

EXHIBIT 6



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ALJs Lay Path Forward For Stakeholders As Appeals Backlog Continues

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Providers, beneficiary advocates, contractors and other stakeholders this week gathered to hear what the Office of Medicare Hearings and Appeals has in the works to relieve the backlog of claims clogging the third level of the Medicare appeals system, and they were told, while there is no silver bullet, several initiatives are underway. OMHA outlined planned projects and improvements to help increase the Administrative Law Judges' efficiency while also acknowledging the burden the situation has placed on those waiting for appeals to be heard.

The office said it will formally seek stakeholders' advice on ways to handle the backlog and suggested one option is for those appealing to waive their right to a hearing to quicken the process. The office also revealed plans to prioritize beneficiary claims, hire more people, open a Central Time Zone office, explore alternate adjudication models including a pilot letting attorneys fast-track claims reviews, launch a slew of information technology initiatives, and write a manual injecting a degree of consistency across ALJs.

Chief Administrative Law Judge Nancy Griswold told stakeholders at the OMHA forum Wednesday (Feb. 13) that the wait times before providers and beneficiaries can get a Medicare appeal at the third level are unacceptable. The agency knows this, she said, and is committed to making changes -- but she added there is no silver bullet to solving the problems created by the ever-growing backlog of appeals. OMHA received more than 15,000 appeals per week as of January, Griswold said, and given those levels of appeals there is no one approach that will quickly provide a solution to the problem.

A letter from Griswold sent to those appealing claims in December says that because of "rapid and overwhelming increase in claim appeals, effective July 15, 2013, OMHA temporarily suspended the assignment of most new requests for an Administrative Law Judge hearing to allow OMHA to adjudicate appeals" already waiting in the backlog. OMHA also announced plans to hold a public forum.

The chief ALJ said that, as of January, those appealing claims were looking at a 28-month wait before appeals are assigned to an Administrative Law Judge, and OMHA has also noted a six-month wait after assignment before those appealing can expect a hearing. One ALJ suggested that cases might be handled quicker if those appealing waive their right to a hearing and put forth all of their arguments and evidence in writing, though he noted that is not always the best option.

A limited number of claims were starting to be assigned to ALJs as of Feb. 3, Griswold said. She also emphasized that beneficiary claims will be considered priority cases.

Notice seeking comment. OMHA plans to publish a notice asking stakeholders for their comments and suggestions on how to handle the backlog, Griswold said. Some, including the American Hospital Association, have already put forward suggestions.

New office and more resources. OMHA is also planning to open a Central Time Zone office, and Griswold told stakeholders that the agency has seen an 18.6 percent increase to its budget over last year. OMHA is looking to bring additional resources on board, Griswold said, but it will take time to hire and train more staff.

Alternative adjudication models. Jason Green, the director of the program evaluation and policy division at OMHA, said the agency is looking to "alternate adjudication models" to help handle the backlog, and Griswold said the agency is looking at greater group appeals, mediation, alternative dispute resolution and, if those appealing agree, statistical sampling.

Green said alternative options could provide more tools for reaching a resolution. The agency is also looking at using pilots to test alternative appeals models and demonstrate they are viable, Green said.

OMHA attorney case review pilot. One pilot under consideration would allow for OMHA attorney case reviews. Such a program could "fast track" claims that look like they may favor the person appealing or narrow issues for a hearing. If allowing the attorneys to review and settle appeals works, Green said OMHA would pursue regulations to allow for such a program outside of a pilot. While Green acknowledged this would be a longer-term solution, he said it is something to start looking at, and it could bring more efficiency to the process.

OMHA also has a slew of IT initiatives planned that as part of the solution.

A spokesperson for American Coalition for Healthcare Claims Integrity, which represents Recovery Audit Contractors, said the group would be open to the idea of alternatives, and would support efforts to speed up the appeals process -- provided the alternatives still followed Medicare policy. But the group would need more details before backing any specific appeals alternatives.

ALJ manual. Griswold and Green also said OMHA is working on a manual for ALJs, with a goal to create more consistency across the ALJs. Consistency among the ALJs has been a concern for the Office of Inspector General, which pointed out that the number of denials overturned varied greatly between the different judges.

The American Coalition for Healthcare Claims Integrity said that their central concern is the inconsistency of ALJ reviews and decisions. "While we welcome many of the proposals presented by OMHA officials to address this issue, such as the adjudication manual and ALJ educational symposia, we will continue to push OMHA to impose strict Medicare compliance requirements on the ALJ," the coalition said in a statement.

One stakeholder asked if the manual would be available for public comment. Griswold said the manual will be looking at uniformity, case process, and best practices, and as it will address internal practices, she had not envisioned having a public comment on the manual.

Griswold also noted that if you look at any judicial process, there will be some differences in the way judges decide cases. As long as the judges are with the framework of Medicare policy, the ALJs have the authority to apply the Medicare policy in the way their conscience dictates within the law.

Stakeholders at the forum noted the lack of consistency between decisions at the ALJ level and those at the first two levels of the appeals system, and some said the feedback loops between the different levels of appeals need to be tightened. One stakeholder questioned this inconsistency between the different levels of appeals, and as the ALJs are bound to Medicare policy, wondered if it would be fair to say that Medicare law had not been correctly applied in cases where denials were overturned by the ALJs.

Griswold said that while the ALJs are adhering to Medicare policy, the judges may reach a different conclusion than the lower appeals levels as they get to hear those appealing the case, and may see additional evidence, testimony and explanation during the hearing process.

Holistic approach. One of the silver linings to the clogged appeals process is that all levels of the appeals process are beginning to look at the appeals work holistically, Griswold said. Board Chair of the Medicare Appeals Council Constance B. Tobias noted that the council's workload is directly related to what OMHA processes, and noted that appeals at the fourth level have also increased. With the number of appeals the council is seeing, it is also unlikely to meet its 90-day deadline for deciding appeals, she added.

Green said that although many of the tools OMHA is considering will increase efficiency, the agency cannot address the cases only in terms of moving them faster through the process. There also needs to be a focus on quality, Green said.

One stakeholder suggested that OMHA should be trying to find ways to reduce the number of cases filed rather than focusing simply on how to process them quickly. Another said that the fact that the lower levels of the appeals system don't seem to be working is a systemic problem, and if that root problem is addressed some of the issues at the higher appeals levels will be resolved. -- *Michelle M. Stein*

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