DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

MAR 14 2014

Ms. Anita Liberman-Lampear
President
American Orthotic and Prosthetic Association
330 John Carlyle Street, Suite 200
Alexandria, VA 22314

Dear Ms. Liberman-Lampear:

Thank you for your letter regarding the significant delays in assignment of appeals to Administrative Law Judges (ALJs). I appreciate and share your concern regarding the delays and the effect on Medicare providers.

As you know, the Centers for Medicare & Medicaid Services (CMS) has responsibility for establishing policy for the Medicare appeals process and overseeing the lower level appeals contractors and the Recovery Audit Program. Operations at the ALJ level are overseen by the Office of Medicare Hearings and Appeals (OMHA). We agree that collaboration and cooperation between CMS and OMHA is important to ensuring an efficient Medicare appeals process.

To support this effort, CMS meets regularly with OMHA to discuss programmatic and operational issues and explore opportunities to improve the appeals process, while still ensuring the independence of the ALJs. In addition, the Secretary convened a cross-agency workgroup to look at current appeals processes and regulations to find ways to quickly reduce the backlog and make appeals processes more streamlined and efficient. We are working diligently to identify short and long-term solutions that can be implemented expeditiously. As announced by Chief Judge Nancy Griswold at the OMHA Appellant Forum on February 12, 2014, the Department will also be publishing a Federal Register notice to solicit comments on ways to reduce the backlog and improve the claim appeals process.

Concurrent with these efforts, CMS is committed to ensuring proper payments are made on behalf of patients and taxpayers, and reducing the estimated $36 billion in improper payments found in the Medicare Fee-for-Service Program in 2013. Working with our stakeholders, we have identified a number of improvements that will refine and improve the Medicare Recovery Audit Program. In addition, as announced on February 18, 2014, while CMS is working on awarding the next round of contracts for the program, there will be a transition phase for the Recovery Auditors to complete all current claims reviews and other processes by the end date of the current contracts. This pause in review operations will allow CMS to continue to refine and improve the Recovery Audit Program. Reviews will resume under the new contracts. Therefore, the length of the pause will depend on the process of awarding new contracts.

Ensuring accurate Recovery Audit Program determinations is critical for reducing the burden on providers and minimizing the number of appeals of Recovery Auditor decisions. Currently, CMS contracts with an independent entity that reviews a random sample of claims from each

Recovery Auditor to establish an accuracy rate, which is a measure of the accuracy of each Recovery Auditor's overpayment and underpayment determinations. The combined accuracy rates for the Recovery Auditors are consistently above 90 percent. In addition, a Recovery Auditor must demonstrate that its review methodology complies with CMS policy prior to an Auditor reviewing specific claims. A panel of CMS experts also reviews and approves the methodology before the Recovery Auditor can select claims.

Under the law, providers have the ability to delay recoupment of an overpayment determination through the first two levels of appeal. Section 1893(f)(2)(a) of the Social Security Act prohibits CMS from recouping Medicare overpayments until a reconsideration by a Qualified Independent Contractor is made. Also, once a final determination is rendered, providers who do not wish to pay their overpayment in full or who do not want recoupment initiated or resumed may request an Extended Repayment Schedule (ERS) to pay the debt over a period of up to 60 months. Providers can contact their corresponding Medicare Administrative Contractor (MAC) that processed the claim(s) at issue or visit the MAC's website for information on requesting an ERS.

Thank you for providing your concerns and suggested improvements. Please feel free to contact me with any additional questions or concerns. A copy of this response will also be sent to Mr. Thomas F. Fise.

Sincerely,

Marilyn Tavenner