

RAC News UPDATE

February 5, 2015

Obama's HHS budget request includes proposals to address Medicare appeals

President Obama's fiscal year 2016 budget request for the Department of Health and Human Services includes several legislative proposals to address the significant backlog in Medicare administrative law judge appeals. The legislative proposals are put forward by HHS's Office of Medicare Hearings and Appeals, which oversees the ALJs, and include:

- Allowing the Centers for Medicare & Medicaid Services to retain an increased portion of payments denied by Recovery Audit Contractors in order to pay for RAC-related appeals.
- Establishing a per-claim filing fee for providers and suppliers at each level of Medicare appeal. The fee would be returned to appellants who receive a fully favorable appeals decision.
- Increasing the minimum amount that must be at issue (known as the amount in controversy) for a claim to be adjudicated by an ALJ. The minimum amount in controversy would be the same as that for federal court (\$1,460 in 2015).
- Implementing a magistrate adjudication program for claims below the minimum amount in controversy.
- Remanding appeals to the first (Medicare Administrative Contractor) level of review when new documentary evidence is submitted at the second level of appeal or above.
- Allowing HHS to use sampling and extrapolation to adjudicate appeals and to consolidate appeals into a single administrative appeal at all levels of the appeals system.

OMHA predicts that it would receive an additional \$125 million from RAC recoveries and \$5 million from the appeals filing fee. The agency states this would allow an expansion in capacity from 77 to 196 ALJ teams, more than doubling its adjudication capacity.

RACs approved to begin therapy cap manual medical reviews

The Centers for Medicare & Medicaid Services notified AHA staff that it has approved the current Recovery Audit Contractors to begin post-payment complex reviews of certain Medicare claims for outpatient therapies. The statute requires manual medical review of

outpatient therapies provided to a Medicare beneficiary once payments for those therapies exceed \$3,700 in a year. RACs perform those reviews, but they had been on hold since last spring pending the award of new RAC contracts – a process that has been delayed by ongoing litigation. RACs will review outpatient therapy claims submitted by a facility and paid through the Fiscal Intermediary Shared System between March 1, 2014, and Dec. 31, 2014. CMS will allow RACs to issue additional documentation requests for a specified percentage of eligible claims every 45 days, such that all of a provider's eligible claims will be reviewed within five 45-day ADR cycles. Claims will be reviewed in the order in which they were paid. The agency has not yet determined how it will handle reviews for outpatient therapy claims paid in 2015.