



**American Orthotic &
Prosthetic Association**

Restore Due Process Rights & Proper Administrative Law Judge Timeframes

Background

There are five levels in the Medicare claims appeal process and the Administrative Law Judge (ALJ) is the third level; and the Office of Medicare Hearings and Appeals (OMHA) is the entity responsible for overseeing the ALJs. The ALJ level allows a supplier/beneficiary/provider the opportunity to present their appeal to a person who will independently review the materials provided and render a new decision in accordance with the law and not render a decision based on Medicare policy; and according to the HHS-OIG, ALJs reversed prior-level decisions and decided fully in favor of appellants in 56 percent of appeals in FY 2010.

Current ALJ/OMHA Statistics

- Currently there are 65 Administrative Law Judges
- Since 2010 there has been an 184% increase in the OMHA/ALJ workload
- In January 2012 the weekly average of requests for appeals filed was 1,250. In December 2013 the weekly average rose to 15,000
- In December 2013 the OMHA estimated the backlog of pending appeals grew from 92,000 claims to over 460,000 claims
- Requests for ALJ hearings in fiscal year 2009 totaled 36,000. In fiscal year 2013 the total was 351,000
- The number of appeals decided by an ALJ in fiscal year 2009 was 34,000 in fiscal year 2013 the number was 79,000
- OMHA anticipates that assignment of requests for ALJ hearings may be delayed for up to 28 months
- Average processing time for an appeal decided by an ALJ in fiscal year 2014 is 335.5 days, compared to 94.9 days in fiscal year 2009; 121.3 days in fiscal year 2011 and 220.6 days in fiscal year 2013

(Over)

This increased workload, number of appeals being filed, and the backlog being created is directly related to the increase in audit activity by Medicare and its contractors over the last few years. In an attempt to work through the backlog the OMHA has temporarily suspended the assignment of any new ALJ hearing requests as to claims appeals by providers (no interruption in assigning patient/beneficiary claims) and anticipates that assignment of requests for ALJ hearings may be delayed for up to 24 months, in essence halting the appeal process for up to two years. Before OMHA enacted the temporary suspension in assigning hearing dates for new appeals, O&P providers have already been forced to wait up to 26 months to get their appeal heard by the ALJ. This suspension will almost certainly make the wait even longer, in violation of the law.

However, this temporary delay doesn't halt all aspect of the audit process or provide any solace or break to suppliers/providers. During this two year delay any money CMS previously paid on claims, now denied through audits, is being recouped, with interest, and held by Medicare until the appeals process is completed. So, even though CMS through the OMHA has halted the appeals process they have not halted their collection activities. Also as this temporary delay drags on the audit appeals are continuing to pour in causing the supplier/provider to file more appeals; and increasing the ALJ backlog.

Recommendation

Congress emphasized the importance of quickly processing Medicare appeals when it passed the Medicare, Medicaid, and State Children's Health Insurance Program Benefits Improvement and Protection Act of 2000 (BIPA), which included a statutory requirement that ALJ's issue decisions no more than 90 days from the date the appeal request filing date.

CMS/OMHA continues to exceed the timeframe established by the BIPA statute and leaves Medicare providers without an adequate avenue of redress against CMS and its contracted auditors' (many of whom are compensated on a 'bounty' system) over payment denials of individual claims. Moreover, the growing backlog in provider appeals continues to put financial pressure on providers, many of whom operate small businesses that cannot afford to have cash flows endlessly held up in the appeal process. More than 100 O&P providers have closed their doors because of inadequate cash flow to meet their obligations which is also denying patients their needed care.

Please communicate to CMS Administrator Tavenner that CMS/OMHA continue to violate their statutory requirement to avail an ALJ hearing within 90 days, and compel them to suspend any new audits, including any overpayment recoupments, until ALJs are able to conform to the law; and normal adjudication timeframes are restored.

Justice Delayed is Justice Denied

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For more information contact the American Orthotic & Prosthetic

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