

1. Will the profile on the phase I [OMHA ECAPE] portal allow for appellant address changes?

In the OMHA Electronic Case Adjudication Processing Environment (ECAPE), each provider/supplier—as well as other actors in the appeals process, such as beneficiaries, State agencies, and representatives—will have a profile with contact information. The profile will be associated with appeals related to the party or representative. The contact information will be maintained by OMHA staff to help ensure data consistency and integrity.

In ECAPE phase I, an appellant, or any other party or representative, can change its address of record by using the new address when filing a new request for hearing, or by sending a letter requesting the address change. Through either method, the change will be reviewed by OMHA Central Operations and the change will be made to the profile and update all pending appeals associated with that profile.

2. What [is OMHA] doing to allow its ALJs to issue a partially favorable decision awarding Part B payment when a provider's claim for Part A inpatient hospital services is denied because the admission was not reasonable and necessary?

OMHA ALJs are bound by Medicare statutes and regulations, National Coverage Determinations (NCDs), and CMS Rulings. CMS Ruling 1455-R clarified that the scope of an adjudicator's review is limited to the claim(s) that are before the adjudicator on appeal. For Part A inpatient hospital service appeals, the claim on appeal is the Part A inpatient hospital service claim, and adjudicators, including ALJs, are limited to reviewing the submitted Part A claim. In this scenario, a claim for Part B services has not been billed and has not received an initial determination, redetermination, or reconsideration. However, an option to bill for some Part B services in this scenario may be available under the CMS Ruling—please review the Ruling to see if your services qualify for Part B rebilling, and if so, what services may be billed.

3. On the SCF Expansion slide [#67], Phase III, it states [that Phase III of SCF] expands the pilot to include "certain" Part A appeals. Can you expand on the word "certain"?

¹ All questions are as submitted; however, in some cases where questions were not clear, some edits were required in an effort to capture the intent of the question.

All Part A providers are eligible to request participation in the OMHA Settlement Conference Facilitation (SCF) pilot. However, claims that were eligible for the CMS Part A Hospital Appeals Settlement (administrative agreement) option are not currently eligible for the OMHA SCF pilot, regardless of whether the provider participated in the CMS Part A Hospital Appeals Settlement.

4. How long does it take an individual beneficiary who has no representation to get a hearing?

Appeals filed by beneficiaries who have no representation are assigned to an ALJ as they are received, and prioritized for adjudication. On average, prioritized beneficiary appeals are adjudicated within 90 days.

5. Could you please further define what make up the traditional workload receipts?

Traditional workload is used to refer to the original workload that OMHA received in its initial years of operation. Since that time, appeals filed by Medicaid State Agencies and appeals arising from the CMS Recovery Audit program have been added. The traditional workload refers to all appeals not included in these two categories.

6. How many home health agency appeals currently are pending? Hospice appeals pending? Total appeals pending?

As of May 31, 2016 the following appeals are pending:

Home Health	83,203
Hospice	5,153
Total Pending	716,442

7. Can someone tell us how many judges presently adjudicate DAB appeals and what is the DAB level turnaround time?

The Departmental Appeals Board (DAB) currently has 6 Administrative Appeals Judges who serve on the Medicare Appeals Council (in addition to the Board Chair and Deputy Chair who adjudicate Council appeals on a less frequent basis). The average adjudication time for an appeal at the DAB level for appeals decided as of June 30, 2016, was 707 days.

8. Will the ECAPE Portal's upload feature (presently designed for an ALJ hearing for a Medicare Appeal) be used to also upload Recovery Audits currently being sent to the ALJ level by a provider?

When fully implemented, the Appellant Public Portal will be available to any appellant filing Part A, Part B, or Part D non-expedited appeals with OMHA, which will include provider appeals of Recovery Audits.

9. Will a provider be able to use ECAPE to check appeal status if the appeal was uploaded by a third party?

When the Appellant Public Portal is fully operational, if a party (such as a provider) to an appeal filed by another party or representative has the identifying information to search for the appeal (such as the QIC or IRE Medicare appeal number, ALJ appeal number or Electronic Case Adjudication (ECAPE) identification number), the party will be able to access the appeal status provided they have registered as an Appellant Public Portal user. In the interim (as the ECAPE and the Appellant Public Portal are developed), OMHA has the ALJ Appeal Status Information System (AASIS) website, accessible via the OMHA website (<http://www.hhs.gov/omha>) by selecting the “Appeal Status Lookup” link. AASIS allows users to search by level 2 (QIC or IRE) or level 3 (ALJ) appeal numbers and obtain appeal data such as: the date the appeal was received; the status of the appeal; the assigned field office; and the assigned ALJ and team phone number.

10. Can you comment on whether there will be changes to party notification when an ALJ hearing is requested electronically?

Notifying the other parties to the appeal that a request for an ALJ hearing is being filed will remain the responsibility of the filer.

11. Has OMHA changed the "prep time" regarding notifying an appellant of an ALJ hearing date? Recently received a notice of hearing with less than 1 week notice.

“Notice of a Hearing before an ALJ” is a regulatory requirement found in 42 C.F.R. § 405.1022. “After the ALJ sets the time and place of the hearing, notice of the hearing will be mailed to the parties and other potential participants, as provided...at their last known address, or given by personal service... The notice is mailed or served at least 20 calendar days before the hearing.” Please check the post mark date on the envelope—it should be at least 20 calendar days before the scheduled hearing date. If parties are experiencing non-compliance with this requirement, they should be referred through e-mail to Medicare.Appeals@hhs.gov.

12. Any ideas on what the proposed [refundable] filing fees will be and at which levels they will be required?

Establishing a refundable filing fee at each level of appeal is a legislative proposal included in the President's Budget for FY 2017. No specific amount is proposed, but filing fees would be returned to appellants who receive a fully favorable appeal determination.

13. What is being done to educate the new and seasoned ALJ judges regarding CMS regulations and how they pertain to inpatient medical necessity pre two midnight rule and post two midnight rule?

OMHA provides monthly in-service training and a yearly Judicial Education Symposium for all OMHA ALJs and legal support staff. The topic of the inpatient hospital coverage has been presented in both venues and on multiple occasions. The topic is also included in the new ALJ training, which every incoming ALJ is required to complete.

14. Will uploading of additional documentation serve to enhance the hearing or will this substitute for a hearing?

The creation of the Appellant Public Portal will allow users to create and manage profiles, upload or create requests for hearing, upload evidentiary attachments, and check the status of a filed appeal. The uploading of additional documentation allows evidence to be added to an existing Medicare appeal and if the evidence is submitted by a provider or supplier, or beneficiary represented by a provider or supplier, the ALJ then determines whether there is good cause for new evidence to be submitted for the first time at the ALJ level, as required by section 1869(b)(3) of the Social Security Act (42 U.S.C. § 1395ff(b)(3)) and 42 C.F.R. § 405.1028. Provided the evidence is admitted and is not duplicative of evidence already in the record, it may serve to enhance the hearing. Unless requested by the appellant through a waiver of the oral hearing, the additional documentation will not substitute for a hearing.

15. When can a hospital expect a letter from the ALJ office if a favorable ALJ decision letter was mailed to [the] hospital by the QIC and not the ALJ office? Can it take up to 2 years?

In Part A and Part B appeals, the Notice of Decision with the ALJ's decision is mailed by an OMHA office to the parties, including the appellant or the appellant's representative, and to the QIC that issued the Reconsideration and the contractor that made the initial determination, at the same time. If a party has not received the Notice of Decision, specific inquiries should be referred through e-mail to Medicare.Appeals@hhs.gov.

16. What is the preferred method for requesting a consolidated hearing for several Medicare Appeal Numbers that relate to the same provider and the same issues?

We recommend sending the requests for hearing in one package with a cover note indicating the appellant's desire for a consolidated hearing. OMHA will make every effort to group the appeals when they are assigned to an ALJ, so a consolidated hearing can be considered by the ALJ.

17. Is there an initiative to transition the ALJs to electronic records?

There is an initiative to transition the ALJs to electronic records. With the implementation of the OMHA Electronic Case Adjudication Processing Environment (ECAPE), ALJs will begin to use an electronic case record to adjudicate appeals.

18. As lawyers, is it legal that the ALJs can surpass the statutory time frame for appeals?

Section 1869(d)(3)(A) of the Social Security Act (42 U.S.C. § 1395ff(d)(3)) provides the option for an appellant who is appealing a QIC reconsideration decision to escalate its appeal to the Medicare Appeals Council level of appeal when an ALJ is unable to issue a decision within the applicable adjudication time frame. See also 42 C.F.R. § 405.1104.

19. Where are these eligibility requirements for SCF listed?

Information on the OMHA Settlement Conference Facilitation (SCF) pilot program, including eligibility requirements, can be found on the OMHA website at <http://www.hhs.gov/omha/>.

20. Can you please clarify if the totality for SCF Phase III is a minimum of \$20k or a max of \$20K?

For Phase III of the OMHA Settlement Conference Facilitation (SCF) pilot program, a Part A appellant must have **at least** 50 eligible claims at issue **and at least** \$20,000 must be in controversy in those claims.

21. Can I withdraw my request for an ALJ Hearing if I have submitted a request but I have not yet received a Hearing date? [This question was received during the Settlement Conference Facilitation (SCF) question and answer segment.]

Only pending appeals are eligible for OMHA's Settlement Conference Facilitation (SCF) pilot program. If you withdraw your request for ALJ hearing prior to initiating or completing the SCF process, your appeal will not be eligible for a settlement agreement through SCF.

Outside of the SCF pilot process, appellants may withdraw their request for hearing at any time before the ALJ issues a decision, dismissal, or remand.

22. Due to the caveat, how do you see this pilot program for Part A helping to relieve the backlog of appeals? Also, do you anticipate opening this up to all claims at any point?

All appellants who are waiting in the hearing queue benefit from the OMHA Settlement Conference Facilitation (SCF) pilot program, even those whose appeals are not currently eligible for participation. When one appellant is able to resolve their appeals using this alternate method, the appeals settled through the SCF pilot are removed from the hearing queue, so all other appellants move up in line, making it possible to address the appeals of other appellants more expeditiously.

OMHA will assess appellant interest and participation in this pilot in the coming months and will consider any downward revisions to the eligibility thresholds at that time.

23. Can a business entity combine NPI's to meet the claim/dollar requirement for SCF? (Second Question on same topic: Can a company with multiple SNFs aggregate their denied claims for SCF across multiple facilities? They will have multiple NPIs.)

Yes. To combine National Provider Identifier (NPI) numbers, the appellant must list all of the NPIs for which it is seeking OMHA Settlement Conference Facilitation (SCF) when it submits the Expression of Interest. The Expression of Interest must indicate all of the NPI numbers for each appellant the business entity is requesting be included in the SCF process.

24. Are inpatient rehab claims eligible for SCF?

Yes, Inpatient Rehabilitation Facility (IRF) appeals became eligible for OMHA Settlement Conference Facilitation (SCF) in the Phase III expansion.

25. If an NPI has both Part A and Part B ALJ hearings pending, will they all be combined into the same SCF?

If an appellant is interested in OMHA Settlement Conference Facilitation (SCF) for their Medicare Part A and Medicare Part B appeals, the appellant must submit a Medicare Part A SCF Expression of Interest and a Medicare Part B SCF Expression of Interest. Please send both Expressions of Interest in ONE e-mail.

Please be aware that logistical considerations may require that this type of request be grouped and scheduled in multiple settlement conference sessions, which may lead to multiple settlements for effectuation purposes.

26. If a hospital sends in their SCF [Expression of Interest] today and receives a Notice of Hearing tomorrow, how should they respond to the Judge with regard to the intended settlement?

The appellant must proceed with the ALJ hearing. The pilot is limited to claims that have not yet been scheduled for an ALJ hearing. Those appeals for OMHA Settlement Conference Facilitation (SCF) are not pulled from the ALJ hearing process until OMHA issues the Settlement Conference Facilitation Preliminary Notification to the appellant.

27. Why are separate submissions required for A and B if the request form permits a requestor to select "both"?

Although the Request for Settlement Conference Facilitation form indicates "and/or," this is for internal tracking purposes. A separate submission is required based on different eligibility criteria for Part A and Part B participation in the Phase II of OMHA's Settlement Conference Facilitation (SCF) pilot program. Medicare Part A eligibility requires that at least 50 claims are at issue and at least \$20,000 is in controversy, whereas Medicare Part B eligibility requires at least 20 claims are at issue, or at least \$10,000 is in controversy. If an appellant is interested in SCF for their Medicare Part A and Medicare Part B appeals, the appellant must submit both a Medicare Part A SCF Expression of Interest and a Medicare Part B SCF Expression of Interest. Please send both Expressions of Interest in ONE e-mail.

Please be aware that logistical considerations may require that this type of request be grouped and scheduled into multiple settlement conference sessions which may lead to multiple settlements for effectuation purposes.

28. What if we have waited more than 6 months for a decision on an ALJ hearing?

If the hearing has been conducted and you have not received a decision within 6 months, please provide the ALJ number with your contact information by e-mail to Medicare.Appeals@hhs.gov.

29. Could [OMHA] address OMHA's process for assigning (or re-assigning) any appeal that was submitted for the CMS Settlement program, but was found by CMS to be ineligible. We have several appeals that had hearings scheduled in 2015 that were put on hold due to the settlement, but ultimately were deemed by CMS to be ineligible. How can I tell these appeals have been re-queued and not fallen off the radar?

If CMS determined an appeal was not eligible for the CMS Part A Hospital Appeals Settlement (administrative agreement) option, the appeal is returned to OMHA. If the appeal was assigned to an ALJ, it will return to the same ALJ. The appeal will also resume its previous place in the adjudication queue. The status of appeals may be queried using the OMHA's ALJ Appeal Status Information System (AASIS) at <http://aasis.omha.hhs.gov/>.