

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  
Arkansas Medical Society  
Arizona Medical Association  
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  
South Carolina Medical Association  
South Dakota State Medical Association  
Tennessee Medical Association  
Texas Medical Association  
Utah Medical Association  
Vermont Medical Society  
Medical Society of Virginia  
Washington State Medical Association  
West Virginia State Medical Association  
Wisconsin Medical Society  
Wyoming Medical Society