

# MEDICARE COMPLIANCE

## Hospitals Can Expect a Long Wait For ALJ Decisions on Claim Denials

Hospitals in at least one region of the country may find Part B rebilling more tempting in light of an administrative law judge's (ALJ) statement on how long it will take to resolve appeals of Part A claim denials.

"Because of a very heavy and ever-expanding case-load of appeals arriving in our office, we do not anticipate scheduling this case for hearing and decision until the last quarter of FY 2014," an ALJ from the mid-Atlantic field office said in an April 29 letter to Executive Health Resources in response to the appeal it filed on behalf of a hospital. "Many of the cases that we are receiving will not be heard and decided until the first and second quarters of FY 2015." The ALJ acknowledges how far away that is, but says at least hospitals will have ample time to produce information about the claim requested by the ALJ.

It's unclear whether all ALJs will adopt the same schedule, but it's possible because the Office of Medicare Hearings and Appeals has a significant backlog, says Steven Greenspan, vice president of regulatory affairs at Executive Health Resources in Newtown Square, Pa. The nation's 65 HHS ALJs and their legal teams are swamped. Although ALJs rule on other types of claims (e.g., Medicare eligibility), they mostly address Part A and B claims denials. Of them, the lion's share involves appeals of Part A denials by recovery audit contractors (RACs). The number of hospital appeals of Part A RAC denials spiked from 1,545 in FY 2011 to 40,386 in FY 2012 (*RMC 12/10/12, p. 1*). Now, however, hospitals may withdraw or relinquish appeals of Part A denials of inpatient

admissions based on setting because they have the option to rebill Part B instead (see story, p. 1). The burden is probably increasing because ALJs are getting back the appeals they remanded to qualified independent contractors (QICs), which are one rung below ALJs on the appeals food chain, Greenspan says. The ALJs had returned the cases to the QICs with instructions to provide more information and consider Part B payment (*RMC 12/17/12, p. 5*).

### ALJ's Remarks Are Worrisome

But the ALJ's remarks are disconcerting for compliance experts. "What this means in real terms is that from the time hospitals submit the initial appeal request, the ALJs don't anticipate even getting to schedule them or getting a hearing until sometime between July and September 2014," Greenspan says. The decisions themselves won't come down until sometime between October 2014 and March 2015, he says.

And yet, so far his clients generally are not taking the rebilling route, Greenspan says. "Their mindset is 'we are doing it right and we will not forego the reimbursement we are due.'" But hospitals may want to consider rebilling zero-day stays. "They probably have the largest target on their back in terms of not being successful in the appeal process. Hospitals may want to think twice about whether to rebill these cases, always keeping in mind the documentation must support the services billed regardless of the length of stay."

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