

Health Information Compliance Alert

Industry News: Feds Change to Merit-Based Appointments for ALJs

Administrative law judges (ALJs) are part of HHS and preside over agency cases and disputes that involve fraud, eligibility, abuse, and HIPAA. The feds are using new criteria to vet and appoint them.

In the past, ALJs were selected by agency officials, but a Supreme Court ruling last June, related to ALJs at the Securities and Exchange Commission, put into question how ALJs are appointed at HHS, an agency release said. The Court ruled that only the President, heads of departments, or court leaders could appoint "officers of the United States."

Now: On Jan. 8, HHS announced how Secretary Alex Azar will now select ALJs in the future.

The new selection and appointment process, which is effective immediately, is a merit-based initiative, noted the release.

"Under this merit-based process, HHS has established required and desired qualifications for ALJ candidates that meet the needs of the [Office of Medicare Hearings and Appeals] OMHA and [Departmental Appeals Board] DAB for their ALJs," the agency explained. "Career officials with extensive experience in administrative law and HHS programs will make recommendations to the Secretary of Health and Human Services, who will then select and appoint the top candidates."

Azar, however, will have the final say and will not seek advice on candidates or decisions, the HHS release indicated.

Sidenote: Despite the challenges this abrupt change brings, HHS intends to stick with its new policies. "These changes will not only allow the department to appoint ALJs more quickly and maintain the critical independence that the American people expect, but will also allow us to ensure HHS ALJs have the knowledge and skills necessary for working at the department from day one," the release said.

Read about the ALJ appointment changes at

www.hhs.gov/blog/2019/01/08/new-merit-based-process-for-appointing-administrative-law-judges.html.