DEPARTM

[OMHA-2201-N]

Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim and Entitlement Appeals; Quarterly Listing of Program Issuances—October Through December 2021

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 October through December 2021. 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*.

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 October through December 2021. 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 October Through December 2021

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 October through December 2021. This information is available on our website at *https://www.hhs.gov/about/agencies/omha/the-appeals-process/case-processing-manual/index.html.*

General OCPM Updates

The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. The OCPM frequently cites to the governing regulations for the Medicare Program contained in the CFR. The OCPM provides hyperlinks to those regulation citations at the Electronic Code of Federal Regulations (eCFR) website, available at *https://www.ecfr.gov*.

In late summer 2021, the eCFR website underwent significant updates. These updates rendered many of the eCFR hyperlinks embedded in the OCPM inoperable. To reconcile the OCPM with these updates, OMHA made revisions to footnotes and citations in the following sections: 4.4.1.3, 5.2.1.2, 5.4.1, 5.4.3, 7.1.1.1, 7.1.1.2, 7.1.4.1, 7.2.1, 7.2.2, 7.3.1, 7.3.2, 7.3.4, 7.4.3, 7.5.2, 7.5.4, 7.5.5, 7.5.6, 7.5.8, 7.5.9, 10.5.2, 10.5.3, 10.7.10.1, 10.7.11, 10.7.11.1, 10.7.11.2, 11.3.2, 11.4.5, 17.1.4, 17.1.5.2, 17.1.5.4, 17.1.11.1, 17.2.1, 20.1.4, 20.2.2, 20.4.3.

OCPM Chapter 11: Procedural Review and Determinations—Section 11.3.2

This chapter was initially released on May 24, 2019, and was included in a quarterly notice published in the July 16, 2019 **Federal Register** (84 FR 33956). Section 11.3 of this chapter describes the amount in controversy (AIC) that is the statutory threshold monetary amount that a party with standing to appeal must meet to be entitled to a hearing or review of a dismissal.

CMS issues annual adjustments to the AIC threshold amounts for ALJ hearings and judicial review under the Medicare appeals process. This revision to OCPM 11.3.2 updates the table in this section to reflect the AIC for the ten most recent calendar years.

OCPM Chapter 16: Decisions—Section 16.4.3

This chapter was initially released on October 9, 2019, and was included in a quarterly notice published in the July 1, 2020 **Federal Register** (85 FR 39571). Section 16.4.3 of this chapter describes when an adjudicator issues a stipulated decision. A stipulated decision may be issued when CMS, a CMS contractor, or a plan submits a written statement, or makes an oral statement at a hearing, indicating that an enrollee's at-risk determination should be reversed, or that the items or services at issue should be covered or payment may be made, and agreeing to the amount of payment that the parties believe should be made, if the amount of payment is at issue. This revision updates footnote 15 in section 16.4.3 to reflect the revised regulation at 42 C.F.R. section 422.562(d)(3) that became effective on March 22, 2021 (86 FR 6101), which provides that, "for the sole purpose of applying the regulations at § 405.1038(c) of this chapter, an MA organization is included in the definition of "contractors" as it relates to stipulated decisions."

OCPM Chapter 20: Post-Adjudication Actions—Sections 20.5.3, 20.6.4, 20.7.4, 20.8.4, 20.9.2, 20.11.2

This chapter was initially released on May 25, 2018, and was included in a quarterly notice published in the August 7, 2018 **Federal Register** (83 FR 38700). Since the initial release, the OMHA Central Operations office relocated. This revision updates the Central Operations mailing address accordingly in sections 20.5.3, 20.6.4, 20.7.4, 20.8.4, 20.9.2, and 20.11.2.

Karen W. Ames,

Executive Director,

Office of Medicare Hearings and Appeals.

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