

U.S. Department of Health & Human Services
Office of Medicare Hearings and Appeals

**Latest Policy and Regulatory Changes
to the Medicare Appeals Process**
Update from OMHA

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Health Care Compliance Association, Annual Compliance Institute; March 26–29, 2017

OMHA by the Numbers

Average Receipts per Team per Day

Average Dispositions per Team per Day

Average Agency Dispositions per Day (Including Special Initiatives)

Average Processing Time

Note: Receipts include appeals involving an Settlement and combined appeals. Dispositions include remainder of appeals. Data current as of January 31, 2017.

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Departmental Initiatives

- 📞 **QIC Formal Telephone Discussion Demonstration**
 - DME QIC conducts voluntary telephone discussions with suppliers in MAC Jurisdictions C & D
 - Suppliers given opportunity to present facts of case & provide additional documentation to support resolution of appeal at QIC
 - QIC also reviews closed reconsiderations pending with OMHA; identifies cases that can be resolved favorably via QIC reopening in light of discussion

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Departmental Initiatives

QIC Formal Telephone Discussion Demonstration

- If a fully favorable determination is warranted, QIC requests remand from OMHA and notifies DME MAC to pay claim
- 5,683 appeals* have been resolved favorably via demonstration process prior to reaching OMHA
- 16,208 appeals* have been remanded from OMHA for QIC to process reopening/resolve claim favorably
- Recently expanded to include all claims for DME submitted by Jurisdictions C and D suppliers

*Data current as of February 2, 2017 (confirmed with CMS)

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OMHA Initiatives

Settlement Conference Facilitation (SCF)

- Appeals resolved since June 2014: 10,838

Adjudication through Statistical Sampling

- Appeals for which the appellant selected statistical sampling since June 2014: 6,287
- New process implemented in the coming month
 - No date restrictions
 - Sample units will be assigned among multiple adjudicators

Senior Attorney On the Record (OTR)

- Appeals resolved since July 1, 2015: 3,338

*Data current as of February 15, 2017

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OMHA Initiatives

Electronic Case Adjudication Processing Environment (ECAPE)

- Release 1 (Spring 2017)
 - Case Intake/Appellant Public Portal (Phase I)
- Release 2
 - Phase 1 (Spring /Summer 2017) - Appellant-Initiated Requests for Withdrawals/Remands Associated with Backlog Initiatives
 - Phase 2 (Winter/Spring 2018) - Appeals Adjudication
- Release 3 (Summer 2018)
 - Enhanced Appellant Public Portal (Phase II)

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Medicare Appeals Final Rule

- ✎ Medicare Program: Changes to the Medicare Claims and Entitlement, Medicare Advantage Organization Determination, and Medicare Prescription Drug Coverage Determination Appeals Procedures (82 FR 4974 (Jan. 17, 2017))
- ✎ 68 comments to July 5, 2016, proposed rule (81 FR 43790)
- ✎ Published effective date: March 20, 2017

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Medicare Appeals Final Rule

- ✎ Precedential Decisions (§401.109)
- ✎ Attorney Adjudicators—authorities
 - Decide appeals for which a decision can be issued without a hearing
 - Review dismissals issued by a CMS contractor
 - Issue remands to CMS contractors
 - Dismiss requests for hearing when an appellant withdraws the request
- ✎ CMS and CMS Contractor Participation (§§405.1010, 405.1012, 423.2010)

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Medicare Appeals Final Rule

Review of New Evidence (§405.1028(a)(2))

- ✎ With §405.1018, implements §1869(b)(3) of Social Security Act
- ✎ Four new examples of when good cause may be found for submission of new evidence:
 - Material to a new issue identified after QIC decision
 - Unable to be obtained prior to QIC’s decision, and evidence that reasonable attempts were made
 - Previously submitted but missing evidence.
 - Any other circumstance where party could not have obtained evidence before the QIC issued its reconsideration
- ✎ Clarified that limitation does not apply to CMS or its contractors, Medicaid State Agencies, or Plans

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Medicare Appeals Final Rule

Increased Efficiencies

- ✎ Revised request for information (§405.1034) and remand (§405.1056) procedures and authority of Chief ALJ or designee to review remands
- ✎ Adjudication time frame for cases remanded from Medicare Appeals Council (§405.1016(b)(2))
- ✎ Authority of ALJ or attorney adjudicator to vacate his or her own dismissals (§405.1052(e))
- ✎ Stipulated decisions (§405.1038(c))

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Medicare Appeals Final Rule

Reduced Confusion

- ✎ Replaces references to “MAC” and “DAB” with “Council”
- ✎ Clarifies application of part 405 regs to other parts
- ✎ Clarifies §405.1014 requirement to send copies of request for hearing to other parties

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Medicare Appeals Final Rule

Proposals That Were Not Finalized

- ✎ (Section IV of Final Rule 82 FR 5102)
- ✎ Changes to calculation methodology for amount in controversy
- ✎ Required disclosure on request for hearing of pending OIG or law enforcement investigations or proceedings

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