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Opening Statement
Congresswoman Jackie Speier, Subcommittee Ranking Member

Subcommittee on Energy Policy, Health Care and Entitlements
Hearing on "Medicare Mismanagement Part II: Exploring Medicare Appeals Reform"

July 10, 2014

Thank you, Chairman Lankford, for holding this hearing. And thank you to Chief Judge Griswold for joining us today to discuss this important issue.

I think we can all agree that Medicare providers are entitled to have their claims administered fairly, efficiently, and without undue delay, so that they can focus on their core mission of providing care to our nation's seniors. This includes receiving prompt decisions so that providers know how to bill appropriately going forward. Unfortunately, that is not the situation facing providers today.

Medicare providers appealing payment decisions made by contractors are waiting an average of 387 days to have their claims adjudicated by the Office of Medicare Hearings and Appeals. For providers submitting new claims, the wait could be as long as 28 months, just to have an appeal assigned to an Administrative Law Judge.

The current claims backlog in OMHA is unacceptable and unsustainable. OMHA must make some significant changes in how it does business. I look forward to hearing from Chief Judge Griswold about the initiatives that OMHA is implementing to improve efficiency and alleviate the backlog.

But I also want to remind my colleagues that the claims backlog is a problem that Congress has created. Congress has required CMS, as it should, to be increasingly vigilant in detecting and reducing the amount of waste, fraud, and abuse in the $600 billion Medicare program that covers 51 million beneficiaries.

This emphasis on program integrity is critical both to the health of our nation's seniors and to the protection of our taxpayer dollars. But this increased scrutiny has not been coupled with additional funds to address the influx of claims and appeals that have resulted.

With the Medicare Prescription Drug Act, Congress created the Medicare Administrative Contractors, the Zone Program Integrity Contractors, and the Recovery Auditor Contractors pilot program. In 2010, the RAC program was made permanent and expanded nationwide.

All of these contractors conduct audits of Medicare providers. Each of these entities has increased the number of claims being audited for payment accuracy in recent years. According to a 2013 GAO study, the volume of contractors' post-payment claim reviews increased by 55% between 2011 and 2012.

More audits means more appeals. That is an inevitable result of the additional program integrity functions that Congress has asked CMS and its contractors to carry out.

Yet Congress has not provided OMHA with more funding for more judges to adjudicate claims. Despite a six-fold increase in the number of appeals since 2006, the number of ALJs at OMHA has remained relatively constant.

In 2007, OMHA received 20,000 RAC claims. In FY 2013, OMHA received 192,000 RAC claims, yet received no additional funding to handle this workload.

I joined a number of my colleagues on both sides of the aisle in sending a letter to the Secretary of HHS citing concerns about the RAC program, and expressing the need for reform.

But it is also important to note that RACs have led to the exposure of many questionable billing practices, such as billing for hospital re-admissions on the same day with the same diagnosis, durable medical equipment (DME) items delivered, but never ordered by a physician, hospital claims coded with illnesses a patient did not possess, and excessive units of medication ordered, especially where the billed dose would be harmful or lethal to the patient who received it.

We may need to consider reforms to the RAC program that reduces the administrative burdens of RAC audits on providers. But we must also ensure that we preserve the central program integrity functions of the RACs, who perform the critically important, Congressionally-mandated function of reducing improper payments in the Medicare program.

Finally, an important part of reducing the burden on providers is ensuring that appeals from adverse RAC determinations are adjudicated in a timely manner. Congress must do its part by ensuring that OMHA's budget request is fully funded. We have to give OMHA the resources commensurate with the workload that we have asked them to perform.

With that, I yield back.

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