December 5, 2014

Nancy J. Griswold
Chief Administrative Law Judge
Office of Medicare Hearings and Appeals
Department of Health and Human Services
Attention: OMHA-1401-NC
1700 N. Moore St., Suite 1800
Arlington, VA 22209

Re: Administrative Law Judge Hearing Program for Medicare Claim Appeals [OMHA-1401-NC]

Dear Chief Administrative Judge Griswold:

On behalf of the Medical Association of Georgia (MAG) and physicians in the state, thank you for the opportunity to offer MAG’s views on the appeals backlog. This two-year backlog is unacceptable for both physicians and patients, and it must be rectified immediately. MAG supports the efforts of the Office of Medicare Hearings and Appeals (OMHA) to address this issue using every available option, and we appreciate OMHA’s decision to reach out to the provider community to seek potential solutions.

Note that in addition to this letter, I have also written a letter to Centers for Medicare & Medicaid Services (CMS) Administrator Tavenner to express MAG’s strong view that the fundamental problem and reason for the appeals backlog is the Recovery Audit Contractor (RAC) and other audit programs. Multiple changes – including penalties for erroneous RAC determinations, extension of the one-year timely filing requirement for claims recouped by auditors, and increased physician review of RAC claims – are among the changes we have asked Administrator Tavenner to consider.

With regard to changes to the appeals process by OMHA, MAG is offering the following recommendations:

- OMHA should consider expanding the Settlement Facilitation Conference Pilot. This pilot provides a more expedient and straightforward process for Medicare Part B providers who have submitted appeals to the Administrative Law Judge (ALJ) and who would like to swiftly resolve a number of claims. However, some physicians have reservations about this pilot because they have to give up future appeal rights to participate and that there are set benchmarks for the number of claims at issue or the amount in dispute to be considered eligible to participate. Therefore, we encourage OMHA to look at whether the loss of future appeal rights, as a programmatic requirement rather than a settlement term, may dissuade physician participation. We also encourage OMHA to consider approaching the amount/claims in controversy parameters with increased flexibility as to allow the maximum number of Part B providers to avail themselves of this option.

- OMHA should consider expanding the Statistical Sampling Initiative. The potential to resolve a large number of outstanding claims through this initiative is attractive for some of the physicians
who have received a large number of same-service audits – and utilization of this initiative by appellants may significantly decrease the appeals backlog. Again, we ask that OMHA consider adding some flexibility to the requisite conditions of participation in this initiative. For example, OMHA currently requires that there be a minimum of 250 claims on appeal. This high number puts the Statistical Sampling Initiative out of reach for many physician practices that may want to participate in the program. In addition, OMHA currently requires that claims that may be evaluated within the Statistical Sampling Initiative all must fall into one of the following categories: pre-payment audits or non-RAC post-payment audits or RAC post-payment audits from one RAC. While we can understand the administrative quandary posed by reconsidering the determinations of several audit contractors in one remedial initiative – or in one data set – from a physician point of view, these parameters for eligibility do not make sense. During the next round of RAC contracts, for example, physicians may be audited by a new RAC for the same issue for which they were audited previously. Limiting the universe of claims that can be included in the statistical sample based on the identity of the audit contractor seems arbitrary to a physician who views these audits as deriving from a single source – Medicare.

• OMHA should consider extending the 65 percent settlement option that has been offered to hospitals to physicians and other health care professionals. It is inequitable to offer this option to some health care professionals and not others, and the same reasons that OMHA and CMS hope that this hospital settlement offer will reduce the appeals backlog may be applied in the physician or Part B provider context. Physicians want to expediently resolve their outstanding appeals, and are generally willing partners to resolve them in a mutually satisfactory manner. Therefore, we strongly urge that this program be extended to physicians.

• OMHA should continue its efforts to move to an electronic system for appeals management and resolution. We applaud OMHA’s efforts to offer videoconference hearings and conferences which has been a vital piece of an ALJ appeal for physicians. MAG believes that OMHA should build on the successes of that initiative by emphasizing electronic records management and the development of optional electronic portals for document submission.

MAG appreciates OMHA efforts to improve the appeals backlog and keep physicians informed of this progress. Should you have any questions, please contact MAG Executive Director Donald J. Palmisano Jr. at 678.303.9290 or dpalmisano@mag.org.

Sincerely,

Manoj H. Shah, MD
President
Medical Association of Georgia