Medicare Claims Appeals
Developments and Proposals for Expansion

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Agenda

- Medicare Appeals Backlog – 700,000 Appeals and Growing
- Process Overview
- Pilots and Demonstrations
- The Proposed Regulations
What is the Medicare Appeals Backlog?

- Appeals account for approximately 3 percent of all processed claims
  - Over 1.2 billion Medicare fee-for-service claims processed in FY 2015
  - 123 million claims denied at initial determination (~10%)
  - 3.7 million denied claims appealed (~3%)
- Massive backlog at the third level of appeal: Hearing before an Administrative Law Judge (ALJ)
  - 442% increase in the numbers of ALJ appeals received annually from FY 2010 to FY 2015
  - 884,017 appeals were waiting to be adjudicated by OMHA at end of FY 2015
    ▪ OMHA annual adjudication capacity in FY 2015 = 75,000 appeals
    ▪ OMHA estimates that it would take 11 years to process the backlog, assuming current resources and no additional appeal

Medicare Appeals Backlog

OMHA Workload – Appeals Receipts

Includes appeals with Request for Hearing Date in listed fiscal year and excludes reopened appeals. FY14 and FY15 receipts include changes in methodology to reflect actual numbers including combined appeals. Run Date: 1/21/2016

Office of Medicare Hearings and Appeals (OMHA) – Medicare Appellant Forum – February 25, 2016 – Falls Church, VA
HHS’s Approach to the Fix Backlog

- HHS has a three-pronged strategy to improve the Medicare Appeals process:
  - Invest new resources at all levels of appeal
  - Take administrative actions to reduce the number of pending appeals and encourage resolution of cases earlier in the process
    - CMS and OMHA Pilots and Demonstrations
  - Propose legislative and regulatory reforms
    - Proposals in FY 2017 Presidential Budget
    - CMS Proposal Changing Medicare Appeals Rules (July 5, 2016)

- Backlog of appeals to exceed 1.9 million by FY 2020 if no strategies employed
The Existing Appeals Process
In a Nutshell
Appeals Structure

Redetermination
• Contractors

Reconsideration
• QIC

OMHA
• ALJ

Medicare Appeals Council

Federal Court
• Judges
• DOJ
Level One: First Level of Appeal

- Appeal to the Medicare contractor for “Redetermination”
  - Use CMS 20027 or written letter
- 120 day appeal window
  - Deadline calculated from receipt of demand
- Staying recoupment
  - Appeal within 30 days of the date of demand letter to stay recoupment
    - 42 C.F.R. § 405.379; MMA § 935(f)(2)(a) of 2003
    - Interest accrues during stay period
- Decision deadline of 60 days
  - Escalation right if review exceeds 60 days, as adjusted by evidence submissions
- If lose at redetermination, you can pay, allow recoupment, request extended repayment schedule (ERS) or appeal to second level
Level Two: Reconsideration

- Appeal to Qualified Independent Contractor (QIC)
  - Use CMS Form 20033 or written letter
- 180 day appeal window
  - Deadline calculated from receipt of redetermination decision
- Maintaining stay of recoupment
  - Appeal within 60 days of date of redetermination decision
  - Stay effective when reconsideration appeal filed
  - Interest continues to accrue
- Decision deadline of 60 days
  - Escalation right if review exceeds 60 days, as adjusted by evidence submissions
- If lose at reconsideration, you can pay, allow recoupment, request extended repayment schedule (ERS) or appeal to third level
Level Three: ALJs and Office of Medicare Hearings and Appeals (OMHA)

- Redetermination
  - Contractors
- Reconsideration
  - QIC
- Medicare Appeals Council
- Federal Court
  - Judges
  - DOJ
Level Three: ALJ

- Appeal to Administrative Law Judge (ALJ)
  - Use CMS Form 20034 A/B or written letter
- 60 day appeal window
  - Deadline calculated from receipt of reconsideration decision
- Stay on recoupment ceases
  - Contractor may begin recoupment immediately upon receipt of reconsideration decision (i.e., within 30 days of the date of the post-appeal demand)
- Decision deadline of 90 days
  - Calculated from date OMHA receives appeal
  - Can be extended due to discovery or waived by appellant
- If lose at ALJ, you can pay, allow recoupment, request extended repayment schedule (ERS) or appeal to fourth level
Level Three: ALJ Hearing

- **Parties and Participants**
- **Evidence**
  - New witness testimony permitted
  - Good cause must be established for submitting written evidence for the first time at the ALJ level (42 C.F.R. § 405.1028)
    - New denial basis introduced by QIC may constitute good cause, but not always
- **Assume nothing**
  - Do not assume that the ALJ will be familiar with the relevant benefit or its coverage criteria
    - Set out the relevant coverage policy
    - Medicare statute, regulations, manuals, LCDs, NCDs
  - De novo review
    - Do not assume the stated basis of the denial is the only issue you need to defend
    - Confirm ALJ’s “Record” is the same as yours
Level Four:
Medicare Appeals Council

- Redetermination
  - Contractors

- Reconsideration
  - QIC

- OMHA

- Departmental Appeals Board
  - Medicare Appeals Council

- Federal Court
  - Judges
  - DOJ
Level Four:
Medicare Appeals Council

- Appeal to Medicare Appeals Council
  - Use DAB-101 Form or written letter
- Who can request review?
  - Appellant or any other Party
  - “Own motion”
- 60 day appeal window
  - Deadline calculated from receipt of ALJ decision
- Typically “On-the-Record” adjudication
  - Oral argument may be requested
- Decision deadlines, subject to extensions
  - Within 90 days from date Council receives appeal of ALJ determination
  - Within 180 days from date Council receives escalated appeal
- If lose at ALJ, you can appeal to fifth level of review in Federal court
Level Four:
Finding Appeals Council Decisions

• Council posts only “certain significant decisions and actions” by topic of decision

• Useful for purposes of arguing “legal precedents”
Medicare Appeals Council Decisions

In January 2003, the Medicare Appeals Council (MAC) initiated the posting of certain significant decisions and actions on the website of the Department of Appeals Board (of which it is a component). The following decisions and actions were selected for posting since they involve the adjudication of issues that may be of interest to various stakeholders in the Medicare appeals process. They are searchable as well as indexed by primary topic area. This compendium of MAC decisions will be supplemented periodically.

MAC decisions issued beginning in October 2010 are carried by WESTLAW® (in the Federal Health Law database, identifier FHIH-MAC), a commercial legal research service. Cases with an asterisk (*) were later appealed to the federal courts. The reader may wish to research any subsequent action by the courts.

Search MAC Decisions

Browse MAC Decisions by Topic Area

- Ambulance Claims
  Cases involving ambulance services, such as destination and medical documentation requirements.
- Dental Claims
  Cases involving coverage for dental and associated services under Medicare Part A and Medicare Part B.
- Durable Medical Equipment Claims
  Cases involving equipment such as wheelchairs and the documentation requirements for coverage of the equipment.
- Entitlement to Medicare Claims
  Cases involving enrollment into Medicare, such as penalties for late enrollment in Medicare Part B.
- Claims Involving Hearings and Appeals Procedures
  Cases involving appeal filing requirements as well as legal issues such as the timely submission of evidence and good cause for late filing of an appeal.
- Home Health Care Service Claims
  Cases involving coverage requirements for home health services such as homebound status and documentation requirements.
APPEALS REFORM
CMS and OMHA Initiatives
Overview of Initiatives

- CMS initiatives
  - DMEPOS Discussion Demonstration
  - Administrative Settlement for Hospital Patient Status Denial
  - Prior Authorization Demonstration

- OMHA initiatives
  - Settlement Conference Facilitation Pilot
  - Statistical Sampling Pilot
  - On-the-Record Adjudication
OMHA Initiatives
Settlement Conference Facilitation (SCF) Pilot

• Alternative dispute resolution process
  – Trained OMHA mediators assist appellants and CMS discuss administrative resolution of group of pending appeals
  – Settlement is financial issue; claims not discussed
  – Settlement document drafted by OMHA settlement conference facilitator
    ▪ Document signed by appellant and CMS at the settlement conference session
    ▪ ALJ appeals covered by settlement dismissed

• As of May 12, 2016, OMHA has facilitated the settlement of 4,245 appeals for 16 different appellants
  – Equivalent of more than four ALJ teams’ annual workload
OMHA Initiatives

SCF Pilot

• Phased Implementation of Pilot
  – Phase I: Commenced June 2014 and included Part B claims for ALJ hearings filed in 2013
  – Phase II: Commenced Fall 2015 expanding Pilot to include most Part B claims for ALJ hearings filed prior to 10/1/15
  – Phase III: Commenced February 2016 expanding to include certain Part A claims for ALJ appeals filed prior to 12/31/15
    ▪ Applies to SNF Part A appeals

• Requirements are available on OMHA’s website
OMHA Initiatives
SCF Phase III Criteria

• ALJ Hearing Request must appeal Part A QIC reconsideration decision
• Beneficiary not liable after redetermination or participated in reconsideration
• Jurisdictional requirements for ALJ hearing satisfied on all appealed claims
• Appeal not yet scheduled for ALJ hearing
• Request for hearing filed on or before 12/31/15
• Each individual claim must be $100,000 or less
  – Extrapolated overpayments must be $100,000 or less
• At least 50 claims must be at issue and at least $20,000 must be in controversy
• No outstanding request for OMHA statistical sampling pilot on same claims
OMHA Initiatives
SCF Phase III Criteria

• Must include all of appellant’s pending appeals for the same item or service at issue that meet the SCF criteria;
• Appellant cannot have not filed for bankruptcy; no expectation of bankruptcy
• Medicare Part A law and policy apply to claims at issue
• Appellant received OMHA SCF Facilitation Preliminary Notification
  – Stating that appellant may request SCF for the claims identified in the SCF spreadsheet
  – Note: appellant may not formally request a settlement conference until receiving this notice, but an appellant can initiate the process by filing its expression of interest
OMHA Initiatives
Statistical Sampling Pilot

- Pilot designed to allow appellants to adjudicate large volumes of claims using statistical sampling and extrapolation techniques
- May be initiated by the appellant or in response to an offer made by OMHA
- Appellants consent to universe of claims
- Once universe is set, all appeals in universe combined into a single appeal and assigned to an ALJ for adjudication
- OMHA statistical expert identifies a random sample of cases from the universe
- ALJ conducts hearing on sample cases per normal ALJ hearing process
- CMS contractor extrapolates decision on sample cases to universe
OMHA Initiatives
Statistical Sampling Pilot: Criteria

- ALJ hearing request appeals QIC reconsideration decision
- Beneficiary not liable after redetermination or participated in reconsideration
- Jurisdictional requirements for ALJ hearing satisfied on all appealed claims
- Claims currently assigned to ALJs or were filed between 4/1/13 and 6/30/13
- 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
  - Post-payment (overpayment) RAC claim denials from one RAC
- No outstanding request for participation in SCF Pilot for same claims
OMHA Initiatives
On-the-Record Adjudication

- Appellant has requested On-The-Record hearing
  - Waived right to an oral hearing
  - Requested that merits be decided from existing record
- OMHA senior attorney reviews the record and drafts a recommended decision
- ALJ reviews and issues if he or she concurs
Proposed Rule
Proposed Regulation

- July 5, 2016 Federal Register
- Proposes to revise the procedures at the Administrative Law Judge level for claims appeals
  - Appeals of payment and coverage determinations for items and services furnished to Medicare beneficiaries
    - Including enrollees in Medicare Advantage and other Medicare competitive health plans, and enrollees in Medicare prescription drug plans
- Revises procedures at the Medicare Appeals Council
Highlights

- New expanded role for Attorney Advisors
- New details on Notices of Appeal
  - Authorization of Representative
  - Notices to Parties
  - Certificates of Services
  - Amount in Controversy
- New details on Contractor Participation
  - Due dates for notices of participation by CMS
  - Due dates for Position Papers
  - Bad Actors
- New details on Addition of New Issues
- New details on Submission of New Evidence
- New details on Appeals of Statistical Samples
Administrative Decisions Made by Non-ALJs

Current System

- Administrative Decisions – including cases being dismissed, are decisions of the ALJ
- Time consuming for judges to ‘rule’ on cases not requiring particular expertise

As Proposed

- Some administrative decisions (not decisions on the merits) will be made by Attorneys of OMHA
- Decisions will be subject to appeal just as an ALJ decision would be) provided that appeal is not otherwise prohibited
Getting Started

• Appointment of Representative
  – More information to be required
  – Must be signed by the Appointee
  – More adjudication time granted if appointment is an issue

• Pending Investigations
  – New content requirement obligating the filing party to include a statement regarding whether it is aware that it or the claim is the subject of an investigation or proceeding by the OIG or other law enforcement agencies
  – However, we note that the information would not be the basis for a credibility determination on evidence or testimony, as an investigation or allegations prior to findings of wrongdoing by a court of competent jurisdiction are not an appropriate foundation for credibility determinations
Who Gets the Request for Hearing: Other Parties to the Appeal?

- Proposed Regulation requires an appellant to send a copy of a request to the other parties who were sent a copy of the QIC's reconsideration or dismissal.
- Failure to do so will toll the ALJ's 90 calendar day adjudication deadline until all parties to the QIC reconsideration receive notice of the requested ALJ hearing.
- Proposes that if additional materials submitted with a request are necessary to provide the information required for a complete request, copies of those materials must be sent to the parties as well (subject to authorities that apply to disclosing the personal information of other parties).
Proof of Service to Parties

- Current regulations do not state what constitutes evidence that a copy of the request for hearing was sent to the other parties
- Proposed regulation says evidence that a copy of the request for hearing or review was sent includes:
  - Certifications that a copy of the request is being sent to the other parties on the standard form for requesting a hearing or review of a QIC dismissal;
  - An indication, such as a copy or “cc” line on a request for hearing or review, that a copy of the request and any applicable attachments or enclosures are being sent to the other parties, including the name and address of the recipients;
  - An affidavit or certificate of service that identifies the name and address of the recipient and what was sent to the recipient; or
  - A mailing or shipping receipt that identifies the name and address of the recipient and what was sent to the recipient.
Consequences of Failure to Provide Notices

**CURRENT**

- Beyond stating that an adjudication time frame is tolled if a party does not satisfy the copy requirement, current regs do not address the consequence of not satisfying the requirement

**PROPOSED**

- If the appellant fails to send a copy of the request for hearing or request for review of a QIC dismissal, any additional materials, or a copy of the submitted evidence or a summary thereof, the appellant would be provided with an opportunity to cure the defects
- If an adjudication time frame applies, it does not begin until evidence that the request, materials, and/or evidence or summary thereof were sent is received
- If an appellant does not provide evidence within the time frame provided, the appellant's request for hearing or review would be dismissed
Content of Notices to Parties

- “Jurisdictional”
  - If a complete request includes a position paper that explains the reasons the appellant disagrees with the QIC's reconsideration, a copy of the position paper would be sent to the other parties, subject to any authorities that apply to disclosing the personal information of other parties.
  - Appellants are free to include cover letters to explain the request, but such letters on their own do not satisfy the copy requirement.

- Evidence
  - Additional evidence, such as medical records, is generally not required for a complete request, and therefore copies would not have to be sent, but could instead be summarized and provided to the other parties at their request, subject to any authorities that apply to disclosing the personal information of other parties.
Contractors as Parties and Participants

- Additional parameters are needed to help ensure hearings with the entities are as efficient as possible; expectations and roles are clear; and the entities have an opportunity to assist with appeals for which no hearing is conducted
- CMS and its contractors may elect to be a participant or a party
- No decisions without notice to contractors
- Not more than one contractor unless need is established (for example statistical sampling)
- Contractor must give notice of participation 30 days after the appeal is filed
- Contractor must give notice of intent to appear at hearing ten days prior to hearing
- All parties to the ALJ hearing to reply to the notice by acknowledging whether they plan to attend the hearing at the time and place proposed in the hearing, or whether they object to the proposed time and/or place of the hearing
ROLES AND RESPONSIBILITIES OF CMS OR A CONTRACTOR AS A PARTICIPANT

CURRENT

• Participation may include filing position papers or providing testimony to clarify factual or policy issues, but it does not include calling witnesses or cross-examining a party's witnesses

PROPOSED

• Participation may include filing position papers “and/or” providing testimony
• When CMS or a contractor participates in a hearing, they may not be called as witnesses and, thus, are not subject to examination or cross-examination by parties to the hearing

However, to be clear about how a party and the ALJ may address statements made by CMS or a contractor during the hearing given that limitation, we also are proposing that the parties may provide testimony to rebut factual or policy statements made by the participant, and the ALJ may question the participant about the testimony
POSITION PAPERS

CURRENT

• Current § 405 1010(e) states that CMS or its contractor must submit any position papers within the time frame designated by the ALJ

PROPOSED

• Deadlines for submission of position papers and written testimony
• CMS or a contractor position paper or written testimony must be submitted within
  – 14 calendar days of an election to participate if no hearing has been scheduled, or
  – No later than five calendar days prior to the scheduled hearing unless additional time is granted by the ALJ
Amount in Controversy (AIC)

Current
✓ The current Amount in Controversy (AIC) requirement for a claim appeal filed in 2016 ($150 minimum)
✓ The amount in controversy is calculated in the following manner:
  ✓ Amount Charged minus Medicare payments already made or awarded = Subtotal Balance
  ✓ Subtotal Balance minus any applicable Deductible/Coinsurance = Amount in Controversy

Proposed
✓ AIC for ALJ hearings based on the Medicare allowable amount rather than billed charges
  ✓ FFS: Medicare allowable
  ✓ SNF/Hospital/HHA: billed charges
    ✓ reduced by the amount paid
    ✓ Down-RUG amount will be the difference between RUGs rates
  ✓ Overpayment Demands (post payment): Amount in Demand Letter
  ✓ For Statistical Samples: Estimated Overpayment
✓ Exception: if a claim does not have a published, contractor-priced allowable amount, the AIC will continue to be based on the billed charges
Identifying Witnesses

- ALJs have expressed concern that parties and representatives appear at a hearing with multiple individuals and witnesses who were not previously identified, complicate and slow the hearing process.
- While a party or representative has considerable leeway in determining who will attend the hearing or be called as a witness, prior notice of those individuals is necessary for the ALJs to schedule adequate hearing time, manage their dockets and conduct the hearing.
- Parties must specify the individuals from the entity or organization who plan to attend the hearing.
Bad Actors: Representatives of the Appellant

- In rare circumstances, OMHA ALJs have encountered a party or representative that makes it difficult or impossible for the ALJ to regulate the course of a hearing.
- This may occur when a party or representative continues to present testimony or argument on a matter that is not relevant to the issues before the ALJ, or on a matter for which the ALJ believes he or she has sufficient information or on which the ALJ has already ruled.
- This may also occur when a party or representative is uncooperative, disruptive or abusive during the course of the hearing.
Bad Actors

• In these circumstances, we are proposing that the ALJ would have the clear authority to excuse the party or representative from the hearing and continue with the hearing to provide the other parties and participants with the opportunity to offer testimony and/or argument.

• ALJ would be required to provide the excused party or representative with an opportunity to submit written statements and affidavits in lieu of testimony and/or argument at the hearing.

• These proposals would allow the ALJ to effectively regulate the course of the hearing and balance the excused party's right to present his or her case, present rebuttal evidence and cross-examine the witnesses of other parties with allowing the party to submit written statements and affidavits.
Good Cause for Late Submission of Evidence

• The statute sets a bar to introducing new evidence
• The current rule provides that a party may submit evidence if good cause exists
• Proposed in the rule are criteria for when an ALJ may accept that good cause exists
  – The ALJ or attorney adjudicator finds that the new evidence is material to an issue addressed in the qualified independent contractor’s (QIC’s) reconsideration decision and the issue was not identified as a material issue prior to the QIC’s decision;
  – The new evidence is material to a new issue identified in the QIC’s decision;
  – The party was unable to obtain the evidence before the QIC issued its reconsideration decision and the party submits evidence that establishes the party’s reasonable attempts to obtain the evidence before the decision was made;
  – The evidence was submitted by the party to the QIC, and the party can supply evidence of such, but it was not included in the administrative record
• In addition to these four circumstances, the rule proposes a fifth example in which the ALJ or attorney adjudicator determines that the party demonstrated that it could not have obtained the evidence before the QIC issued its reconsideration decision
Submitting New Evidence

• Parties must submit all written or other evidence they wish to have considered with the request for hearing, by the date specified in the request for hearing in accordance with proposed § 405 1014(a)(2), or if a hearing is scheduled, within ten calendar days of receiving the notice of hearing.

• The regulation proposes to require a provider, supplier or beneficiary represented by a provider or supplier that wishes to introduce new evidence to submit a statement explaining why the evidence was not previously submitted to the QIC, or a prior decision-maker and the submitting party must establish good cause by explaining why the evidence was not previously submitted.
STATEMENT OF A NEW ISSUE

CURRENT

- Current § 405 1022(b)(1) requires a notice of hearing to contain a statement of the specific issues to be decided
- Current § 405.1032 also permits an ALJ to consider a new issue at the hearing, if notice of the new issue is provided to all parties before the start of the hearing

AS PROPOSED

- Notice of hearing also would contain a statement of any new issues that the ALJ will consider to ensure the parties and potential participants are provided with notice of any new issues and can prepare for the hearing accordingly
- The proposed revision would allow an ALJ to consider a new issue only if the resolution of the issue is material to the claim and there is new or material evidence not available or known at the time of the underlying determination; and if the evidence considered in making the determination was in obvious error
Appeals of Partially Favorable QIC Decisions

• Current regs state that the issues before the ALJ include all of the issues brought out in the initial determination, redetermination or reconsideration that were not decided entirely in a party's favor.

• However, when a request for hearing involves a reconsideration of multiple claims and the appellant does not identify one or more of the claims that were not decided entirely in the party's favor, it is unclear whether the ALJ should review all of the claims that were not decided entirely in the party's favor or just those claims specified by the appellant in the request for hearing.

• To address the ambiguity, we are proposing that the issues before the ALJ or attorney adjudicator include all the issues for the claims or appealed specified in the request for hearing that were brought out in the initial determination, redetermination or reconsideration that were not decided entirely in a party's favor.
Appealing a Statistical Sample

- Request for hearing must include the challenge to each sample claim that the appellant wishes to appeal, and be filed within 60 calendar days of the date that the party received the last reconsideration for the sample claims (if they were not all addressed in a single reconsideration), and assert the reasons the appellant disagrees with the statistical sampling methodology and/or extrapolation in the request for hearing.

- 60 calendar day period would begin on the date the party receives the last reconsideration of a sample claim, regardless of the outcome of the claim in the reconsideration or whether the sample claim is appealed in the request for hearing.
“Statistical Sampling” Objection Must Be Raised

• When an appeal involves a statistical sample and an extrapolation and the appellant wishes to challenge how the statistical sample and/or extrapolation was conducted, the regulations are proposing to require the appellant to assert the reasons the appellant disagrees with how the statistical sampling and/or extrapolation was conducted in the request for hearing.

• We are proposing at § 405 1032(d)(1) to reinforce this requirement by excluding issues related to how the statistical sample and/or extrapolation were conducted if the appellant does not comply with § 405 1014(a)(3)(iii)
What claims are open in an Appeal of a Stat. Sample?

• Related to the issues that an ALJ must consider, the 2005 Interim Final Rule (70 FR 11466) explained that ALJ decisions that are based on statistical samples because a decision that is based on only a portion of a statistical sample does not accurately reflect the entire record.

• As discussed in the 2009 Final Rule (74 FR 65328), when an appeal from the QIC involves an overpayment, and the QIC used a statistical sample in reaching its reconsideration, the ALJ must base his or her decision on a review of all claims in the sample.

• While a review of the claims selected for the sample is necessary to review issues related to a contested sample and extrapolation, for example to determine whether the sample claims were appropriately selected for a representative sample of the universe, [regulations] have been read more broadly to also require adjudication of each sample claim, regardless of whether the sample claim was adjudicated favorably at lower appeal levels.

• We do not believe adjudicating sample claims that were decided favorably at lower levels of appeal, or sample claims that are not appealed by a party, is necessary to adjudicate broader issues with how sampling and extrapolation was conducted, and the broader reading of current regulations results in unnecessary adjudications of claims that were not appealed.
Issues in Statistical Samples

- To clarify what is at issue and what must be considered in appeals involving statistical sampling and extrapolations, we are proposing that if a party asserts a disagreement with how the statistical sampling methodology and extrapolation were conducted in the request for hearing, only the sample units that were specified in the request for hearing are individually adjudicated, subject to a new issue being identified for an appealed claim.

- However, proposed § 405 1032(c) would permit adding sample claims to a pending appeal if they were adjudicated in the appealed reconsideration and the time to request a hearing on the reconsideration has not expired, or the ALJ or attorney adjudicator extends the time to request an ALJ hearing on those claims in accordance with § 405 1014(e).
Precedential Decisions

Current System

- Decisions of the ALJs of the Council have no precedential value, meaning that neither side can rely on a prior determination of the adjudicator
- Some decisions have impact as precedents but Council is not bound by the decision
- Decisions only occasionally published

As Proposed

- Council will determine which cases have precedential value and will publish the decision
- Decisions will be selected by the Chief Judge of the DAB
- Decisions will be precedential on issues of law and policy – not on beneficiary facts
- Decisions will be published in Fed. Reg. (de-identified)
Precedential Impact of a Appeals Council Decision

• When is a MAC not a MAC?
  – Code of Federal Regulations would be revised to change the Medicare Appeals Council’s current acronym, MAC (as well as references to it as the “Board”), to “Council.” The “MAC” acronym would be changed to avoid confusion with “Medicare Administrative Contractors”
Comment Period Is Still Open!

- The rule provides that comments on the proposed revisions will be accepted either electronically at https://www.regulations.gov or via mail addressed to the Office of Medicare Hearings and Appeals, Department of Health and Human Services, Attention HHS-2015-49, 5201 Leesburg Pike, Suite 1300, Falls Church, Va, 22041

- All comments must be received by 5 p.m. EST on August 29
Please give us suggestions for future topics in our survey to follow.

QUESTIONS?