**Medicare Red Tape Relief Project**

Submissions accepted by the Committee on Ways and Means, Subcommittee on Health

Date: August 25, 2017

Name of Submitting Organization: Physicians Advocacy Institute

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Statutory ✓

Regulatory

**Please describe the submitting organization’s interaction with the Medicare program:**

PAI is a not-for-profit advocacy organization focused on securing fair and transparent payment for physicians. PAI’s Board is comprised of CEOs/former CEOs of state medical associations from California, Connecticut, Georgia, Nebraska, New York, North Carolina, South Carolina, Tennessee and Texas, and a Kentucky physician. A significant portion of the members of these and other states’ medical societies treat Medicare patients and submit claims to Medicare.

**Short Description**: Need to reform the Medicare Recovery Audit Program’s system for compensating Recovery Audit Contractors’ (“RACs”) on a contingency basis.

**Summary:**

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| The contingency fee payment system creates a conflict of interest by perversely incenting RAC contractors to inflate their audit findings, resulting in inaccurate audits and erroneous overpayment findings. Many members of Congress have recognized this problem, stating in a February 10, 2014 letter to then HHS Secretary Sebilius: “Due to this payment structure, RACs are incentivized to deny claims, even when the claims are correct.” The Senate Special Committee on Aging has also recognized the problem with the current incentive system. In its staff report *Improving Audits: How We Can Strengthen the Medicare Program for Future Generations,* the Committee Staff found: “The RAC program pays its contractors based on the amount of improper payments identified through their audits. This creates an incentive to keep improper payments high, rather than to educate providers about how they can better prevent improper payments in the future.” (p. 39) In addition, the Appeal Fairness, Integrity and Reform in Medicare Act (AFIRM), which was reported on a bipartisan basis out of the Senate Finance Committee in 2015, required CMS to study and to provide recommendations to Congress on replacing the incentive payment system without financially burdening providers.  The contingency fee system does not impose any liability on the RACs for errors, which has in turn resulted in the large appeals backlog at the Office of Medicare Hearings and Appeals, significant delays in physician payments, and time and expense wasted by both physicians and government personnel on appeals that would have been unnecessary if the initial audit findings had been accurate. Reforming the RAC compensation system would promote accurate audit determinations and protect the Medicare Trust Fund. |

**Related Statute/Regulation:**

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| 42 U.S.C. 1395ddd(h)(1) |

**Proposed Solution:**

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| * Strike the statutory provision providing that “(A) RAC payment shall be made to such contractor only from amounts recovered; (B) From such amounts recovered, payment (i) shall be made :on a contingent basis for collecting overpayments.” * Replace the contingency fee system with a retainer-based system or other system that is not based on the payment amount. A new payment system should create incentives for RAC accuracy and disincentives for inaccuracy. |