

January 29, 2014

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

I am writing to express my continued concern over the significant delays in processing Medicare appeals at the U.S. Department of Health & Human Services' Office of Medicare Hearings and Appeals (OMHA). Recently, a memorandum from OMHA warned health care providers of new operational changes that will suspend the adjudication of most new appeals cases for 24 months and that post-assignment hearing wait times will continue to exceed 16 months. Even with these changes, OMHA will only address the existing caseload and will not solve the massive influx of appeals coming into the office daily.

As a result of the flawed Medicare appeals process, hospitals have millions of dollars frozen until their Recovery Audit Contractor (RAC) cases are fully resolved. These hospitals are being forced to divert already scarce resources away from caring for patients to appeal audit decisions that end up being overturned a large majority of the time. After several years of warnings from OMHA about the growing backlog in cases, the Department has not addressed the underlying issue of why there continues to be an increase in hospitals filing appeals, or why over half of the cases sent to OMHA are ultimately overturned. Without solving the fundamental problem, the appeals process will continue to be severely overwhelmed, inefficient, and unworkable.

As Ranking Member of the Senate Appropriations Labor-HHS-Education Subcommittee, I raised concerns about this issue numerous times this past year to no avail. In April at the Labor-HHS-Education appropriations hearing, you and I had the opportunity to discuss the Centers for Medicare and Medicaid Services' (CMS') plan on addressing the increasing number of appeals due to inconsistent RACs. I was pleased you noted that you were working on ways to address the issue, but since then, nothing has resulted to stem the tide of appeals. In July, at my request, the Senate FY2014 Labor-HHS-Education appropriations bill included report language urging OMHA to work with providers to ensure that only a small number of cases are ultimately appealed. This language was also included in the Consolidated Appropriations Act of 2014, in

addition to a request for CMS to include in its annual report to Congress the steps it has taken to implement a systematic process in both federal and contractor-operated programs to prevent fraud, waste, and abuse. In August, I wrote to you for an update on the Department's efforts to improve the RAC program. Your response in October stated that the majority of the appeals were due to hospitals incorrectly billing for inpatient versus outpatient services and the letter did not address the core problems that continue to plague the appeals process.

The Consolidated Appropriations Act of 2014 provided OMHA the amount requested by the Department, a \$14.1 million increase which is 21 percent higher than FY2013 with sequester. I am concerned that, after passage of this bill, the Department has now indicated this amount of funding will not alleviate the backlog nor was it ever meant to. Further, I do not understand why the Department chose to delay the assignment of cases at OMHA as opposed to suspending RAC audits until the appeals process could catch up with its current workload. Why are hospitals and health care providers being penalized for appealing decisions that are overturned more than half of the time? Clearly the issue to be resolved is at the early stages of the appeals process and not mid-way through it.

I support efforts to prevent waste, fraud, and abuse in the Medicare system and want to work with you to achieve this objective. However, we need to balance this effort in a way that does not place undue burdens on hospitals and health care providers. After years of disregarding warning signs, the Department is now scrambling to find a solution before the entire Medicare appeals process completely breaks down. I urge you to implement solutions now that address the root cause of this problem to both improve the appeals process and strengthen patients' access to hospitals and health care providers. I look forward to continuing to work with you to find adequate solutions for this important issue.

Sincerely,



Jerry Moran

cc: The Honorable Marilyn Tavenner, Administrator, Centers for Medicare and Medicaid Services and The Honorable Nancy J. Griswold, Chief Administrative Law Judge, Office of Medicare Hearings and Appeals