



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

[OMHA-1903-N]

### **Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—October 2019 Through March 2020**

**AGENCY:** Office of Medicare Hearings and Appeals (OMHA), Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice lists the OMHA Case Processing Manual (OCPM) instructions that were published from October 2019 through March 2020. 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:** Jon Dorman, by telephone at (571) 457-7220, or by e-mail at [jon.dorman@hhs.gov](mailto:jon.dorman@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 notice provides the specific updates to the OCPM that have occurred in the period of October 2019 through March 2020. 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 period 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 October 2019 Through March 2020**

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 period of October 2019 through March 2020. 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 16: Decisions**

On October 9, 2019, OMHA issued OCPM Chapter 16, which describes the structure and content of the decisions issued by OMHA adjudicators. The chapter details when an adjudicator classifies a decision as favorable or fully favorable, unfavorable, or partially favorable, and the effect the financial responsibility determination has on the characterization of the decision.

Additionally, the chapter provides general writing guidelines and the protocols for protecting personally identifiable and protected health information in a decision. The chapter also describes the format for a decision affirming the dismissal of a request for reconsideration, a decision

addressing multiple consolidated appeals, and a stipulated decision. An OMHA-approved notice of decision template must accompany every decision and describes the parties' appeals rights.

OMHA also issued a Citation Policy as chapter support material to Chapter 16.

#### OCPM Chapter 15: Conducting Conferences and Hearings: Posthearing Development

On November 21, 2019, OMHA issued OCPM Chapter 15, which describes the process used by OMHA adjudicators when conducting prehearing/posthearing conferences and hearings. The chapter details regulatory requirements, OMHA administrative requirements, and suggested best practices when conducting a conference or hearing. The chapter also explains when and how to hold a consolidated, supplemental, or continued hearing; the procedures for responding to a request for a copy of the administrative record; and available actions that can be taken to develop the administrative record after an initial hearing has been conducted.

#### OCPM Chapter 10: Party and Non-Party Participant Requests and Submissions

On February 19, 2020, OMHA issued OCPM Chapter 10, which explains how to route, document and address contacts from parties and non-party participants involving both general and case-specific matters. The chapter describes how to provide language or communication assistance services to individuals with limited English proficiency or a disability, and summarizes the services OMHA offers in response to such requests. The chapter also explains how to process requests for a stay of proceedings, discovery, or subpoena; and review submissions of evidence and other case-related materials. Many types of requests and submissions that generally occur at a specific stage in the adjudication process are covered in detail in other OCPM chapters. To facilitate locating this information, Chapter 10 contains a list of these requests and submissions, along with cross-references to the specific OCPM provisions where they are discussed.

Dated: June 26, 2020.

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**Karen W. Ames,**

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