



**Association of
American Medical Colleges**

655 K Street, N.W., Suite 100, Washington, D.C. 20001-2399
T 202 828 0400
www.aamc.org

Via Electronic Submission (www.regulations.gov)

August 29, 2016

Mr. Andrew Slavitt
Acting Administrator
Centers for Medicare & Medicaid Services
ATTN: HHS-2015-49
7500 Security Blvd.
Baltimore, MD 21244-1850

Dear Mr. Slavitt:

Re: Changes to the Medicare Claims and Entitlement, File Code HHS-2015-49

Dear Acting Administrator Slavitt:

The Association of American Medical Colleges (AAMC or Association) welcomes this opportunity to comment on the Centers for Medicare & Medicaid Services' (CMS's or the Agency's) proposed rule entitled, *Changes to the Medicare Claims and Entitlement*, 81 *Fed.Reg* 43891 (July 5, 2016). The AAMC is a not-for-profit association whose members are comprised of all 145 accredited US medical schools; nearly 400 major teaching hospitals and health systems, including 51 Department of Veterans Affairs Medical Centers, and more than 80 academic societies. Through these institutions and organizations, the AAMC represents 148,000 faculty members, 83,000 medical students, and 115,000 resident physicians.

While the AAMC appreciates CMS's efforts to address the overwhelming backlog of pending appeals, more must be done to further streamline the appeals process. The significant increase in the number appeals due to recovery auditors, and failure of the Office of Medicare Hearings and Appeals (OMHA) to issue decisions in a timely manner has caused hospitals financial harm. The time and money spent on appeals reduces the resources that would otherwise be devoted to patient care.

PRECEDENTIAL FINAL DECISIONS OF THE SECRETARY

CMS proposes to grant the Chair of the Departmental Appeals Board (DAB) authority to issue precedential decisions. These decisions will be binding on all CMS components, all Human Health Services (HHS) components that adjudicate matters under CMS's jurisdiction, and on the Social Security Administration (SSA) to the extent that SSA component adjudicate matters under CMS jurisdiction. The precedential decisions will also bind CMS's contractors, including qualified independent contractors (QICs).

The designation of precedential decisions has the potential to be efficient. However, the AAMC is concerned that the precedential effect will only apply to a limited number of decisions and will not make a significant impact on reducing the backlog. To promote greater efficiency within the appeals process, CMS should clarify to QICs and Administrative Law Judges (ALJs) that ALJ decisions are entitled to collateral estoppel effect. Furthermore, the AAMC encourages CMS to instruct ALJs to give collateral estoppel effect in cases where the elements of the rule are satisfied.

ATTORNEY ADJUDICATORS

CMS proposes to grant attorney adjudicators broader authority to issue decisions where a hearing with an administrative law judge (ALJ) is not required. CMS also states that attorney adjudicators would receive the same training as ALJs, and their decisions may be reopened or appealed in the same manner as ALJ decisions.

The AAMC agrees that the intent of the CMS proposal is a good one, but it will only be helpful if the Agency ensures that attorney adjudicators receive sufficient training and have access to the resources that they need. The AAMC also recommends a yearly report to assess the impact that attorney adjudicators are having on the backlog and to provide a compilation of the types of decisions they are issuing, including the percentage of cases that are decided in favor of the government.

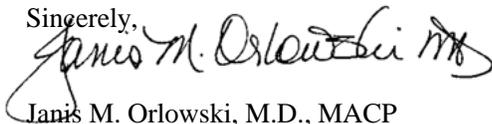
ADDITIONAL STEPS CMS SHOULD TAKE

Finally, as this level of the appeals process has had the greatest rate of increase in appeals in recent years, the AAMC encourages CMS to further investigate root causes of the backlog, including initial determinations by recovery auditors and inconsistencies between decisions issued by QICs and ALJs.

CONCLUSION

Thank you for the opportunity to present our views. We would be happy to work with CMS on any of the issues discussed above or other topics that involve the academic health center community. If you have questions regarding our comments, please feel free to contact Ayeisha Cox, J.D., at 202.828.0482 or aycox@aamc.org

Sincerely,

A handwritten signature in black ink that reads "Janis M. Orlowski". The signature is written in a cursive style with a large, looping initial "J".

Janis M. Orlowski, M.D., MACP
Chief Health Care Officer

cc: Ayeisha Cox, AAMC
Ivy Baer, AAMC