

In The News

Memo Could Be Catalyst In Audit Battle

01.17.14

Home Medical Equipment News

A recent memo from the chief administrative law judge (ALJ) makes it clear that the Office of Medicare Hearings and Appeals (OMHA) is in over its head.

In the Dec. 31 memo, which was sent to providers who currently have appeals pending, Chief ALJ Nancy Griswold states that the office's workload has increased 184% since 2010 and that the average number of appeals received each week has increased from 1,250 to 15,000. The office currently has a backlog of 357,000 appeals.

As a result, the OMHA has suspended the assignment of hearings for appeals going back to July 15, 2013, and warned that it could take as long as 24 months before it resumes activity. By law, providers who file an appeal must receive a decision within 90 days.

"You can't have a two-year backlog, but if you do, you need to stop auditing claims that are going to end up in the appeals process," said Kim Brummett, senior director of regulatory affairs for AAHomecare. "This isn't a DME issue; it's a healthcare issue."

Stakeholders have seized on the memo to make their case. The VGM Group last week sent letters to Griswold and to Sen. Chuck Grassley, R-Iowa, urging CMS to, among other things, suspend audits immediately and stop recoupments on current claims denials that are waiting for an ALJ hearing.

Industry attorneys are also exploring judicial options to see whether due process is being denied.

"We're looking to see if there's some sort of constitutional tort or wrong with this to see if it would rise to that level," said Rick Addison, a partner with Munsch Hardt. "There's a punitive aspect in having timelines run against you and costs being incurred while you are waiting for a hearing. Some of these folks will never have a hearing because they'll be driven out of business."

Stakeholders place the blame squarely on an audit system run amok, with increased types of audit contractors—ZPIC, RAC, CERT—denying claims for technical reasons. That has led to a surge in providers filing appeals with the ALJ, where 56% of the time they win, according to a 2012 report from the Office of Inspector General.

"They get overturned routinely because they never should have been denied in the first place," said Steve Azia, counsel at Baker Donelson. "I handle a lot of claims that should never get to the ALJ."

It's gotten so bad that even a favorable ALJ decision won't necessarily safeguard providers against further audits from other contractors, stakeholders say.

"We've got claims that are getting looked at four or five times by different contractors," said John Daniel, president of Superior Medical Supply in Clarksville, Tenn. "We tell them we've already been to the ALJ and the response is, 'Well, you'll be going to the ALJ again.' We won the last time, so yeah, we'll be going again."

OMHA will host a daylong forum Feb. 12 to discuss its workload and provide information on initiatives to make the appeals process more efficient. Currently, the forum is an in-person-only event, but the office is considering adding a phone-in or live stream component.

By: Theresa Flaherty

Primary Contacts



Frederick Addison

Dallas
214.855.7570
raddison@munsch.com

Related Practices

Litigation
Appellate
Environmental
Regulatory Law

Related Industries

Health Care