

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

AMERICAN HOSPITAL ASSOCIATION, *et al.*,)
Plaintiffs,)
v.) Civil Action No. 14-cv-00851 (JEB)
ALEX M. AZAR II, in his official)
capacity as SECRETARY OF HEALTH AND)
HUMAN SERVICES,)
Defendant.)

DECLARATION OF MICHAEL R. BAGEL

I, Michael R. Bagel, declare as follows:

1. I am a senior program analyst in the office of the Assistant Secretary for Financial Resources of the Department of Health and Human Services (HHS or Department) and the career leader of the intra-agency Medicare Appeals workgroup. I have held this position since August 13, 2012. Prior to joining the Department, I graduated cum laude from the William and Mary Law School and have previously worked for the Office of General Counsel at the Office of Management and Budget, the Office of Administrative Law Judges at the Department of Labor, and the Senate Finance Committee. Among my duties at HHS, I provide advice and guidance to HHS senior leadership in the areas of budget, performance, and program policy, and synchronize the implementation of these activities across the Department. I also lead the staff intra-agency Medicare appeals Departmental workgroup focused on administrative initiatives to reduce the backlog and improve the efficiency of the Medicare appeals process.

2. Attached as Exhibit 1 is a true and correct copy of the Medicare Appeals Dashboard, which shows the actual volume of appeals at the Office of Medicare Hearings and Appeals (OMHA) and the prior two levels of appeal from the beginning of fiscal year (FY) 2012 through Quarter 1 of FY 2018.

3. As reflected in Exhibit 1, OMHA received only 384 appeals resulting from Recovery Audit Contractor (RAC) overpayment determinations in the first quarter of FY 2018. Similarly, at the prior, Qualified Independent Contractor (QIC)-level of appeal, only 209 RAC appeals were received in the first quarter of FY 2018. On average over the past two years, QICs have denied approximately 59% of appeals at the QIC-level of appeal, and of those denied appeals at the QIC-level, 51% have been appealed to OMHA.

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

Executed on March 20, 2018 in Washington, D.C.


Michael R. Bagel

Exhibit 1: Medicare Appeals Dashboard

Reporting Period: Through Quarter 1 FY 2018

(Data in Appeals)

		Fiscal Year						Most Recent 6 Quarters															
		FY 2018		FY 2017		FY 2016		FY 2015		FY 2014		FY 2013		FY 2012		FY 2011		FY 2010		FY 2009			
Beginning Workload Balance		284,313		355,892		358,078		456,517		557,839		496,703		390,658		284,313		316,219		314,950		335,892	
Receipts	RAC (non-adjudicated)	714,331		3,339,145		3,448,540		3,743,071		4,230,754		3,992,623		3,465,711		714,331		818,365		862,670		846,344	
Dispositions	RAC (non-adjudicated)	(6,12,138)		(2,649,181)		(2,793,338)		(2,806,751)		(3,284,086)		(3,137,823)		(2,838,590)		(6,12,138)		(652,495)		(651,565)		(668,111)	
	RAC (non-adjudicated)	(11,449)		(19,653)		(89,789)		(72,983)		(60,3,303)		(475,514)		(256,878)		(1,449)		(510)		(408)		(4,137)	
	non-RAC (non-adjudicated)	(6,10,659)		(2,630,129)		(2,712,549)		(2,733,769)		(2,880,389)		(2,662,309)		(2,581,712)		(6,10,659)		(651,985)		(663,979)		(663,012)	
Net Pending Receipt Increase / (Decrease)		218,887		284,313		335,892		358,078		456,517		557,839		496,703		218,887		284,313		316,219		298,380	
Ending Workload (backlog)																							335,892

1/ Ending Workload at Level 1 does not represent backlog. It represents all appeals received but not adjudicated, i.e. appeals have not passed the 60-day timeframe for adjudication.

		Fiscal Year						Most Recent 6 Quarters															
		FY 2018		FY 2017		FY 2016		FY 2015		FY 2014		FY 2013		FY 2012		FY 2011		FY 2010		FY 2009			
Beginning Workload Balance		55,715		76,599		79,332		117,098		135,343		98,062		58,715		60,109		62,247		64,109		60,605	
Receipts	RAC (non-adjudicated)	96,129		436,661		511,996		561,624		895,850		874,808		457,096		96,129		96,981		104,978		118,199	
Dispositions	RAC (non-adjudicated)	209		12,062		26,360		33,445		309,288		310,363		102,251		209		677		1,420		3,746	
	non-RAC (non-adjudicated)	95,920		424,599		485,136		528,179		586,562		564,445		95,920		103,306		103,558		110,282		119,948	
	RAC (non-adjudicated)	(98,644)		(457,545)		(514,829)		(509,290)		(914,095)		(837,527)		(417,749)		(98,644)		(103,515)		(106,840)		(114,699)	
	non-RAC (non-adjudicated)	(98,328)		(440,786)		(489,749)		(517,123)		(579,813)		(579,713)		(332,382)		(297,749)		(316)		(1,093)		(2,770)	
Net Pending Receipt Increase / (Decrease)		(2,515)		(40,784)		(28,833)		(37,669)		(18,245)		(37,745)		(37,669)		(39,347)		(2,515)		(1,862)		(104,970)	
Ending Workload (I)		53,200		55,715		76,599		79,432		117,098		135,343		98,062		53,200		55,715		62,247		64,109	
																						60,605	
																						76,599	

1/ Ending Workload at Level 2 does not represent backlog. It represents all appeals received, but not adjudicated, i.e. appeals have not passed the 60-day timeframe for adjudication.

		Fiscal Year						Most Recent 6 Quarters															
		FY 2018		FY 2017		FY 2016		FY 2015		FY 2014		FY 2013		FY 2012		FY 2011		FY 2010		FY 2009			
Beginning Workload Balance		55,715		76,599		79,332		117,098		135,343		98,062		58,715		60,109		62,247		64,109		60,605	
Receipts	RAC (non-adjudicated)	96,129		436,661		511,996		561,624		895,850		874,808		457,096		96,129		96,981		104,978		118,199	
Dispositions	RAC (non-adjudicated)	209		12,062		26,360		33,445		309,288		310,363		102,251		209		677		1,420		3,746	
	non-RAC (non-adjudicated)	95,920		424,599		485,136		528,179		586,562		564,445		95,920		103,306		103,558		110,282		119,948	
	RAC (non-adjudicated)	(98,644)		(457,545)		(514,829)		(509,290)		(914,095)		(837,527)		(417,749)		(98,644)		(103,515)		(106,840)		(114,699)	
	non-RAC (non-adjudicated)	(98,328)		(440,786)		(489,749)		(517,123)		(579,813)		(579,713)		(332,382)		(297,749)		(316)		(1,093)		(2,770)	
Appeals Removed	OMHIA Dispositions (non-adjudicated)	(87,791)		(207,393)		(391,515)		(412,364)		(474,063)		(474,063)		(17,098)		(193,151)		(16,893)		(16,213)		(27,186)	
	RAC (non-adjudicated)	(21,846)		(84,729)		(112,933)		(184,240)		(240,360)		(47,929)		(193,151)		(117,098)		(16,893)		(16,213)		(27,186)	
	non-RAC (non-adjudicated)	(6,628)		(16,302)		(33,511)		(45,586)		(28,104)		(17,739)		(12,357)		(6,628)		(6,458)		(4,465)		(8,110)	
	Administrative Actions Dispositions (non-adjudicated)	(15,218)		(38,427)		(63,612)		(63,612)		(63,233)		(63,233)		(49,171)		(15,218)		(17,369)		(11,089)		(11,881)	
	OMHIA X/F - including states (non-adjudicated)	(66,125)		(122,664)		(310,392)		(42,483)		0		0		0		(66,125)		(67,315)		(67,900)		(10,473)	
	CMS QIC - disposition demo - remands for resolution (non-adjudicated)	(46,901)		0		0		0		0		0		0		(46,901)		0		0		0	
		(1,487)		(23,911)		(2,387)		0		0		0		(1,487)		(5,873)		(3,756)		(6,326)		(7,956)	
	CMS Hospital Settlements (non-adjudicated)	0		(91,486)		(246,249)		(42,483)		0		0		(14,175)		(54,144)		(4,147)		(19,020)		(68,026)	
	Received appeals combined for efficiency (non-adjudicated)	(17,737)		(7,267)		(61,762)		0		0		0		(17,737)		(7,267)		0		0		(61,762)	
	Net Pending Receipt Increase / (Decrease)	(71,078)		(94,460)		(213,751)		118,996		386,726		304,774		55,540		(71,078)		(52,729)		(54,423)		(13,360)	
	Ending Workload (pending appeals)	507,605		578,683		673,143		886,418		767,422		380,696		75,922		507,605		578,683		601,412		654,360	
																						659,783	

1/ FY18 Q1 includes the majority of appeals received through December 31, 2017.
2/ Received appeals combined for efficiency result in one disposition for a group of combined appeals. This accounts for received appeals that are not reflected in disposition counts. QIC remands or CMS Hospital Settlements.