

# PUBLICATION

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## U.S. District Court for District of Columbia Requires HHS to Eliminate Medicare Appeals Backlog by December 31, 2020 [Ober|Kaler]

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On December 5, 2016, a U.S. District Court for the District of Columbia granted summary judgment in *American Hospital Association, et al., v. Burwell*, in favor of the American Hospital Association (AHA) in its quest to reduce and eliminate the backlog of Medicare reimbursement appeals. The court will require the Secretary of Health and Human Services (HHS) to eliminate the backlog of Medicare reimbursement appeals by December 31, 2020, as part of a four-year reduction plan. Judge Boasberg's [decision](#) targets the multi-year delays in the Medicare appeals process at the Administrative Law Judge (ALJ) stage, the third of four stages of administrative appeals. With hundreds of thousands of backlogged appeals, estimates project it would take ten years or more to resolve the already-filed appeals if the ALJ process continues at the current pace, and the number of appeals continues to grow.

The AHA and affiliated entities filed their mandamus complaint in May 2014, to compel the Secretary of HHS to meet the statutory deadlines for administrative review of denial of claims for Medicare reimbursement. Initially, the district court was reluctant to intervene and concluded that mandamus was not warranted, dismissing the case for lack of jurisdiction. The D.C. Circuit, however, reversed and remanded in February 2016, instructing the district court to evaluate whether “compelling equitable grounds” exist to issue a writ of mandamus. On remand, HHS moved to stay the proceedings until September 2017, which the district court denied and, in so doing, concluded that equitable grounds for mandamus indeed exist. Thus, the court ordered the parties to propose the specific form that mandamus should take, recognizing the reality that HHS is unable to resolve the backlog of appeals within statutorily prescribed deadlines. In its brief, HHS asked the court to reconsider the grant of mandamus, citing progress in its backlog-reduction efforts, but the court reiterated that grounds for mandamus persist, reminding HHS that it is “bound by statutorily mandated deadlines, of which it is in flagrant violation as to hundreds of thousands of appeals.”

In granting summary judgment for AHA, the court adopted AHA's proposed initiative to reduce the appeals backlog on a four-year timetable as follows:

- 30% reduction from the current backlog of cases pending at the ALJ level by December 31, 2017;
- 60% reduction by December 31, 2018;
- 90% reduction by December 31, 2019; and
- 100% reduction by December 31, 2020.

AHA had alternatively proposed three categories of more intrusive intervention that would require HHS to offer settlements, defer repayment requirements, and impose financial penalties on Recovery Audit Contractors for high reversal rates by ALJs, but the court preferred to avoid encroaching on HHS's specific decision-making processes and operations, opting for AHA's alternative timetable instead.

The court did reject AHA's proposed backstop, which would have required the entry of default judgment in favor of all claimants whose appeals were pending at the ALJ level for more than one year as of January 1, 2021. The court agreed with HHS that such a measure would “create perverse incentives for providers and suppliers to appeal non-meritorious claims.” Instead, the court noted that parties whose appeals are still pending in January 2021, may move for default judgment or otherwise seek to enforce the writ of mandamus.

The order also requires HHS to file quarterly status reports to update the statistics for the current and projected backlog, in which HHS also must describe any significant administrative or legislative actions that will affect the backlog.

## **Ober|Kaler's Comments**

The decision of U.S. District Court for the District of Columbia, on remand from the D.C. Circuit, remains at odds with a Fourth Circuit decision in [\*Cumberland County Hospital v. Burwell\*, No. 15-1393 \(4th Cir. Mar. 7, 2016\)](#), which determined that the growing appeals backlog, although “incontrovertibly grotesque,” is insufficient grounds for mandamus. It remains to be seen whether the Secretary will appeal Judge Boasberg's decision granting summary judgment in favor of the AHA.