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**American Orthotic &  
Prosthetic Association**

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January 27, 2014

Hon. Marilyn Tavenner  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health of Human Services  
200 Independence Ave, SW  
Washington, DC

Dear Administrator Tavenner,

We are writing on behalf of the over 2,000 members of the American Orthotic and Prosthetic Association (AOPA) to express our concern about the Office of Medicare Hearings and Appeals' (OMHA) decision to temporarily suspend referrals of non-beneficiary-initiated appeals to ALJs. Judge Nancy Griswold recently announced this policy change, citing increased case backlogs and the agency's inability to comply with statutory adjudication timelines.

Unfortunately, while this change in policy is purported to allow OMHA to focus its resources, deprioritizing claims disputes based simply on their source does not address the underlying flaws in the existing appeal process and will not serve to reduce the total backlog of claims facing the ALJs. 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. **AOPA estimates that the policies and actions of CMS and your contractors (many of whom are compensated on a 'bounty' system) have already strangled the cash flow for principled and legitimate O&P health professionals through draconian, and unjustified audits to the point of putting roughly 100 such practices out of business.** The impact of these closings extends beyond economics and business – it directly and negatively affects people with limb loss and other mobility-impaired individuals as they lose the benefit of long-standing, clinically-beneficial relationships with their health care providers.

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. Sadly, OMHA freely admits that the current wait time for an ALJ

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hearing has ballooned to more than 5 times longer than dictated by BIPA (16 months). Worse, AOPA has received data demonstrating that OMHA forces some providers to wait as long as 26 months – *more than 8 times longer than BIPA's statutory requirement*.

With its decision to temporarily suspend the assignment of most new requests for an ALJ hearing by an estimated additional two years, OMHA continues to explicitly violate the BIPA statute and leaves Medicare providers without an avenue of redress against MACs, RACs, CERTs, ZPICs, and other auditors' payment denials of individual claims. This is a blatant infringement of O&P providers' statutory and due process rights and denies AOPA members the administrative appeal rights that HHS claims must be exhausted before judicial relief can be sought.\* The only means of partially mitigating this harm is for **CMS to suspend all of these audits until CMS and HHS put their house in order so that ALJ hearings are available within 90 days to conform to the law.**

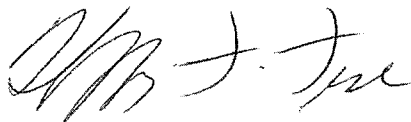
We can all agree that ensuring the health of Medicare beneficiaries is our priority. However, undermining the due process by which providers of health services resolve disputes over individual claims is not a sustainable solution to the burgeoning backlog of ALJ hearing requests, a backlog created by CMS' overly aggressive audit policies.

We appreciate your consideration of this request, would be pleased to discuss further these concerns, and look forward to your reply to our request for suspension of audits. If you have any questions, please do not hesitate to contact either of us.

Sincerely,



Anita Liberman-Lampear, MA  
President



Thomas F. Fise  
Executive Director

\*AOPA does not recede from its view that exhaustion of administrative appeals is not required to challenge the new documentation standards in the August 2011 "Dear Physician" letter.