



January 15, 2014

The Honorable Charles Grassley
United States Senate
Hart Senate Office Building # 135
Washington DC 20510

Mr. Ronald Bendell
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I write today to express my extreme dismay with the current appeals process governing Medicare-sanctioned audit programs for durable medical equipment, orthotics and prosthetics supplies (DMEPOS).

It has come to my attention that the massive acceleration of audits pertaining to DMEPOS claims that are identified as potentially improper by Medicare independent audit contractors has led to a backlog of nearly 460,000 claims, causing unreasonable delays in the appeals process for adjudication.

The attached letter recently sent to those currently awaiting an Administrative Law Judge (ALJ) hearing is appalling. In the letter, Chief Administrative Law Judge Nancy Griswold informs providers of a temporary suspension of assigning appealed cases an ALJ hearing date as of July 15, 2013. This suspension has irreparably harmed providers awaiting an appeal. How can audit contractors continue to audit claims if there is no adequate appeals process in place to offer providers?

Additionally, according to current rules governing Medicare audit programs and appeals, after a provider has exhausted the first two levels of appeal (reconsideration and redetermination), the provider has until 31 days following their appeal to the ALJ to pay the balance of the audited claim. Providers can choose to pay the amount in full, enter into a high-interest payment plan with The Centers for Medicare and Medicaid Services (CMS), or CMS will begin garnishing current claims reimbursement until the debt is satisfied.

Considering the two year delay in receiving an ALJ hearing date, how can CMS continue to hold providers to this arbitrary and capricious date for payment while simultaneously suspending the appeals process?

Current rules also require Administrative Law Judge's to issue a ruling within 90 days of receiving an appeal. However, as the attached document from the Chief Administrative Law Judge outlines, the backlog for an ALJ hearing and subsequent ruling is nearly two



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years. There is currently a backlog of more than 460,000 audits appeals claims for just 65 judges nationwide. It is hard to imagine a worse scenario for small medical providers.

I respectfully request that you inquire as to the legality of continuing current audit programs even as CMS is denying due process to providers who seek an appeal to an Administrative Law Judge, as is their right under current rules. It is simply unconscionable for CMS to recoup dollars associated with appealed claims prior to an appeal, or in the absence of an appeal. The appeals system is overloaded and broken, but audits have continued unabated. Independent medical providers and the beneficiaries they serve need your help.

I have attached a letter from VGM Group General Counsel to Chief Administrative Law Judge Nancy Griswold that outlines several potential remedies to this perilous situation for independent medical providers. Please feel free to contact me directly with any questions or for additional information. Thank you in advance for your prompt attention to this matter.

Sincerely,

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