

Chapter I-4 Parties

Table of Contents

Section	Title
I-4-1	Overview
I-4-2	Parties in Part A/B Appeals (Non-QIO)
I-4-3	Parties in Part A/B Appeals (QIO)
I-4-4	Parties in Part C Appeals
I-4-5	Parties in Part D Appeals
I-4-6	Parties in Appeals of SSA Determinations
I-4-7	Addressing Party Status of an Individual or Entity Requesting a Hearing

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I-4-1 Overview

Citations: §§ 405.906, 405.908, 405.912, 405.1020, 405.1046, 422.562

A. Presumption of Party Status

A CMS contractor's or SSA's treatment of an individual or entity as a party will not be revisited by OMHA, unless the evidence of record raises a question of party status.

NOTE: If there is a question of party status regarding the individual or entity that submitted the request for hearing that cannot be resolved after review of the record or the record is missing information, the prospective party must be contacted for further information, in accordance with I-4-6.

B. Effect of Participation in Prior Levels of Appeals or Financial Interest in a Claim

1. Generally.

The parties to an ALJ hearing are specified by regulation. Unless specifically provided in the regulations, the fact that an individual or entity may not have participated in prior levels of appeal, or that a party has no financial interest in the claim at issue, does not affect that individual or entity's party status.

Example 1. A Part A/B beneficiary is a party to an initial determination and remains a party in subsequent appeals of the initial determination, even if liability for the non-covered claim has been limited with respect to the beneficiary and the beneficiary has not participated in appeals of the claim.

Example 2. A Part A/B Medicare provider that files a claim or supplier that takes assignment of a claim is also a party to the initial determination and remains a party in subsequent appeals of the initial determination, even if an ABN was executed that results in the beneficiary being liable for the non-covered services.

2. Circumstances in which when financial liability matters.

The following are examples of situations where financial liability and prior participation in the appeals process do affect party status:

- a. Parties that succeed a deceased beneficiary must be obligated to make or entitled to receive payment. § 405.906(a)(1), (b)(1).
- b. Providers and suppliers that are not parties to the initial determination may be parties only where: (1) the beneficiary dies and there is no other party available to appeal the determination (§ 405.906(c)); (2) the provider or supplier is not otherwise a party and accepts an assignment of appeal rights from a beneficiary if

Division I: Parties

- they furnished an item or service([§ 405.906\(b\)\(3\)](#)); or (3) a physician or supplier of durable medical equipment does not participate in the Medicare program and may be liable to refund monies collected for items or services furnished to the beneficiary for the reasons specified in the rules ([§ 405.906\(b\)\(4\)](#), [\(b\)\(5\)](#)).
- c. Medicaid State Agencies may only be parties where they file a timely redetermination and have made payment for items and services or could be liable for payment for those items or services. [§§ 405.906\(b\)\(2\)](#), [405.908](#).
 - d. An enrollee that received items or services by a non-contract provider or supplier in a Part C appeal no longer has an appealable interest if the non contract provider or supplier executed a waiver of enrollee liability. [§ 422.562\(c\)\(2\)](#); [CMS, Medicare Managed Care Manual, Pub. 100-16, Ch. 13, § 60.1.1 \(MMCM, Ch. 13, § 60.1.1\); 1-4-3](#).

NOTE: While party status is generally not impacted by financial liability or participation in prior levels of appeal, the notice requirements for such parties may differ at various stages in the appeals process.

Example. A Part B supplier requested review of items furnished to the beneficiary that were denied at the redetermination and reconsideration levels; the beneficiary was not held liable in the prior decisions and did not file requests for a reconsideration or an ALJ hearing. The supplier is responsible for sending a copy of its request for hearing to the beneficiary, because the beneficiary is a party to the claim. [§ 405.1014\(b\)\(2\)](#). A notice of hearing does not have to be sent to the beneficiary, because the beneficiary did not participate in the reconsideration and was not found liable for the items or services at issue subsequent to the initial determination. [§ 405.1020\(c\)\(1\)](#). However, the notice of decision must be sent to the non-appellant beneficiary, unless the appeal is of an overpayment assessment involving multiple beneficiaries where there is no beneficiary liability. [§ 405.1046\(a\)](#).

C. Substitution of Party

If a beneficiary dies after filing a request for hearing with OMHA and the beneficiary has not assigned his or her appeal rights pursuant to [§ 405.912](#), the beneficiary's estate or other person obligated to make or entitled to receive payment who would qualify as a party under [§ 405.906\(a\)\(1\)](#), may enter the OMHA proceedings as a substitute party. See I-5-5 E, for determining if there is a remaining financial interest.

NOTE: A party with a financial interest must submit [form HHS-722](#), a Request for Substitution of Party upon Death of Party, or an equivalent writing.

D. Employees Acting on Behalf of a Party

Providers and suppliers may designate employees to pursue administrative appeals and appear on their behalf. An employee acting on behalf of an employer that is a party to the proceedings is the point of contact for the party, and has the authority to make representations and speak on behalf of the employer.

The employee is not considered an “authorized” or “appointed” representative. Therefore, documentation of representation is not necessary. See also I-5-1.

I-4-2 Parties in Part A/B Appeals (Non-QIO)

Citations: § 1814(d)(1) , §1862(b)(2) of the Act; §§ 400.202, 405.902 , 405.906, 405.908, 405.910, 405.912, 405.924, 424.53 424.62 , 424.64 424.100–.109

A. Overview

The chart below (entitled “Potential Parties Based on Origination of Party Status”) provides a summary of the potential parties for an appeal of a typical claim for items or services. More detailed information on potential parties for non-QIO appeals is found in subsections B–E, below.

NOTE: There can be multiple parties for each claim presented (for example, the beneficiary and the Medicare provider that submitted the claim or the supplier that accepted assignment of the claim). In most cases, there can only be one party from each column for each claim presented, and not all columns will apply for a given claim.

Example. If there is not a provider or supplier with independent appeal rights, the provider or supplier is not a party unless the beneficiary has assigned his or her appeal rights, or the beneficiary is deceased and the provider or supplier enters the proceedings as another who is entitled to payment or because there is no other party to pursue the appeal.

Potential Parties Based on Origination of Party Status			
Beneficiary (See subsection B, below)	Provider or Supplier (See subsection C, below)	Medicaid State Agency (MSA) (See subsection D, below)	MSP (See subsection E, below)
<ul style="list-style-type: none"> • Beneficiary • Beneficiary’s estate • If no estate, other person obligated to make or entitled to receive payment for services furnished to a deceased beneficiary (payment by a third party payer does not entitle that entity to party status). • Provider or supplier that (1) is not already a party and (2) has 	<ul style="list-style-type: none"> • Medicare provider that files a claim for items or services furnished to the beneficiary • Supplier that has accepted assignment of the claim for items or services furnished to the beneficiary that are at issue in the appeal. • A non-participating physician (supplier) 	<ul style="list-style-type: none"> • MSA that (1) filed a timely request for a redetermination and (2) made payment or may be liable for payment for (3) items or services furnished to an individual enrolled in both the Medicare and Medicaid programs. 	<ul style="list-style-type: none"> • Where Medicare is pursuing recovery directly from the applicable plan, the applicable plan is the sole party to an initial determination under § 405.924(b)(16) and any subsequent appeal.

Division I: Parties

<p>received an assignment of appeal rights from the beneficiary in accordance with § 405.912</p> <ul style="list-style-type: none"> • Provider or supplier that (1) is not already a party and (2) furnished services to the beneficiary, who subsequently died; if (3) there is no other party available to appeal the determination. (Not applicable to an initial determination issued to a MSP applicable plan under § 405.924(b)(16).) 	<p>who has not taken assignment of the claim, if the physician may be liable to refund monies collected for services furnished to the beneficiary because those services were denied as not reasonable and necessary on the basis of § 1862(a)(1) of the Act.</p> <ul style="list-style-type: none"> • A non-participating supplier of medical equipment or supplies that has not taken assignment, if the supplier may be liable to refund the amount collected because: (1) the supplier did not have a supplier number; (2) the item was furnished after an unsolicited contact; (3) the item was denied in advance; or (4) the item was not reasonable and necessary. 		<ul style="list-style-type: none"> • If Medicare is not pursuing recovery directly from the applicable plan, the beneficiary or the beneficiary's successor is the sole party.
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B. Beneficiaries and Beneficiary Successors

1. Beneficiary.

A beneficiary whose claim is at issue, whether filed by the beneficiary or on the beneficiary's behalf, is a party to the initial determination and subsequent appeals, regardless of participation and financial liability, unless one of the following exceptions apply:

- a. The beneficiary is deceased (see subsection **B.2**, below); or
- b. The beneficiary assigned his or her appeal rights to a provider or supplier who is not already a party, pursuant to [§ 405.912](#) (see subsection **C.3**, below).
[§ 405.906\(a\)\(1\), \(b\)\(1\)](#).

NOTE: Payment by a third party on behalf of the beneficiary does not entitle the third party to party status in an appeal. [§ 405.906\(a\)\(1\)](#).

2. Deceased beneficiary.

If a beneficiary whose claim is at issue passes away during the appeal process, the beneficiary is no longer a party. The individual or entity who may take the place of a beneficiary as a party depends upon when the beneficiary passed away, assuming the beneficiary had not assigned his or her appeal rights pursuant to [§ 405.912](#).

a. The beneficiary died before a request for hearing or request for review of a QIC dismissal is filed with OMHA.

The following can request a hearing and be a party to an appeal:

- i. The beneficiary's estate, which has a financial interest; or
- ii. If there is no estate, a person obligated to make or entitled to receive payment in accordance with [part 424, subpart E](#).

b. The beneficiary died after a request for hearing or request for review of a QIC dismissal is filed with OMHA.

i. The following may enter OMHA proceedings as a substitute party:

- The beneficiary's estate, which has a financial interest; or
- If there is no estate, a person obligated to make or entitled to receive payment who would qualify as a party under [§ 405.906\(a\)\(1\)](#).

NOTE: See subsection **E**, below, for determining when another person is obligated to make or entitled to receive payment.

Division I: Parties

- ii. To enter OMHA proceedings as a substitute party, a party with financial interest must submit [form HHS-722](#), A Request for Substitution of Party upon Death of Party, or an equivalent writing.

NOTE: If a beneficiary is deceased, the individual attempting to file the appeal must provide documentation of the individual's authority. [74 Fed. Reg. 65296, 65307 \(Dec. 9, 2009\)](#).

Example. For a beneficiary that died with an estate, this would include documentation of the individual as the executor or administrator, or where there is no estate, documentation of the intestate provisions of the relevant state's probate law.

NOTE: If the beneficiary dies after submitting a request for hearing, and there is no estate or other person obligated to make or entitled to make payment (in other words, no remaining financial interest), the appeal is dismissed.

C. Providers and Suppliers

The following providers and suppliers may be parties to an ALJ hearing, either through independent appeal rights or through execution of an assignment of appeal rights:

1. Supplier that accepts assignment.

A supplier that has accepted assignment for items or services furnished to a beneficiary that are at issue in the claim is a party to the initial determination, and remains a party. [§ 405.906\(a\)\(2\), \(b\)\(1\)](#).

As defined in [§ 405.902](#), unless the context otherwise requires, the term "supplier" means a physician or other practitioner, a facility, or other entity (other than a provider of services) that furnishes items or services under Medicare.

An "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 for his or her services than what Medicare finds to be the Medicare-approved amount, as provided in [§§ 424.55 and 424.56. § 405.902](#).

NOTE: An assignment of a claim, which does not affect the beneficiary's party status, is distinct from an assignment of appeal rights under [§ 405.912](#), as detailed in subsection **B.3**, below, which does affect the beneficiary's party status.

The supplier that accepts assignment may be one of the following:

Division I: Parties

a. Participating supplier.

A participating supplier is a supplier that has agreed to take assignment on all items or services payable on behalf of a Medicare Beneficiary.

b. Non-participating supplier.

A non-participating supplier is a supplier that has accepted assignment with respect to the items or services at issue in the appeal.

2. Medicare provider.

A provider that files a claim for items or services furnished to a beneficiary is a party to the initial determination. [§ 405.906\(a\)\(3\), \(b\)\(1\)](#).

- As defined in [§ 405.902](#), “provider” means 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.

3. Other provider or supplier that accepts assignment of appeal rights.

a. Generally.

A provider or supplier that accepts an assignment of appeal rights from the beneficiary pursuant to [§ 405.912](#) is a party to any appeals of the initial determination after a valid assignment of appeal rights is filed and until the assignment of appeal rights is revoked by the beneficiary. [§§ 405.906, 405.912\(e\) and \(g\)](#).

As defined in [§ 405.902](#), “assignment of appeal rights” means the transfer by a beneficiary of his or her right to appeal under this subpart to a provider or supplier who is not already a party, as provided in [§ 1869\(b\)\(1\)\(C\) of the Act](#).

NOTE: An assignment of appeal rights is distinct from an assignment of a claim, which is a payment concept that involves the transfer of a claim for payment under Medicare Part B from a beneficiary to a physician or other supplier. [§ 405.902; 67 Fed. Reg. 69317 \(Nov. 15, 2002\)](#).

b. Who may take an assignment of appeal rights from a beneficiary (that is, be an assignee of appeal rights).

A provider or supplier may seek an assignment of appeal rights from the beneficiary for the furnished item or service if the provider or supplier: (1) is not otherwise a party to the initial determination in accordance with § 405.906(a), or a party to subsequent appeals in accordance with § 405.906(b)(4) or (b)(5); and (2) furnished an item or service to the beneficiary.

NOTE: When a provider or supplier who is already a party submits form CMS-20031, the assignment is not valid.

Example. Non-participating physicians/suppliers described in § 405.906(b)(4) or (b)(5) have independent appeal rights, and cannot obtain an assignment of appeal rights if they meet the criteria to qualify as parties under the respective provisions.

c. Requirements for a valid assignment of appeal rights (§ 405.912(c)–(d)).

For a valid assignment of appeal rights, the assignment must:

- Be executed using form CMS-20031, Transfer of Appeal Rights (use of this form is mandatory);
- Be in writing and signed by the beneficiary assigning his or her appeal rights or an authorized representative of the beneficiary;

NOTE: A beneficiary's appointed representative may not assign the beneficiary's appeal rights, see 70 Fed. Reg. 11420, 11432 (Mar. 8, 2005).

- Be signed by the assignee (the provider or supplier);
- Indicate the item or service for which appeal rights are being assigned (an assignment of appeal rights is only be effective for the items or services listed on the assignment form), see 74 Fed. Reg. 65296, 65302 (Dec. 9, 2009);
- 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 ABN was signed; and
- Be submitted at the same time the request for redetermination or other appeal is filed.

d. Rights and responsibilities of the assignee (§ 405.912(f), (h)).

When a valid assignment of appeal rights is executed, the assignor (the beneficiary) transfers all appeal rights involving the particular item or service to the assignee (the provider or supplier). These include, but are not limited to, the following:

Division I: Parties

- Obtaining information about the claim to the same extent as the assignor;
- Submitting evidence;
- Making statements about facts or law; and
- Making any request, or giving, or receiving any notice about appeal proceedings.

Once the assignee files an appeal, the assignee becomes a party to the appeal. The assignee must meet all requirements for appeals that apply to any other party.

e. Duration of a valid assignment of appeal rights ([§ 405.912\(e\)](#)).

Unless revoked, the assignment of appeal rights is valid for all administrative and judicial review associated with the item or service identified in the assignment, even in the event of the death of the assignor (the beneficiary).

f. Revocation of assignment of appeal rights ([§ 405.912\(g\)](#)).

An assignment of appeal rights may be revoked in any of the following ways:

- In writing by the assignor (the beneficiary), delivered to the adjudicator and the assignee (the provider or supplier), and is effective on the date of receipt by the adjudicator;
- By abandonment if the assignee does not file an appeal of an unfavorable decision; or
- By act or omission by the assignee that is determined by an adjudicator to be contrary to the financial interests of the assignor.

When an assignment of appeal rights is revoked, the rights to appeal revert to the assignor.

g. Effect of assignment of appeal rights on beneficiary's appeal rights.

If the beneficiary assigns appeal rights pursuant to [§ 405.912](#), then the beneficiary transfers any right as a party, including the right to request a redetermination, reconsideration, ALJ hearing, or Council review with respect to the item or services at issue, unless the assignment is revoked in accordance with [§ 405.912\(g\)](#). [70 Fed. Reg. 11420, 11427 \(Mar. 8, 2005\)](#).

4. Non-participating physician.

A non-participating physician who has not taken assignment of the claim is a party to appeals of an initial determination if, in accordance with [§ 1842\(l\) of the Act](#), the physician may be liable to refund monies collected for services furnished to the

Division I: Parties

beneficiary because those services were denied as not reasonable and necessary on the basis of [§ 1862\(a\)\(1\) of the Act](#)). [§ 405.906\(b\)\(4\)](#).

Alternatively, a non-participating physician who has not taken assignment of the claim, and is not liable to refund monies, is not a party.

Example. A non-participating physician who files a claim but does not accept assignment on the claim, and the claim is denied as a statutory exclusion (such as certain cosmetic surgeries under [§ 1862\(a\)\(10\) of the Act](#)).

- The physician does not have a direct right to appeal the initial determination, because the physician does not qualify as a party in accordance with [§ 405.906\(a\)\(2\) and \(b\)\(1\)](#).
- However, the physician could get party status to file an appeal by obtaining an assignment of appeal rights from the beneficiary for this service. [§ 405.906\(b\)\(3\)](#). The assignment of appeal rights must be completed in accordance with the procedures set forth in [§ 405.912](#).
- If the beneficiary was deceased, the physician may be able enter as a party as someone entitled to receive payment, [§ 405.906\(a\)\(1\) and \(b\)\(1\)](#), or as a provider or supplier that is not otherwise a party if there is no other party available to pursue the appeal, [§ 405.906\(c\)](#); 70 Fed. Reg. 11420, 11427 (Mar. 8, 2005).

5. Non-participating provider.

A non-participating provider of services is a provider, such as a hospital, that does not have a participation agreement (as described in [§1866 of the Act](#)) in effect during the dates of service at issue. [§§ 400.202, 405.902](#). A non-participating provider does not meet the definition of a “provider” that is a party to an initial determination under [§ 405.906\(a\)\(3\)](#), and thus, has no right to request a hearing under [§ 405.906\(b\)\(1\)](#).

NOTE: The Medicare program does allow a hospital that does not have a participation agreement in effect to bill Medicare for emergency services provided to beneficiaries when certain conditions of payment are met. [§1814\(d\)\(1\)](#); [§§ 424.100–.109](#). (Pursuant to [§ 424.109](#), beneficiaries may also submit claims for emergency services provided by a non-participating hospital that does not have in effect an election to claim payment). While the Act authorizes the non-participating provider to bill for emergency services when all conditions of payment are met, neither the Act nor the appeals regulations 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 [§ 405.906\(c\)](#) applies.

6. Non-participating supplier of medical equipment or supplies.

A non-participating supplier of durable medical equipment or supplies that has not taken assignment is a party to appeals of an initial determination if the supplier may be liable to refund the amount collected under §§ 1834(a)(18) and (j)(4) of the Act because:

1. The supplier did not have a supplier number (§§ 1834(j)(1) of the Act);
 2. The item was furnished after an unsolicited contact (§ 1834(a)(17)(B) of the Act);
 3. The item was denied in advance (§ 1834(a)(15) of the Act); or
 4. The item was not reasonable and necessary (§ 1862(a)(1) of the Act)).
- § 405.906(b)(5).

7. Provider or supplier as another person obligated to make or entitled to receive payment.

If the beneficiary is deceased, a provider or supplier who otherwise does not have the right to appeal, may enter the proceedings where the provider or supplier qualifies as “another person obligated to make or entitled to receive payment in accordance with part 424, subpart E (see § 405.906(a)(1), (b)(1)). See subsection E, below, for information on determining whether there is a remaining financial interest.

8. A provider or supplier when no other party is available.

If the beneficiary is deceased, a provider or supplier who otherwise does not have the right to appeal may enter the proceedings to appeal an initial determination relating to services it rendered to a beneficiary who subsequently dies if there is no other party available to appeal the determination. § 405.906(c).

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

D. Medicaid State Agencies (MSAs)

1. Generally.

- a. An MSA may be a party to an appeal under §§ 405.906(b)(2) and 405.908 when:
 - 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 MSA made payment for the items or services, or it may be liable to make payment under the Medicaid program; and
 - The MSA filed a timely request for redetermination.

Division I: Parties

NOTE: When an MSA is a party to the redetermination of a claim, it remains a party to all subsequent appeals of the claim. If an MSA did not request the redetermination, it is not a party.

- b. An MSA may have an appointed representative, subject to the rules at [§ 405.910](#). See [I-5](#) for information on representation.

2. The beneficiary's party status in an MSA appeal.

An MSA appeals on behalf of the beneficiary, as subrogee of the beneficiary, where the MSA made payment or is liable for payment. However, the MSA's status does not affect the beneficiary's party status.

NOTE: Since the beneficiary remains a party, a notice of hearing must also be sent to a beneficiary who was found or may be found liable, and a notice of decision must also be sent to the beneficiary.

3. Impact on § 1879 of the Act limitation of liability.

In cases involving an MSA, [§ 1879](#) of the Act limitation of liability analysis must assess limitations of liability with respect to the beneficiary and the provider or supplier. There is no authority to assess liability for a claim to an MSA or apply Medicaid program rules and/or make conclusions of law with respect to the Medicaid program.

NOTE: If the appellant is an MSA, and the case involves [§ 1879](#) limitation of liability, liability is assessed to either the beneficiary or provider, not the "appellant."

E. Medicare Secondary Payer (MSP) appeals.

1. Overview.

Section [1862\(b\)\(2\)](#) of the Act, in part, prohibits Medicare from making payment where payment has been made or can reasonably be expected to be made by a primary plan, such as a workmen's compensation law or plan of the United States or a State, or under an automobile or liability insurance policy or plan (including a self-insured plan), or under no fault insurance. In a situation where a primary plan may be held liable for charges, Medicare may make conditional payments with the expectation that the payments will be reimbursed to the appropriate Medicare Trust Fund. The responsibility for such reimbursement is generally demonstrated by a settlement, judgment, award, or other payment. Medicare is subrogated to individuals or any applicable plan to payment for items or services under a primary plan, to the extent Medicare payments were made for such medical items and services. [§1862\(b\)\(2\)](#).

2. The beneficiary's party status.

If Medicare is not pursuing recovery directly from the applicable plan, the beneficiary or the beneficiary's successor is the sole party to an appeal of an MSP determination.

3. The applicable plan's party status.

Where Medicare is pursuing recovery directly from the applicable plan, the applicable plan is the sole party to an initial determination under [§ 405.924\(b\)\(16\)](#) and any subsequent appeal. [§ 405.906\(a\)\(4\)](#). 80 Fed. Reg. 10611, 10617 (Feb. 27, 2015).

F. Determining Whether there is a Remaining Financial Interest

The standard for determining when another person is obligated to make or entitled to receive payment, in accordance with [part 424, subpart E](#), is as follows:

1. Payment after beneficiary's death: Bill has been paid ([§ 424.62](#)).

Persons who may be entitled to receive payment when: (1) the beneficiary has received services that if covered, he or she could receive direct payment for under [§ 424.53](#) (see Note, below); (2) the beneficiary died without receiving Medicare payment; and (3) the bill has been paid:

- The person or persons who, with or without a legal obligation to do so, paid for the services with their own funds, before or after the beneficiary's death.
- The legal representative of the beneficiary's estate if the services were paid for by the beneficiary before the beneficiary died, or with funds from the estate.
- If the deceased beneficiary or his or her estate paid for the services and no legal representative of the estate has been appointed, the beneficiary's survivors in the following order of priority:
 - The person found by SSA to be the surviving spouse, if he or she was either living in the same household with the deceased at the time of death, or was, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased beneficiary;
 - The child or children, who were, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one child, in equal parts to each child);
 - The parent or parents, who were, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings

Division I: Parties

record as the deceased (and, if there is more than one parent, in equal parts to each parent);

- The person found by SSA to be the surviving spouse who was not living in the same household with the deceased at the time of death and was not, for the month of death, entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased beneficiary;
 - The child or children who were not entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one child, in equal parts to each child);
 - The parent or parents who were not entitled to monthly social security or railroad retirement benefits on the basis of the same earnings record as the deceased (and, if there is more than one parent, in equal parts to each parent).
- If none of the listed relatives survive, no payment is made.
 - If the services were paid for by a person other than the deceased beneficiary, and that person died before payment was completed, Medicare does not pay that person's estate. Medicare pays a surviving relative of the deceased beneficiary in accordance with the priorities listed above. If none of those relatives survive, Medicare pays the legal representative of the deceased beneficiary's estate. If there is no legal representative of the estate, no payment is made.

NOTE: Pursuant to [§ 424.53](#), Medicare pays the beneficiary for the following services, if covered, in the specified circumstances:

- Emergency inpatient and outpatient services furnished by a nonparticipating U.S. hospital that has not elected to claim payment in accordance with subpart G of this part.
- Certain medical and other health services covered under Medicare Part B and furnished by a nonparticipating U.S. hospital, if the hospital does not receive assigned payment as a supplier under [§ 424.55](#).
- Emergency or nonemergency services furnished by a foreign hospital if the hospital does not have in effect an election to claim payment in accordance with subpart H of this part.
- Physician and ambulance services furnished outside the United States.
- Services furnished by a supplier if the claim has not been assigned to the supplier.

2. Payment after beneficiary's death: Bill has not been paid ([§ 424.64](#)).

Persons obligated to make payment when: (1) the beneficiary has received services furnished by a physician or other supplier that may be covered under Part B; (2) the beneficiary died without making an assignment to the physician or other supplier, or receiving Medicare payment; and (3) the bill has not been paid:

- The physician or other supplier if he or she:
 - Files a claim in accordance with CMS requirements;
 - Upon request from a CMS contractor, provides evidence the services were furnished; and
 - Agrees in writing to accept the reasonable charge as the full charge for the services.
- If the physician or other supplier does not agree to accept the reasonable charge, a person who submits to the CMS contractor:
 - A statement indicating that he or she has assumed a legal obligation to pay for the services;
 - A claim form in accordance with CMS requirements;
 - An itemized bill that identifies the claimant as the person to whom the physician or other supplier holds responsible for payment; and
 - Upon request from a CMS contractor, provides evidence the services were furnished.

NOTE: A hearing is not required to determine a remaining financial liability. [70 Fed. Reg. 11420, 11465 \(Mar. 8, 2005\)](#).

I-4-3 Parties in Part A/B Appeals (QIO)

Citations: §§ 1154, 1155, 1869 of the Act; §§ 478.16, 478.40

The parties to an ALJ hearing may include:

- The beneficiary or deceased beneficiary successor;
- The provider or practitioner; and
- A Medicaid State Agency that meets the requirements of § 405.908.

NOTE: See II-3-3 B for the circumstances under which each party may request a hearing.

I-4-4 Parties in Part C Appeals

Citations: §§ 1155, 1852(g)(5) of the Act; §§ 422.561, 422.562, 422.574, 422.582, 422.602, 422.622, 422.626, 478.40.

A. Non-QIO Appeal

The parties to an ALJ hearing include the parties to the reconsideration (as defined in § 422.582(d)), the MAO, and any other person or entity whose rights may be affected by the hearing. (§ 422.602(c)):

1. Enrollee or the enrollee's representative. §§ 422.574(a), 422.582(d).

An enrollee is defined as an MA eligible individual who elected an MA plan offered by an MAO (§ 422.561).

NOTE: An enrollee generally remains a party regardless of whether he or she participated in the lower levels, unless the enrollee no longer has an appealable interest. See subsection **B.4**, below.

If the enrollee is deceased, the legal representative of the deceased enrollee's estate remains a party. See subsection **B.3**.

2. Assignee of the Enrollee. §§ 422.574(b), 422.582(d).

a. A physician or other provider (including a non-contract provider) who has furnished a service to the enrollee and formally agrees to waive any right to payment from the enrollee for that service may be an assignee of the enrollee and a party to the ALJ hearing.

b. If an assignee of the enrollee is a party, the enrollee is no longer a party, due to lack of an appealable interest.

3. Legal representative of a deceased enrollee's estate, if applicable. §§ 422.574(c), 422.582(d).

If the enrollee is deceased, the legal representative (for example, the executor) of the deceased enrollee's estate is a party.

4. Any other provider or entity determined to have an appealable interest in the proceeding. §§ 422.574(d), 422.582(d).

The ALJ determines if there is any other person or entity whose rights may be affected by the hearing. See CMS, Medicare Managed Care Manual, Pub. 100-16, Ch. 13, § 100.1 (MMCM, Ch. 13, § 100.1).

Division I: Parties

5. The MAO. §§ 422.600(a), § 422.602(c).

The MAO may not request a hearing, but is a party.

See I-6 for further discussion on the roles of CMS and CMS contractors in Part C appeals.

B. QIO Appeal

The parties to an ALJ hearing include (§ 1155 of the Act; §§ 422.562, §§ 422.600(a), § 422.602(c), 422.622, 422.626, 478.16, 478.40):

- a. The enrollee or the successor of a deceased enrollee; and
- b. A provider or practitioner.
- c. The MAO.

NOTE: See III-3-3 B for the circumstances under which each party may request a hearing.

I-4-5 Parties in Part D Appeals

Citations: §§ [423.2008](#); [423.2052\(a\)\(5\)](#).

The only party to an ALJ hearing for a standard or expedited Part D appeal is the enrollee (or the enrollee's representative) or a deceased enrollee's surviving spouse or estate with a financial interest in the case.

I-4-6 Parties in Appeals of SSA Determinations

Citations: [§ 405.904\(a\)](#); [20 C.F.R. §§ 404.908\(b\), 404.921\(a\), 418.1350, 418.2350](#).

A. Entitlement/Eligibility/Part B Late Enrollment Penalty Appeal

Generally, the only party to an ALJ hearing is the beneficiary or beneficiary successor. [§ 405.904\(a\)](#).

Exception: The ALJ determines another person has shown in writing that his or her rights are adversely affected by the initial determination. [20 C.F.R. §§ 404.908\(b\), 404.921\(a\)](#).

B. Part B and D Income Related Monthly Adjustment Amount Appeal

The only party to an ALJ hearing is the beneficiary or a beneficiary successor. [20 C.F.R. §§ 418.1350, 418.2350](#).

I-4-7 Addressing Party Status of an Individual or Entity Requesting a Hearing

If the party status of the individual or entity that submitted the request for hearing is revisited, in accordance with I-4-1 A, and cannot be determined based on the record or the record does not contain evidence of party status (for example, the individual requesting the hearing is the executor of the estate, but there is no will), staff must take the following steps:

1. Issue an interim letter (OMHA-110, Interim Letter, available in MATS) to all parties:
 - a. Explaining that the requester does not appear to be a party or there is insufficient evidence to establish party status;
 - b. Specifying that the individual or entity must provide (1) in writing, the reasons the individual or entity believes they have party status; or (2) the information that would establish party status;
 - c. If the only issue to be addressed by the interim letter is party status, the requestor has 14 calendar days from the date of the interim letter (which must be mailed on the date stated on the letter) for the individual or entity to provide the information; and
 - d. Notifying the individual or entity that the request for hearing may be dismissed if information establishing party status is not provided within the specified time period.
2. Upon receipt, review the information submitted by the individual or entity, and determine whether the information establishes party status.
 - If the individual or entity provides information that establishes party status within the 14 calendar day period, staff continues processing the appeal.
 - If the individual or entity does not provide information that establishes party status, the request for hearing is dismissed for no right to a hearing.

See also II-3-3 C, III-3-3 C, IV-3-3 B, V-3-3 B regarding standing in an appeal.

NOTE: All communication related to the procedural issue must be documented for the administrative record.