

Report on Medicare Compliance Volume 31, Number 19. May 23, 2022 Providers Are Losing More Appeals at ALJs, Although Data Is Mixed

By Nina Youngstrom

Providers are winning fewer Medicare fee-for-service appeals with administrative law judges (ALJs) these days, but decisions are coming down a little faster, according to data from the Office of Medicare Hearings and Appeals (OMHA). The backlog also is shaking loose.

ALJs overturned 53.2% of claim denials in 2012 and 33.6% in 2015, with the rate steadily declining to 16.6% in 2019 before rising slightly to 20% in 2021.^[1] “It is not the same provider-friendly environment it once was,” said attorney Jessica Gustafson at the National Physician Advisor Conference April 12.^[2] “But it’s not as bad as the data would suggest.” The reason is the rate of dismissals has increased significantly, from 12.5% in 2012 to 46.9% in 2021. She attributes that to OMHA’s initiatives, such as settlement facilitation conferences, in which appellants (i.e., providers and suppliers) and CMS try to compromise on a percentage of payment for disputed claims with the help of an OMHA-trained facilitator. It’s essentially mediation, with both sides shooting for a deal so they can end appeals that typically drag on for years.

Also, recovery audit contractors (RACs) were barred from auditing patient status (inpatient vs. observation) denials several years ago. They’re more about medical necessity now, she said. For example, RACs review whether hospitals comply with local coverage determinations for total knee replacements and the national coverage determination for hyperbaric oxygen therapy.

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