

**Pension & Fiduciary Service**

**Inquiry Response Highlights**

**November 2019**

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# **Pension Management Center Related Inquiries**

# Running Awards and a Claimants Request to be Reduced to the $90 Rate

**Target Audience**: PMC Claims Processors

**Question 1:** Prior to “prescribed form” requirements for any changes in medical expenses, PMCs could just call to verify the claimant was a patient in a Medicaid approved Nursing Home (NH) and what he/she was paying the facility. From there, PMCs could reduce the claimant to the $90 rate right away (date last paid).

Now PMCs cannot take the NH information over the phone from the claimant and has to request it in a development letter. This holds up the reduction to $90 for another 4-5 months. In that time PMCs could have been paying the claimant $90 instead of the maximum pension rate. This jeopardizes the claimant’s Medicaid status as now he/she may now be over the income limit to qualify for that benefit.

Lastly, if the claimant unfortunately doesn’t reply to the PMC’s request in the development letter, an adjustment has to be made to remove all unverified medical expenses, which typically terminates the claimant’s award and creates an overpayment. All this is not a good situation for our beneficiaries. Our own rules cause a severe hardship on them.

**P&F Response:** Per M21-1.III.ii.2.B.1.b, VA does not require beneficiaries to use a specific form (i.e. VA Form 21-8416, 21-0779, etc.) to report a change in income that will result in a decrease in benefits.  A beneficiary may report such changes

* in writing
* by telephone, email, or fax, or
* through eBenefits.

This guidance also applies to a report of a change in *status* that would result in a decrease in benefits, such as when a claimant reports being admitted to a Medicaid-approved nursing facility. Manual changes are forthcoming to further clarify this guidance.

**Question 2:** What should the $90 due process letter look like? (no examples provided)

**P&F Response:** M21-1.I.2.B lists the requirements of a due process letter.  A Medicaid due process letter should utilize the PCGL template PP9 and should be tailored to the specifics of the case and provide the necessary information outlined in M21-1.I.2.B.2.a and b.

**Question 3:** What specific elements must a $90 due process letter contain? (e.g. 8416/0779 required? They are not mentioned in this reference.

**P&F Response:** M21-1.I.2.B.2.a and b outline the necessary information a due process letter must contain.  Furthermore, M21-1.I.2.B.2.a notes the attachment of forms to supplement due process does not substitute for the information that must be included within the letter.  Therefore, send any VA Form as an attachment to the due process letter that will provide the requested information to adjudicate the claim.  For your convenience, below are the manual references applicable to this question.

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| **I.2.B.2.a****.  Required Elements for Notice of Proposed Adverse Action** |  | Every notice of proposed adverse action must include the following elements:   * a statement of the proposed decision, including new rates of payment * the proposed effective date of the decision * information on the possible creation of an overpayment * detailed reasons for the proposed decision, and * the right to   + present evidence   + request a personal hearing, and   + have representation.   ***Note***:  The attachment of forms to supplement the notice of proposed adverse action does not substitute for the information that must be included within the letter itself. |

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| **I.2.B.2.b****.  Description of Elements in Notice of Proposed Adverse Action** |  | The table below describes each of the elements in a notice of proposed adverse action.   | **Element** | **Description** | | --- | --- | | Statement of proposed decision | * Fully and clearly states the proposed decision to   + reduce   + suspend, or   + terminate benefits, and * provides new rate information for each rate change.   ***Exception***:  Rate change information is not required in automated drill pay notice of proposed adverse action letters. | | Statement of proposed effective date | * States the proposed effective date, and * informs the beneficiary that   + he/she has 60 days to respond to the proposed decision, and   + the payment of benefits will continue through the 60-day period.   ***Note***:  The requirement that payments be continued through the 60-day period does not alter the effective date of the proposed reduction or termination.  ***Reference***:  For more information on effective dates for reduced benefits, see [38 CFR 3.500 to 3.505](http://www.ecfr.gov/cgi-bin/text-idx?SID=89a210b6f8738c4fa13db242491be8df&mc=true&node=sg38.1.3_1461.sg15&rgn=div7). | | Statement advising beneficiary of potential overpayment | * Advises the beneficiary that if the proposed adverse action is implemented, he/she must repay any overpayment resulting from the   + proposed adverse action, and/or   + continuation of payments during the proposed adverse action period, and * informs the beneficiary that he/she may minimize any potential overpayment by requesting that the award be adjusted without awaiting expiration of the due process period. | | Basis for proposed decision | States the   * evidence under consideration * facts and reasons for the proposal, and * proposed rates and any calculations used to arrive at the proposed rates. | | Rights of beneficiary | Informs the beneficiary of the right to   * present evidence * request a personal hearing, and * have representation. |   ***References***:  For more information on   * procedural due process requirements, see [38 CFR 3.103](https://www.ecfr.gov/cgi-bin/text-idx?SID=978ba41dc474ae71c07e1ada133edefd&mc=true&node=se38.1.3_1103&rgn=div8), and * the list of references specific to due process, see [M21-1, Part I, 2.B.4](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000014072/M21-1-Part-I-Chapter-2-Section-B-Notice-of-Proposed-Adverse-Action#4). |

**Question 4:** Based on past P&F Q&A’s they have said that ANY change in medical expenses must be claimed on a 21-8416 Medical Expense Report. Therefore, if a claimant moves into a Medicaid Approved Nursing Home it MUST be claimed on a brand new, properly filled-out 8416.

**P&F Response:** We were unable to locate the Q&A that you are referencing. Current manual guidance supersedes past Q&A guidance. Per M21-1.III.ii.2.B.1.b, VA does not require beneficiaries to use a specific form (i.e. VA Form 21-8416, 21-0779, etc.) to report a change in income that will result in a decrease in benefits.  A beneficiary may report such changes

* in writing
* by telephone, email, or fax, or
* through eBenefits.

**Question 5:** What action should we propose to take if the claimant DOES NOT respond? Or what if they don’t respond with ALL of the requested information?

**P&F Response:** Propose the most adverse action, which in most cases, should be to reduce benefits to $90 per M21-1 V.iii.3.6.c. If a claimant or third party indicates that prior approved continuing medical expenses have changed, we may have to request medical expenses for prior years. Formal updates to M21-1 **V.iii.3. were published on November 18, 2019 to clarify when it is appropriate to request medical expense information for periods prior to a claimant’s admission to a Medicaid-approved nursing facility.**

**Result:** M21-1 updated on November 18, 2019.

# Managing Evidence on Unacceptable Applications

**Target Audience**: PMC Claims Processors

**Question:** The PMC would like additional clarification on whether or not there is a requirement to manage evidence when an EP400 is completed for an incomplete or outdated application or improperly signed application.  The following reference indicates that all evidence received that does not correspond to a pending tracked item must be accurately recorded with the proper receipt date using the MANAGE EVIDENCE screen, however, it does not specify that this should be used in situations where a completed application was not received.  We would like guidance as to whether or not it is necessary to manage evidence on applications that do not constitute a valid claim.

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| **III.ii.1.B.2.h.  Handling Unsolicited Evidence** |  | All evidence received that does not correspond to a pending tracked item must be accurately recorded with the proper receipt date using the MANAGE EVIDENCE screen in VBMS, or the EVIDENCE tab in MAP-D.  ***Important***:  Do not use VA-specific abbreviations or jargon when entering evidence description.  Plain language should be used whenever possible as it will be visible through eBenefits.  ***References***:  For more information on   * recording evidence in   + VBMS, see the [*VBMS User Guide*](http://vbaw.vba.va.gov/VBMS/docs/VBMS_Release_9_0_UserGuide.pdf), or   + MAP-D, see the [*MAP-D User Guide*](http://vbaw.vba.va.gov/VetsNet/Claims_Docs/webhelp/Claim_Development1.htm), and * processing solicited and unsolicited mail, see [M21-1, Part III, Subpart ii, 1.E.5.d](https://vaww.vrm.km.va.gov/system/templates/selfservice/va_kanew/help/agent/locale/en-US/portal/554400000001034/content/554400000032384/M21-1,-Part-III,-Subpart-ii,-Chapter-1,-Section-E---Centralized-Mail-(CM)-Intake). |

**Response:**  Yes, VA has a requirement to manage all submitted evidence, whether or not it is related to a claim or pending tracked item. As indicated, M21-1, Part III, Subpart ii, 1.B.2.h, evidence not related to a pending tracked item or a claim must be documented in either VBMS or Map-D. Block h refers to how to handle unsolicited evidence, and not whether there is a completed application or not.

**Result:** Clarification provided.

# Due Process Inquiry

**Target Audience**: PMC Claims Processors

**Question:** Based on the response received on October 16, 2019, we are seeking clarify as to why there appears to be two sets of rules for automated versus self-generated due process letters. The difference in requirements is creating inefficiencies and inconsistencies amongst the three PMCs, causing rework and individual quality errors.

**October 16, 2019 Response**

Pension and Fiduciary (P&F) Service reviewed your inquiry and concur with your interpretation of 38 CFR 3.103 and M21-1.I.2.B.2.a and b. 38 CFR 3.103 is the guiding reference for M21-1.I.2.B.2.b – which states that a notice of proposed adverse action includes

* evidence under consideration
* facts and reasons for the proposal, and
* proposed rates and any calculations used to arrive at the proposed rates.

Therefore, as M21-1.I.2.B.2.b specifically states that the notice of a proposed adverse action must include the proposed rate(s) and any calculations used to arrive at the proposed rates. For Pension benefits, a notice of proposed adverse action must also contain all income and medical expenses used in calculating the proposed rate(s).

**Response:**  Pension and Fiduciary (P&F) Service understands and appreciates your request to utilize a standard adverse action notification process. We are currently reviewing both adverse action notification processes – automated and manual – to determine the best way to streamline the manual process to align with the automated process. Once determined and implemented, P&F Service will change the M21-1, if necessary, and disseminate the aligned adverse action notification process accordingly.

However, currently, COLA and loss of dependency automated and manual due process letters are two distinct and separate processes. Regarding the automated process, its letters comply with the legal requirements for notices of adverse action as described in [38 CFR 3.103](https://www.ecfr.gov/cgi-bin/text-idx?SID=d042eb3474dc1f6c89d47fde88f1ab64&mc=true&node=se38.1.3_1103&rgn=div8). Claims processors can take all required action(s) to adjust the beneficiary’s award based on the automated notice.  Claims processors are not required nor should they send a “new” notice encompassing all required elements as outlined within M21-1.I.2.B.2.a or b prior to taking action.

Regarding the manual process, as provided within P&F Service’s October 16, 2019 reply, claims processors should utilize the adjudication manual (M21-1.I.2.B.2.b) when manually creating notices of adverse action.

As these are two distinct processes, inefficiencies and inconsistencies amongst the three PMCs currently should not be an issue – Hines Information Technology Center (ITC) creates and mails out all automated letters while the three PMCs create and mail out all manual letters. Depending on the process, all letters should be consistent while providing efficient notification to our claimants.

If your office is experiencing incorrect individual quality errors relating to this issue, please notify the [Training, Quality, and Oversight](mailto:PFTNGQUALOVRST.VBACO@va.gov) mailbox.

**Result:** Clarification provided.

# Clarification Request - EP 140s Intertwined with EP 165s

**Target Audience**: PMC Claims Processors

**Question:** M21-1 VIII.5.17.g EP Control and Disposition for Initial Claims or CUEs and the answer to question 1 of the Accrued EP jurisdiction Responses document indicate we should keep EP 140s pending until a decision on an intertwined EP 165 is final.  Essentially, we read these to state both the EP 140 and EP 165 should be worked together.

The answer to question 5 on the PF Continental Response document seems to infer otherwise.  We believe this answer states to close the EP 140 and re-adjudicate the service connected death claim if the EP 165 accrued claim is awarded.

We request clarification of whether EP 140s may be rated and closed prior to disposition of an intertwined EP 165, or if we must keep the EP 140 pending until the EP 165 is also ready to finalize.  Please note, for accrued decisions related to legacy appeals and Board-direct AMA elections, EP 140 timeliness could be significantly impacted if we are required to keep these EPs pending.

**Response**: In general, the EP 140 may be rated and closed prior to disposition of the EP 165. However, when the accrued claim is inextricably intertwined with the cause of death, such as an initial claim, clear and unmistakable error, supplemental claim, or a higher-level review, then the EP 140 and EP 165 must be worked together unless Dependency and Indemnity Compensation can be granted. Please refer to the exception noted in M21-1 VIII.5.17.g and h. P&F Service published changes to M21-1 VIII.5 on November 26, 2019, to clarify this issue.

**Result:** M21-1 updated on November 26, 2019.

# **Fiduciary HUB Related Inquiries**

# FPM 2.D.1 10/11/19 update

**Target Audience**: Field Examiners

**Question 1**: Can the FE conduct all fiduciary interviews over the phone or only the 3 exceptions listed?

**P&F Response 1**: Specifically, under FPM 2.D.1.e, when the interview with the proposed fiduciary is not conducted with the beneficiary interview, a face-to-face interview with the proposed fiduciary will not be conducted when the proposed fiduciary is

* an entity, such as the trust department of a bank that provides fiduciary services per 38 CFR 13.100(f)(4)
* currently residing outside of the conducting FE’s territory and it is necessary to transfer the field examination work item to another FE creating unnecessary delays in processing, or
* currently performing satisfactorily as VA fiduciary for at least one other VA beneficiary and is determined to be suitable in accordance with all applicable elements of FPM 2.D.4.c including up-to-date submissions of accountings.

Other than the situations noted in FPM 2.D.1.e, the field examiner must conduct a face-to-face interview with the fiduciary to complete the appointment process. However, scheduled follow-up examinations allow for contact with the fiduciary by telephone.

*Note: Since this response was issued, manual changes were made to the FPM 2.D.1.e on December 5, 2019 that direct that the face-to-face interview will not be conducted when there are unresolved safety concerns.*

**Question 2**: Can P&F further define “an entity”. Does this include state ran organizations, etc.

**P&F Response 2**: Per 2.A.2.k., P&F Service provides the definitions for individual and corporations serving as fiduciaries. Specifically an entity falls under the corporation heading which provides a corporation serving as a fiduciary refers to any entity or person, which serves using a tax identification number as a VA-appointed fiduciary. This may include but is not limited to a law firm, bank, or professional fiduciary service. .

**Question 3**: The 4703 will still need to be filled out for the 3 exceptions listed?

**P&F Response 3**: In all fiduciary appointments, a VA Form 21-4703 must be completed regardless of the type of appointment.

**Question 4**: Do we wait until the 4703 is signed and returned before we continue with the process? If so…FE calls today, generates the letter and attaches letter/4703 to a task to be mailed. It comes back to central mail…seems we are adding time

**P&F Response 4**: As part of the appointment process identified in FPM Chapter 2, certain requirements must be met prior to the appointment of a fiduciary. Part of that requirement includes completion and agreement with the VA Form 21-4703, therefore, the appointment process cannot be completed until a signed VA Form 21-4703 is received by the hub. .

**Question 5**: Based on the email, we obtain a CB/CR prior to the phone call…we cannot run a CB/CR without their consent first. That consent before was the signing of the 4703.

**P&F Response 5**: Information provided in the criminal background reports consists strictly of public records, therefore the information received in the report is not protected and does not require prior consent to obtain.

**Question 6**: We normally do not get their DOB and SSN until we do a visit; so how will run a CB/CR without this information.

**P&F Response 6**: The criminal background information can be obtained without having the date of birth and/or social security number, therefore only this report will be run before contact with a proposed fiduciary. The credit check cannot be completed prior to obtaining that information and written consent from a proposed fiduciary.

**Result:** Clarification provided.

# FPM 2.D.1, 2.D.4 and 2.D.5 Clarification

**Target Audience**: Field Examiners

**Question:**  The recent changes to the FPM 2.D.1.e indicate a face-to-face interview will only be conducted with a proposed fiduciary if they are present at the time of the beneficiary interview or when they have telephone accessibility issues. FPM 2.D.4.k identifies a face-to-face interview must be conducted when recognizing a VA-appointed fiduciary. Furthermore, FPM 2.D.5.i identifies a criminal background check will be obtained prior to contacting the proposed fiduciary so the FE can conduct the appropriate identification protocol.

We believe many proposed fiduciaries who do not receive a face-to-face interview will be very hesitant to provide their full name, address, DOB and SSN over the telephone in wake of continual scam telephone calls and security breaches leading to identity theft occurring nationwide. The current FE VA cell phone caller identification does not show Dept. of Veterans Affairs, but instead only displays the FE’s phone number, and does not assist for VA employee identification purposes.

Clarification:

1) If the proposed fiduciary can’t be present during the beneficiary interview and is very hesitant to provide their DOB and SSN over the telephone for the CBC, may a face-to-face interview be completed?

2) May the method of fiduciary interview be in-person for any proposed fiduciary if an in-person interview is the only way to obtain the necessary information to appoint the least restrictive fiduciary appointment?

Recommendation: Provide an alternative to the interview process that will afford the field examiner the ability to complete the least restrictive fiduciary appointment possible when the telephone interview process isn’t feasible.

**Response**: The two examples you provided would not qualify as exceptions to the requirement that a face-to-face interview not be conducted. Specifically, under FPM 2.D.1.e., a face-to-face will ***not*** be conducted if the:

* proposed fiduciary is an entity, such as the trust department of a bank that provides services per 38 CFR 13.100(F)(4),
* the proposed fiduciary is residing outside of the conducting FE’s territory and it is necessary to transfer field examination work item to another FE creating unnecessary delays in processing, or
* the proposed fiduciary is currently performing satisfactorily as VA fiduciary for at least one other VA beneficiary and is determined to be suitable in accordance with all applicable elements of FPM 2.D.4.c, including up-to-date submissions of accountings.

Of the three proposed fiduciary types listed above, only where the proposed fiduciary is residing outside the conducting FE’s territory, would the need to collect sensitive personally identifiable information such as an SSN likely be necessary. If the proposed fiduciary is an entity, collection of the SSN or DOB would not be applicable and if the proposed fid is already performing as fiduciary for another beneficiary, the FE would already have access to the fiduciary record where all that information is already available. Regardless, as directed by 2.D.1.e., a face-to-face interview with the proposed fiduciary types noted above will ***only*** be conducted when the interview with the proposed fiduciary is conducted at the same time and location as the beneficiary interview, or proposed fiduciary has telephone accessibility issues (e.g. deaf or telephone connection issues) and the accessibility issues is documented in the field examination report.

If at the time of the telephone interview, the proposed fiduciary is uncomfortable providing the demographic information needed to complete the field exam, the field examiner will advise the fiduciary they must submit this information via mail or fax on the VA Form 21P-4703 as noted in 2.D.1.e. Also, please note that the DOB and SSN are not required from the fiduciary to run the CBC, these questions are part of the telephone identify protocol during the telephone interview. The CBC normally should already have been completed prior to the field exam by utilizing the fiduciary’s name and phone number to identify the appropriate record in CLEAR.

**Result:** Clarification provided.

# Question Regarding Direct Deposit Change Verification

**Target Audience**: Field Examiners and Legal Instruments Examiners

**Question:**  According to the recent FPM update to 4.C.12.a., we may only take action to change the direct deposit of a VA beneficiary if we receive one of the options below:

by viewing a copy of a voided check or,

a completed VA Form 24-0296 and a voided check.

It appears from this update we are no longer able to take action on direct deposit change requests if the fiduciary provides a copy of a bank statement. If this is true, the Hub is severely limited in recourse for this action.

Are we no longer able to change the direct deposit if the fiduciary or bank provides a copy of the bank account documentation (i.e., bank statement, deposit slip, etc.)?

In speaking with several bank agents, we have a concern that by only accepting copies of cancelled checks as verification or a properly titled account (in these scenarios), we (the VA) are placing our reliance on a third-party vendor instead of the bank which owns the bank account. In most cases, banks do not print the checks the fiduciary receives. Most banks contract the printing of checks out. Additionally, a fiduciary may solicit a third-party check vendor directly and by-pass the bank completely. To add to this issue, the fiduciary can solicit a third-party check vendor and have whatever he/she wants printed on the check. The third-party vendors usually have the purchaser input the account information via online form and no account verification is required, because the third-party vendor does not care if the checks actually work with the account.

**Response**: If the fiduciary provides bank account documentation such as, deposit slip, bank statement to the fiduciary hub, the hub may accept this bank account documentation as proof of payment address and direct deposit information. The information contained in FPM 4.C.12.a is not exclusive as documents provided by the banking institution that convey account information may be used to change the direct deposit information.

Since the time this response was issued via email, we have since updated FPM 4.C.12 on November 27th, 2019 to clarify that an account can be verified as properly titled via a bank statement.

**Result:** FPM updated on November 27, 2019.

# **P&F Service Information**

# P&F Service Contact Information

Policy and Procedure questions from the PMCs or Fiduciary Hubs should be submitted to P&F Service at [VAVBAWAS/CO/P&F POL & PROC](mailto:PFPOLPROC.VBACO@va.gov) by the Quality Review coach or PMC/Fiduciary HUB Division Management.

P&F Service would like to remind you that all inquiries sent to the Policy and Procedures Mailbox must include the references previously researched, key words or phrases used to search in CPKM. P&F Service is available to assist when there is confusion about a certain policy or procedure, however, PMCs and Fiduciary Hubs are required to research and attempt to resolve the issue before sending the question to the P&F Service Policy and Procedures Mailbox. Additionally, including all words used to search topics in CPKM will allow P&F Service to add those search words into CPKM if they were not already in the metadata for a certain manual reference.

Training and Quality questions can be directed to: [VAVBAWAS/CO/P&F TNG QUAL OVRST](mailto:PFTNGQUALOVRST.VBACO@va.gov).

Systems-related questions can be directed to: [VAVBAWAS/CO/P&F BUS MGMT](mailto:PFBUSMGMT.VBAVACO@va.gov).

# Disclaimer

Please note that all responses provided are for informational purposes only. If changes to the M21-1 Adjudication Procedures Manual are needed, they are made in conjunction with the response. The M21-1 Adjudication Procedures Manual supersedes any inquiry response.