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October 22, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Verma:

On behalf of our physician and medical student members, the American Medical Association (AMA) urges the Centers for Medicare & Medicaid Services (CMS) to revise the Quality Improvement Organizations' (QIOs) appeals process by requiring an opportunity for beneficiaries and providers to request an additional review when a QIO initial determination review and reconsideration are in conflict.

The QIO appeals process as currently structured is the result of *Public Citizen, Inc. v. HHS* (332 F.3d 654, June 20, 2003) in which the court determined that QIOs must, at a minimum, notify a complainant of the results of its review. When a beneficiary submits a formal complaint to a QIO about the quality of care delivered by a health care provider, a peer reviewer renders an Interim Initial Determination and the provider is offered an opportunity to discuss the concerns raised by the complaint with the peer reviewer. If, based off the Interim Initial Determination, the QIO decides that the standard of care was not met, the provider must be offered the opportunity to discuss the concerns and may submit a written response. The QIO reviews everything and sends it back to the same peer reviewer who makes a Final Initial Determination. Either party can request a reconsideration (by a different peer reviewer) of the original peer reviewer's determination resulting in a final determination. Physicians who have gone through a QIO appeal have voiced concern to the AMA that the process, and particularly redeterminations, lacks fairness and is singularly focused on a final determination providing no opportunity for further discussion or appeal. Additionally, we have also heard concerns that the peer reviewer may review cases outside of the reviewer's specialty or expertise.

The Medicare QIO Manual explicitly states that the QIO must inform the beneficiary that, if the QIO receives a request for reconsideration from any of the parties, the results of the Final Initial Determination could change. There is no parallel requirement that the provider must be informed. Moreover, during the reconsideration, there is no requirement that the party not requesting the reconsideration be given the opportunity to discuss concerns or submit a written response. This decision is final and there are no additional appeal rights available to either the beneficiary or the provider. **The AMA believes that notification that a reconsideration could change the final determination should be given to both parties and this requirement should be reflected in the Medicare manual. We also believe that during a reconsideration both parties are given an opportunity to discuss concerns with, or submit a written response to, the second peer reviewer. The AMA further asks that CMS or the QIO notify the health care provider when the peer reviewer is reviewing a case that is outside the reviewer's**

The Honorable Seema Verma

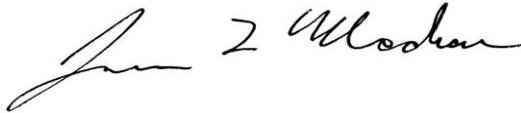
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specialty or expertise. We ask that CMS require QIOs to disclose at least annually the number of peer reviews performed by reviewers without the same expertise as the physician being reviewed.

The AMA believes that giving both parties appropriate notification and providing the same opportunity to comment during reconsiderations would help rectify the current inequities built into the QIO appeals process. Should you have any questions or to arrange a meeting, please contact Jason Scull, Assistant Director, Federal Affairs, at jason.scull@ama-assn.org or 202-789-4580.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is fluid and cursive, with a large initial "J" and "M".

James L. Madara, MD