

December 3, 2014

Nancy J. Griswold  
Chief Administrative Law Judge  
Office of Medicare Hearings and Appeals  
U.S. Department of Health and Human Services  
Attention: OMHA-1401-NC  
1700 N. Moore Street, Suite 1800  
Arlington, VA 22209

**Re: Medicare Program; Administrative Law Judge Hearing Program for Medicare Claim Appeals [OMHA-1401-NC].**

Dear Chief Administrative Judge Griswold:

On behalf of the physician and medical student members of the American Medical Association (AMA), thank you for the opportunity to provide the AMA's views on the appeals backlog. This two-year backlog is unacceptable for both physicians and patients, and must be rectified immediately. We support the effort of the Office of Medicare Hearings and Appeals (OMHA) to address this issue with the resources and legal authorities available to it, and we appreciate OMHA's decision to reach out to the provider community to seek potential solutions. We hope to offer some innovative and useful solutions in this letter.

In addition to this letter, under separate cover, we are writing to the Centers for Medicare & Medicaid Services (CMS) Administrator Tavenner to express our strong view that the fundamental problem and reason for the appeals backlog is the Recovery Audit Contractor (RAC) and other audit programs, and to seek relief through the improvement of those programs. Multiple changes, including penalties for erroneous RAC determinations, extension of the one-year timely filing requirement for claims recouped by auditors, and increased physician review of RAC claims are among the issues we have asked Administrator Tavenner to consider.

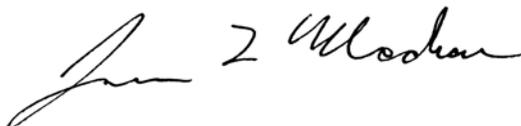
In regard to changes to the appeals process by OMHA, we offer the following recommendations:

- OMHA should continue and consider expanding the **Settlement Facilitation Conference Pilot**. This Pilot provides a more expedient and in some ways straightforward process for Medicare Part B providers who have appealed to the Administrative Law Judge (ALJ) level and would like to swiftly resolve a number of claims. Some reservations that we have heard about this Pilot are that physicians must give up future appeal rights to participate, and that there are set benchmarks for the number of claims at issue or the amount in dispute to be considered eligible to participate. We encourage OMHA to look at whether the loss of future appeal rights, as a programmatic requirement rather than a settlement term, may dissuade participation. We also ask that OMHA consider approaching the amount/claims in controversy parameters with increased flexibility as to allow the maximum number of Part B providers to avail themselves of this option.

- OMHA should continue and consider expanding the **Statistical Sampling Initiative**. The potential to resolve a large number of outstanding claims through this initiative is attractive for some physicians who have received a large number of same-service audits, and utilization of this initiative by appellants may significantly decrease the appeals backlog. Again, we ask that OMHA consider adding some flexibility to the requisite conditions of participation in this Initiative. For example, currently OMHA requires that there be a minimum of 250 claims on appeal. This high number puts the Statistical Sampling Initiative out of reach for many physician practices that may want to participate in the program. In addition, OMHA currently requires that claims that may be evaluated within the Statistical Sampling Initiative all must fall into only one of the following categories: pre-payment audits, non-RAC post-payment audits, or RAC post-payment audits from one RAC. While we can understand the administrative quandary posed by reconsidering the determinations of several audit contractors in one remedial initiative—or in one data set—from a physician point of view these parameters for eligibility do not make sense. In the future under the next round of RAC contracts, for example, physicians may be audited by a new RAC for the same issue for which they were audited previously. Limiting the universe of claims which may be included in the statistical sample based on the identity of the audit contractor seems arbitrary to a physician who views these audits as deriving from a single source—Medicare.
- OMHA should consider extending the 65 percent settlement option which has been offered to hospitals to physicians and other providers. It is wholly inequitable to offer this option to some health care providers and not others, and the same reasons that OMHA and CMS hope that this hospital settlement offer will reduce the appeals backlog may be applied in the physician or Part B provider context. Physicians want to expediently resolve their outstanding appeals, and are generally willing partners to resolve them in a mutually satisfactory manner. We therefore strongly urge that this program be extended to physicians.
- OMHA should continue its efforts to move to an electronic system for appeals management and resolution. We applaud OMHA's efforts to offer videoconference hearings and conferences—this has been an absolutely vital piece of an ALJ appeal for physicians and is extremely valuable. We think OMHA should build on the successes of that initiative by focusing on its electronic records management and development of optional electronic portals for document submission.

The AMA appreciates OMHA's continued efforts to improve the appeals backlog and keep physicians informed of this progress. Should you have any questions on this letter, please contact Cybil Roehrenbeck, Assistant Director, Federal Affairs, at [cybil.roehrenbeck@ama-assn.org](mailto:cybil.roehrenbeck@ama-assn.org) or 202-789-8510.

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