

OMHA Case Processing Manual

Chapter 4 PARTIES

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4.0 Chapter overview

(Issued: 03-29-19, Effective: 03-29-19)

The parties to an OMHA appeal are specified by regulation and vary based on the matter presented and the Medicare Part under which the appeal arises. This chapter identifies the different parties and potential parties to an appeal, when an individual or entity may enter the proceedings as a substitute party, when and how a beneficiary's appeal rights may be assigned to a provider or supplier, and the procedures OMHA follows when an appellant's party status is unclear. There may be multiple parties to an appeal, and an individual's or entity's party status is generally not determined by the individual's or entity's financial interest in the outcome of the appeal, unless otherwise noted.

Caution: When taking the actions described in this chapter, ensure that all PII, PHI, and Federal Tax Information is secured and only disclosed to authorized individuals (internally, those who need to know).

4.1 Beneficiaries and beneficiary successors as parties

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4.1.1 When is the beneficiary a party?

A beneficiary to whom the items or services at issue were furnished or are proposed to be furnished, or whose benefits or premiums are at issue, is a party to an OMHA appeal,¹ *unless*:

- The beneficiary's appeal rights are assigned to a provider or supplier (*see* OCPM 4.7.2);
- The beneficiary is deceased (*see* OCPM 4.1.2); or
- The case involves an MSP overpayment recovery claim, and CMS is pursuing recovery directly from the applicable plan (*see* OCPM 4.5).

4.1.2 What if the beneficiary died . . .

4.1.2.1 Before the request for hearing or review was filed with OMHA?

If a beneficiary dies before a request for hearing or review of his or her claim or other matter is filed with OMHA, the following individuals or entities may request a hearing and be a party to an appeal:

- The beneficiary's estate, which has a financial interest;
- In a **Part A** or **Part B** appeal, if there is no estate, a person obligated to make or entitled to receive payment in accordance with [42 C.F.R. part 424, subpart E](#) (*see* OCPM 4.1.3);² or
- In a **Part A** or **Part B** appeal, if there is no other party available to appeal, a provider or supplier who furnished the items or services at issue to the beneficiary, and who is not already a party to the proceedings in accordance with [42 C.F.R. section 405.906\(a\) and \(b\)](#).³

¹ 42 C.F.R. §§ 405.904, 405.906(a)(1), (b)(1), 422.574(a), 422.582(d), 422.600(a), 422.602(c), 422.622, 422.626, 478.40, 423.2008; 20 C.F.R. §§ 418.1350, 418.2350.

² 42 C.F.R. § 405.906(a)(1), (b)(1).

³ 42 C.F.R. § 405.906(c); Medicare Claims Processing Manual, pub. 100-04, ch. 29, § 210.1.

4.1.2.2 After the request for hearing or review was filed with OMHA?

If a beneficiary dies while an appeal is pending with OMHA, the following individuals or entities may enter the OMHA proceedings as a substitute party:

- The beneficiary's estate, which has a financial interest;⁴
- The beneficiary's surviving spouse, if the surviving spouse has a remaining financial interest in the case (see OCPM 4.1.3);⁵ or
- In a **Part A** or **Part B** appeal, if there is no estate, any other person obligated to make or entitled to receive payment in accordance with [42 C.F.R. part 424, subpart E](#) (see OCPM 4.1.3).⁶

Requests to enter the OMHA proceedings as a substitute party must be in writing. Individuals or entities may, but are not required to, use a Request for Substitution of Party upon Death of Beneficiary or Enrollee (OMHA-106).

Note: The substitute party must provide documentation of his or her authority to act on behalf of the deceased beneficiary, or of the substitute party's obligation to make or entitlement to receive payment.⁷ For a beneficiary who died with an estate, this would include documentation establishing the individual as the executor or administrator of the estate. If there is no estate, documentation of the relevant state probate law for individuals who die intestate (that is, without a will) may suffice.

4.1.3 How do we determine if another individual or entity has a remaining financial interest in the case?

The standards for determining whether another person is obligated to make or entitled to receive payment (that is, has a remaining financial interest) are found in [42 C.F.R. part 424, subpart E](#).

Example: A beneficiary paid a provider for services for which the beneficiary could receive direct payment under [42 C.F.R. section 424.53](#). The beneficiary submits a claim to Medicare, but the claim is denied and the beneficiary dies

⁴ 42 C.F.R. §§ 405.1052(a)(4), (b)(3), 423.2052(a)(4), (b)(3).

⁵ 42 C.F.R. §§ 405.1052(a)(4), (b)(3), 423.2052(a)(4), (b)(3).

⁶ 42 C.F.R. § 405.906(a)(1), (b)(1).

⁷ See 74 Fed. Reg. 65296, 65307 (Dec. 9, 2009).

without receiving Medicare payment. The beneficiary dies without an estate and has no surviving spouse. The beneficiary is survived by a son who is entitled to monthly social security benefits on the basis of the same earnings record as the beneficiary. Because Medicare would make payment to the son under [42 C.F.R. section 424.62\(c\)\(3\)\(2\)](#) if the services were found to be covered, the son has a remaining financial interest in the case.

Note: A hearing is not required to determine a remaining financial interest.⁸

4.1.4 What if the beneficiary was not found liable after the initial determination?

See OCPM 4.8.3 for the effect of a party's liability or potential liability on party status.

⁸ 70 Fed. Reg. 11420, 11465 (Mar. 8, 2005).

4.2 Providers and suppliers as parties

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4.2.1 When is a provider or supplier a party in a Part A or Part B appeal?

Non-QIO, non-MSP appeals

The following types of providers and suppliers are parties to an appeal, either through independent appeal rights or through an assignment of appeal rights:

1. A **supplier**—generally defined in [42 C.F.R. section 405.902](#) as a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items under Medicare—**that has accepted assignment** of the claim for items or services furnished to a beneficiary that are at issue.⁹

Note: An assignment of a claim means the beneficiary transferred his or her claim for payment to the supplier in return for the supplier's promise not to charge more than the Medicare-approved amount for the items or services.¹⁰ Participating suppliers are suppliers who have agreed to take assignment on all items or services payable on behalf of a Medicare beneficiary. Non-participating suppliers may accept assignment on a case-by-case basis.

Caution: Assignment of a **claim** does not affect the beneficiary's party status and is distinct from an assignment of **appeal rights** under [42 C.F.R. section 405.912](#) (see OCPM 4.7.2), which does affect the beneficiary's party status.

2. A **provider**—defined in [42 C.F.R. section 405.902](#) as a hospital, critical access hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or hospice **that has in effect an agreement to participate in Medicare**, or clinic, rehabilitation agency, or public health agency that has in effect a similar agreement, but only to furnish outpatient physical therapy or speech pathology services, or a community mental health center that has in effect a similar agreement but only to furnish partial hospitalization services.

⁹ [42 C.F.R. § 405.906\(a\)\(2\), \(b\)\(1\)](#).

¹⁰ See [42 C.F.R. §§ 405.902, 424.55, 424.56](#).

Non-participating providers who did not have a participation agreement in effect on the date of service at issue do not meet the definition of a “provider” under [42 C.F.R. section 405.902](#) and are not a party to an initial determination under [42 C.F.R. section 405.906\(a\)\(3\)](#) and, thus, have no right to request a hearing or review under [section 405.906\(b\)\(1\)](#).

Note: Medicare does allow non-participating hospitals to bill Medicare for emergency services provided to beneficiaries when certain conditions of payment are met.¹¹ However, the appeals regulations do not afford a non-participating hospital any appeal rights following the initial determination, even if the beneficiary has appeal rights, *unless* the beneficiary is deceased and [42 C.F.R. section 405.906\(c\)](#) applies (see OCPM 4.1.2.1).

3. Providers and suppliers that accept an **assignment of appeal rights** from the beneficiary *if* the provider or supplier:
- Furnished the item or service to the beneficiary; and
 - Is not otherwise a party to the initial determination.

Example: A non-participating supplier that furnished items or services to a beneficiary and is not liable to refund monies collected from the beneficiary for the items or services, does not have independent appeal rights and is not a party to the appeal under [42 C.F.R. section 405.906](#). Because it is a supplier, and the supplier does not already have party status, the supplier could become a party through an assignment of appeal rights from the beneficiary.

See OCPM 4.7.2 for more information on assignment of appeal rights.

4. Non-participating physicians *if*:
- The physician did not accept assignment of the claim; and

¹¹ See [§ 1814\(d\)\(1\) of the Act](#); [42 C.F.R. §§ 424.100–109](#). See also [42 C.F.R. § 424.109](#) (permitting beneficiaries to submit claims for emergency services provided by a non-participating hospital that does not have in effect an election to claim payment).

- The physician may be liable to refund monies collected for the furnished services because those services were denied as not reasonable and necessary under [section 1862\(a\)\(1\) of the Act](#).¹²

Note: If the services are denied based on a statutory exclusion other than [section 1862\(a\)\(1\) of the Act](#), the non-participating physician could still enter as a party: (1) through an assignment of appeal rights from the beneficiary; (2) if the beneficiary is deceased, as an individual or entity obligated to make or entitled to receive payment under [42 C.F.R. part 424, subpart E](#); or (3) if the beneficiary is deceased, the non-participating physician rendered the services in dispute, and there is no other party available to appeal the initial determination.

5. Non-participating suppliers of medical equipment or supplies *if*:¹³

- The supplier did not accept assignment of the claim; and
- The supplier may be liable to refund the monies collected because:
 - The supplier did not have a supplier number;¹⁴
 - The item was furnished after an unsolicited contact that would be improper under [section 1834\(a\)\(17\)\(A\) of the Act](#);¹⁵
 - The item was denied in advance;¹⁶ or
 - The item was not reasonable and necessary.¹⁷

6. Providers or suppliers that furnished items or services to a beneficiary who is now deceased and who do not otherwise have a right to appeal *if*:

- There is no estate, and the provider or supplier qualifies as “any person obligated to make or entitled to receive payment in accordance with [\[42 C.F.R.\] part 424, subpart E](#)” (*see* OCPM 4.1.3);¹⁸ or

¹² [42 C.F.R. § 405.906\(b\)\(4\)](#) (referencing [§ 1842\(l\) of the Act](#) as the authority requiring refund of the monies collected).

¹³ [42 C.F.R. § 405.906\(b\)\(5\)](#) (referencing [§ 1834\(a\)\(18\)](#) and [\(j\)\(4\) of the Act](#) as the authorities requiring refund of the monies collected).

¹⁴ [§ 1834\(j\)\(1\) of the Act](#).

¹⁵ [§ 1834\(a\)\(17\)\(B\) of the Act](#).

¹⁶ [§ 1834\(a\)\(15\) of the Act](#).

¹⁷ [§ 1862\(a\)\(1\) of the Act](#).

- There is no other party available to appeal the determination.¹⁹

Note: If another party is available, but does not wish to pursue the appeal, the provider or supplier cannot become a party.²⁰

QIO appeals

For appeals under section 1869 or 1155 of the Act, the provider or practitioner that furnished the items or services at issue is a party to the appeal.²¹

Note: Although the provider or practitioner is a party, only the beneficiary has standing to request a hearing for QIO determinations appealed under [section 1155 of the Act](#) and for QIO expedited determinations regarding inpatient hospital discharge or terminations of service by a home health agency, skilled nursing facility, comprehensive outpatient rehabilitation facility, or hospice.²²

4.2.2 When is a provider or supplier a party in a Part C appeal?

Non-QIO appeals

The provider or supplier may be a party to a Part C appeal under the following circumstances:

- The provider or supplier enters the proceedings as an assignee of the enrollee because it: (1) furnished the item or service to the enrollee; and (2) formally agrees to waive any right to payment from the enrollee (*see* OCPM 4.7.2);²³

Note: Only a non-contracted (out-of-network) provider or supplier who has executed a waiver of enrollee liability may enter the proceedings as an assignee of the enrollee.²⁴

- The provider or supplier was determined to have an appealable interest in the proceeding and was a party to the organization determination or plan reconsideration;²⁵ or

¹⁸ See 42 C.F.R. § 405.906(a)(1), (b)(1).

¹⁹ 42 C.F.R. § 405.906(c).

²⁰ See Medicare Claims Processing Manual, pub. 100-04, ch. 29, § 210.1.

²¹ §§ 1155 and 1869 of the Act;

²² 42 C.F.R. §§ 405.1204, 405.1206.

²³ 42 C.F.R. § 422.574(b).

²⁴ See Parts C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance, § 50.

- An ALJ determines that the provider or supplier is a person or entity whose rights with respect to the reconsideration may be affected by the hearing.²⁶

Example: A non-contracted, non-participating supplier bills an enrollee in excess of the limiting charge for a service, and does not accept assignment of the claim. [Section 1848\(g\)\(1\)\(A\)\(iv\) of the Act](#) requires suppliers who charge in excess of the limiting charge to refund the excess charges to the beneficiary. The ALJ may determine that the non-participating supplier is a party with a financial interest in the case because it could potentially be found responsible for refunding costs to the enrollee.

QIO appeals

The provider or practitioner that furnished the items or services at issue is a party to the appeal.²⁷

Note: Although the provider or practitioner is a party, only the beneficiary has standing to request a hearing for QIO determinations made under [section 1155 of the Act](#) and QIO determinations regarding discharges from inpatient hospitals or terminations of service by a home health agency, skilled nursing facility, or comprehensive outpatient rehabilitation facility.²⁸

4.2.3 When is a provider or supplier a party in a Part D appeal?

Only the enrollee (or a deceased enrollee's successor²⁹) is a party to a Part D appeal. Prescribers and other providers or suppliers are not parties to the appeal, but may serve as the enrollee's appointed representative in an appeal before OMHA (see [OCPM 5.1.3.1](#)).

Caution: At prior levels of appeal, the prescriber may request an appeal on behalf of an enrollee, but the prescriber may not do so at the OMHA level, *unless* appointed as a representative of the enrollee.

²⁵ 42 C.F.R. §§ 422.574(d), 422.582(d), 422.602(c).

²⁶ 42 C.F.R. §§ 422.574(d), 422.582(d), 422.602(c); [Parts C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance](#), § 70.1.

²⁷ § 1155 of the Act.

²⁸ 42 C.F.R. §§ 422.622(g), 422.626(g).

²⁹ 42 C.F.R. § 423.2052(a)(4), (b)(3).

4.2.4 When is a provider or supplier a party in an appeal of an SSA reconsideration?

There is no provider or supplier involved in appeals of SSA reconsiderations.

4.3 Medicaid State agencies as parties

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4.3.1 When is a Medicaid State agency a party in a Part A or Part B appeal?

A Medicaid State agency may be a party to a **Part A** or **Part B** appeal when all of the following apply:

- The beneficiary was enrolled to receive benefits under both Medicare and Medicaid at the time the item or service at issue was furnished to the beneficiary;
- The Medicaid State agency made payment for the items or services, or may be liable to make payment under the Medicaid program; and
- The Medicaid State agency filed a timely request for redetermination.³⁰

Note: When a Medicaid State agency is a party to the redetermination of a claim, it remains a party to all subsequent appeals of the claim. If a Medicaid State agency did not request the redetermination, it is not a party.

Note: A Medicaid State agency's party status does not affect the beneficiary's status.

Caution: In cases involving a Medicaid State agency-appellant and limitation on liability analysis under [section 1879 of the Act](#), liability must be assessed with respect to the beneficiary and the provider or supplier, not "the appellant." OMHA adjudicators do not have authority to assess liability for a claim to a Medicaid State agency, apply Medicaid program rules, and/or make conclusions of law with respect to the Medicaid program.

4.3.2 When is a Medicaid State agency a party in a Part C appeal?

A Medicaid State agency may be a party to a **Part C** appeal if the Medicaid State agency qualifies as an entity determined to have an appealable interest under [42 C.F.R. section 422.574\(d\)](#).

³⁰ [42 C.F.R. §§ 405.906\(b\)\(2\), 405.908.](#)

4.4 CMS, CMS contractors, and Part C and Part D plans as parties

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4.4.1 When may CMS or a CMS contractor be a party . . .

4.4.1.1 In a Part A or Part B appeal?

Under certain circumstances, CMS or a CMS contractor (other than a UPIC³¹) may elect or be requested to join the proceedings as a party.³² See [OCPM 6.3](#) for additional information on CMS and CMS contractors as parties.

4.4.1.2 In a Part C appeal?

Under certain circumstances, CMS or the Part C IRE may elect or be requested to join the proceedings as a party.³³ See [OCPM 6.3](#) for additional information on CMS and CMS contractors as parties.

4.4.1.3 In a Part D appeal?

Never. Only the enrollee (or a deceased enrollee's successor) is a party to a **Part D** appeal.³⁴ CMS and the Part D IRE are never parties, but may request, or be invited, to join the proceedings as non-party participants (see [OCPM 6.3.1.3](#)).

4.4.2 When is a plan a party . . .

4.4.2.1 In a Part A or Part B appeal?

There are no Medicare health plans or prescription drug plans involved in Part A or Part B appeals. However, MSP cases may involve an **applicable plan** (see [OCPM 4.5](#)).

4.4.2.2 In a Part C appeal?

The MAO may not initiate an appeal at the OMHA level, but is always a party.³⁵

³¹ [Medicare Program Integrity Manual, pub. 100-08, ch. 4, §§ 4.1, 4.8.2](#). The UPIC statement of work currently provides for election of non-party participant status only.

³² [42 C.F.R. § 405.1012](#).

³³ [42 C.F.R. §§ 405.1012, 422.562\(d\)\(1\)](#).

³⁴ [42 C.F.R. § 423.2008](#).

³⁵ [42 C.F.R. §§ 422.600\(a\), 422.602\(c\)](#).

4.4.2.3 In a Part D appeal?

Never. Only the enrollee (or a deceased enrollee's successor) is a party to a **Part D** appeal. The Part D plan sponsor is never a party, but may request, or be invited, to join the proceedings as a non-party participant (see [OCPM 6.3.3.3](#)).

4.5 Applicable plans as parties

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In a **Part A or Part B MSP appeal** in which Medicare is pursuing recovery directly from an applicable plan (defined in [42 C.F.R. section 405.902](#) as “liability insurance (including self-insurance), no-fault insurance, or a workers’ compensation law or plan”), the applicable plan is the sole party to the initial determination and any subsequent appeal. The beneficiary is not a party to these appeals.³⁶

³⁶ [42 C.F.R. § 405.906\(a\)\(4\), \(b\)\(1\)](#).

4.6 Other parties

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Under certain circumstances, the regulations allow an individual or entity who is not a Medicare beneficiary (or successor), provider or supplier, Medicaid State agency, CMS contractor, plan, or applicable plan to enter the proceedings as a party if the adjudicator determines the individual or entity has an appealable interest or has rights that may be adversely affected by the initial determination. These circumstances include:

- In addition to the beneficiary or beneficiary successor, the parties to an appeal of an SSA reconsideration involving **beneficiary entitlement, eligibility, or a Part B late enrollment penalty** also include any other person an ALJ determines has shown in writing that his or her rights are adversely affected by the initial determination.³⁷

Caution: This does not apply to appeals of SSA reconsiderations involving **Part B or D IRMAA determinations**. Only the beneficiary or a beneficiary successor is a party to appeals of such determinations.³⁸

- In addition to the enrollee or a legal representative of the enrollee's estate, an assignee of the enrollee, and the MAO (which may not request the appeal), the potential parties to an appeal at the OMHA level of a **Part C** organization determination also include any other provider/person or entity determined by the ALJ to have rights with respect to the reconsideration that may be affected by the hearing.³⁹

³⁷ 20 C.F.R. §§ 404.908(b), 404.921(a).

³⁸ 20 C.F.R. §§ 418.1350, 418.2350.

³⁹ 42 C.F.R. § 422.602(c) (providing that the parties to an ALJ hearing are “the parties to the reconsideration, the MA organization, and any other person or entity whose rights with respect to the reconsideration may be affected by the hearing, as determined by the ALJ”); [Parts C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance, § 70.1](#) (providing that the parties to an ALJ hearing include the parties to the reconsideration, the MAO, and “other person/entity . . .”); *see also* 42 C.F.R. §§ 422.574(d) (identifying parties to the organization determination) and 422.582(d) (identifying parties to the reconsideration).

4.7 Substitution of parties and assignment of appeal rights

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4.7.1 What is substitution of a party?

If a beneficiary dies after filing a request for hearing with OMHA, and the beneficiary has not assigned his or her appeal rights (see OCPM 4.7.2), the beneficiary's estate or other person or entity obligated to make or entitled to receive payment who would qualify as a party under [42 C.F.R. section 405.906\(a\)\(1\)](#) may enter the OMHA proceedings as a substitute party. See OCPM 4.1.2.2 for more information on substitution of parties.

4.7.2 What is assignment of appeal rights?

Assignment of appeal rights means the transfer of a beneficiary's appeal rights to a provider or supplier who is not already a party.⁴⁰

Caution: Assignment of **appeal rights** is distinct from assignment of a **claim**.

Assignment of a **claim** means the transfer by a beneficiary of his or her claim for payment to the supplier in return for the supplier's promise not to charge more than the Medicare-approved amount for the items or services (see OCPM 4.2.1).

4.7.2.1 Who may be an assignee?

An assignee (individual or entity that receives the assigned appeal rights) may only be a provider or supplier in a **Part A, Part B, or Part C** appeal who:

- Furnished an item or service at issue in the appeal to the beneficiary; and
- In a **Part A** or **Part B** appeal, is not already a party to the initial determination pursuant to [42 C.F.R. section 405.906](#);⁴¹ or

Example: A participating provider who files a claim for items or services furnished to a beneficiary has independent appeal rights, and therefore may not accept an assignment of appeal rights from the beneficiary.

⁴⁰ [42 C.F.R. §§ 405.902, 405.912\(a\)](#).

⁴¹ [42 C.F.R. § 405.912\(a\)](#).

- In a **Part C** appeal, has waived any right to payment for the service from the enrollee.⁴²

4.7.2.2 How are appeal rights assigned?

In a **Part A** or **Part B** appeal, beneficiaries **must** complete a [Transfer of Appeal Rights \(CMS-20031\)](#). Equivalent writings are not permitted. The assignment must:

- Be in writing and signed by the beneficiary, or the beneficiary's authorized representative;

Note: While a beneficiary's authorized representative may assign the beneficiary's appeal rights by signing the CMS-20031, an appointed representative may not.⁴³

- Be signed by the assignee (the provider or supplier);
- Indicate the item or service for which appeal rights are being assigned;

Note: An assignment of appeal rights is only effective for the items or services listed on the assignment form, even if the assignee furnished additional items or services to the same beneficiary on the same date.⁴⁴

- Waive the assignee's right to collect payment from the beneficiary for the item or service that is the subject of assignment, except for coinsurance or deductible amounts and any payment for which a valid Advance Beneficiary Notice of Noncoverage (ABN) was signed; and
- Be submitted at the same time the request for redetermination or other appeal is filed.⁴⁵

In a **Part C** appeal, a non-contract provider or supplier may submit a signed statement providing that the non-contract provider will not bill the enrollee

⁴² 42 C.F.R. § 422.574(c); see also [Parts C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance, § 50.1](#) (CMS policy limiting the ability of providers that are in-network (contracted) with the MA plan to use the Medicare appeal process for contract disputes between the provider and the MA plan).

⁴³ 70 Fed. Reg. 11420, 11432 (Mar. 8, 2005).

⁴⁴ 74 Fed. Reg. 65296, 65302 (Dec. 9, 2009).

⁴⁵ 42 C.F.R. § 405.912(c)–(d).

regardless of the outcome of the appeal.⁴⁶ The enrollee is not required to sign this statement.

4.7.2.3 What is the effect of an assignment of appeal rights?

When a beneficiary's appeal rights are assigned to a provider or supplier, all rights and responsibilities the beneficiary had involving the particular items or services that were the subject of the assignment are transferred to the provider or supplier, including the right to:

- Obtain information about the claim or appeal;
- Submit evidence;
- Make statements about facts or law; and
- Make any request, or give or receive any notice about appeal proceedings.⁴⁷

The beneficiary is no longer a party to the appeal, *unless* the assignment is revoked (see OCPM 4.7.2.5). The assignee becomes a party, and has all the rights and obligations of any other party.

4.7.2.4 How long is an assignment of appeal rights valid?

Unless it is revoked (see OCPM 4.7.2.5), an assignment of appeal rights is valid for all administrative and judicial reviews associated with the items or services identified on the assignment form, even if the beneficiary dies.⁴⁸

4.7.2.5 How is an assignment of appeal rights revoked?

An assignment of appeal rights in a **Part A or Part B appeal** may be revoked in any of the following ways:⁴⁹

- For appeals that have been **assigned** by Central Operations to an OMHA adjudicator, the beneficiary may revoke the assignment of appeal rights in writing by sending notice to the assignee (provider or supplier) and to the assigned OMHA adjudicator.

⁴⁶ See [Parts C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance, § 50.1.1, Waiver of Liability \(WOL\) statement.](#)

⁴⁷ [42 C.F.R. § 405.912\(f\).](#)

⁴⁸ [42 C.F.R. § 405.912\(e\).](#)

⁴⁹ [42 C.F.R. § 405.912\(g\).](#)

For appeals that have **not yet been assigned** by Central Operations to an OMHA adjudicator, the beneficiary may revoke the assignment of appeal rights in writing by sending notice to the assignee (provider or supplier), and to OMHA Central Operations at the following address:

OMHA Central Operations
Attn: Administrative Mail Stop
200 Public Square, Suite 1260
Cleveland, OH 44114-2316

The revocation is effective on the date it is received by the assigned adjudicator or OMHA Central Operations.

- If the assignee (provider or supplier) does not file an appeal of an unfavorable decision, the assignment of appeal rights is revoked by abandonment.
- If the assignee (provider or supplier) makes an act or omission that the adjudicator determines would be contrary to the financial interests of the beneficiary, the assignment is revoked.

When an assignment of appeal rights is revoked, the rights and obligations as a party revert to the beneficiary.

Note: Because the enrollee is not required to sign the waiver of enrollee liability, and an enrollee who has no further liability no longer has an appealable interest,⁵⁰ revocation is not relevant in the context of a **Part C** assignment of appeal rights.

⁵⁰ See 42 C.F.R. § 422.562(c)(2).

4.8 Addressing questions of party status

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4.8.1 When do we need to make a determination with regard to an individual's or entity's party status?

If a CMS contractor or SSA treated an individual or entity as a party to a lower-level appeal, you may generally presume that the individual or entity is a party to the OMHA appeal. Do not revisit the issue of party status, *unless* the evidence of record raises a question of party status.

If an appellant's party status cannot be determined after a review of the record, or the record is missing information, issue a Notice of Filing Defect (OMHA-125) (*see* OCPM 4.8.4).

Example: The QIC issues an unfavorable decision for emergency hospital services provided to a beneficiary, and the hospital files a request for hearing. In the request for hearing, the appellant mentions that the hospital did not have a Medicare participation agreement in effect during the dates of service at issue in the appeal. Although the QIC treated the hospital as a party and issued a decision, OMHA will revisit the question of party status because non-participating providers are not parties to an initial determination or subsequent appeals, and administrative error does not confer party status (*see* OCPM 4.2.1).

Note: Providers and suppliers that are parties to an appeal may designate employees to pursue appeals as agents of the employer. An employee acting in this capacity is the point of contact and has the authority to make representations and speak on behalf of his or her employer. An appointment of representation is not required (*see* [OCPM 5.1.3.2](#)).

4.8.2 Does an individual's or entity's participation in a prior level of appeal affect its status as a party in an OMHA appeal?

An individual or entity's participation, or lack of participation, in a lower-level appeal does not affect that individual's or entity's party status in an appeal before OMHA, *unless* an applicable statute or regulation specifically provides otherwise.

Example: Pursuant to [42 C.F.R. section 405.908](#), with respect to a claim for items or services furnished to a dually eligible beneficiary for which a Medicaid State

agency made or may be liable for payment, the Medicaid State agency is only considered a party if it filed a timely redetermination request. Because the regulation specifically provides that the Medicaid State agency must file a timely redetermination request in order to be a party to subsequent levels of appeal, a Medicaid State agency that did not participate in the redetermination level of appeal is not a party to a subsequent appeal before OMHA.

Example: Other than **MSP** appeals in which CMS is pursuing recovery directly from an applicable plan, a beneficiary is a party to a **Part A** or **Part B** initial determination, and remains a party to subsequent appeals, *unless* the beneficiary is deceased or has assigned his or her appeal rights to a provider or supplier (*see* OCPM 4.1.1). The fact that the beneficiary may not have participated in the lower levels of appeal does not affect the beneficiary's party status in an OMHA appeal.

Note: While participation in lower levels of appeal does not generally affect party status, it may affect whether a party is entitled to notice of hearing or of a decision (*see* [OCPM 14.5.4](#)).

4.8.3 Does an individual's or entity's financial liability affect its status as a party in an OMHA appeal?

An individual's or entity's financial liability, or potential financial liability, does not affect that individual's or entity's party status in an appeal before OMHA, *unless* an applicable statute or regulation specifically provides otherwise.

Example: Other than **MSP** appeals where CMS is pursuing recovery directly from an applicable plan, a beneficiary is a party to a **Part A** or **Part B** initial determination, and remains a party to subsequent appeals, unless the beneficiary is deceased or has assigned his or her appeal rights to a provider or supplier (*see* OCPM 4.1.1). The fact that the beneficiary's liability may have been limited in a prior determination, or is expected to be limited in an OMHA determination, does not affect the beneficiary's party status in an OMHA appeal.

Example: A provider that had a participation agreement at the time the services were furnished, or a supplier that accepted assignment of a claim, is a party to a **Part A** or **Part B** initial determination and remains a party to subsequent appeals, even if the beneficiary signed an ABN that results in the beneficiary

being liable for the non-covered items or services at issue in the appeal.

Note: While financial liability does not generally affect party status, it may affect whether a party is entitled to notice of hearing or of a decision (see [OCPM 14.5.4](#)).

Circumstances in which financial liability does affect party status include:

- Parties that succeed a deceased beneficiary must be obligated to make or entitled to receive payment (see OCPM 4.1.2.2).⁵¹
- A non-participating supplier of medical equipment or supplies that did not accept assignment or the claim and may be liable to refund the moneys collected under [section 1834\(a\)\(18\) and \(j\)\(4\) of the Act](#) is a party to the initial determination and subsequent appeals (see OCPM 4.2.1).
- A non-participating physician who did not bill on an assigned basis is not a party to a **Part A** or **Part B** initial determination or subsequent appeal, *unless* the physician may be liable under [section 1842\(l\) of the Act](#) to refund monies collected for services furnished to the beneficiary that were denied because the services were not medically necessary (see OCPM 4.2.1).
- A Medicaid State agency must have made payment for the items or services, or be potentially liable to make payment under the Medicaid program (see OCPM 4.3).
- A **Part C** enrollee who received items or services from a non-contract (out-of-network) provider or supplier no longer has an appealable interest if the non-contract provider or supplier executed a waiver of enrollee liability.⁵²

4.8.4 How do we address questions regarding an appellant's party status?

If the party status of the individual or entity that submitted the request for hearing is revisited (see OCPM 4.8.1) and cannot be determined based on a review of the record, issue a Notice of Filing Defect (OMHA-125). The notice should also identify any other procedural deficiencies for which a Notice of Filing Defect is required to be sent.

Example: The individual requesting the hearing claims to be the executor of a deceased

⁵¹ 42 C.F.R. §§ 405.906(a)(1), (b)(1), 405.1052(a)(4), 423.2052(a)(4).

⁵² [Parts C & D Enrollee Grievances, Organization/Coverage Determinations, and Appeals Guidance, § 50.1.1.](#)

beneficiary's estate, but there is no will or letter of administration from a court in the record.

The notice is addressed to the appellant, with a copy to any other established parties to the appeal, and:

- Explains that the appellant does not appear to be a party, or there is insufficient evidence to establish party status;
- Specifies that the appellant must provide: (1) in writing, the reasons the appellant believes it is a party; or (2) documentation that would establish party status;
- Provides that the appellant has 20 calendar days from the date of the notice, which must be placed in the mail on that date, to provide the information; and
- Notifies the appellant that the request for hearing or review may be dismissed if information establishing party status is not provided within the specified time period.

If the appellant does not provide information that establishes party status, the request for hearing or review is dismissed on the basis that there is no right to a hearing or review (see [OCPM 17.1.5.2](#)).

Revision history

Date	Description	Sections/subsections updated
03/29/2019	Initial Release	N/A

If the table above indicates there are prior versions of this chapter, click [here](#) to view them.