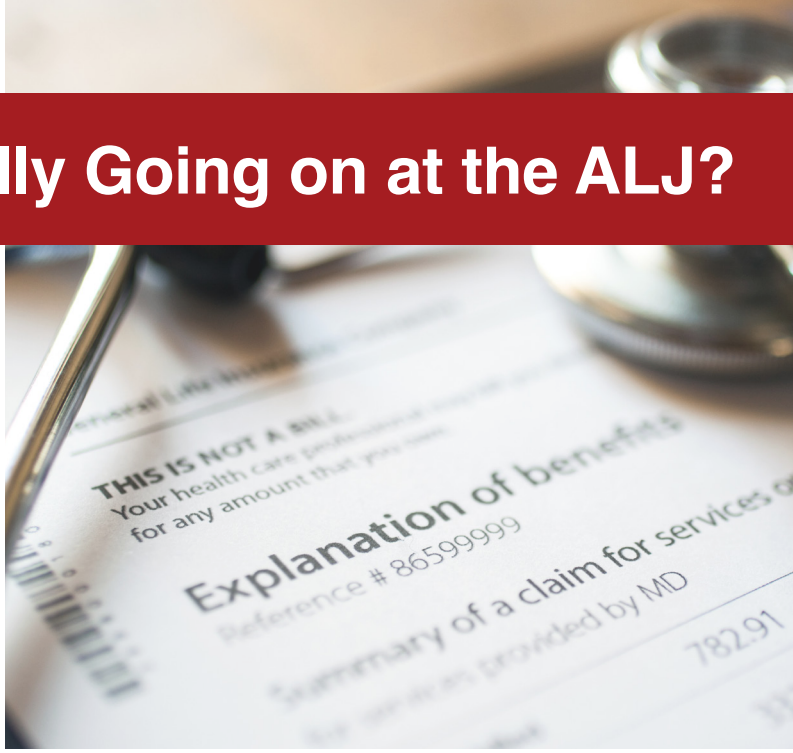
COUNCIL FOR MEDICARE INTEGRITY

What's Really Going on at the ALJ?



There is a backlog of 1 million[1] cases at the Administrative Law Judge (ALJ) level of appeals within Medicare. Provider groups, including the American Hospital Association (AHA) and the American Medical Association (AMA) claim that Recovery Audit Contractors (RACs) inappropriately deny claims, forcing providers to appeal. Recent validated government reports, however, tell a very different story.

Of the total claims that RACs denied as improper in 2012 and 2013, only **2.3%**[2] and **10.6%**[3], respectively, were appealed to the ALJ level.

Year	Number of Claims RACs Denied	Number of RAC Denials Appealed	Percentage
2012	1,272,297	29,757	2.3%
2013	1,532,249	162,344	10.6%

Provider "Frequent Filers" Created the ALJ Backlog

According to the HHS Office of the Inspector General (OIG), "wide interpretation" of Medicare policy[4] at the ALJ level has caused providers to actively seek to appeal to this level in the hope that they will get a different answer on the validity of their claim than from the previous appeal. All other levels of appeal rule strictly according to Medicare policy. The inconsistency at the ALJ level has led to the surge in "frequent filers"[5], providers who appeal every audit in defiance of Medicare oversight. In fact, of appeals filed at the ALJ level in 2015, only 19% were from RAC decisions.

For example, the 2012 OIG report stated that on average providers filed six appeals each; however within their samples 96 providers filed at least 50 appeals each and one provider filed over 1,000 appeals. These accounted for nearly one-third of all ALJ appeals that year.[6]

All Stakeholders Welcome ALJ Reform

All Medicare stakeholders agree that there is grave need for reform at the ALJ level of appeals. The President's FY2016 Budget includes several provisions that seek to address the Medicare appeals process. The Council for Medicare Integrity supports the following reforms, which will have a positive impact on addressing the ALJ backlog.

- **Sample and consolidate similar claims for administrative efficiency.**
- **Expedite procedures for claims with no material fact in dispute.**
- **Provide for a refundable filing fee when a provider is successful on appeal.**

The Council also recommends reforms that require ALJ's to rule according to Medicare policy, which would foster greater consistency to allow both providers and Recovery Auditors to improve their performance by understanding what management decisions were correct and which were incorrect according to the law.

The Health of the Medicare Trust Fund is of Utmost Importance

Challenges within the appeals process are a symptom of a much larger problem. Medicare loses more money to waste than any federal program and is slated to be insolvent in the next 15 years. Since 2011 the rate of improper Medicare payments has trended upward steadily from 8.6% to 12.1%, which equates to a loss of more than $43 billion in FY2015.[7]

Congress created the RAC Program to be the first line of defense for the Medicare Trust Fund. The program has been wildly successful, returning more than $10 billion to Medicare, an impressive amount given than Recovery Auditors currently review 0.5% of inpatient claims.

We ask Congress to continue their support for the RAC program they created to protect taxpayer dollars and our nation's marquee healthcare program for future generations.

www.medicareintegrity.org

1 OMHA Activities, www.hhs.gov/about/budget-in-brief/omha

2, 3 FY2012 RAC Report to Congress. (Page iv), OMHA presentation at National RAC (and MAC) Summit, November 14, 2014. (Pages 7,9)

4 November 2012: Improvements are Needed at the Administrative Law Judge Level of Medicare Appeals, Page 12. http://oig.hhs.gov/oei/reports/oei-02-10-00340.pdf

5, 6 Improvements are Needed at the Administrative Law Judge Level of Medicare Appeals, November 2012. (Page 5)

7 Medicare Fee-For-Service 2016 Improper Payments Report, Supplementary Appendices. (Page 4)