

## Part B Insider (Multispecialty) Coding Alert

### Are Medicare Appeal Fees In Your Future?

**OMHA proposals to shorten appeals timeframes could restrict your appeal rights, advocates warn.**

In addition to increasing the HHS Office of Medicare Hearings and Appeals' funding to double the Office's capacity for processing appeals, Chief Administrative Law Judge **Nancy Griswold** also suggested the following legislative reforms in her testimony before the Senate Finance Committee:

- **Utilize RAC collections.** Use part of the money that the Recovery Audit Contractor program recovers to fund the program's administration and the appeals process for RAC-related appeals.
- **Establish a refundable filing fee.** Institute a refundable per-claim filing fee for providers, suppliers, and Medicaid State Agencies, including those acting as a beneficiary representative, at each level of appeal. Appellants who receive a fully favorable determination would receive a refund of their filing fees. "A filing fee would encourage those who frequently file to more carefully assess the merits of their appeals before filing," Griswold noted.
- **Consolidate similar claims.** Allow the adjudication of large numbers of similar claims appeals using sampling and extrapolation techniques, without the appellants' consent. Griswold also suggested authorizing the consolidation of similar appeals into a single administrative appeal at all levels of the appeals process for adjudicative efficiency. All appeals included within an extrapolated overpayment or consolidated previously would remain part of the extrapolated or consolidated file on appeal.
- **Remand to lowest appeal level when new evidence arises.** When a party submits new documentary evidence into the administrative record at the second appeal level or above, Griswold proposed that OMHA remand the appeal back to the first review level at CMS. Griswold believes that this proposed change would create "a strong incentive for all evidence to be produced early in the appeals process and to ensure the same record is reviewed and considered at the second and subsequent levels of appeal."
- **Increase the minimum amount for ALJ adjudication.** Griswold recommended increasing the minimum amount in controversy required for adjudication by an ALJ to the Federal district court amount requirement (currently \$1,460).
- **Establish magistrate adjudication for smaller claims.** Also, Griswold's proposal would allow OMHA to use attorney adjudicators to resolve appeals that meet the current ALJ amount in controversy threshold (\$150) but fall below the amount currently required to file an appeal in Federal district court (\$1,460).
- **Expedite appeals with no material fact in dispute.** The proposal would allow OMHA to issue decisions without holding a hearing when no material fact is in dispute and a binding authority governs the decision (i.e., appeals in which Medicare does not cover the cost of a particular drug or the ALJ cannot find in an appellant's favor due to binding limits on authority).

#### Advocates Push Back On OMHA Proposals

The Center for Medicare Advocacy (CMA) is among many parties that aren't impressed with OMHA's proposed changes.

"We are greatly alarmed at these proposals, which would further restrict access to meaningful reviews," the CMA stated. "The primary way that OMHA proposes to deal with the backlog is to limit access to ALJ hearings □ diminishing, rather than enhancing, due process rights."

For example, the CMA warned that establishing a refundable filing fee "will deter providers and suppliers from rendering assistance to beneficiaries, and prevent Medicaid State Agencies, subrogated to the rights of the poorest Medicare beneficiaries, from seeking just and proper coverage from Medicare." Also, remanding appeals to the redetermination (first) level would further subject beneficiaries to the 98-percent denial rate at this lowest appeals level, the CMA said.