

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>AMERICAN HOSPITAL ASSOCIATION, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>ALEX M. AZAR II, in his official capacity as SECRETARY OF HEALTH AND HUMAN SERVICES,</p> <p style="text-align: center;">Defendant.</p>	}	Civil Action No. 14-cv-00851 (JEB)
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DECLARATION OF NANCY J. GRISWOLD

I, Nancy J. Griswold, declare as follows:

1. I am the Chief Administrative Law Judge for the Office of Medicare Hearings and Appeals (OMHA) within the Department of Health and Human Services (HHS or Department), which organizationally, is located within the Office of the Secretary. I have held this position since March 1, 2010. Among my duties, I oversee the third level of administrative review for individual Medicare claim and entitlement appeals within HHS, which is also known as the Administrative Law Judge (ALJ) level of review.

2. The statements made in this declaration are based on my personal knowledge, information contained in agency files, and information furnished to me in the course of my official duties.

3. On March 23, 2018, Congress appropriated \$182.3 million for OMHA to address the issue of the Medicare appeals backlog. *See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, tit. II, 132 Stat. 348, 739 (2018).* This represented a 70% increase over the amount appropriated for Fiscal Year (FY) 2017. With this additional appropriation, OMHA plans to

increase ALJ staffing by approximately 80 ALJs and fill 600 new positions over the next 14 months, which is projected to increase annual ALJ disposition capacity by 80,000 appeals. When fully staffed, OMHA will have a total of approximately 170 ALJ teams onboard. Once all new staff members are fully trained, these ALJ teams, combined with attorney adjudicators, senior attorney on-the-record reviews, the senior ALJ program, and statistical sampling, will be able to adjudicate approximately 187,850 appeals annually.

4. As of July 31, 2018, the Settlement Conference Facilitation (SCF) program has removed a total of more than 72,000 Medicare appeals pending at OMHA. Specifically, 70 agreements have been reached with provider appellants to resolve over 17,000 provider appeals, and three (3) agreements have been reached with State Medicaid agencies to resolve over 55,000 appeals.

5. As of July 31, 2018, there have been 290 SCF requests from providers, with 46 of those requests still in the SCF process. Of the 244 SCF provider requests that have been fully processed:

- 70 resulted in a settlement;
- 22 did not reach a mutually agreeable settlement with CMS;
- 143 were not eligible for participation; and
- 9 were withdrawn by the provider from the SCF process before a conference was held.

6. Appeals to OMHA generated from the denial of claims through the RAC program have decreased drastically from FY 2014, both in terms of incoming appeals and appeals currently pending before OMHA:

RAC APPEALS FILED AND PENDING AT OMHA

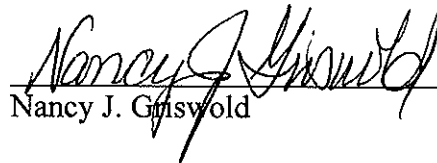
Fiscal Year	FY 2013 10/1/12- 09/30/13	FY 2014 10/1/13- 09/30/14	FY 2015 10/1/14- 09/30/15	FY 2016 10/1/15- 09/30/16	FY 2017 10/1/16- 09/30/17	FY 2018* 10/1/17- 06/30/18
New RAC-Related Appeals Filed	193,105	273,407	31,624	15,761	13,782	661
Percentage of RAC-Related Appeal Receipts of Total of OMHA Receipts	50.3%	53.8%	14.1%	9.5%	12.2%	1.4%
Total RAC-Related Appeals Pending at OMHA (end of FY)	190,117	345,229	437,524	154,592	82,329	56,311
Percentage of RAC-Related Appeals of Total Appeals Pending at OMHA	50.4%	52.4%	57.7%	23.5%	14.2%	12.6%

* FY 2018 data provided through Q3 only.

7. As of July 27, 2018, the number of pending appeals at OMHA is 444,894.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on August 3, 2018 in Arlington, Virginia


Nancy J. Griswold