



## OMHA Public Forum on Temporary Suspension of Medicare Appeals

Sara M. Lord

On February 12, 2014, the Office of Medicare Hearings and Appeals (OMHA) hosted a public forum to address concerns raised by its recent announcement that, effective July 15, 2013, OMHA had “temporarily suspended the assignment of most new requests for an Administrative Law Judge hearing to allow OMHA to adjudicate appeals involving almost 357,000 claims for Medicare services and entitlements already assigned to its 65 Administrative Law Judges (ALJs).” Chief Administrative Law Judge Nancy Griswold outlined the forum objectives, which were to:

- Provide updates on the status of OMHA operations;
- Provide information on OMHA’s initiatives to help mitigate the growing backlog;
- Provide information on what appellants can do to make the process more efficient; and
- Answer questions from the appellant community.

Effectively, OMHA used the forum to describe the problems caused by a growing backlog and ever-increasing number of appeals filed; to outline the proposals being implemented or under consideration to improve case processing and efficiencies in deciding them; and to recommend practices for appellants to follow that OMHA believes will help to reduce the backlog and/or improve the appeals process. While it was clear that Level 3 appeals have, in fact, overwhelmed the system beyond its ability to handle them, it was not clear that OMHA’s planned initiatives will significantly reduce the backlog or shorten delays in processing in the foreseeable future.

While OMHA clearly views the backlog and the increasing number of Level 3 appeals as case management issues, the audience suggested that there were other causes for the problems that were not being addressed, including bad audits and poor decision-making at the lower appeals levels. Audience participants also compared the significant number of technical appeals to the number of (substantive) medical necessity appeals, and pointed to the heavy financial burdens imposed by the processing delays.

### The Large and Growing Backlog of Cases

After describing OMHA’s organizational structure and mission, Judge Griswold focused substantially on the growth in OMHA’s workload over the last several years. The number of appeals filed has grown every year, with larger increases each year – in FY2010, there were 44,368 appeals, a 24% increase from FY2009, and, in FY2011, the number grew by 34% to 59,601. By FY2012, however, the number of appeals had increased by 97% to 117,371, and through the third quarter of FY2013, the number increased by another 101%, with 236,227 claims having been filed by the end of the quarter. In January 2012, OMHA received 1250 appeals per week, but by January 2014, was receiving 15,000 appeals per week.

The appeal receipts have outstripped the 65 ALJs’ ability to decide them, resulting in an enormous backlog of more than 350,000 claims. In FY2012, OMHA received twice as many appeals as were decided, and in FY2013, the trend continued with OMHA receiving over four times the number of appeals that could be decided.

Judge Griswold attributed the dramatic increases in the numbers of appeals filed to the continuing

expansion of all post-payment audit programs, more active State Medicaid Agencies, and increases in the number of Medicare beneficiaries.

## OMHA Initiatives and Recommendations

To unify OMHA's national docketing and assignment functions, OMHA created the Central Operations Division in 2012. OMHA has implemented centralized docketing with a "deferred assignment" process that affects requests for hearing received in and after April 2013. As a result, Level 3 requests for hearing are being held until an ALJ can accommodate them on his/her docket. The appeal requests are assigned in rotation and for administrative efficiency purposes may be reviewed and grouped before they are assigned to a judge. As of January 24, 2014, OMHA estimated the time between filing and assignment to an ALJ to be up to 28 months. Currently, there are 480,000 appeals awaiting assignment. The estimated time between assignment to an ALJ and a hearing typically exceeds six months – and OMHA expects this to continue as the ALJs work through the backlog.

To facilitate the intake and assignment process, OMHA has provided specific recommendations for submitting the request, including prominently listing the Medicare Appeal Number (which functions as a document control number for transmitting the record from the QIC to the ALJ); using tracked mail to submit the request; and providing proof of service to the other parties. Distinguishing between the intake-assignment role of Central Operations and the functions of the ALJs, OMHA also asked appellants **not** to include evidentiary submissions with the requests for hearing; **not** to submit evidence that was already submitted at the lower level; and to submit any additional filings directly to the ALJ after the request has been assigned, rather than to central operations and/or before assignment to a judge. A more detailed presentation of OMHA's tips can be found at [http://www.hhs.gov/omha/omha\\_medicare\\_appellant\\_forum\\_presentations.pdf](http://www.hhs.gov/omha/omha_medicare_appellant_forum_presentations.pdf).

While centralized docketing and deferred assignments address the backlog directly, OMHA has also been developing and considering other long-term initiatives to address the continuing growth in its workload. These include the possible addition of another office, located either in the Central or the Mountain Time Zone, as well as a range of programmatic and IT initiatives.

OMHA is developing a Case Adjudication Manual to improve consistency among adjudicators, and provide a framework for the move to electronic case processing. Also under consideration are alternative adjudication models, including statistical sampling and extrapolation to adjudicate appeals; mediation of claims; and attorney case reviews to fast-track claims.

On the IT front, OMHA is developing an ALJ Appeal Status Information System (AASIS) website to be accessed through the OMHA website, which will allow users to find the field assignment, ALJ assignment, team phone number, and status of their appeals. This website is expected to be implemented in spring 2014. OMHA is also developing a Medicare Appeals Template System (MATS), a document generation system that uses fillable forms and data population to create individualized templates that will be rolled out in the second quarter of 2014. Long-term, OMHA expects to begin using an electronic case filing system, Electronic Claims Adjudication and Processing Environment, some time in 2016.

A panel of ALJs offered specific recommendations for appellants to improve the hearing process. While some of the recommendations addressed general topics, such as early review and evaluation of the case and the advantages of concise presentation, there also were concrete suggestions, such as considering whether to waive the actual hearing in favor of having the appeal decided on the papers; improving the quality of the hearing by using dedicated conference facilities, rather than a speaker phone; and, if withdrawing the case, doing so before the hearing takes place.

Following the judges' panel, the forum featured an Overview of Level 1 and 2 Appeals, as well as the Departmental Appeals Board. As with the Level 3 appeals, the presenters all noted substantial increases in the numbers of cases they were handling.

## **Conclusion**

While the clear message from OMHA and the other divisions was that the number of appeals has overwhelmed the process and necessitated significant changes, the audience consistently expressed concerns over the effects of these changes, especially delays in reimbursements, on providers and suppliers.

## Authors and Contributors

---

**Sara M. Lord**

Partner, DC Office  
202.677.4054  
sara.lord@agg.com

not *if*, but *how*.<sup>®</sup>

## About Arnall Golden Gregory LLP

---

Arnall Golden Gregory, a law firm with more than 150 attorneys in Atlanta and Washington, DC, employs a “business sensibility” approach, developing a deep understanding of each client’s industry and situation in order to find a customized, cost-sensitive solution, and then continuing to help them stay one step ahead. Selected for The National Law Journal’s prestigious 2013 Midsize Hot List, the firm offers corporate, litigation and regulatory services for numerous industries, including healthcare, life sciences, global logistics and transportation, real estate, food distribution, financial services, franchising, consumer products and services, information services, energy and manufacturing. AGG subscribes to the belief “not if, but how.” Visit [www.agg.com](http://www.agg.com).

**Atlanta Office**

171 17th Street NW  
Suite 2100  
Atlanta, GA 30363

**Washington, DC Office**

1775 Pennsylvania Ave., NW,  
Suite 1000  
Washington, DC 20006

To subscribe to future alerts, insights and newsletters: <http://www.agg.com/subscribe/>

©2014. Arnall Golden Gregory LLP. This legal insight provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice. Under professional rules, this communication may be considered advertising material.