



Herb B. Kuhn
President and Chief Executive Officer
P.O. Box 60 • Jefferson City, MO 65102-0060
Phone: 573/893-3700 • Fax: 573/893-2809
www.mhanet.com

January 9, 2014

The Honorable Roy Blunt
U.S. Senator
260 Russell Office Building
Washington, DC 20510-0001

Dear Senator Blunt:

The Medicare Recovery Audit Contractor program has become an administrative quagmire. The enclosed letter from the Department of Health and Human Services' Office of Medicare Hearings and Appeals recently was sent to some Missouri hospitals. Essentially, the OMHA is completely overwhelmed by an exponential growth in appeals and has *"temporarily suspended the assignment of most new requests for an Administrative Law Judge hearing to allow OMHA to adjudicate appeals involving almost 357,000 claims for Medicare services and entitlements already assigned to its 65 Administrative Law Judges."* The OMHA is the third level of administrative review in the Medicare claim and entitlement appeals process.

While the OMHA hears appeals other than payment challenges other than Medicare RAC payment denials, there is no doubt that the flawed RAC program is a major contributor. According to the American Hospital Association, appeals of RAC payment denials increased by 126 percent between the third quarters of 2012 and 2013. Based on past experience, most of the RACs' payment denials turn out to be a waste of the government's time and money. While the exact percentage may be in dispute, the AHA indicates that two-thirds of the Medicare RACs' payment denials are overturned on appeal.

The OMHA letter provides ample evidence of a system in chaos. In two years, the OMHA backlog has grown from 92,000 to over 460,000 and "continues to rise." Weekly receipts of appeals grew from 1,250 in January 2012 to 15,000 in November 2013. According to the OMHA, "the average wait time for an Administrative Law Judge hearing has risen to 16 months and is expected to continue to increase as the backlog grows." The current backlog of cases is 5,945 per Administrative Law Judge.

This is unconscionable. Providers aggrieved by a RAC payment denial — and who are twice as likely to win the appeal as to lose it — are placed in administrative purgatory for years. There is no conceivable way this can constitute adequate due process. Meanwhile, funds that could be better used to care for Medicare beneficiaries are tied up.

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To its credit, the OMHA is convening a forum to explain its predicament and the steps it is taking to avoid drowning while lashed to an anchor. However, a forum won't fix the problem. Something must be done to stop the RACs' force-feeding the system with unsustainable payment denials. Nine of the 10 members of the Missouri congressional delegation are lead sponsors or co-sponsors of legislation to bring more accountability to the Medicare RAC process. These bills or other comparable actions are needed to address this seemingly inexorable catastrophe now.

We ask for your continued intervention on behalf of Missouri's hospitals to address the increasingly egregious failings of the Medicare RAC program as it is being implemented under current law and regulations. We look forward to collaborating with you on this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DL', with a long horizontal flourish extending to the right.

Daniel Landon
Senior Vice President of Governmental Relations

dl/cml

enclosure

c Kathleen Sebelius