

January 9, 2014

The Honorable Roy Blunt  
U.S. Senator  
260 Russell Office Building  
Washington, DC 20510-0001

Dear Senator Blunt:

The Medicare Recovery Audit Contractor program has become an administrative quagmire. The enclosed letter from the Department of Health and Human Services' Office of Medicare Hearings and Appeals recently was sent to some Missouri hospitals. Essentially, the OMHA is completely overwhelmed by an exponential growth in appeals and has "*temporarily suspended the assignment of most new requests for an Administrative Law Judge hearing to allow OMHA to adjudicate appeals involving almost 357,000 claims for Medicare services and entitlements already assigned to its 65 Administrative Law Judges.*" The OMHA is the third level of administrative review in the Medicare claim and entitlement appeals process.

While the OMHA hears appeals other than payment challenges to Medicare RAC payment denials, there is no doubt that the flawed RAC program is a major contributor. According to the American Hospital Association, appeals of RAC payment denials increased by 126 percent between the third quarters of 2012 and 2013. Based on past experience, most of the RACs' payment denials turn out to be a waste of the government's time and money. While the exact percentage may be in dispute, the AHA indicates that two-thirds of the Medicare RACs' payment denials are overturned on appeal.

The OMHA letter provides ample evidence of a system in chaos. In two years, the OMHA backlog has grown from 92,000 to over 460,000 and "continues to rise." Weekly receipts of appeals grew from 1,250 in January 2012 to 15,000 in November 2013. According to the OMHA, "the average wait time for an Administrative Law Judge hearing has risen to 16 months and is expected to continue to increase as the backlog grows." The current backlog of cases is 5,945 per Administrative Law Judge.

This is unconscionable. Providers aggrieved by a RAC payment denial — and who are twice as likely to win the appeal as to lose it — are placed in administrative purgatory for years. There is no conceivable way this can constitute adequate due process. Meanwhile, funds that could be better used to care for Medicare beneficiaries are tied up.

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To its credit, the OMHA is convening a forum to explain its predicament and the steps it is taking to avoid drowning while lashed to an anchor. However, a forum won't fix the problem. Something must be done to stop the RACs' force-feeding the system with unsustainable payment denials. Nine of the 10 members of the Missouri congressional delegation are lead sponsors or co-sponsors of legislation to bring more accountability to the Medicare RAC process. These bills or other comparable actions are needed to address this seemingly inexorable catastrophe now.

We ask for your continued intervention on behalf of Missouri's hospitals to address the increasingly egregious failings of the Medicare RAC program as it is being implemented under current law and regulations. We look forward to collaborating with you on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "DL", with a long horizontal flourish extending to the right.

Daniel Landon

Senior Vice President of Governmental Relations

dl/cml

enclosure

c Kathleen Sebelius



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Office of Medicare Hearings and Appeals  
Office of the Chief Judge  
1700 North Moore Street, Suite 1800  
Arlington, VA 22209  
(703) 235-0635 Main Line  
(703) 235-0700 Facsimile

**HOSP PT ACCTS**

**Memorandum to OMHA Medicare Appellants**

Re: Administrative Law Judge Hearings for Medicare Claim and Entitlement Appeals

Based on a number of recent inquiries regarding delays in the processing of Medicare claim and entitlement appeals, I want to apprise you of some recent operational changes that may impact your interaction with the Office of Medicare Hearings and Appeals (OMHA). You have been chosen to receive this letter because you have a significant number of Medicare appeals currently pending before OMHA.

Due to the rapid and overwhelming increase in claim appeals, effective July 15, 2013, OMHA temporarily suspended the assignment of most new requests for an Administrative Law Judge hearing to allow OMHA to adjudicate appeals involving almost 357,000 claims for Medicare services and entitlements already assigned to its 65 Administrative Law Judges. This temporary measure was necessitated by a dramatic increase in the number of decisions being appealed to OMHA, the third level of administrative review in the Medicare claim and entitlement appeals process.

From 2010 to 2013, OMHA's claims and entitlement workload grew by 184% while the resources to adjudicate the appeals remained relatively constant, and more recently were reduced due to budgetary sequestration. Even with increased productivity from our dedicated Administrative Law Judges and their support staff, we have been unable to keep pace with the exponential growth in requests for hearing. Consequently, a substantial backlog in the number of cases pending an ALJ hearing, as well as cases pending assignment has resulted.

In just under two years, the OMHA backlog has grown from pending appeals involving 92,000 claims for services and entitlement to appeals involving over 460,000 claims for services and entitlement, and the receipt level of new appeals is continuing to rise. In January 2012, the number of weekly receipts in our Central Operations Division averaged around 1,250. This past month, the number of receipts was over 15,000 per week. Due to this rapidly increasing workload, OMHA's average wait time for a hearing before an Administrative Law Judge has risen to 16 months and is expected to continue to increase as the backlog grows.

Although assignment of most new requests for hearing will be temporarily suspended, OMHA will continue to assign and process requests filed directly by Medicare beneficiaries, to ensure their health and safety is protected. Assignment of all other new requests for hearing will resume as Administrative Law Judges are able to accommodate additional workload on their dockets. However, with the current backlog we do not expect general assignments to resume for at least 24 months and we expect post-assignment hearing wait times will continue to exceed 6 months.

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HOSP PT ACCTS

We remain committed to providing a forum for the fair and timely adjudication of Medicare claim and entitlement appeals; however, we are facing significant challenges which reduce our ability to meet the timeliness component of our mission. To address this challenge, OMHA is working closely with our colleagues within the Centers for Medicare and Medicaid Services (CMS) and the Departmental Appeals Board (DAB). We are committed to finding new ways to work smartly and more efficiently, in order to better utilize resources to address the increased demand for hearings.

In order to keep you apprised concerning our workload and to facilitate your interaction with OMHA, we will host an OMHA Medicare Appellant Forum on February 12, 2013, from 10:00 am to 5:00 pm. The event will take place in the Wilbur J. Cohen building located at 330 Independence Ave. SW, Washington DC 20024. The purpose of this event is to provide further information to OMHA appellants and providers on a number of initiatives underway and to provide information on measures we can take to make the appeals process work more efficiently. You can obtain further information and register for the event by visiting the OMHA website; <http://www.hhs.gov/omha/index.html>. We are pleased to offer this opportunity and hope you will be able to join us.

Although we know that this information will not alleviate your concerns with regard to delays in processing appeals, we hope that we have at least provided a backdrop for the environment in which OMHA currently processes appeals. We ask for your indulgence as we work to address these challenges and thank you in advance for your patience as we continue our efforts to serve the Medicare appellant and beneficiary communities. For additional information and updates on OMHA's adjudication timeframes, or to register for our OMHA Medicare Appellant Forum, please visit the OMHA website at: <http://www.hhs.gov/omha/index.html>.

Sincerely,



Nancy J. Griswold  
Chief Administrative Law Judge