

September 24, 2014

Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201

RE: Payment of RAC Contingency Fee under Appeals Settlement Offer

Dear Ms. Tavenner:

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, and our 43,000 individual members, the American Hospital Association (AHA) is writing to request clarification regarding how the appeals settlement offer, announced by the Centers for Medicare & Medicaid Services (CMS) on Aug. 29, 2014, impacts the contingency fees Recovery Audit Contractors (RACs) received for previously denied claims that are part of the settlement. Specifically, we are inquiring about whether the RACs will be required to forfeit any of the contingency fee they received for those denials. As you are aware, when a hospital prevails in its appeal of a denied claim, the RAC must return the entire fee paid for that denial.

We continue to receive questions from hospitals across the country about this aspect of the appeals settlement offer. Hospitals have informed us that they consider the decision on RAC fees to be one of fundamental fairness that will impact their evaluation of the terms of CMS's offer. While we have raised the issue with CMS staff in a number of forums, we have not to date received a definitive answer. Because hospitals have been asked to accept partial payment in order to alleviate the significant strain on the appeals system, we expect that CMS has required a corresponding financial sacrifice from the RACs.

Thank you for your attention to this inquiry. If you have questions, please feel free to contact me at (202) 626-4625 or rpollack@aha.org.

Sincerely,

/s/

Rick Pollack
Executive Vice President

