommendations of the analyst and the Appeals Officer. Thus, as we stated earlier in this preamble and in the preamble to the NPRM, we believe that the revised process will expedite the bringing of "close cases" to the attention of the AAJs and increase their ability to carry out the important function of reviewing many ALJ decisions, while also allowing the Appeals Council to deny or grant the public's requests for review more promptly.

*Comment:* The commenter also thought that the number of cases denied review could increase because the only action the Appeals Officers could take would be to deny requests for review, and because the goal of increasing the Appeals Council's "organizational

effectiveness" seems to imply that the desired outcome is more denials of review. The commenter believed this change would occur in the context of a situation in which the number of Medicare cases the Council can consider is already limited by standards concerning the monetary amounts at issue.

The commenter was concerned that if the Appeals Council reviews fewer cases, the proposed rule would have a significant, adverse impact on low-and-moderate income Medicare beneficiaries, limiting some to seeking relief through court actions they cannot afford and denying others any further opportunity to pursue relief (because the access of Medicare beneficiaries to district court review is restricted by monetary minimums on the amount in controversy). The commenter recommended requiring that an AAJ consider all cases in which judicial review would not be possible because of the amount at issue, noting that this change would not address the concern about court costs prohibiting additional appeals.

*Response:* As discussed in our response to the prior comment, we believe the modified process will increase the capacity of the Appeals Council to identify and review ALJ decisions that should be reviewed pursuant to the applicable regulatory standards. The intent of the revised process provided for in the final rule is to increase the Appeals Council's organizational effectiveness by increasing its capacity to identify and review ALJ decisions that should be reviewed, including, but not limited to, those that present important policy or procedural issues. The revised process should reduce the number of individuals who must file civil actions to obtain relief.

An individual's right to an ALJ hearing in a Medicare case is contingent, in part, on whether or not the claim or claims at issue meet the amount in controversy requirements set forth in the Act. There are, however, no monetary thresholds that limit the Appeals Council's authority to consider reviewing a decision or dismissal issued by an ALJ on a Medicare claim. For example, if an ALJ dismisses a request for hearing because the amount in controversy requirement has not been met, a party may request the Appeals Council to review and vacate the dismissal action. If the request for hearing should not have been dismissed under the applicable standards, the Council will grant the request for review and vacate the hearing dismissal.