



**American Hospital
Association**

Liberty Place, Suite 700
325 Seventh Street, NW
Washington, DC 20004-2802
(202) 638-1100 Phone
www.aha.org

August 24, 2004

Mark B. McClellan, M.D., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Sent via email to: <http://www.cms.hhs.gov/regulations/ecomments>

Re: Medicare Program; Provider Reimbursement Determinations and Appeals [CMS-1727-P]

Dear Dr. McClellan:

On behalf of our 4,700 member hospitals and health care systems and our 31,000 individual members, the American Hospital Association (AHA) welcomes the opportunity to comment on the Centers for Medicare and Medicaid Services' (CMS) proposed rule concerning provider reimbursement determinations and appeals. We appreciate and generally support CMS' efforts to streamline the process for pursuing appeals that begin with the Provider Reimbursement Review Board (PRRB) or an intermediary hearing officer. In this comment letter, we offer recommendations that are in line with the agency's goal of improving the appeal process while also ensuring that hospitals have a full and fair opportunity to pursue Medicare reimbursement appeals.

Adding Issues to a Hearing Request ["Provider Hearing Rights" section]

We understand CMS' concern that the resolution of appeals to the PRRB could be delayed when providers add issues to existing appeals. However, we believe the agency's proposal is too constraining. Despite their best efforts, providers may not have the information needed to meet the proposed deadline for adding issues. It can take 180 days for providers to obtain the intermediary's audit workpapers or the work product from outside consultants needed to determine the merits of a new issue.

In our view, there are alternate deadlines for adding issues that would not delay a PRRB appeal. For example, allowing a provider to add issues to its preliminary position paper would offer time



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August 24, 2004

Page 2 of 2

to identify issues without delaying the appeal. In addition, we suggest that CMS provide the PRRB with the authority to extend the deadline for adding issues when it deems an extension to be appropriate. This is necessary to rectify situations in which the provider is not aware of an issue because the fiscal intermediary does not provide the necessary information prior to the deadline for adding issues.

Prompt Resolution of Clear Errors [“Board Proceedings Prior to Hearings” Section]

The current backlog of 10,000 cases at the PRRB must be reduced; we believe that a more aggressive approach to resolving issues that involve clear errors helps. A number of appeals to the PRRB relate to audit errors, clerical errors or other minor issues for which providers file what amounts to little more than “protective appeals.” While CMS’ proposal to require the provider and intermediary to attempt to resolve legal and factual issues would seem to be a mechanism to resolve these issues or errors, absent the involvement of the PRRB or its staff no such resolution occurs and the appeal drags on to a hearing. The AHA recommends that a mechanism be established by which a provider can identify issues that should be quickly resolvable and explain why they can be resolved quickly, followed by the PRRB or its staff convening a conference call to address such issues. In our view, bringing the parties together early in the appeal can eliminate some or all issues quickly, minimizing the burden on all involved.

Conclusion

Thank you for the opportunity to provide input as you finalize the provider determinations and appeals rule. We look forward to more efficient and expeditious provider appeals processes and hope that you consider our suggested changes as you move forward. If you have questions regarding our comments please feel free to contact me or Maureen D. Mudron, Washington counsel, at mmudron@aha.org or 202-626-2301.

Sincerely,

Rick Pollack
Executive Vice President