

United States Senate
Committee on Finance
Washington, D.C.

For Immediate Release
Thursday, Sept. 18, 2008

Senators work to improve Medicare appeals system

WASHINGTON --- Senators Chuck Grassley and Max Baucus have asked the federal government to report on the performance of the appeals system currently in place for Medicare beneficiaries and to consider changes to the system that would better serve Medicare beneficiaries. Their request is based on concerns about the consistency with which appeal options are presented to beneficiaries, the ease with which Medicare beneficiaries can reach appeal offices, and the amount of time in which appeals are decided.

The senators were the principal Senate sponsors of the 2003 Medicare prescription drug legislation that reformed an outdated Medicare appeals system. The legislation required the Secretary of Health and Human Services to set up a new system. In 2005, Grassley and Baucus requested an independent review, which found shortcomings in the transfer from the old to the new program and that the new program failed to meet the legislative goals and requirements. Today, Grassley and Baucus said they want to make sure that “beneficiaries and providers have an appeals system that is equitable and just.”

The text of their letter to the Secretary of Health and Human Services is below. Baucus is Chairman and Grassley is Ranking Member of the Senate Committee on Finance, which is responsible for Medicare legislation and oversight.

September 15, 2008

The Honorable Michael O. Leavitt
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Leavitt:

The United States Senate Committee on Finance (Committee) has jurisdiction over, among other things, the Medicare and Medicaid programs, which are administered by the Department of Health and Human Services (HHS). As Chairman and Ranking Member of the Committee, we have a responsibility to protect the rights of the over 80 million Americans who receive health care under the Medicare and Medicaid programs. This includes oversight of the manner in which the appeal rights of Medicare beneficiaries and providers are administered.

As a result of Section 931 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), HHS created the Office of Medicare Hearings and Appeals (OMHA). OMHA was tasked with conducting Medicare administrative appeals previously handled by the Social Security Administration. In creating OMHA, HHS used its discretion to explore the use of video conferencing (VTC) and established only four OMHA offices nationwide, as it planned to make better use of technology in its appeals process.

As principal authors of the MMA, we believe that technology plays an important role in making the Medicare appeals process more efficient for the American taxpayer and more accessible to beneficiaries and providers. At the same time, we have a special responsibility to ensure that beneficiaries and providers have an appeals system that is equitable and just. To this end, in December 2005, we requested that the HHS Office of Inspector General (OIG) assess the use of telephone, VTC, and in-person hearings in the Medicare administrative hearing process. We also requested that it examine the extent to which OMHA was meeting its statutory requirement of deciding certain cases within 90 days. HHS OIG released its report in July 2008, which raised several concerns we would like to share with you.

The HHS OIG report found that, of twelve Administrative Law Judge (ALJ) teams interviewed, five directed appellants to a VTC hearing as the default option, five offered VTC and telephone options at the same time, and the remaining teams discussed the options more generally. Thirty-five percent of the appellants interviewed reported that OMHA staff promoted telephone hearings over other formats, and sometimes did not present VTC as an option at all. Three appellants reported that they were never presented options; they were simply mailed letters stating the hearing would be conducted over the telephone. In interviews, OMHA staff explained that there is no standardized script or employee manual that offers guidance on how to present the hearing options to an appellant, or ways to document how the hearing format is decided.

OMHA is under a statutory mandate to decide certain appeals within 90 days. The HHS OIG report found that in its first 13 months of operation, OMHA received 6,085 cases subject to this mandate. Of these, only 3,278 had a decision date recorded in the appeals system. Of those in the system, 501, or 15 percent, were not decided within 90 days.

On the basis of these concerns, we request responses to the following questions:

- 1) Are there any employee manuals, scripts, or other documents to assist employees in their communication with appellants? If so, please provide copies to our staff. If not, are any such documents in development? If not, why not?
- 2) Does OMHA staff have any way of recording what options were presented to appellants, or how the appellant chose their hearing format? If not, is any such process in development? If not, why not?
- 3) HHS OIG found that only 3,278 of the 6,085 cases subject to the 90-day mandate had a decision date recorded in the system. Why were the 2,807 remaining cases without recorded decision dates?

- 4) Can you identify, by hearing format, the number and percentage of appeals that were decided favorably and unfavorably to the appellant?
- 5) Of the cases OMHA reviewed in the first quarter of calendar year 2008, what percentage of those subject to the 90-day statutory mandate was decided within the required timeframe?
- 6) The HHS OIG report found that most delays occur in the pre-scheduling period after OMHA receives the hearing request. To what do you attribute this delay early in the appeals process? What changes has OMHA implemented, or what changes does it plan to implement, to cure this delay and better comply with its statutory obligations?

Finally, as Chairman and Ranking Member of the Committee on Finance, we have previously requested monthly updates on OMHA's performance. It has been nearly a year since our staff received an update. We are sure this is an unintentional omission by HHS officials, and look forward to the next update being provided before the end of September, and on a monthly basis thereafter. We have also asked HHS OIG to conduct a follow-up investigation, and expect OMHA's continued cooperation with HHS OIG's inquiries.

We would appreciate a response to this letter by no later than October 6, 2008. Thank you in advance for cooperation in this matter.

Sincerely,

Max Baucus
United States Senator
Chairman of the Committee on Finance

Charles E. Grassley
United States Senator
Ranking Member of the Committee on Finance