

February 12, 2014

Nancy J. Griswold
Chief Administrative Law Judge
Office of Medicare Hearings and Appeals
Department of Health & Human Services
1700 N. Moore Street
Suite 1800
Arlington, VA 22209

Dear Chief Administrative Law Judge Griswold:

On behalf of the undersigned organizations, we write to you to express serious concern about the backlog of Medicare appeals. We are particularly troubled by the recent notice by the Office of Medicare Hearings and Appeals (OMHA) that assignment of requests for Administrative Law Judge (ALJ) hearings may be delayed for up to 28 months. We are also discouraged that OMHA still predicts that, even after this delay, post-assignment hearing wait times are likely to continue to exceed six months. While we understand and appreciate that OMHA has convened a forum today to discuss the backlog of Medicare appeals, we are concerned that this forum alone will not sufficiently address the multitude of issues that patients and physicians face when the Medicare appeals process is not working properly. **We therefore strongly urge OMHA to develop a comprehensive solution to the Medicare appeal backlog problem so that appealed cases may be assigned and adjudicated without delay.**

As you are aware, Medicare audit contractors are often erroneous in their overpayment determinations. In particular, the Recovery Auditors, or RACs, have a very poor accuracy record. The most recent Centers for Medicare & Medicaid Services (CMS) RAC report to Congress stated that 43.6 percent of provider-appealed RAC determinations are overturned. Because the Medicare contractors often get it wrong, the Medicare appeals process is of utmost importance. A physician who undergoes a RAC audit and believes that the RAC has erroneously recouped a payment has but one recourse: they may file an appeal of the RAC determination through the Medicare appeals process. Many of these cases proceed all the way to the ALJ level and are overturned. By delaying the *assignment* of cases to ALJs by more than two years, OMHA is denying due process which is predicated on the timely disposition of disputes for physicians and other providers who experience erroneous determinations by Medicare contractors.

The proposal to further delay processing appeals is the most recent example of the barriers to obtaining payment for the delivery of medically necessary and reasonable services to Medicare beneficiaries. Over the course of years, physicians have increasingly assumed the cost of producing medical records (often repeatedly at various levels of appeal), meeting exacting deadlines, and filing a succession of appeals. The foregoing does not capture the additional opportunity cost associated with the diversion of physician and staff hours from delivering direct medical care to patients. The OMHA appeals process is but one appeals process that physicians and patients must navigate. We recommend that OMHA and the Office

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of the Secretary within the U.S. Department of Health & Human Services (HHS) evaluate the need for expedient appeals processes across the health programs administered by HHS, including Medicare, Medicare Advantage, and the Medicare Prescription Drug benefit. The numerous appeals requirements, actual costs of filing appeals, and often lengthy delays undermine the ability of physicians to deliver patient-centered care.

As a necessary first step, we strongly urge you to remedy the OMHA backlog immediately. With the numerous new regulatory requirements that physicians are facing today, physicians do not have the resources to navigate an interminable appeals process. We are happy to work with you as you address these issues.

Sincerely,

American Medical Association
American Academy of Allergy, Asthma & Immunology
American Academy of Dermatology Association
American Academy of Family Physicians
American Academy of Home Care Medicine
American Academy of Ophthalmology
American Academy of Otolaryngic Allergy
American Academy of Otolaryngology—Head and Neck Surgery
American Association for Geriatric Psychiatry
American Association of Clinical Endocrinologists
American Association of Neurological Surgeons
American College of Allergy, Asthma and Immunology
American College of Cardiology
American College of Emergency Physicians
American College of Gastroenterology
American College of Mohs Surgery
American College of Physicians
American College of Phlebology
American College of Rheumatology
American College of Surgeons
American Congress of Obstetricians and Gynecologists
American Osteopathic Association
American Psychiatric Association
American Society for Clinical Pathology
American Society for Gastrointestinal Endoscopy
American Society for Surgery of the Hand
American Society of Cataract and Refractive Surgery
American Society of Clinical Oncology
American Society of Dermatopathology
American Society of Hematology

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American Society of Neuroradiology
American Society of Ophthalmic Administrators
American Society of Retina Specialists
American Thoracic Society
American Urological Association
College of American Pathologists
Congress of Neurological Surgeons
Heart Rhythm Society
International Spine Intervention Society
Joint Council of Allergy, Asthma and Immunology
Medical Group Management Association
North American Spine Society
Renal Physicians Association
Society for Cardiovascular Angiography and Interventions
Society for Vascular Surgery
Society of Hospital Medicine
The Society of Thoracic Surgeons

Medical Association of the State of Alabama
Alaska State Medical Association
Arizona Medical Association
Arkansas Medical Society
California Medical Association
Colorado Medical Society
Connecticut State Medical Society
Medical Society of Delaware
Medical Society of the District of Columbia
Florida Medical Association Inc
Medical Association of Georgia
Hawaii Medical Association
Idaho Medical Association
Illinois State Medical Society
Indiana State Medical Association
Iowa Medical Society
Kansas Medical Society
Kentucky Medical Association
Louisiana State Medical Society
Maine Medical Association
MedChi, The Maryland State Medical Society
Massachusetts Medical Society
Michigan State Medical Society
Minnesota Medical Association
Mississippi State Medical Association

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Missouri State Medical Association
Montana Medical Association
Nebraska Medical Association
Nevada State Medical Association
New Hampshire Medical Society
Medical Society of New Jersey
New Mexico Medical Society
Medical Society of the State of New York
North Carolina Medical Society
North Dakota Medical Association
Ohio State Medical Association
Oklahoma State Medical Association
Oregon Medical Association
Pennsylvania Medical Society
Rhode Island Medical Society