

PUBLICATION

OMHA Announces Two New Programs to Process Administrative Law Judge (ALJ) Hearings More Efficiently [Ober|Kaler]

August 21, 2014

Earlier this year, the Office of Medicare Hearings and Appeals (OMHA) announced that for most hearing requests received after April 1, 2013, it will be deferring assignment of ALJs. OMHA's announcement is available on its website at www.hhs.gov/omha. We published an article titled "Highlights from OMHA's Medicare Appellant Forum," that described OMHA's forum for the public on February 12, 2014, in which Judge Nancy Griswold, OMHA's Chief Administrative Law Judge, and other OMHA personnel provided an update on the ALJ hearing process.

At this forum, Jason Green, Director of Program Evaluation & Policy Division at OMHA, provided an overview of initiatives OMHA was exploring to address the workload. Some suggestions offered by Mr. Green to improve case processing included alternate adjudication models, such as statistical sampling and mediation of claims. Recently, OMHA announced that it implemented the following proposals: the Settlement Conference Facilitation Pilot Program and the Statistical Sampling Initiative. Below is a summary of both programs.

The Settlement Conference Facilitation Pilot Program

This program is a pilot alternate dispute resolution program that OMHA designed to bring the appellant and CMS together to discuss a potential mutually agreeable resolution of the claims appealed to the ALJ hearing level of the Medicare claim appeals process. The process involves a settlement conference facilitator (Facilitator), who is an employee of OMHA and uses mediation principles to assist the appellant and CMS to reach a mutually agreeable resolution. The Facilitator does not make official determinations on the merits of the claims at issue. The Facilitator also does not act as a fact finder. If the appellant and CMS reach a resolution, they will sign a settlement document drafted by the Facilitator reflecting the agreement. Part of the agreement includes the dismissal of the ALJ hearing requests covered by the settlement.

OMHA's website for the Settlement Conference Facilitation Pilot Program contains a list of eligibility requirements to participate in this process. Some of these requirements include that the appellant must be a Medicare provider or supplier, and that the amount of each individual claim must be less than \$100,000. To participate in this program, the appellant must complete a written request for a Settlement Conference Facilitation and fill out a spreadsheet providing detailed information regarding the claims that are subject to the request. Rejection of a request for a Settlement Conference Facilitation is not appealable.

OMHA's Settlement Conference Facilitation Pilot Fact Sheet Fact answers additional industry questions. This program applies only to unassigned ALJ hearing requests filed in 2013. The Fact Sheet states that settlement agreements are not appealable. Also, if the parties do not reach a settlement, the appealed claim(s) will return to the ALJ hearing process for adjudication in the order the request for hearing was received.

For more information on the Settlement Conference Facilitation Pilot Program, please visit OMHA's website.

The Statistical Sampling Initiative (SSI)

The SSI provides appellants with an option to address large volumes of claim disputes at the ALJ hearing level by using statistical sampling to draw a random sample from a universe of claims and extrapolate the sample's results to the entire universe of claims. The appellant may request statistical sampling or OMHA may offer statistical sampling. An OMHA employee, called a statistical sampling coordinator, will serve as the central point of contact for the appellant.

An ALJ will conduct a pre-hearing conference to confirm consent for the statistical sampling and address other matters. The ALJ will issue a pre-hearing conference order, which becomes binding, and the appellant's appeals will be combined into a single appeal that is assigned to a new ALJ for hearing on the sample units selected by the OMHA statistical expert. This trained and experienced statistical expert will conduct the statistical sample, and this person will develop the appropriate sampling methodology in accordance with Medicare guidance, and randomly select the sample units. The ALJ will review the sample and make findings and issue a decision based on this sample. After the ALJ conducts the hearing and issues a decision, the decision on the sample units will be extrapolated to the universe of claims by a CMS contractor and the decision will be effectuated based on the extrapolated amount.

OMHA's website for the SSI contains a list of appeal eligibility requirements. One of the requirements includes having a minimum of 250 claims that fall into one of the three listed 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.

OMHA's Statistical Sampling Fact Sheet answers additional questions that Medicare providers and suppliers may inquire. OMHA is conducting statistical sampling for appeals currently assigned to ALJs, or appeals currently being assigned by OMHA Central Operations (which includes appeals filed between April 1, 2013 and June 30, 2013). An appellant is permitted to request a statistical sampling for claims from multiple providers or suppliers only if these are owned by a single entity that agrees to the requirements for payment.

For more information on the Settlement Conference Facilitation Pilot Program, please visit OMHA's website.

Ober|Kaler's Comments

OMHA announced these proposals at its forum on February 12, 2014. By implementing these two proposals less than six months after publicly announcing them, OMHA shows that is listening to providers' and suppliers' frustrations with the appeals backlog. OMHA is taking steps in the right direction to reduce the backlog; however, these proposals are currently limited to a small subset of appeals and, therefore, are not likely to have an immediate impact on the appeals backlog. Providers and suppliers should take advantage of these two new proposals to streamline their appeals processes when they are eligible to participate.