

**Public Health Service, HHS**

**§ 130.35**

or she may submit original or duplicate documents as described in paragraph (h)(1) or (h)(2) of this section in order to satisfy that portion of the petition relating to the person with HIV.

**§ 130.32 How and when will the Secretary determine the order of receipt of petitions?**

(a) The order that the petition was received by the Secretary will be determined by the postmark date or the date indicated by a commercial carrier or the U.S. Postal Service, in accordance with §130.31(f).

(b) If the Secretary receives more than one petition which is either post-marked or dated by a commercial carrier or the U.S. Postal Service on the same date, the Department will conduct a random selection of each day's submissions to determine the order within each group of petitions.

(c) A number will be assigned to each petition indicating the order in which it is selected.

**§ 130.33 How will the Secretary determine whether a petition is complete?**

(a) If the Secretary determines that a petition does not include all of the documentation described in subpart C of this part (*i.e.*, it is incomplete), the petitioner will be given the opportunity to complete the petition prior to a final determination.

(b) The petitioner will be notified that the Secretary has determined that the petition is incomplete and, for purposes of retaining the assigned order number described in §130.32, will be given 60 calendar days from the date of the notice to submit the missing information. If the petitioner submits the missing information within 60 calendar days, and the Secretary determines that the petition meets the requirements of the Act, the petitioner will be paid according to the assigned order number.

(c) If the petitioner is unable to complete the petition, the petitioner may submit written documentation to the Secretary, within 60 calendar days, which shows good cause why the required medical or legal documentation is unavailable. If the Secretary determines that the petitioner has provided

an adequate showing of good cause and is otherwise eligible for payment under the Act, the petitioner will be paid according to the assigned order number.

(d) The Secretary will process the petition according to § 130.34 if:

(1) The petition does not include the required documentation, as described in subpart C, even after the opportunity is given to complete it;

(2) The 60-day deadline to complete the petition is not met; or

(3) An adequate showing of good cause why the required medical or legal documentation is unavailable is not provided.

**§ 130.34 How will the Secretary determine whether to pay a petition?**

(a) Subject to available resources, the Secretary will review each petition filed under the Act and make one of the following determinations:

(1) If the Secretary concludes that the petition does not meet the requirements of the Act, the petitioner will be so notified and payment will not be made. These petitioners may seek reconsideration under §130.40.

(2) If the Secretary concludes that the petition does meet the requirements of the Act, the petitioner will receive payment as described in §130.3.

(b) Petitions will be reviewed based upon the assigned number indicating the order of receipt, as described in §130.32.

**§ 130.35 How and when will the Secretary pay a petition?**

(a) To the extent practicable, determinations on complete petitions will be made not later than 120 calendar days after the date that the Secretary determines that the petition is complete.

(b) Payments on petitions will be made as soon as practicable after a determination that a complete petition meets the requirements of the Act.

(c) For each eligible individual, as described in subpart B of this part, the Secretary will make only one payment on a petition.

(d) Where there are multiple surviving children or surviving parents, survivors who have submitted all required documentation and are otherwise eligible for payment under the

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Act, will be paid their share(s) of the payment, as described in §130.11(b)(2) and (3). If any surviving children or surviving parents who are otherwise eligible for payment have not submitted the required documentation, their share(s) of the payment will remain in the Fund until such time as they complete their petitions by submitting such documentation. If they have not submitted the required documentation by the time that the Fund terminates, their share(s) will revert back to the Treasury.

(e) Payments on petitions will be made to eligible individuals, as described in subpart B, unless the eligible individual is legally incompetent to receive payment. A personal representative may receive payment for a legally incompetent individual by submitting the following written documentation to the Secretary:

(1) Proof showing that the eligible individual does not have the legal capacity to receive payment under the Act, such as a birth certificate showing that the eligible individual is a minor, or other evidence showing that the eligible individual is legally incompetent; and

(2) Proof showing that the personal representative has the authority to receive payment for the eligible individual, such as proof of legal guardianship.

**Subpart E—Reconsideration Procedures**

**§ 130.40 Reconsideration of denial of petitions.**

(a) *Right of reconsideration.* Every individual who has filed a petition and has been denied payment may seek reconsideration. To seek such reconsideration, the petitioner must put a request for reconsideration in writing and send it to the Deputy Associate Administrator for Health Professions, Health Resources and Services Administration, Room 8A-54, 5600 Fishers Lane, Rockville, Maryland 20857. The request for reconsideration must be received by the Deputy Associate Admin-

istrator for Health Professions within 60 calendar days of the date the Department denied the petition for payment.

(b) *Request for reconsideration.* The request for reconsideration must state the reasons why the petitioner is seeking reconsideration. However, the request for reconsideration may not include any additional documentation that was not included in the completed petition.

(c) *Review process.* When the Deputy Associate Administrator for Health Professions receives a request for reconsideration, he will convene a panel of three individuals, who are independent of the Ricky Ray Program Office, to review the initial determination and make a recommendation regarding payment. The Deputy Associate Administrator for Health Professions will review the panel's recommendation and then determine whether the petitioner is eligible for payment under the Act. The Deputy Associate Administrator for Health Professions' determination will constitute the Department's final action on the request for reconsideration. If the determination is that the petitioner is eligible for payment, the petitioner will receive payment as described in §130.3. If the determination is that the petitioner is not eligible for payment, the Deputy Associate Administrator for Health Professions will inform the petitioner in writing of the reasons for this determination.

**Subpart F—Attorney Fees**

**§ 130.50 Limitation on agent and attorney fees.**

As provided by section 107 of the Act:

(a) Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the petition of an individual under this Act, more than 5 percent of a payment made under this Act (*i.e.*, \$5,000) on the petition.

(b) Any such representative who violates this section is subject to a fine of not more than \$50,000.