

Supporting Statement for Paperwork Reduction Act Submission
Appointment of Representative and Supporting Regulations in 42 CFR 405.910
(CMS-1696, OMB 0938-0950)

Background

This iteration requests a revision of an information collection package associated with regulations that permit individuals or entities to appoint representatives to exercise their rights to appeal an initial determination. We are proposing several minor changes that have no impact on our burden estimates. However, we are adjusting our total burden estimate based on more recent annual response data. Our currently approved per response estimates are unchanged.

A. Justification

1. Need and Legal Basis

The authority for collecting this information is under 42 CFR 405.910(a) of the Medicare claims appeal procedures.

An appointment of representative must:

- be in writing;
- be signed and dated by both the party and individual agreeing to be the representative;
- provide a statement appointing the representative to act on behalf of the party, and in the case of a beneficiary, authorize the adjudicator to release personally identifiable health information;
- include a written explanation of the purpose and scope of the representation;
- contain the party's and appointed representative's name, phone number, and address;
- provide the beneficiary's Medicare number (either the health insurance claim number, or the Medicare beneficiary identifier), if applicable. When the represented party is not a beneficiary, a unique identifier (such as the National Provider Identifier or plan number) is requested;
- include the appointed representative's professional status or relationship to the party; and
- be filed with the entity processing the party's initial determination or appeal.

2. Information Users

This form would be completed by beneficiaries, providers and suppliers (typically their billing clerk, or billing company), and any party who wish to appoint a representative to assist them with their initial Medicare claims determinations, and filing appeals on Medicare claims.

The information supplied on the form is reviewed by Medicare claims and appeals adjudicators. The adjudicators make determinations whether the form was completed accurately, and if the form is correct and accepted, the form is appended to the claim or appeal that it pertains to.

3. Use of Information Technology

This instrument can be completed manually (print the form and complete it using pen and ink), or electronically (type the information into the form and digitally sign). After completion, this instrument may be submitted (along with other corresponding appeal or claim request) in hard copy through the postal mail, or electronically through a contractor or appeal adjudicator portal. Due to containing Personally Identifiable Information and Protected Health Information (PHI), any electronic submission must be through a secure connection.

4. Duplication of Efforts

The CMS-1696 does not duplicate any existing information collection.

5. Small Businesses

This collection does not have a significant economic impact on a substantial number of small entities.

6. Less Frequent Collection

This form is submitted on an as needed basis; therefore, we cannot conduct this collection less frequently. If this data is not collected, under current regulations, individuals or entities would not be able to appoint representatives to assist them in exercising their right to file a claim or an appeal of a claim determination.

7. Special Circumstances

This information collection is in accordance with the guidelines in 5 CFR 1320.6.

8. Federal Register/Outside Consultation

The 60-day Federal Register Notice published in the Federal Register on 02/05/2021 (86 FR 8362).

We received two comments from healthcare organizations. The comments and our responses can be found in the document titled CMS Response to Public Comments Received for Appointment of Representative (AOR) Form CMS-1696, attached.

The 30-day Federal Register Notice published in the Federal Register on 05//2021 (86 FR 27851).

9. Payments/Gifts to Respondents

We do not plan to provide any payment or gifts to respondents.

10. Confidentiality

Beneficiaries who choose to appoint a representative are required by regulation (42 CFR 405.910(c)(5)) to provide their Medicare Number on the AOR form. The form, when submitted, is made a part of the existing claim or 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

Users of this form must supply certain information as required by regulation, in order to identify the parties involved and to supply adjudicators with contact information to furnish responses. In particular, users must:

- provide the party's and appointed representative's name, phone number, and address;
- provide the beneficiary's Medicare Number (either the health insurance claim number, or the Medicare beneficiary identifier), if applicable. When the represented party is not a beneficiary, a unique identifier (such as the National Provider Identifier or plan number) is required;
- include the appointed representative's professional status or relationship to the party.

12. Burden Estimates (Hours & Wages)

We must estimate the burden for the Appointment of Representative (AOR) form because CMS does not collect data on the use of appointed representatives. The cost to alter

systems to collect the data would be prohibitive, and there is no use for the data other than for this collection. Therefore, our estimates are derived from anecdotal information.

We believe that when parties appoint representatives, they generally do so at the start of the appeals process. For FY 2019, 2,705,442 requests for first level appeals were received (this figure is obtained from the CROWD [Contractor Reporting of Operational & Workload Data] system used by contractors to report workload statistics to CMS). We estimate that in 10% of all appeals (270,544) appellants will appoint a representative.

Since we have developed the optional standardized form, we estimate that it should take approximately 15 minutes to supply the information needed to comply with the requirements for a valid Appointment of Representative.

Wage Estimates

To derive average costs, we used data from the U.S. Bureau of Labor Statistics’ May 2019 National Occupational Employment and Wage Estimates for all salary estimates in the table below (www.bls.gov/oes/current/oes_nat.htm).

The following table presents the mean hourly wage, the cost of fringe benefits and overhead, and the adjusted hourly wage.

| Occupation Title | Occupation Code | Mean Hourly Wage (\$/hr) | Fringe Benefits and Overhead (\$/hr) | Adjusted Hourly Wage (\$/hr) |
|----------------------------|-----------------|--------------------------|--------------------------------------|------------------------------|
| Billing and Posting Clerks | 43-3021 | 19.53 | 19.53 | 39.06 |

Except where noted, we are adjusting our employee hourly wage estimates by a factor of 100 percent. This is necessarily a rough adjustment, both because fringe benefits and overhead costs vary significantly from employer to employer, and because methods of estimating these costs vary widely from study to study. Nonetheless, there is no practical alternative and we believe that doubling the hourly wage to estimate total cost is a reasonably accurate estimation method.

Individuals: We believe that the burden will be addressed under All Occupations (occupation code 00-0000) at \$25.72/hr since the group of individual respondents varies widely from working and nonworking individuals and by respondent age, location, years of employment, and educational attainment, etc.

Unlike our private sector adjustment to the respondent hourly wage (see above), we are not adjusting this figure for fringe benefits and overhead since the individuals' activities would occur outside the scope of their employment.

Requirements/Burden Estimates

Providers/Suppliers

We estimate that 90% of all AOR forms will be completed by providers or suppliers. As noted previously, providers and suppliers are likely to use a billing service to file claims and appeals. We estimate 243,490 AORs (270,544 x 0.90) completed by providers or suppliers annually.

In aggregate we estimate a burden of 60,873 hours (243,490 providers or supplier appointments x 0.25 hr) at a cost of \$2,377,699.38 (60,873 hr x \$39.06/hr).

Beneficiaries

The remaining 10% of the AOR forms filled out would be completed by beneficiaries. We estimate that 27,054 AORs (270,544 x 0.10) will be completed by beneficiaries annually.

In aggregate, we estimate a burden of 6,764 hours (27,054 beneficiaries x 0.25 hr) at a cost of \$173,970.08 (6,764 hours x \$25.72/hr).

Burden Survey

| Respondent Type | Respondents | Responses | Time per Response (hr) | Total Time (hr) | Labor Rate (\$/hr) | Total Cost (\$) |
|---------------------|----------------|----------------|------------------------|-----------------|--------------------|---------------------|
| Providers/Suppliers | 243,490 | 243,490 | 0.25 | 60,873 | 39.06 | 2,377,699.38 |
| Beneficiaries | 27,054 | 27,054 | 0.25 | 6,764 | 25.72 | 173,970.08 |
| TOTAL | 270,544 | 270,544 | 0.25 | 67,637 | varies | 2,551,669.46 |

Collection of Information Instruments and Instruction/Guidance Documents

- Appointment of Representative (English)

Revised with changes.

- Appointment of Representative (Spanish)

In an effort to make the best use of limited translation resources, the revised Spanish version is not included in this package but will be added as a non-substantive change after OMB approval.

13. Capital Costs

There are no capital costs associated with this collection.

14. Cost to Federal Government

There is no cost to the Federal Government for this collection.

15. Changes to Burden

The AOR form proposes several changes, which we have implemented for clarity and ease of use. We have re-ordered sections 1 and 2 and added an optional fill box for a fax number. We have also added some instructions on page 2 for clarity on required fields. The changes have no impact on our burden estimates.

The burden is computed based on relevant available data for Medicare appeals, and those figures are updated annually. Current appeals data indicates that the number of first level appeals has decreased since 2017. While the total time to complete the form has not changed, the hourly burden estimates have decreased and is being adjusted in this iteration for all respondents due to a fewer number of appeals being filed. Overall, the number of appeals using this collection has decreased by 76,740 (prior amount 347,284 minus current amount 270,544) which translates to a decrease of 19,184 burden hours (prior amount 86,821 minus current amount 67,637).

16. Publication/Tabulation Dates

The standardized form will be published on the Internet on the CMS.gov forms page, however, no aggregate or individual data will be tabulated from them.

17. Expiration Date

The expiration date appears at the bottom of the form.

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.