

PUBLICATION

Senate Considering Bill to Speed Medicare Claims Appeals [Ober|Kaler]

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In early December of last year, Orrin Hatch (Senate Finance Committee Chairman, R-UT) and Ron Wyden (D-OR) introduced the Audit and Appeals Fairness, Integrity, and Reforms in Medicare Act of 2015 (AFFIRM Act) [PDF]. The purpose of the bill is to improve the efficiency of the Medicare claims appeals process. Some of the key provisions of the bill are discussed below.

Under the bill, \$125 million would be made available to the Office of Medicare Hearings and Appeals and \$2 million to the Departmental Appeals Board. Additionally, a Medicare Magistrate Program would be created, wherein magistrates would hear cases valued from \$500 — \$1,500.

The bill provides that if new evidence is submitted at the reconsideration level before a qualified independent contractor (QIC), then the appeal would be remanded for a *de novo* determination, so that the new evidence could be considered.

In cases where there is no material issue of fact in dispute and an administrative law judge (ALJ) determines there is binding authority that controls the decision, the ALJ would be permitted to issue a decision on the record, without the need to schedule a hearing. ALJs would also be permitted to certify appeals for expedited access to judicial review even if the appellant does not request the expedited access, where there is not a material issue of fact in dispute and neither the ALJ nor the Departmental Appeals Board has the authority to decide the legal issue.

To further promote administrative efficiencies, individuals or entities conducting redeterminations, reconsiderations, reviews or hearing would be permitted to consolidate requests for review into a single action, and issue either a single decision or separate decisions, if: (a) the review requests involve common questions of fact or law for similar claims submitted by the same individual or entity, (b) the review requests involve claims that were included within a statistical sample during the initial determination or any previous appeal level, (c) the appellant requests the aggregation, or (d) the decision maker determines consolidation would promote administrative efficiency.

The bill would permit the decision makers to use statistical sampling and extrapolation to reach a decision, if the appellant consents. Additionally, if the appeal involves a decision based on a statistical sample at the lower level, the decision maker's decision must be based on the same statistical sampling.

AFFIRM would also require:

- ALJs to provide the basis for any contrary decision it reaches upon review of a QIC decision;
- Publication of appeals information;
- Studies and reports related to:
 - whether ALJ and magistrate decisions are consistent with Medicare policy, and
 - whether ALJ specialization would lead to more consistent decisions;
- The establishment of one or more alternative dispute resolution processes;
- The creation of a Medicare Provider and Supplier Ombudsman for reviews and appeals; and

- Generally limit the audit period for recovery audit contractors' patient status reviews to six months after the date of service.

Ober|Kaler's Comments

Although the Senate Finance Committee approved the bill in June of 2015, it was only recently formally introduced to the full Senate. The bill has a long way to go before it could become law, having to be approved by both the Senate and the House before being put before the President for approval. As everyone knows, Congress has not been able to move many bills to law in the last few years and the current partisan politics is not likely to be diminished during an election year. However, it is likely both sides of the aisle can agree there is a problem in the claims appeal process that needs attention, and the introduction of the bill jointly by a Republican and Democrat may help to facilitate action. The bill would address many of the problems in the claims appeal process and merits following by those providers and suppliers likely to file appeals.

Our claims appeal group will continue to follow the progress of this bill and other claims appeal issues. Please feel free to contact us if you have questions.