DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA-1902-N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—April through June 2019

AGENCY: Office of Medicare Hearings and Appeals (OMHA), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists the OMHA Case Processing Manual (OCPM) instructions that were published from April through June 2019. This manual standardizes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives, and gives OMHA staff direction for processing appeals at the OMHA level of adjudication.

FOR FURTHER INFORMATION CONTACT: Jason Green, by telephone at (571) 777-2723, or by e-mail at *jason.green@hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Medicare Hearings and Appeals (OMHA), a staff division within the Office of the Secretary within the U.S. Department of Health and Human Services (HHS), administers the nationwide Administrative Law Judge hearing program for Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals under sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D-4(h) of the Social Security Act (the Act). OMHA ensures that Medicare beneficiaries and the providers and suppliers that furnish items or services to Medicare beneficiaries, as well as Medicare Advantage organizations (MAOs), Medicaid State agencies, and applicable plans, have a fair and impartial forum to address disagreements with

Medicare coverage and payment determinations made by Medicare contractors, MAOs, or Part D plan sponsors (PDPSs), and determinations related to Medicare eligibility and entitlement, Part B late enrollment penalty, and income-related monthly adjustment amounts (IRMAA) made by the Social Security Administration (SSA).

The Medicare claim, organization determination, coverage determination, and at-risk determination appeals processes consist of four levels of administrative review, and a fifth level of review with the Federal district courts after administrative remedies under HHS regulations have been exhausted. The first two levels of review are administered by the Centers for Medicare & Medicaid Services (CMS) and conducted by Medicare contractors for claim appeals, by MAOs and an Independent Review Entity (IRE) for Part C organization determination appeals, or by PDPSs and an IRE for Part D coverage determination and at-risk determination appeals. The third level of review is administered by OMHA and conducted by Administrative Law Judges and attorney adjudicators. The fourth level of review is administered by the HHS Departmental Appeals Board (DAB) and conducted by the Medicare Appeals Council (Council). In addition, OMHA and the DAB administer the second and third levels of appeal, respectively, for Medicare eligibility, entitlement, Part B late enrollment penalty, and IRMAA reconsiderations made by SSA; a fourth level of review with the Federal district courts is available after administrative remedies within SSA and HHS have been exhausted.

Sections 1869, 1155, 1876(c)(5)(B), 1852(g)(5), and 1860D-4(h) of the Act are implemented through the regulations at 42 CFR part 405 subparts I and J; part 417, subpart Q; part 422, subpart M; part 423, subparts M and U; and part 478, subpart B. As noted above, OMHA administers the nationwide Administrative Law Judge hearing program in accordance with these statutes and applicable regulations. To help ensure nationwide consistency in that effort, OMHA

established a manual, the OCPM. Through the OCPM, the OMHA Chief Administrative Law Judge establishes the day-to-day procedures for carrying out adjudicative functions, in accordance with applicable statutes, regulations, and OMHA directives. The OCPM provides direction for processing appeals at the OMHA level of adjudication for Medicare Part A and B claims; Part C organization determinations; Part D coverage determinations and at-risk determinations; and SSA eligibility and entitlement, Part B late enrollment penalty, and IRMAA determinations.

Section 1871(c) of the Act requires that the Secretary publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every three months in the *Federal Register*.

II. Format for the Quarterly Issuance Notices

This quarterly notice provides the specific updates to the OCPM that have occurred in the three-month period of April through June 2019. A hyperlink to the available chapters on the OMHA website is provided below. The OMHA website contains the most current, up-to-date chapters and revisions to chapters, and will be available earlier than we publish our quarterly notice. We believe the OMHA website provides more timely access to the current OCPM chapters for those involved in the Medicare claim; organization, coverage, and at-risk determination; and entitlement appeals processes. We also believe the website offers the public a more convenient tool for real time access to current OCPM provisions. In addition, OMHA has a listserv to which the public can subscribe to receive notification of certain updates to the OMHA website, including when new or revised OCPM chapters are posted. If accessing the OMHA website proves to be difficult, the contact person listed above can provide the information.

III. How to Use the Notice

This notice lists the OCPM chapters and subjects published during the quarter covered by the notice so the reader may determine whether any are of particular interest. The OCPM can be accessed at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

IV. OCPM Releases for April Through June 2019

The OCPM is used by OMHA adjudicators and staff to administer the OMHA program. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, and OMHA directives.

The following is a list and description of OCPM provisions that were issued or revised in the three-month period of April through June 2019. This information is available on our website at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

OCPM Chapter 11: Procedural Review and Determinations

This newly issued chapter describes how to conduct a procedural review of an appeal, and how to resolve any identified procedural defects. The procedural review is required to ensure that a request for hearing or review of dismissal meets jurisdictional and filing requirements, and that procedural determinations are made before case development occurs, or a conference or hearing is scheduled. If there is a procedural defect, the defect may result in a dismissal or may require an opportunity for the appellant to resolve the defect. If an adjudication time frame applies to the case, a procedural defect may delay the start of, or extend, the adjudication time frame. When the procedural review is complete, and any identified defects have been resolved, and any applicable determinations have been made, the case moves forward in the adjudication process. Specialized

procedural review is required for requests for expedited hearings in Part D appeals; however, a hearing may be scheduled before the screening is complete and any procedural defects are resolved, to facilitate meeting the expedited adjudication period.

OCPM Chapter 6: CMS, CMS Contractor, Plan Roles—Sections 6.3.1.1, 6.3.2

This chapter was initially released on July 27, 2018, and was included in a quarterly notice published in the November 14, 2018 *Federal Register* (83 FR 56859). Sections 6.3.1.1 and 6.3.2 of this chapter state that a Unified Program Integrity Contractor (UPIC) cannot elect party status in an appeal, and may only participate as a non-party. As initially published, these sections cited to CMS's Medicare Program Integrity Manual, internet-only manual publication 100-08, chapter 4, section 4.8.2, which previously stated that a Zone Program Integrity Contractor (ZPIC) could not elect party status in an appeal, and section 4.1, which stated that all references to ZPICs shall also apply to UPICs, unless otherwise specified in the UPIC Statement of Work (SOW). Effective October 22, 2018, CMS revised the Medicare Program Integrity Manual to directly state that a UPIC cannot invoke party status, and can only participate in OMHA proceedings as a non-party. This revision to OCPM 6.3.1.1 and 6.3.2 updates footnotes in these sections to reflect the CMS manual's revised language. This revision does not change the way that OMHA interprets or implements the underlying policy that a UPIC cannot elect party status.

Dated: July 2, 2019.

Karen W. Ames,

Executive Director,

Office of Medicare Hearings and Appeals.

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