

Update: CMS Announces Two New Initiatives to Reduce Medicare Appeals Backlog

The Centers for Medicare & Medicaid Services (“CMS”) recently announced two new initiatives intended to reduce the growing backlog of Medicare appeals. The number of Medicare appeal requests submitted to the Office of Medicare Hearings and Appeals (“OMHA”) has increased exponentially over the past two years, from approximately 1,250 per week in 2012 to 15,000 per week this year. As a result of this increase, the [average processing time](#) for requests is 464 days as of June 2014, and appellants in over one million appeals are awaiting an Administrative Law Judge (“ALJ”) hearing. In a previous [client advisory](#) we outlined steps providers can take to help OMHA deal with the backlog and alluded to initiatives CMS was considering to make the appeals process more efficient. Now CMS has implemented two of those proposals: the [Settlement Conference Facilitation Pilot](#) program and the [Statistical Sampling Initiative](#). While neither initiative is expected to eliminate the backlog overnight, they should help reduce it by increasing the efficiency of adjudicating a large number of appeals with similar issues brought by a single provider.

Settlement Conference Facilitation Pilot

The Settlement Conference Facilitation (“SCF”) pilot program uses an alternate dispute resolution process to bring CMS and the provider together to negotiate a resolution for Medicare appeals with the help of a third party facilitator. The facilitator will be an employee of OMHA, which is a separate agency from CMS. The facilitator does not serve as a fact finder and instead uses mediation principles designed to help CMS and the appellant evaluate their positions. The goal is to have the two parties come to a mutually agreeable settlement, which will in turn dismiss requests for an ALJ hearing for the covered claims. Neither CMS nor the appellant has an obligation to reach a settlement and if one cannot be reached the appealed claims will return to the ALJ hearing process.

CMS lists a number of criteria that must be met to make an appeal eligible for the SCF process:

- A request for hearing must appeal a Qualified Independent Contractor (QIC) reconsideration of a claim for Medicare Part B items or services;
- The appellant must be a Medicare provider or supplier;
- The beneficiary must not have been found liable after the initial determination or participated in the QIC reconsideration;
- All jurisdictional requirements for a hearing before an ALJ must be met for the request for hearing and all appealed claims;
- The request for hearing must have been filed in 2013 and not be currently assigned to an ALJ;
- The amount of each individual claim must be less than \$100,000. For the purposes of an extrapolated statistical sample, the extrapolated amount must be less than \$100,000.
- At least 20 claims must be at issue, or at least \$10,000 must be in controversy if fewer than 20 claims are involved;
- There cannot be an outstanding request for OMHA statistical sampling for the same claims; and
- The request must include all of the appellant’s pending appeals for the same item or service at issue that meet the SCF criteria. For example, if an appellant has 50 wheelchair appeals pending that meet the requirements above, the appellant must submit a request for SCF for all 50 wheelchair appeals.
 - ◊ Appellants may submit an SCF request for appeals involving multiple items or services, provided the appellant has included all of the appeals that meet the above eligibility requirements in its SCF request,

- for all of the items or services involved in the appeals.
- ◇ Appellants may not request an SCF for some but not all of the items or services included in a single appeal. For example, if an individual appeal has at issue 10 diagnostic tests and 10 drugs/biologicals, an appellant may not request that the diagnostic tests go to SCF and the drugs/biologicals go to hearing.

The number of appeals eligible for SCF is limited at this time. Medicare Part A, Medicare Part C, Medicare Part D, and appeals of Social Security Administration decisions regarding entitlement, Part B late enrollment penalties, and Part B and Part D income related monthly adjustment amounts are not currently eligible for SCF. Providers must submit a written request for SCF. The SCF process is based out of OMHA's headquarters in Arlington, Virginia, but video-conference facilitations are also available. To learn more about the SCF process, CMS has posted a [fact sheet](#) and [flowchart](#) on its website.

Statistical Sampling Initiative

The Statistical Sampling Initiative ("SSI") is designed to increase the speed of adjudication for appellants with a large number of claims at the ALJ hearing level of the appeals process. An OMHA statistician will randomly select a sample from all of a provider's claims according to [Medicare guidelines](#). An ALJ will then review the sample and make a decision based on the selected claims. After a decision is issued a CMS contractor will extrapolate it to all of the appellant's claims.

CMS requires the following criteria be met in order for claims to be eligible for the SSI:

- A request for hearing must appeal a Medicare Qualified Independent Contractor (QIC) reconsideration decision.
- The appellant must be a single Medicare provider or supplier (if multiple providers or suppliers with multiple National Provider Identifiers (NPIs) are owned by a single entity, the owning entity may serve as "a single provider or supplier" provided that the owning entity agrees to accept any payment that may be due from Medicare as a single payment, or agrees to make any payment that may be due to Medicare as a single payment).
- All jurisdictional requirements for a hearing before an ALJ must be met for the request for hearing and all appealed claims.
- The beneficiary must not have been found liable after the initial determination or participated in the QIC reconsideration.
- The claims must be currently assigned to one or more ALJs or have been filed during the time period currently being assigned by OMHA Central Operations – at this time, that includes appeals that were filed between April 1, 2013, and June 30, 2013.
- No hearing on the claim has been scheduled or conducted.
- There must be a minimum of 250 claims and all claims must fall into only one of the following categories:
 - ◇ Pre-payment claim denials;
 - ◇ Post-payment (overpayment) non-Recovery Audit Contractor (RAC) claim denials; or
 - ◇ Post-payment (overpayment) RAC claim denials from one RAC.
 - ◇ There cannot be an outstanding request for Settlement Conference Facilitation for the same claims.

The SSI can be initiated by either an appellant request or in response to an offer from OMHA. It is important to note that while it is an optional program, it becomes binding after an ALJ confirms appellant consent to the program in a pre-hearing conference. To learn more about the SSI, see CMS' [fact sheet](#).

Next Steps

While these initiatives are steps in the right direction to reduce the ALJ appeal backlog, providers and suppliers are left to weigh the pros and cons of participating in either program. The SSI could produce big wins or big

losses for a provider with a large number of similar appeals. The SCF program is promising, but limited only to Medicare Part B claims at this time. Providers and suppliers should evaluate the strength of their cases and have a full understanding of the underlying law and coverage policies at issue in their appeals before entering into either program.

HDJN's Reimbursement team is closely following developments in this area and will publish updates to this Client Advisory as CMS and OMHA continue to implement changes. If you are interested in using SCF or the SSI for your Medicare appeals, or have questions about either program, please contact a member of HDJN's Reimbursement team:

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