

Office of Medicare Hearings and Appeals
Statistical Sampling Pilot Program
FACT SHEET

What is statistical sampling?

Statistical sampling draws a random sample from a universe of claims and extrapolates (in other words, projects) the results of the sample to the entire universe of claims. OMHA statistical sampling is conducted using a trained and experienced statistical expert to develop the appropriate sampling methodology in accordance with Medicare guidance, and randomly select the sample units. An Administrative Law Judge then reviews the sample units and makes findings and a decision on those sample units. The decisions on the sample units are then extrapolated to the universe of claims at issue. Statistical sampling offers a scientifically reliable, time-saving and lower cost approach to addressing large volumes of claim disputes.

Which claims or appeals are eligible for statistical sampling?

To be eligible for OMHA statistical sampling:

- A request for hearing must appeal a Medicare Qualified Independent Contractor (QIC) reconsideration decision.
- The appellant must be a single Medicare provider or supplier (if multiple providers or suppliers with multiple National Provider Identifiers (NPIs) are owned by a single entity, the owning entity may serve as “a single provider or supplier” provided that the owning entity agrees to accept any payment that may be due from Medicare as a single payment, or agrees to make any payment that may be due to Medicare as a single payment).
- All jurisdictional requirements for a hearing before an Administrative Law Judge must be met for the request for hearing and all appealed claims.
- The beneficiary must not have been found liable after the initial determination or participated in the QIC reconsideration.
- The claims must be currently assigned to one or more Administrative Law Judges or have been filed during the time period currently being assigned by OMHA Central Operations.
- There must be a minimum of 250 claims and all claims must fall into only one of the following categories:
 - Pre-payment claim denials;
 - Post-payment (overpayment) non-Recovery Audit Contractor (RAC) claim denials; or
 - Post-payment (overpayment) RAC claim denials from one RAC.
- There cannot be an outstanding request for Settlement Conference Facilitation for the same claims.

Who can initiate the use of statistical sampling?

Statistical sampling may be initiated by an appellant with eligible appeals, or in response to an OMHA offer to conduct statistical sampling.

How can I request statistical sampling?

We encourage you to read this entire fact sheet before requesting statistical sampling. Please visit the statistical sampling page at www.hhs.gov/omha for the most up to date instructions, information requirements, and helpful templates for requesting statistical sampling.

Can I request a statistical sample of all of my pending appeals at OMHA?

It depends on whether your appeals are assigned to an Administrative Law Judge, and if they are not, when your requests for hearing were filed. At this time we can only conduct statistical sampling of appeals that are currently assigned to an Administrative Law Judge, or are currently being assigned by OMHA Central Operations – at this time, that includes appeals that were filed between April 1, 2013, and June 30, 2013. In addition, other criteria applies that may limit the pending appeals that can be sampled – please see “Which claims or appeals are eligible for statistical sampling?” above.

Can I request statistical sampling for claims from multiple providers or suppliers?

Only if the multiple providers or suppliers are owned by a single entity that agrees to the requirements for payment – please see “Which claims or appeals are eligible for statistical sampling?” above. The payment requirements are necessary for CMS’ effectuation process.

Can I request a statistical sample of the Part B hospital claims that I would like to submit for Part A inpatient claims that continue to be denied?

No, for hospitals appealing denials of Part A inpatient hospital claims, the statistical sample can only address the Part A claims. OMHA adjudicators cannot consider claims that have not been submitted. Questions regarding how to address any available Part B billing options should be directed to CMS.

Who is involved in the statistical sampling process?

OMHA will procure an independent statistical expert to assist the Administrative Law Judge in carrying out the statistical sampling in accordance with Medicare guidance. In addition, CMS or CMS contractors may be involved in the hearing on the sample units, in accordance with 42 C.F.R. sections 405.1010 and 405.1012. An appellant may have its own statistical expert to assist in preparing for the hearing and evaluating the OMHA expert’s methodology and sample selection process — if an appellant calls its expert as a witness, the expert will be subject to questioning by the Administrative Law Judge and any CMS contractor that has elected party status.

What Medicare guidance applies to statistical sampling?

Medicare guidelines for conducting statistical sampling are found in chapter 8 of the *Medicare Program Integrity Manual* (Internet-Only Manual 100-08). The Medicare Internet-Only Manuals can be accessed at: <http://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Internet-Only-Manuals-IOMs.html>.

What is the role of the OMHA statistical sample “coordinator”?

The OMHA statistical sampling coordinator receives, tracks, and monitors all appellant requests for statistical sampling, and OMHA offers to conduct statistical sampling. The coordinator serves as the central point of contact with an appellant in securing the initial consent for statistical sampling, and ensures sampling efforts are coordinated throughout OMHA.

I received an OMHA offer to conduct statistical sampling — what happens next?

An OMHA offer to conduct statistical sampling is an invitation to use the statistical sampling process to adjudicate a group of appeals. The decision on whether to use that process rests with the appellant. The appeals may be decided faster using statistical sampling because it is a more efficient means to adjudicate appeals, but rejecting the offer will not impact the adjudication of the individual claims. When the OMHA coordinator sends a letter to an appellant offering the statistical sampling option, information on the process and the tentative universe of claims will be included. The appellant will have

twenty (20) calendar days from receipt of the letter to consent to statistical sampling conducted at OMHA, and may request more time. OMHA does request that if an appellant is not interested in using statistical sampling, that a response to that effect is sent so that the coordinator can close out the offer. If three offers are made and rejected, OMHA will not send additional offers.

If I consent to the use of statistical sampling what should I expect?

To proceed with statistical sampling, OMHA will request consent from the appellant in writing. Because of the costs and amount of time and effort that will be invested in the statistical sampling process, this consent is required to proceed with the process. After the written consent is obtained, a pre-hearing conference will be scheduled. The pre-hearing conference will be conducted by an Administrative Law Judge for the purpose of confirming the consent, establishing the universe from which the sample will be drawn, and agreeing to other matters to facilitate the hearing. A pre-hearing conference order will then be issued in accordance with 42 C.F.R. section 405.1040. An opportunity to object to the order within ten (10) calendar days of receipt will be provided. If there is no objection, the order will become binding.

How will my statistical sampling appeal be assigned?

After the pre-hearing conference order becomes binding, OMHA will combine the universe of appeals under a single appeal number and assign the appeal on a rotational basis to an available Administrative Law Judge, unless all of the appeals had been assigned to a single Administrative Law Judge prior to the request for or offer to conduct statistical sampling.

Can I withdraw my consent to use statistical sampling?

Consent may be withdrawn up to the point when the pre-hearing conference order becomes binding in accordance with 42 C.F.R. section 405.1040. At that point, the appellant has affirmatively consented to the statistical sampling in writing, confirmed the consent at a proceeding before an Administrative Law Judge, and the consent will have been documented in the pre-hearing conference order and the appellant will have had an opportunity to object to the pre-hearing conference order.

What happens if I do withdraw my consent or object to the pre-hearing conference order?

If you withdraw your consent for statistical sampling before the pre-hearing conference order becomes binding, the appeals will be returned to the standard Administrative Law Judge hearing process. If your objection to the pre-hearing conference order is on a different matter, the Administrative Law Judge will consider your objection and attempt to resolve the matter. However, if the Administrative Law Judge does not believe the matter can be resolved or resolving the matter would require a violation of law or policy, the statistical sampling effort will not proceed and the appeals will be returned to the standard Administrative Law Judge hearing process.

How is a statistical sample of appealed claims effectuated by Medicare?

After the Administrative Law Judge has issued a decision on the sample units, the decision and sample methodology will be forwarded to a CMS contractor. The CMS contractor will extrapolate the Administrative Law Judge's decision on the sample units to the universe of appealed claims, and direct the Medicare Administrative Contractor to effectuate the decision based on the extrapolated amount.

How can I get more information on OMHA statistical sampling?

More information and the most current instructions, information requirements, and helpful templates for requesting statistical sampling are available on the statistical sampling page at www.hhs.gov/omha.