

OMHA Case Processing Manual

Chapter 6 CMS, CMS CONTRACTOR, PLAN ROLES

Section	Title
6.0	Chapter overview
6.1	CMS contractors and plans
6.2	Party and non-party participant status
6.3	Types of involvement permitted
6.4	ALJ requests for CMS, CMS contractor, or plan involvement
6.5	CMS, CMS contractor, and plan elections and requests
6.6	Responding to an election or request
6.7	Submission of evidence, position papers, and written testimony

6.0 Chapter overview

(Issued: 07-27-18, Effective: 07-27-18)

This chapter describes when and how CMS, a CMS contractor, or a plan may join the proceedings on a request for hearing, including attendance at the oral hearing, if one is held. This chapter also describes the requirements for a valid election or request to participate, what to do when a request is granted, and the circumstances when an election may be deemed invalid or a request may be denied. Finally, this chapter describes when evidence and other documentation may be submitted by CMS, a CMS contractor, or a plan.

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).

6.1 CMS contractors and plans

(Issued: 07-27-18, Effective: 07-27-18)

6.1.1 What are the responsibilities of the CMS contractors and plans?

CMS contractors administer program benefits, identify and prevent improper payments, protect beneficiaries and their due process rights, and/or conduct lower-level appeals. In addition, MAOs and Part D plan sponsors contract with CMS to administer benefits under Medicare Part C (MAOs) and Part D (Part D plan sponsors), but these entities are not generally included in the definition of “CMS contractor.”

The following table lists the various types of CMS contractors and plans, the types of appeals they review, a summary of the contractor’s or plan’s responsibilities, and resources to obtain additional information.

Parts A and B	
Contractor or Plan Type	Responsibilities
Medicare Administrative Contractor (MAC)	Processes claims submitted under Medicare Parts A and B. This function includes identifying and correcting underpayments made to Medicare providers and suppliers and identifying and seeking to collect overpayments from them; effectuating Medically Unlikely Edits (MUEs), which deny or suspend claim line items for units of service billed in excess of certain criteria; and conducting the initial determination and redetermination (except in Part A inpatient claims denied by a Quality Improvement Organization (QIO)). See CMS Medicare Administrative Contractors website .
Zone Program Integrity Contractor (ZPIC)	Replaced the Program Safeguard Contractor (PSC). Investigates allegations of suspected Medicare fraud, waste, and abuse; makes referrals to law enforcement for potential civil and/or criminal prosecution; takes appropriate administrative corrective actions; and performs other program integrity functions. See CMS CPI website .

<p>Unified Program Integrity Contractor (UPIC)</p>	<p>Replacing the PSC, ZPIC, and Medicaid Integrity Contractor (MIC) to become the sole contractor at the federal level to investigate allegations of suspected fraud, waste, and abuse; makes referrals to law enforcement for potential civil and/or criminal prosecution; takes appropriate administrative corrective actions; and performs other program integrity functions. See CMS Review Contractor Directory website.</p>
<p>Supplemental Medical Review Contractor (SMRC)</p>	<p>Conducts medical review as directed by CMS and/or provides support for a variety of tasks aimed at lowering the improper payment rates and increasing efficiencies of the medical review functions of the Medicare and Medicaid programs. See CMS SMRC website.</p>
<p>Comprehensive Error Rate Testing (CERT) Contractor</p>	<p>Calculates an annual improper payment rate for the Medicare Fee-for-Service (FFS) program by medically reviewing statistically valid random stratified samples of Medicare claims to determine whether they were paid properly under applicable Medicare coverage, coding, and billing rules. See CMS CERT website.</p>
<p>Recovery Auditor or Recovery Audit Contractor (RAC)*</p>	<p>Performs complex medical reviews to detect and correct improper payments made to Medicare FFS providers and suppliers. In doing so, the RAC identifies and seeks to recover overpayments from those providers and suppliers, and identifies and corrects underpayments made to them. See CMS Fee For Service Recovery Audit Program website.</p>
<p>Benefits Coordination and Recovery Center (BCRC)</p>	<p>Responsible for all activities that support collecting, managing, and reporting other insurance coverage for Medicare beneficiaries, the BCRC identifies the health benefits available to Medicare beneficiaries and coordinates the payment process to prevent mistaken Medicare payments (where Medicare should not be the primary or first payer of claims).</p> <p>The BCRC consolidates functions previously performed by the Medicare Secondary Payer Recovery Contractor (MSPRC) and the Coordination of Benefits Contractor (COBC). See CMS Coordination of Benefits and Recovery (COB&R) website.</p>

<p>Commercial Repayment Center (CRC)</p>	<p>The CRC, which consolidates functions previously performed by the MSPRC and the COBC, is responsible for recovering mistaken Non-Group Health Plan (NGHP) claims where a liability insurer (including a self-insured entity), a no-fault insurer, or a workers' compensation entity is the identified debtor. See CMS Coordination of Benefits and Recovery (COB&R) website.</p>
<p>Qualified Independent Contractor (QIC)</p>	<p>Responsible for conducting the second-level appeal (reconsideration) and expedited reconsiderations for FFS appeals. There are five QICs that perform reconsiderations, as well as one administrative QIC (AdQIC) that performs various program-support functions. See CMS Review Contractor Directory website.</p>

<p>Parts A, B, and C</p>	
<p>Contractor or Plan Type</p>	<p>Responsibilities</p>
<p>Quality Improvement Organization (QIO)</p>	<p>QIO activities are currently performed under two separate contract types. Beneficiary and Family Centered Care (BFCC)-QIOs are responsible for case review to evaluate medical necessity, quality of care, and appropriateness of services and setting as well as other reviews identified in 42 C.F.R. section 476.71. All QIO appeals of claim denials, hospital discharge reviews, and provider service terminations that reach OMHA have undergone review by a BFCC-QIO. Quality Innovation Network (QIN)-QIOs provide a range of quality improvement services to health care providers (e.g., institutional providers, physicians and other practitioners) that provide Medicare-covered services; however, QIN-QIO activities do not result in appeals subject to the Medicare claims and coverage appeals process. See CMS Quality Improvement Organizations website.</p>

Part C	
Contractor or Plan Type	Responsibilities
Medicare Advantage Organization (MAO)	Private companies contract with Medicare to provide enrollees with Part A and Part B benefits. An MAO may also provide supplemental benefits for items and services not generally covered under Original (FFS) Medicare, subject to the provisions of the plan’s evidence of coverage. The MAO is also responsible for conducting first-level appeals and forwarding unfavorable determinations to the Part C IRE for reconsideration. See CMS Medicare Advantage website .
Part C Independent Review Entity (IRE)	Performs level-2 reconsiderations and expedited reconsiderations in Part C appeals. The Part C IRE is also commonly referred to as the Part C QIC. See Reconsideration by Part C Independent Review Entity (Part C IRE) .

Part D	
Contractor or Plan Type	Responsibilities
Part D Plan Sponsor	Private companies contract with Medicare to provide Part D prescription drug benefits for enrollees. Stand-alone prescription drug plans (PDPs) and Medicare Advantage plans that offer Part D coverage (MA-PDs) conduct the first level of appeal. See PDP Plan Directory .
Part D Independent Review Entity (IRE)	Performs level-2 reconsiderations and expedited reconsiderations in Part D appeals. The Part D IRE is also commonly referred to as the Part D QIC. See Reconsideration by Part D Independent Review Entity (Part D IRE) .

**The concept of Recovery Auditing in Parts C and D is distinct from the role of a Recovery Auditor in Part A and Part B claim appeals. In Parts C and D, the focus of recovery would be on improper payments made by Medicare to the MAO or Part D plan sponsor, not on payments made to providers, suppliers, or enrollees. Part C and D Recovery Audit*

determinations would not be subject to the appeals processes in [42 C.F.R. Part 422, Subpart M](#) or [Part 423 Subparts M and U](#); therefore, Part C and Part D Recovery Auditors would not be parties to an ALJ hearing. In addition, Part C MAOs may subcontract post-payment review and auditing functions to an entity that also holds a Part A/B Recovery Audit contract. In these circumstances, the work performed by the entity is distinct from the work performed under its Part A/B contract with CMS. Please note that, at this time, CMS has not issued a contractual award to an entity to perform Part C RAC activities.

6.2 Party and non-party participant status

(Issued: 07-27-18, Effective: 07-27-18)

6.2.1 How does CMS or a CMS contractor join the proceedings on a request for an ALJ hearing?

Subject to the provisions and limitations set forth below, CMS, CMS contractors, and Part D plan sponsors may elect or request to join (*see* OCPM 6.5), or be requested to join (*see* OCPM 6.4), the proceedings on a request for an ALJ hearing as a party or as a non-party participant. In Part C appeals, the MAO is always a party to the proceedings.

Note: SSA makes initial determinations and reconsiderations on applications for Medicare benefits, entitlement of an individual to receive Medicare benefits, IRMAAs, and Part B late enrollment penalties. Only beneficiaries / applicants and, for non-IRMAA appeals, persons whose rights are adversely affected are entitled to request an ALJ hearing.¹ CMS and SSA are not parties or non-party participants to these appeals at the OMHA level.

6.2.2 What is “party” status?

Generally, when CMS or a CMS contractor joins the proceedings as a party, it has the same rights and responsibilities as any other party. However, rights that extend only to the appellant, and not to other parties, do not extend to CMS or CMS contractors.² See OCPM 6.3 for when party status elections are permitted.

Example: When CMS or a CMS contractor elects party status, it has the right to appear before an ALJ at a hearing, and the ALJ may not issue a fully favorable decision on the record without conducting a hearing.³

Example: Only the appellant may request to escalate an appeal of a Part A or Part B QIC reconsideration from OMHA to the Council. Therefore, this option is not available to CMS or a CMS contractor that has joined the proceedings as a party.

¹ 42 C.F.R. § 405.904(a); 20 C.F.R. §§ 404.908(b), 404.921(a), 418.1350, 418.2350.

² 42 C.F.R. §§ 405.1016(f), 405.1106(b); 67 Fed. Reg. 69312, 69329 (Nov. 15, 2002).

³ 42 C.F.R. § 405.1038(a).

6.2.3 What is “non-party participant” status?

The term “non-party participant” refers to CMS, a CMS contractor, or a Part D plan sponsor if it joins the proceedings on a request for hearing as a non-party participant in **Part A, B, or C** appeals under [42 C.F.R. section 405.1010](#) or **Part D** appeals under [42 C.F.R. section 423.2010](#).

6.2.3.1 What actions are permitted for non-party participants?

A non-party participant’s scope of participation in an appeal before OMHA is limited to filing position papers (*see* OCPM 6.7) and providing testimony to clarify factual or policy issues.⁴ A non-party participant may participate in the oral hearing, if one is held, subject to the limitations described in OCPM 6.6.3, and may be called as a witness by CMS or a CMS contractor that is a party to the hearing.

6.2.3.2 What actions are not permitted for non-party participants?

Certain rights set forth in [42 C.F.R. part 405, subpart I](#) specifically apply only to parties, and to the extent equivalent rights exist in [part 423, subpart U](#), they apply only to enrollees. For example, when CMS, a CMS contractor, or a Part D plan sponsor has joined the proceedings as a non-party participant, it is not entitled to:

- Object to the time, place, or method of hearing;⁵
- Object to the issues described in the notice of hearing;⁶
- Request a subpoena;⁷
- Call witnesses or cross-examine the witnesses of a party during the hearing;⁸

Note: Non-party participants are not subject to cross-examination by a party, unless the non-party participant is called as a witness by CMS or a CMS contractor that is a party to the hearing (*see* OCPM 6.6.3).

- Obtain a copy of the administrative record;⁹ or

⁴ 42 C.F.R. §§ 405.1010(c), 423.2010(d).

⁵ 42 C.F.R. §§ 405.1020(e), (i), 423.2020(e), (i).

⁶ 42 C.F.R. §§ 405.1024, 423.2024.

⁷ 42 C.F.R. § 405.1036(f).

⁸ 42 C.F.R. §§ 405.1010(c), 423.2010(d).

⁹ 42 C.F.R. §§ 405.1042, 423.2042.

- For Parts A and B, receive notice of a decision (unless the non-party participant is the QIC that issued the reconsideration or from which the appeal was escalated), notice of a decision on a request for review of a QIC dismissal, or notice of a dismissal.¹⁰

Note: For **Part D** appeals, a copy of the decision must be sent to both the Part D IRE and the Part D plan sponsor.¹¹ However, it is not necessary to send a copy of a decision on a request for review of a Part D IRE dismissal, or a dismissal of the request for hearing, to the Part D IRE or the Part D plan sponsor.¹²

¹⁰ 42 C.F.R. §§ 405.1046(a)(1), (b)(1), 405.1052(d).

¹¹ 42 C.F.R. § 423.2046(a)(1)(iii).

¹² 42 C.F.R. §§ 423.2046(b)(1), 423.2052(d).

6.3 Types of involvement permitted

(Issued: 07-27-18, Effective: 07-27-18)

6.3.1 When is CMS, a CMS contractor, or a plan permitted to be a party . . .

6.3.1.1 In Part A or B appeals?

CMS or a CMS contractor (other than a UPIC¹³) may join any proceedings on a request for hearing as a **party**, unless the request for hearing was filed by an unrepresented beneficiary.¹⁴

Note: If more than one entity elects to be a party, only the first entity to file its election after notice of hearing is issued is made a party and the other entities are made non-party participants, unless the ALJ grants leave for an additional entity to be a party (*see* OCPM 6.6.3).¹⁵

6.3.1.2 In Part C appeals?

The MAO is always a **party** to a Part C appeal at the OMHA level.¹⁶ CMS or the IRE may join any proceedings on a request for hearing as a party, unless the request for hearing was filed by an unrepresented beneficiary.

6.3.1.3 In Part D appeals?

Never. Only the enrollee is a **party** to a Part D appeal.¹⁷

¹³ UPICs will operate in five separate geographical jurisdictions in the United States, and will combine and integrate functions previously performed by the ZPIC, the PSC, and the MIC. UPICs will perform fraud, waste, and abuse detection, deterrence, and prevention activities for Medicare and Medicaid claims processed in the United States. Specifically, UPICs will perform integrity-related activities associated with Medicare Parts A and B; durable medical equipment, prosthetics, orthotics and supplies; home health and hospice; Medicaid; and the Medicare-Medicaid data match program (Medi-Medi). Any rule that applies to a ZPIC or PSC should be read as applying to a UPIC. [Medicare Program Integrity Manual, pub. 100-08, ch. 4, § 4.1](#) (stating, “All references to ZPICs shall also apply to [UPICs] unless otherwise specified in the UPIC SOW [statement of work]”).

¹⁴ 42 C.F.R. § 405.1012(a).

¹⁵ 42 C.F.R. § 405.1012(d).

¹⁶ 42 C.F.R. § 422.602(c).

¹⁷ 42 C.F.R. § 423.2008.

6.3.2 When is CMS, a CMS contractor, or a plan not permitted to be a party . . .

UPICs may not elect party status and are only permitted to join the proceedings as **non-party participants**.¹⁸ CMS and other CMS contractors are not permitted to be a **party** in the following circumstances:

6.3.2.1 In Part A, B, or C appeals?

CMS or a CMS contractor (other than the MAO) may not elect party status and may not be requested to join the proceedings as a party if the request for hearing was filed by an unrepresented beneficiary.¹⁹

6.3.2.2 In Part D appeals?

Only the enrollee may be a party.²⁰ Therefore, CMS, the Part D IRE, or the Part D plan sponsor may not elect party status and may not be requested to join the hearing as a party.

6.3.3 When is CMS, a CMS contractor, or a plan permitted to join the proceedings as a non-party participant . . .

6.3.3.1 In Part A or B appeals?

CMS or a CMS contractor, including QIOs, may be a **non-party participant** in any proceedings on a request for hearing. Because the role of a non-party participant is non-adversarial, CMS or a CMS contractor may join the proceedings as a non-party participant even where the appellant is an unrepresented beneficiary.²¹

6.3.3.2 In Part C appeals?

CMS or the IRE may join any proceedings on a request for hearing as a **non-party participant**. Because the MAO is always a **party** to a Part C appeal at the OMHA level, the MAO may never be a **non-party participant**.

¹⁸ 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.

¹⁹ 42 C.F.R. § 405.1012.

²⁰ 42 C.F.R. § 423.2008.

²¹ 42 C.F.R. § 405.1010; 70 Fed. Reg. 11420, 11459 (Mar. 8, 2005).

6.3.3.3 In Part D appeals?

The enrollee is the only **party** to a Part D appeal.²² CMS, the Part D IRE, or the Part D plan sponsor may request (*see* OCPM 6.5), or be requested (*see* OCPM 6.4) by the ALJ, to join the proceedings as a **non-party participant**.²³

6.3.4 How do we respond to inquiries from CMS, a CMS contractor, or a plan unrelated to cases in which the entity is a participant or party to an appeal?

General contacts

Refer general (not case-specific) contacts from CMS, a CMS contractor, or a plan to the **Program Evaluation and Policy Division**.

Example: Requests for special notices or procedures, or requests for operational arrangements generally or for a series of cases, are considered general requests that should be referred to the Program Evaluation and Policy Division.

Case-specific contacts

Case-specific contacts from CMS, a CMS contractor, or a plan made before an ALJ requests the entity's involvement (*see* OCPM 6.4), or before the entity files an election or request to participate or be a party (*see* OCPM 6.5), cannot be accepted. Except as set forth below, send a Report of Contact (OMHA-101) to each of the **parties** and the **Program Evaluation and Policy Division**. After CMS, a CMS contractor, or a plan joins the proceedings on a request for hearing, case-specific contacts must be forwarded to the assigned adjudicator for consideration and any appropriate response.

Note: Contacts with CMS, a CMS contractor, or a plan regarding the effectuation of closed cases do not need to be forwarded to the parties or the Program Evaluation and Policy Division.

See OCPM 6.6 for instructions on responding to an election or request to participate or be a party.

²² 42 C.F.R. § 423.2008.

²³ 42 C.F.R. § 423.2010(a).

6.4 ALJ requests for CMS, CMS contractor, or plan involvement

(Issued: 07-27-18, Effective: 07-27-18)

6.4.1 May an ALJ request CMS, CMS contractor, or plan involvement?

Subject to the limitations on when party status is permitted (see OCPM 6.3.2), an ALJ may request that CMS, a CMS contractor, or a Part D plan sponsor join the proceedings, including the oral hearing, if one is held, as a party (for Parts A, B, and C appeals) or as a non-party participant (for Parts A, B, C, and D appeals).²⁴ All parties must be sent a copy of the ALJ's request for involvement.

6.4.2 May an ALJ issue a subpoena to CMS, a CMS contractor, or a plan?

An ALJ may not issue a subpoena to compel the appearance or testimony of CMS or a CMS contractor.²⁵ An ALJ also may not issue a subpoena to compel the production of evidence from CMS or a CMS contractor, though an ALJ may issue a subpoena to compel production of evidence from a Part D plan sponsor.²⁶

Note: An MAO is not considered a CMS contractor, as the term is defined for [42 C.F.R. part 405, subpart I](#), and a subpoena may be issued to an MAO as a party to the appeal.

6.4.3 What if CMS, a CMS contractor, or a plan declines involvement?

An ALJ may not draw adverse inferences if CMS, a CMS contractor, or a Part D plan sponsor decides not to join a hearing as a party or non-party participant. Similarly, if CMS or a CMS contractor elects to join a hearing as a non-party participant that is not subject to cross examination, the ALJ may not draw an adverse inference because CMS or the CMS contractor has declined to extend the scope of its involvement in the hearing beyond that of a non-party participant.²⁷

²⁴ 42 C.F.R. §§ 405.1010(a)(2), 405.1012(a)(2), 423.2010(a)(2).

²⁵ 42 C.F.R. §§ 405.1036(f), 423.2036(f).

²⁶ 42 C.F.R. § 423.2036(f)(1).

²⁷ 42 C.F.R. §§ 405.1010(a)(2), (c)(2), 405.1012(a)(2), 423.2010(a)(2), (d)(2); 74 Fed. Reg. 65295, 65318 (Dec. 9, 2009).

6.5 CMS, CMS contractor, and plan elections and requests

(Issued: 07-27-18, Effective: 07-27-18)

In Parts A, B, and C appeals, CMS or a CMS contractor may elect to join the proceedings on a request for hearing on its own initiative. In Part D appeals, CMS, the Part D IRE, and/or the Part D plan sponsor may request to join the proceedings on a request for hearing on its own initiative.

6.5.1 When may an election or request be submitted when no hearing is scheduled . . .

6.5.1.1 In Part A, B, and C appeals?

CMS or a CMS contractor may elect to be a **non-party participant** within **30 calendar days** after notification that a request for hearing was filed.

Note: **Party** status elections are not permitted before receipt of a notice of hearing.

6.5.1.2 In standard (non-expedited) Part D appeals?

CMS, the IRE, or the Part D plan sponsor may request to be a **non-party participant** within **30 calendar days** after notification that a request for hearing was filed.

6.5.1.3 In Part D expedited appeals?

CMS, the IRE, or the Part D plan sponsor may request to be a **non-party participant** within **2 calendar days** after notification that a request for expedited hearing was filed.

6.5.2 How do we calculate the timeliness of an election or request when no hearing is scheduled?

For purposes of determining whether an election or request is timely, CMS will be deemed to have received notification that a request for hearing was filed on the date it was filed by the appellant.

6.5.3 When may an election or request be submitted after a hearing is scheduled . . .

6.5.3.1 In Part A, B, and C appeals?

CMS or a CMS contractor may elect to be a **party** or **non-party participant** no later than **10 calendar days** after receiving the notice of hearing. See OCPM 6.5.5 for instructions on how to determine the date that CMS, a CMS contractor, or a plan received a notice of hearing.

Note: In a Part C appeal, the MAO is always a party and is subject to the time frames applicable to parties for responding to a notice of hearing.

6.5.3.2 In standard (non-expedited) Part D appeals?

CMS, the IRE, or the Part D plan sponsor may request to be a **non-party participant** no later than **5 calendar days** after receiving the notice of hearing for a non-expedited Part D appeal.

6.5.3.3 In Part D expedited appeals?

CMS, the IRE, or the Part D plan sponsor may request to be a **non-party participant** no later than **1 calendar day** after receiving the notice of hearing for an expedited Part D appeal.

6.5.4 How is timeliness calculated after a hearing has been scheduled . . .

6.5.4.1 In Part A and B (non-QIO) appeals?

For purposes of determining whether an election is timely, CMS or a CMS contractor will be deemed to have received the notice of hearing on the date it was received by the AdQIC.

6.5.4.2 In QIO appeals?

For reconsiderations issued by a QIO, CMS will be deemed to have received the notice of hearing on the date it was received by the QIO.

6.5.4.3 In Part C appeals?

CMS will be deemed to have received the notice of hearing on the date it was received by the Part C IRE.

As the MAO is already a party to the appeal and does not need to file an election, it is not necessary to determine when the MAO received the notice of hearing. The MAO only indicates its intent to attend the hearing after receiving a notice of hearing.

6.5.4.4 In Part D appeals?

The notice of hearing must be sent to the Part D IRE and to the Part D plan sponsor.²⁸ For purposes of determining whether a request for non-party participant status is timely, CMS will be deemed to have received the notice of hearing on the same date it was received, or presumed received as described in OCPM 6.5.5, by the Part D IRE or the Part D plan sponsor, whichever is earlier.

6.5.5 How do we determine the date that CMS, a CMS contractor, or a plan received a notice of hearing?

The AdQIC, QIO, IRE, Part D plan sponsor, and any other direct recipient of a notice of hearing will be presumed to have received the notice of hearing five calendar days after the date the notice of hearing was mailed, unless there is evidence to the contrary. If an alternate means of transmitting the notice of hearing is authorized (for example, by fax, or by email in response to an electronic notice of hearing sent by OMHA), it is presumed that the CMS contractor received the notice of hearing on the date transmitted, unless there is evidence to the contrary.

6.5.6 If the parties waive advance notice of a hearing, does it affect the time period for CMS, a CMS contractor, or a plan to file an election or request?

Unless waived, notice of an ALJ hearing must be mailed, transmitted, or served at least 20 calendar days before the scheduled date of the hearing (or 3 calendar days before the hearing for an **expedited Part D** hearing).²⁹ A waiver of the 20 calendar day (or 3 calendar day) notice made by the appellant and other parties to the appeal does not affect the 10, 5, or 1 calendar day period following receipt of the notice of hearing during which CMS, a CMS contractor, or a Part D plan sponsor may elect or request to participate in or be a party to the hearing (see OCPM 6.5.1).

<p><i>Note:</i> If CMS or a CMS contractor elects party status, but the notice of hearing was sent fewer than 20 calendar days before the scheduled hearing, the hearing must be rescheduled unless CMS or the CMS contractor electing</p>
--

²⁸ 42 C.F.R. § 423.2020(c).

²⁹ 42 C.F.R. §§ 405.1022(a), 423.2022(a)(2).

party status also waives the notice period and agrees to the scheduled hearing date.

6.5.7 How do we notify CMS when the parties waive the advance notice requirement?

If all parties to an appeal waive the advance notice requirement and the ALJ wishes to schedule a hearing with fewer than 20 days' advance notice, OMHA staff will notify the following entities as soon as practicable after the waiver is filed and request that CMS or any CMS contractor or Part D plan sponsor interested in participating file its election or request as soon as possible:

- The **AdQIC**, in **Part A** or **Part B** appeals of QIC reconsiderations;
- The **QIO**, in appeals of QIO reconsiderations; or
- The **IRE** and the **Part D plan sponsor**, in Part D appeals.

This notice may be provided by telephone and documented in a Report of Contact (OMHA-101). However, the ALJ may not require CMS, a CMS contractor, or a Part D plan sponsor to submit its election sooner than the time frames described in OCPM 6.5.1.

6.5.8 What form should the election or request take . . .

6.5.8.1 Before receipt of a notice of hearing, or when no notice of hearing is required?

The election or request must be in writing, *except* for requests to participate in an expedited Part D appeal, which may be made orally. Elections or requests do not need to take any specific form; use of the Notice of Intent to Participate in Proceedings on a Request for an ALJ Hearing or to be a Party to an ALJ Hearing (OMHA-105) is encouraged, but not required.

Note: For **oral requests** to participate in an **expedited Part D** appeal, OMHA staff must document the request in the administrative record in a Report of Contact (OMHA-101), and notify the enrollee of the request by telephone.

6.5.8.2 After receipt of a notice of hearing?

The election or request must be in writing, *except* for requests to participate in an expedited Part D appeal, which may be made orally. Elections or requests do not

need to take any specific form; use of the following forms is encouraged, but not required:

- Notice of Intent to Participate or be a Party in a Part A or Part B Administrative Law Judge (ALJ) Hearing (OMHA-305) for Part A and Part B elections submitted centrally by the AdQIC.
- Notice of Intent to Participate in Proceedings on a Request for an ALJ Hearing or to be a Party to an ALJ Hearing (OMHA-105) for all other elections and requests.

Note: For **oral requests** to participate in an **expedited Part D** appeal, OMHA staff must document the request in the administrative record in a Report of Contact (OMHA-101), and notify the enrollee of the request by telephone.

If party status may be elected in an appeal (*see* OCPM 6.3.1), the election should clearly indicate whether CMS or the CMS contractor is electing to join the hearing as a party or as a non-party participant. If the election does not clearly indicate the entity's choice of party or non-party participant status, OMHA staff will contact CMS or the CMS contractor upon receipt of the election to clarify. Upon receiving clarification, OMHA staff will notify all parties of the status CMS or the CMS contractor has elected using a Clarification of CMS or CMS Contractor Status (OMHA-133).

6.5.9 When an election or request is filed after receipt of a notice of hearing, is a separate response to the notice of hearing required?

If an election or request is made using standard form OMHA-105 or OMHA-305, a separate response to notice of hearing (using form OMHA-102 or an equivalent writing) is not required. These forms incorporate the required elements for responding to a notice of hearing.³⁰

A separate response is only required in the unusual circumstance that CMS or a CMS contractor elects to be a party or non-party participant, but does not use form OMHA-105 or OMHA-305 and the election does not meet the regulatory requirements.

³⁰ 42 C.F.R. §§ 405.1020(c)(2), (3), 423.2020(c)(3).

6.5.10 Where must CMS and CMS contractors send elections and requests?

Written elections and requests

Written elections and requests must be sent to:

- The assigned adjudicator, or Central Operations (see OCPM 6.5.11 for the address and mail stop) if the case is unassigned;
- The appellant(s); and
- In Parts A, B, and C appeals, all other parties who were sent a copy of the notice of hearing, if a hearing has been scheduled. If no hearing has been scheduled, all other parties who were sent a copy of the notice of reconsideration.

Oral requests

For **oral** requests to participate in an **expedited Part D appeal**, CMS, the IRE, or the Part D plan sponsor must notify only the assigned adjudicator, or Central Operations if the appeal is unassigned. OMHA staff will document the request in the administrative record in a Report of Contact (OMHA-101), and notify the enrollee of the request by telephone.

<p><i>Note:</i> As a party to a Part C appeal, the MAO is not required to notify the other parties of its intent to attend a scheduled hearing; the notice of hearing will indicate that the ALJ sent a copy of the notice to the MAO.</p>
--

6.5.11 How does CMS, a CMS contractor, or a Part D plan sponsor submit an election or request to OMHA?

CMS, CMS contractors, and Part D plan sponsors may make an election or request using one of the following means:

- Regular or expedited **mail**;
- **Fax**; or
- An **email** that does not contain PII, if responding to an **electronic notice of hearing (eNOH)** sent by OMHA.
- **Orally**, if requesting to participate in an **expedited Part D** hearing.

Mailed elections or requests may be sent to the attention of the assigned **adjudicator** or, if the case is unassigned, filed with **Central Operations** at:

OMHA Central Operations
Attn: CMS and CMS Contractor Elections Mail Stop
200 Public Square, Suite 1260
Cleveland, OH 44114-2316

6.5.12 What constitutes acceptable evidence that notice of an election or request was sent to the appellant and other parties?

The following list, though not exhaustive, provides examples of how CMS, a CMS contractor, or a Part D plan sponsor may demonstrate compliance with the requirement to notify the appellant and other parties of its election or request (*see* OCPM 6.5.10):

- A signature on standard form OMHA-105 or OMHA-305 acknowledging the requirement to provide copies to the appropriate parties and the consequences of failure to do so.
- An indication on an election or request of the parties to whom a carbon / courtesy copy (cc) was sent, along with their addresses;
- A certified mail receipt or delivery confirmation obtained from a carrier;
- A fax or email confirmation; or
- A written statement made by CMS, or a CMS contractor, or a Part D plan sponsor indicating that it notified the appellant and all appropriate parties of its intent to join the proceedings, if the statement also includes the names of the parties and the address, fax number, or email address where notice was sent.

6.6 Responding to an election or request

(Issued: 07-27-18, Effective: 07-27-18)

6.6.1 May an adjudicator deny an election or request . . .

6.6.1.1 In Part A, B, and C appeals?

Generally, if CMS or a CMS contractor has filed a valid election to join the proceedings on a request for hearing, an adjudicator may not deny the election. However, if the entity's election was not timely filed or was not sent to the correct parties, it may be rejected as invalid. See OCPM 6.5.1 and 6.5.10.

If CMS and one or more contractors, or multiple contractors, elect to be a party, only the first entity to file its election after the notice of hearing is issued is made a party, unless the ALJ grants leave for an additional entity to be a party (*see* OCPM 6.6.3).³¹ The remaining entities are made non-party participants.

Note: Because the **MAO** is a party to the proceedings in a **Part C** case, the ALJ may not deny the MAO the opportunity to appear at the hearing.

6.6.1.2 In Part D appeals?

The adjudicator has the discretion to allow or deny non-party participant status requested by CMS, the Part D IRE, or the Part D plan sponsor.³² The adjudicator may deny the request to join the proceedings if it was not received within the applicable time frames described in OCPM 6.5.1, if it was not sent to the enrollee, or for any other reason if the adjudicator deems the denial necessary to balance the interests of the enrollee with the interests of CMS, the Part D IRE, or the Part D plan sponsor.

6.6.2 What notice do we have to send . . .

6.6.2.1 In Part A, B, and C appeals?

Valid elections

For an election to be valid, CMS or the CMS contractor is required to send a copy of the election to the appellant and other parties that were sent a copy of the notice of reconsideration, if no hearing has been scheduled, or identified in the notice of hearing, if a hearing has been scheduled (*see* OCPM 6.5.10). This copy serves as

³¹ 42 C.F.R. § 405.1012(d).

³² 42 C.F.R. § 423.2010(c).

notice of the entity's intent to join the proceedings. OMHA is not required to send any additional notice to the parties or the entity filing the election, *unless* the entity is precluded by the ALJ from being a party or participating in the oral hearing (see OCPM 6.6.3).

Invalid elections

If an election is determined to be invalid, OMHA staff must notify the entity that submitted the election and all parties that were entitled to receive notice of the election (see OCPM 6.5.10) that the election was invalid. Use a Generic Notice (OMAH-120) with an Order Finding Invalid Election or Precluded Participation (OMHA-131) including the reason(s) the election was determined to be invalid, within the following time frames:

- If **no hearing is scheduled or the election was submitted after the hearing occurred**, the Order Finding Invalid Election or Precluded Participation (OMHA-131) must be sent no later than the date the notice of decision, dismissal, or remand is mailed.³³
- If a **hearing is scheduled**, the Order Finding Invalid Election or Precluded Participation (OMHA-131) must be sent prior to the hearing. If it would be sent fewer than 5 calendar days prior to the hearing, OMHA staff must provide oral notice to the entity that submitted the election followed by written notice to the entity and the parties who were sent the notice of hearing as soon as possible after the oral notice is provided.³⁴

6.6.2.2 In Part D appeals?

OMHA staff must notify the entity requesting to join the proceedings, the enrollee, and the Part D plan sponsor (if the Part D plan sponsor is not the entity requesting to join) of the adjudicator's decision on the request to join the proceedings using a Generic Notice (OMHA-120) with an Order Granting Leave to Participate (OMHA-132) to grant a request, or Order Finding Invalid Election or Precluded Participation (OMHA-131) to deny a request, within the following time frames:

- If **no hearing is scheduled**, at least 20 calendar days before the adjudicator issues a decision, dismissal, or remand;

³³ 42 C.F.R. §§ 405.1010(e)(2)(i), 405.1012(e)(2)(i).

³⁴ 42 C.F.R. § 405.1010(e)(2)(ii).

- If a **standard** hearing is scheduled, within 5 calendar days of receipt of the request to participate;³⁵
- If an **expedited** hearing is scheduled, within 1 calendar day of receipt of the request to participate.

6.6.3 How many CMS offices or contractors may attend the oral hearing in a Part A or B appeal?

If CMS and one or more contractors, or multiple contractors, elect to be a **party** to a hearing, only the first entity to file its election after the notice of hearing is issued is made a party to the hearing. The other entities may participate in the proceedings as non-party participants, but are precluded from attending the oral hearing if one is held.³⁶

If CMS or a contractor does not elect to be a party and more than one entity elects to participate in the proceedings, only the first entity to file its response to the notice of hearing may participate in the oral hearing.³⁷ Entities that file a subsequent response to the notice of hearing may participate in the proceedings as non-party participants, but are precluded from attending the oral hearing. An ALJ may grant leave for an additional entity to be a party or participate in the hearing (see OCPM 6.6.5).

Note: An entity that is precluded from attending a hearing may still be called as a witness by CMS or a CMS contractor that is a party, and may file position papers and/or written testimony to clarify factual or policy issues in the case (see OCPM 6.7.3).³⁸

6.6.4 What notice do we send when CMS or a CMS contractor is precluded from participating in a hearing?

OMHA staff sends a Generic Notice (OMHA-120) with an Order Finding Invalid Election or Precluded Participation (OMHA-131) to each entity that is precluded from attending the oral hearing, and provides a copy to the appellant and any other party that was sent a copy of the notice of hearing, within the following time frames:

³⁵ 42 C.F.R. § 423.2010(c).

³⁶ 42 C.F.R. §§ 405.1010(d)(1), (d)(3), 405.1012(d)(1).

³⁷ 42 C.F.R. § 405.1010(d)(2).

³⁸ 42 C.F.R. § 405.1010(d)(1), (3).

- If **no hearing is scheduled or the hearing already occurred**, the notice must be sent no later than the date the notice of decision, dismissal, or remand is mailed.
- If a **hearing is scheduled**, the notice must be sent prior to the hearing. If it would be sent fewer than 5 calendar days prior to the hearing, the ALJ team must provide oral notice to the entity that submitted the election or request, followed by written notice as soon as possible thereafter.

6.6.5 May an ALJ grant leave for more than one entity to be a party or attend a hearing?

Yes, an ALJ may grant leave for an entity that would otherwise be excluded under the rules described in OCPM 6.6.3 to be a party or participate in the oral hearing if it is necessary for a full examination of the matters at issue.³⁹ For example, if a hearing involves claims for multiple beneficiaries that were decided in two different MAC jurisdictions, the ALJ may deem it necessary to allow both MACs to participate in the hearing.

If more than one entity elects or requests to be a party or participate in a hearing, the ALJ should consider any explanation submitted by the additional entity to support why its involvement is necessary for a full examination of the matters at issue. If no explanation was submitted with the election or request, the ALJ may contact the additional entity for an explanation, or may decide to grant or deny leave based on the information available.

6.6.6 What notice do we send when an ALJ grants leave for an additional entity to be a party or attend a hearing?

If the ALJ grants leave for an additional entity to be a party or participate in the hearing, OMHA staff will send a Generic Notice (OMHA-120) with an Order Granting Leave to Participate (OMHA-132) to the entity that made the election or request, and provide a copy to the appellant and any other party that was sent a copy of the notice of hearing, within the same time frames as the Order Finding Invalid Election or Precluded Participation (OMHA-131) described in OCPM 6.6.2.

³⁹ 42 C.F.R. §§ 405.1010(d)(3), 405.1012(d)(2).

6.7 Submission of evidence, position papers, and written testimony

(Issued: 07-27-18, Effective: 07-27-18)

6.7.1 When may CMS, a CMS contractor, or a plan submit evidence . . .

6.7.1.1 In Part A and B appeals?

If CMS or a CMS contractor joins the proceedings as a **non-party participant**, it may not submit evidence. When CMS or a CMS contractor joins the proceedings on a request for hearing as a **party**, CMS or the CMS contractor may submit evidence no later than 5 calendar days before the hearing, if one is held, unless additional time is granted by the ALJ.⁴⁰

If additional evidence is submitted later than 10 calendar days after receiving the notice of hearing, any applicable adjudication time period is extended by the number of calendar days in the period between 10 calendar days after receipt of the notice of hearing and the day the evidence is received.⁴¹

6.7.1.2 In Part C appeals?

When CMS or the Part C IRE joins the proceedings as a **party**, it may submit evidence subject to the same time frame and requirements that apply in Part A and B appeals (see OCPM 6.7.1.1).

The MAO, which is always a party to the appeal, must submit any evidence within 10 calendar days of receiving the notice of hearing.⁴² If additional evidence is submitted later than 10 calendar days after receiving the notice of hearing, any applicable adjudication time period is extended by the number of calendar days in the period between 10 calendar days after receipt of the notice of hearing and the day the evidence is received.⁴³ The MAO is not required to show good cause for submitting evidence for the first time at the OMHA level.⁴⁴

⁴⁰ 42 C.F.R. § 405.1012(c)(2).

⁴¹ 42 C.F.R. § 405.1018(b).

⁴² 42 C.F.R. § 405.1018(a).

⁴³ 42 C.F.R. § 405.1018(b).

⁴⁴ 42 C.F.R. § 422.562(d)(2)(vi).

6.7.1.3 In Part D appeals?

Only the enrollee may submit written evidence to be considered at the hearing.⁴⁵

CMS, the Part D IRE, and the Part D plan sponsor, whose roles are limited to that of non-party participants, may not submit written evidence.

6.7.2 Is CMS or a CMS contractor that is participating as a party required to show good cause for the introduction of evidence for the first time at the OMHA level?

No. CMS and CMS contractors are not required to show good cause for submitting evidence for the first time at the OMHA level. This good cause requirement only applies in Part A and B appeals to providers, suppliers, and beneficiaries represented by a provider or supplier.⁴⁶

Note: To the extent submission of evidence by CMS or a CMS contractor raises new issues in the appeal that were not considered during the earlier levels of appeal, there may be good cause for the introduction of new evidence by other parties at the OMHA level of appeal.⁴⁷

6.7.3 When may CMS, a CMS contractor, or a Part D plan sponsor submit position papers and written testimony . . .

6.7.3.1 In Part A and B appeals?

When CMS or a CMS contractor elects a **party** or **non-party participant** role in the proceedings, it may submit position papers or written testimony within the following time frames, unless the ALJ grants additional time.⁴⁸

- Within **14 calendar days** of an election to participate, if no hearing has been scheduled; or
- No later than **5 calendar days** prior to the hearing, if a hearing has been scheduled.

⁴⁵ 42 C.F.R. § 423.2018.

⁴⁶ 42 C.F.R. §§ 405.1018(c)(1), (d)(2), 405.1028.

⁴⁷ 74 Fed. Reg. 65295, 65318 (Dec. 9, 2009).

⁴⁸ 42 C.F.R. §§ 405.1010(c)(3)(i).

6.7.3.2 In Part C appeals?

When CMS or the Part C IRE elects a **party** or **non-party participant** role in the proceedings, it may submit position papers or written testimony subject to the same time frames and requirements that apply in Part A and B appeals (see OCPM 6.7.3.1).

The MAO is always a party at the OMHA level and may therefore submit position papers or written testimony at any time before a decision, dismissal, or remand is issued.

6.7.3.3 In Part D appeals?

When CMS or the Part D IRE elects a **non-party participant** role in the proceedings on a **standard Part D appeal**, position papers or written testimony must be submitted within the following time frames, unless the ALJ or attorney adjudicator grants additional time⁴⁹:

- Within **14 calendar days** after receipt of the adjudicator's decision on the request to participate if no hearing has been scheduled; or
- No later than **5 calendar days** prior to the hearing, if a non-expedited hearing has been scheduled.

For **expedited Part D appeals**, position papers or written testimony must be submitted:

- Within **1 calendar day** after receipt of the adjudicator's decision on the request to participate if no hearing has been scheduled; or
- No later than **1 calendar day** prior to the hearing, if an expedited hearing has been scheduled.

6.7.4 Where does CMS, a CMS contractor, or a Part D plan sponsor send evidence, position papers, or written testimony?

CMS, a CMS contractor, or a Part D plan sponsor should send position papers or written testimony, or evidence if CMS or a CMS contractor is joining as a party in a Part A, B or C appeal, directly to the assigned adjudicator at OMHA. The assigned adjudicator's name and contact information can be located using the ALJ Appeal Status Information System (AASIS), online at <http://aasis.omha.hhs.gov/>.

⁴⁹ 42 C.F.R. § 423.2010(d)(3).

If an adjudicator has not yet been assigned, position papers and written testimony should be filed with **Central Operations** at:

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

When CMS or a CMS contractor submits evidence to OMHA, CMS or the CMS contractor must send a copy of the evidence within the same time frame (see OCPM 6.7.1.1) to the parties who were sent a copy of the notice of hearing.⁵⁰

When CMS, a CMS contractor, or a Part D plan sponsor submits a position paper or written testimony to OMHA, CMS, the CMS contractor, or the Part D plan sponsor must send a copy of the position paper or written testimony within the same time frames (see OCPM 6.7.3) to:

- The parties who were sent a copy of the reconsideration, if no hearing has been scheduled; or
- The parties who were sent a copy of the notice of hearing, if a hearing has been scheduled.⁵¹

If CMS, the CMS contractor, or the Part D plan sponsor fails to send a copy to the appropriate parties, or fails to submit the evidence, position paper, or written testimony within the required time frame and no additional time has been granted, the adjudicator will not consider the evidence, position paper, or written testimony in deciding the appeal.⁵²

6.7.5 Is discovery permissible . . .

6.7.5.1 In Part A and B appeals?

Discovery is permissible only when CMS or a CMS contractor elects party status in a hearing; it is not permissible when CMS or a CMS contractor elects non-party participant status or no status.⁵³

⁵⁰ 42 C.F.R. § 405.1012(c)(2)(ii).

⁵¹ 42 C.F.R. §§ 405.1010(c)(3)(ii), 405.1012(c)(2)(ii), 423.2010(d)(3)(ii)

⁵² 42 C.F.R. §§ 405.1010(c)(3)(iii), 405.1012(c)(2)(iii), 423.2010(d)(3)(iii).

⁵³ 42 C.F.R. § 405.1037(a)(1).

6.7.5.2 In Part C appeals?

As the MAO is always a party to the appeal, the proceedings are considered adversarial and discovery is permissible in Part C appeals.

6.7.5.3 In Part D appeals?

Discovery is not permissible in Part D appeals because CMS, the Part D IRE, and the Part D plan sponsor can never be a party to the proceedings at OMHA.⁵⁴ Discovery is only permissible where the proceedings on a request for hearing are adversarial.

⁵⁴ 74 Fed. Reg. 65339, 65353 (Dec. 9, 2009).

Revision history

Date	Description	Sections/subsections updated
07/27/2018	Initial Release	N/A

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