Supporting Statement, Part A
Retrospective Appeal Requests
CMS-10885; OMB 0938-TBD

Background

This is a new collection of information request. It is associated with our December 27, 2023 (88 FR 89506) proposed rule (CMS-4204–P; RIN 0938–AV16).

CMS-4204-P "Medicare Program: Appeal Rights for Certain Changes in Patient Status", sets forth new appeals procedures for certain Medicare beneficiaries who are initially admitted as hospital inpatients but are subsequently reclassified by the hospital as outpatients receiving observation services during their hospital stay and meet other eligibility criteria.

Eligible beneficiaries (as defined by the court order) may pursue an appeal under this proposed rule. The rule proposes a retrospective review process for certain beneficiaries to appeal denials of Part A coverage of hospital services (and certain skilled nursing facility (SNF) services, as applicable), for specified inpatient admissions involving status changes dating back to January 1, 2009, and which occurred prior to the implementation of the prospective appeal process. This collection effort will establish a model request for use by beneficiaries or their appointed or authorized representatives to assist them with filing a retrospective appeal.

A. Justification

1. Need and Legal Basis

42 CFR 405.932 as required by the order from the federal court for the District of Connecticut in the case *Alexander v. Azar*, 613 F. Supp. 3d 559 (D. Conn. 2020)), *aff'd sub nom.*, *Barrows v. Becerra*, 24 F.4th 116 (2d Cir. 2022).

2. Information Users

Section 405.932 proposes that eligible parties may file an appeal related to a change in patient status which resulted in the denial of Part A coverage. The appeal would be filed under the retrospective process established in this proposed rule for specified inpatient admissions dating back to January 1, 2009, and which occurred prior to the implementation of the prospective appeal process. An eligible party would be able to submit an appeal request in writing to the eligibility contractor within 365 days after the implementation date of the final rule, unless the eligible party established good cause for late submission as specified in § 405.942(b)(2) and (3).

3. Use of Information Technology

This instrument can be completed manually (print and complete it using pen and ink), or electronically (fill in the information and digitally sign). After completion, the request (?this instrument?) may be submitted (along with other corresponding appeal documents) in hard copy through the postal mail, tracked delivery service, by facsimile (fax), or electronically through a

contractor portal (if available). Due to containing personally identifiable information and protected health information, any electronic submission must be through a secure connection.

4. Duplication of Efforts

The information we are requesting is unique and does not duplicate any other effort.

5. Small Businesses

These requirements will not adversely affect small businesses.

6. Less Frequent Collection

Appeal requests made through this collection are submitted on a voluntary, as needed basis; therefore, we cannot conduct this collection less frequently. If the data is not collected, Medicare beneficiaries would not be able to exercise their right to file an appeal under the proposed regulations. This collection of information requests the minimum information possible in order for contractors to identify the related claims, complete a review and process an appeal.

7. Special Circumstances

There are no special circumstances that would require an information collection to be conducted in a manner that requires respondents to:

- Report information to the agency more often than quarterly;
- Prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- Submit more than an original and two copies of any document;
- Retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;
- Collect data in connection with a statistical survey that is not designed to produce valid and reliable results that can be generalized to the universe of study,
- Use a statistical data classification that has not been reviewed and approved by OMB;
- Include a pledge of confidentiality that is not supported by authority established in statute or regulation that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- Submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. Federal Register Notice/Outside Consultation

Serving as the 60-day notice, our proposed rule (CMS-4204–P; RIN 0938–AV16) published in

the Federal Register on December 27, 2023 (88 FR 89506). Comments must be received by February 26, 2024.

9. Payments/Gifts To Respondent

No payments or gifts is provided to respondents for their participation or involvement within the collection of information.

10. Confidentiality

Beneficiaries who choose to file an appeal under this collection are required by regulation (42 CFR 405.932(b)) to provide their Medicare number when making their request. The request for appeal, when submitted, is made a part of the existing appeal record that the party is seeking assistance with. Contractors collect and maintain this information for CMS under the provisions of the Privacy Act.

11. Sensitive Questions

There are no questions of a sensitive nature associated with this collection.

12. Burden Estimates

Wage Data

We believe that the cost for beneficiaries undertaking administrative and other tasks on their own time is a post-tax wage of $21.98/hr.

The Valuing Time in U.S. Department of Health and Human Services Regulatory Impact Analyses: Conceptual Framework and Best Practices[1] identifies the approach for valuing time when individuals undertake activities on their own time. To derive the costs for beneficiaries, a measurement of the usual weekly earnings of wage and salary workers of $1,059[2] for 2022, divided by 40 hours to calculate an hourly pre-tax wage rate of $26.48/hr. This rate is adjusted downwards by an estimate of the effective tax rate for median income households of about 17 percent or $4.50/hr ($26.48/hr x 0.17), resulting in the post-tax hourly wage rate of $21.98/hr ($26.48/hr-$4.50/hr). Unlike our State and private sector wage adjustments, we are not adjusting beneficiary wages for fringe benefits and other indirect costs since the individuals' activities, if any, would occur outside the scope of their employment.

Proposed Information Collection Requirements and Associated Burden Estimates

Section 405.932 proposes that eligible parties may file an appeal related to a change in patient status which resulted in the denial of Part A coverage. An eligible party may submit an appeal request in writing to the eligibility contractor no later than 365 days after the implementation date

[1] https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//176806/VOT.pdf

[2] https://fred.stlouisfed.org/series/LEU0252881500A.

of the final rule. unless the eligible party established good cause for late submission as specified in § 405.942(b)(2) and (3). The written request must include the following information:

- Beneficiary name.
- Beneficiary Medicare number (the number on the beneficiary's Medicare card).
- Name of the hospital and dates of hospitalization.
- Name of the SNF and the dates of stay (as applicable).

If the appeal includes SNF services not covered by Medicare, the written request must also include an attestation to the out-of-pocket payment(s) made by the beneficiary for such SNF services and must include documentation of payments made to the SNF for such services.

We estimate that it would take an individual approximately 30 minutes (0.5 hour) to complete the appeal request including the attestation and documentation of out-of-pocket payments for SNF services and submit the completed information to the eligibility contractor.

Because this is a new appeal right and associated process, CMS does not have precise data and cannot meaningfully estimate how many individuals may request an appeal under the new appeals process. However, we believe that the closest equivalent is using the rate of individuals who appeal under the claim appeals process (3 percent) and aligning it with the appeal rates of higher levels of appeal (ranging from 21 percent to 27 percent) to arrive at an estimate of 20 percent. We expect eligible parties in this process will be more motivated than in the claim appeals process to avail themselves of this unique opportunity for a retrospective appeal on potentially high dollar claims.

Based on these data, we estimate that the total number of eligible beneficiaries is 32,894. Assuming that 20 percent of individuals (6,579 = 32,894 x 0.20) who are eligible to appeal will file a request, we estimate a one-time burden of 3,290 hours (6,579 requests × 0.5 hr/request) at a cost of $72,314 (3,290 hr × $21.98/hr).

Note: our data does not permit us to determine whether the observation services occurred prior to the initial inpatient stay or followed the change in status from inpatient to outpatient, as required to qualify for an appeal. As a result, our estimate of 32,894 likely overstates the number of beneficiaries eligible for an appeal.

Burden Summary

Proposed Annual Requirements and Burden Estimates

Regulation Section(s) Under Title 42 of the CFR	Respondents	Total Responses	Time per Response (hours)	Total Time (hours)	Labor Cost ($/hour)	Total Cost ($)
§ 405.932	32,894 beneficiaries	6,579	0.5 (30 min)	3,290	21.98	72,314

Collection of Information Instruments and Instruction/Guidance Documents

None. The requirements are set out in the CFR.

13. Capital Costs

There are no capital costs associated with this collection.

14. Cost to Federal Government

The cost to the Federal government is on a triennial basis and is associated with the preparation and release of the instrument and includes the time it takes the employee to complete the PRA process, another employee to create a translated version, and posting the documents to CMS.gov.

The analysis and preparation of the PRA package and the subsequent release of documents is performed by CMS employees. The average salary of the employees who would be completing this task, which includes the locality pay adjustment for the area of Washington-Baltimore-Arlington, is listed in the table below. See OPM 2023 General Schedule (GS) Locality Pay

Tables, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB.pdf. We estimate that on average it takes a CMS employee 24 hours to perform these activities and the triennial cost to the Federal government to be $1,392.00.

Employee	Hourly Wage	Time (Hours)	Triennial Cost to Government
GS-13, step 5	$58.00/hr	24	$1,392.00
			TOTAL: $1,392.00

15. Program/Burden Changes

This is a new collection.

16. Publication and Tabulation Dates

CMS does not intend to publish data related to this collection.

17. Expiration Date

CMS will display the expiration date and OMB control number.

18. Certification Statement

There are no exceptions to the certification statement.

B. Collection Of Information Employing Statistical Methods

The use of statistical methods does not apply for purposes of this form.