

Hospitals File Lawsuit Over Medicare Administrative Law Judge Hearings Delays

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Health Care

Over 460,000 appeals requesting hearings before an administrative law judge (ALJ) were pending in the **Office of Medicare Hearings and Appeals** (OMHA) at the end of 2013, with 15,000 new appeals being submitted each week. At the beginning of 2014, OMHA suspended any further assignments of appeal requests by providers for a period of up to 28 months. The suspension applies to cases received by OMHA after July 15, 2013. The tremendous increase in appeals is directly related to the expanded number of Medicare contractors reviewing claims and the expanded volume of claims reviews.

The moratorium by **OMHA** prompted the **American Hospital Association** (AHA) to sue the **U.S. Department of Health and Human Services** (HHS) on May 22, 2014, to force the secretary of HHS to meet deadlines required by statute for reviewing denials of **Medicare claims**. In its lawsuit, AHA asserts that providers may wait up to five years to complete four levels of administrative appeals. Federal regulations require the ALJ hearing appeals to be completed within 90 days following the date the request is received by OMHA. If this timetable is not met, the only remedy available is escalation to the Departmental Appeals Board (DAB) where similar delays are common. If the DAB does not decide the appeal within 180 days, escalation is allowed to the federal district court. These remedies are of little practical value to providers.

The delays have hurt providers in many ways. ALJ reviews have consistently led to high rates of reversals of claim denials. In addition, Medicare providers are impacted by the recoupment of alleged overpayments during the expected 30 months they must wait for an appeal to be assigned and heard by an ALJ.

HHS and OMHA have taken steps to address the problem. Provider reviews by recovery auditors were suspended at the end of February 2014. When the RA audit program resumes with new contractors, new guidelines will be in place that are designed to reduce the number of claims reviewed and to facilitate resolution of audit findings at the contractor level. It is hoped this will result in the filing of fewer administrative appeals. Initiatives by OMHA to assist providers impacted by the delays are described on its website (<http://www.hhs.gov/omha>), including “best practice” guideline tips for providers filing hearing requests.

Notwithstanding these measures, the moratorium on assigning cases for hearing remains in place

and the backlog continues to grow. As AHA alleges in its lawsuit “OMHA has admitted that it is not meeting statutory deadlines and will not be able to do so any time the near future.”

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