**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:**

Recovery Audit Program – Timing of contingency payments to RAC contractors for appealed determinations should not be made until after a physician has received an unfavorable decision at the third, ALJ, level of appeal.

**Summary:**

By statute, RAC auditors are paid on a contingency basis out of the funds collected from providers for alleged overpayments. (42 U.S.C. § 1395ddd(h)(1)).[[1]](#footnote-1) In cases in which a physician has appealed a RAC audit determination, the RAC auditors are currently paid their contingency fees after the physician has “received an unfavorable decision at the first (MAC) and second (QIC) level of the appeal process.” (Statement of Work for the Part A/B Medicare Audit Program Regions 1 – 4, November 30, 2016, p. 50). There are, however, *five* levels of appeals from a RAC’s audit findings. Over the last several years, for physicians filing appeals, a significant percentage of the RACs findings have been overturned. For example, CMS’ *Recovery Auditing in Medicare for FY 2015* report to Congress showed that 70% of the RAC audit findings appealed by physicians were overturned. (p. 18). Over half of the RAC audit findings for physicians’ claims, however, are overturned in favor of physicians at the *third* level of appeal, the ALJ level. (*See,* Department of Health and Human Services Office of Inspector General Report OEI-02-10-3340, pp. 10 and 24). It is unfair to recoup alleged overpayments from physicians and to pay the RAC contractors after the second level of review when the RAC findings are likely to be overturned at the third level of appeal.

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**Related Statute/Regulation:**

42 U.S.C. § 1395ddd(f)(2)(A)

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| CMS Statement of Work with Recovery Audit Contractors  |

**Proposed Solution**:

Section 1893(f)(2)(A) of the Social Security Act (42 U.S.C. § 1395ddd(f)(2)(A) should be amended by striking “until the date of the decision on the reconsideration has been rendered” and inserting in its stead “until the date of the decision on appeal after an Administrative Law Judge hearing.”

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| CMS should revise its policy such that RACs would not receive a contingency payment until a physician receives an unfavorable ALJ ruling at the third round of the appeal process.  |

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1. PAI is separately recommending that the contingency fee payment system be eliminating as it perversely incents RACs to find overpayments when there are none. [↑](#footnote-ref-1)