**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**: The substantial appeals backlog at the Office of Medicare Hearings and Appeals (OMHA) has resulted in significant and unfair delays for providers that challenge erroneous audit findings. Physicians must wait several years to recover payments for appropriately furnished services, creating significant administrative and financial burdens and making it increasingly difficult for physicians to continue to provide services to Medicare beneficiaries.

**Summary**: Currently, all physician and hospital audit appeals are subject to the same appeals process at the OMHA. Through the 2nd quarter of Fiscal Year 2017, the average processing time for a provider claim is 1,057 days – close to a three-year wait time. CMS has taken certain steps to address the high number of hospital appeals in the backlog, such as a Hospital Settlement initiative that allowed hospitals to receive timely partial payment in exchange for withdrawing the associated appeals. A statutory change is needed, however, to address the burdens that the backlog creates specifically *for physicians*, who are less equipped than hospitals to handle such a long processing delay and face significant administrative and financial hardships with the current adjudication system.

The need for a separate physician appeals system is even more critical in light of the Recovery Audit Contractors’ (RACs) low accuracy rate at the third level of appeal, which is also the first time that physicians can obtain an independent review of their audits. Data indicates that over half of the RAC claims are overturned at the third level of appeal in favor of physicians, indicating that physicians are currently forced to wait several years to be paid for *correctly performed and billed* services. In the meantime, the alleged overpayments have usually been recouped from the physicians, often creating cash flow problems, particularly for small physician offices.

In its recent Budget Request, the OMHA stated that “ensuring that providers and suppliers have a forum for independent and timely resolution of their disputes over Medicare payments contributes to the security of the Medicare system by encouraging the provider and supplier community to continue to provide services and supplies to Medicare beneficiaries.” In line with this objective, Congress should enact legislation creating a separate process for physician appeals in order to allow OMHA to speed its review of physician appeals. This would ensure that physicians are not forced to limit or terminate their relationship with Medicare patients due to the risk that they will need to wait years to receive appropriate payments due to an audit. Moreover, a physician-focused appeals track would allow Administrative Law Judges (ALJs) and other adjudicators at OMHA to gain special knowledge and experience with physician billing issues, improving the accuracy of appeal determinations.

**Related Statute/Regulation**: [42 U.S.C. 1395ff(b)](http://uscode.house.gov/quicksearch/get.plx?title=42&section=1395ff)

**Proposed Solution**: Amend the Social Security Act to create a specialized, separate appeals track for physician appeals to provide more timely and accurate audit reviews. One possible way to approach such a specialized appeals track would be to create a Medicare Magistrate Review program for RAC appeals involving lower dollar amounts. Such an approach was proposed in the Audit and Appeal Fairness, Integrity and Reforms in Medicare Act (AFIRM), which was reported out of the Senate Finance Committee on a bipartisan basis in 2015.