Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

MEDICARE PREPAYMENT REVIEW--

FAIR HEARINGS

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INSPECTOR GENERAL

OEI-07-89-01680

EXECUTIVE SUMMARY

PURPOSE

The purpose of the inspection is to determine where improvements can be made in the fair hearings process under the Medicare Part B program.

BACKGROUND

Private insurance companies, referred to as carriers, contract with the Health Care Financing Administration (HCFA). Carriers process and pay claims under the Medicare Part B program. The Part B program covers physicians' services, outpatient hospital care, and other medical costs. The patient, physician, practitioner, or supplier may file a Medicare claim, with payment made either to the beneficiary or on his behalf to the provider of the service. For disputed claims, a claimant under the Medicare Part B program can request a fair hearing by the carrier if the amount in controversy is $100 or more, or if payment is not made promptly.

METHODOLOGY

We reviewed 210 fair hearings cases closed in Fiscal Year (FY) 1989. We grouped carriers by fair hearing reversal rates and the volume of claims processed during three quarters of FY 1989. We then selected a sample of carriers from each group.

FINDINGS

- *The $100 threshold for a fair hearing is low compared to various inflation indices.*
- *The HCFA does not require carriers to adjust reported cost savings due to fair hearing reversals of medical necessity denial edits.*
- *Some carriers may not be correctly reporting cost savings due to hearing reversals.*

RECOMMENDATIONS

- *The HCFA should seek legislation to increase the $100 threshold amount for a fair hearing and the thresholds for subsequent levels of appeal.*
- *The HCFA should require that carriers adjust for fair hearing reversals of medical necessity denial edit screens.*
- *The HCFA should assure that carriers adjust for fair hearing reversals of HCFA mandated and carrier initiated edit screens.*

COMMENTS

We did not receive comments from HCFA on the draft of this report.

We received comments on the draft of this report from the Assistant Secretary for Planning and Evaluation. They fully concurred with our recommendations. The complete text of their comments are contained in Appendix D.

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INTRODUCTION

PURPOSE

The purpose of the inspection is to determine where improvements can be made in the fair hearings process under the Medicare Part B program.

BACKGROUND

The Medicare program provides hospital and medical care for beneficiaries under two separate programs identified as Part A and Part B. The Part A program provides coverage for hospital services. The Part B program covers physician services, outpatient hospital services, and other medical services and supplies.

The Health Care Financing Administration (HCFA) administers Medicare. The HCFA is responsible for developing program policy, setting standards, and assuring compliance with Federal legislation and regulation. The HCFA contracts with private insurers, referred to as carriers, to administer Medicare Part B benefits.

As part of their contract with HCFA, carriers process and pay Medicare Part B claims for services. The carriers determine the reasonable charges for services provided and assure that payments to physicians and suppliers are only for covered and medically necessary services. The HCFA monitors carriers' performance through the annual Contractor Performance Evaluation Program (CPEP).

The HCFA requires each carrier to set up and conduct fair hearings. A fair hearing is an impartial review of a disputed claims decision by a carrier employee or subcontractor. The procedure allows a beneficiary enrolled under Part B the opportunity for a fair hearing if the claimed amount in controversy is $100 or more, or if payment is not made promptly and the request is filed within six months of the initial notice. One claim, or a combination of claims for the beneficiary totaling $100 or more, will meet this threshold requirement.

Physicians or suppliers under the Part B program may also request a fair hearing. Decisions which can be appealed include: coverage of items and services, application of the deductible, whether the charges for items and services are reasonable, the medical necessity of services and supplies, and whether the beneficiary, physician, or supplier knew or could reasonably have been expected to know that the items or services were excluded from coverage. When the appeal for a fair hearing is by a physician or supplier, the claims of more than one beneficiary may be combined to meet the $100 threshold.

The carriers use three methods to conduct fair hearings. These are: on-the-record, telephone, and in-person hearings. In 1988, HCFA revised the appeals process to

provide for the expanded use of on-the-record fair hearings where the evidence in the file is the basis for the decision. The beneficiary, physician, or supplier chooses the method of the fair hearing. If dissatisfied with the fair hearing decision, they may also appeal by:

- requesting a hearing by an Administrative Law Judge (ALJ) of the Social Security Administration within 60 days following a carrier's fair hearing decision which involve denied amounts of $500 or more;

- requesting a Departmental Appeals Council review if dissatisfied with an ALJ decision or dismissal; and,

- bringing a civil suit in U. S. District Court of an appeals council decision which involves a denied amount of $1000 or more.

For the Fiscal Year (FY) 1989 review period (October 1, 1988, to September 30, 1989), Medicare carriers' workload was as follows:

Claims Volume	Percentage (%) of Claims Denied or Reduced	Hearing Decisions	Hearing Reversals (%)
410,700,000	17.5 %	47,881	26,726 (55.8 %)

There were 66,802 fair hearing cases cleared in FY 1989 as a result of either a hearing decision, hearing dismissal, or hearing withdrawal.

METHODOLOGY

We randomly selected a sample of eight carriers from all carriers. We used data available from two overlapping periods for the sample selection. The method used to select the sample was a two-stage stratified cluster sample. The carriers were divided into a matrix of four categories based on the reversal rate of fair hearings and the volume of claims processed for payment during the period October 1988 to June 1989. The reversal rate of fair hearings is the percentage of reversals in relation to the totals for the period October 1988 through July 1989.

We grouped the carriers either above or below the respective median value of the carriers' volume of claims and reversal rates. The resulting four categories of carriers were as follows:

- High volume of claims and high reversal rate
- High volume of claims and low reversal rate
- Low volume of claims and high reversal rate
- Low volume of claims and low reversal rate

We selected two carriers meeting the criteria within each of the four categories. The carrier's selection was directly proportional to the volume of claims processed.

We dropped one of the eight carriers from our review when we became aware of a civil suit brought by the Federal government. The civil suit alleged the carrier improperly administered the Medicare program.

We randomly selected thirty fair hearing cases closed during the FY 1989 period from each of the sample carriers. After selection, we reviewed the cases for the appeal issues, the amount in controversy, and the decision. In addition, for reversals, we determined if there was an audit trail to the carrier savings report. We also held discussions with personnel at each of the seven carriers who were responsible for operation of Medicare Part B fair hearings. We questioned staff about the fair hearings process, cost of conducting fair hearings, program weaknesses, and recommendations for improvements.

FINDINGS

THE $100 THRESHOLD FOR A FAIR HEARING IS LOW COMPARED TO VARIOUS INFLATION INDICES.

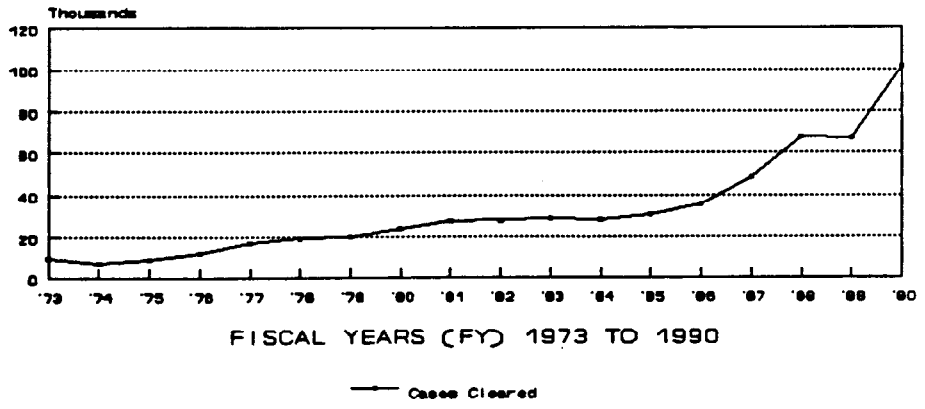
The U.S. Congress amended the review and hearing procedures under the Part B Medicare program, Section 1842(b)(3)(C) of the Social Security Act. This section of the law became effective in FY 1973. The section imposes a threshold of $100 or more before an individual qualifies for a fair hearing under the Medicare Part B program. This threshold was established to avoid administrative burdens for Medicare claims hearings involving small amounts.

The threshold amount of $100 has not changed in the past eighteen years. During the same period, however, there have been substantial increases in several related measures such as medical and general costs and the administrative costs associated with the fair hearing (APPENDIX A). Because the threshold is proportionately small as compared to these other costs, it is no longer achieving its purpose of precluding hearings for negligible dollar value claims.

The effect has been a skyrocketing fair hearings workload. As reported by HCFA, the number of fair hearings has increased substantially since passage of the law. The following chart on Carrier Fair Hearings shows a progressive increase in the number of fair hearings from 9,384 recorded in FY 1973 to 101,246 in FY 1990.

CARRIER FAIR HEARINGS

APPEALS CLEARED



FY 1975 DATA IS INCOMPLETE
HCFA CARRIER APPEALS REPORT (FY 1990)

We estimate that 26.2 percent of the fair hearing cases in FY 1989 involved claimed amounts in controversy that were less than the average fair hearing administrative cost of $224 for the seven carriers sampled. This is more than 17,500 of the 66,802 fair hearing cases cleared in FY 1989.

The increase in workload correlates with an increase in administrative expenditures to process fair hearing requests. For example, the HCFA budget for carrier fair hearings in FY 1990 was more than $16 million. This is up from the previous years of FY 1989, FY 1988, and FY 1987 when the budgets were more than $14 million, $11 million, and $8 million, respectively (APPENDIX A).

The administrative cost of $224 to process a fair hearing is more than twice the current threshold. The Medical Consumer Price Index (MCPI) and the Consumer Price Index (CPI) are 4.2 and 2.9 times greater than they were in 1973, respectively. Applying these ratio's to the $100 fair hearing threshold would support an increase to: (1) $400, an amount that corresponds to the MCPI; (2) $300, an amount that corresponds to the CPI; or (3) $225, the amount that corresponds approximately to the administrative cost of a fair hearing.

We estimate from the number of FY 1989 fair hearings at the sample carriers that HCFA could have achieved administrative budget savings ranging from almost $4 million dollars to over $6 million dollars by raising the threshold of $100 by the following amounts (APPENDIX B):

Proposed Threshold Amount	Fair Hearing Budget Estimated Annual Savings
$400	$6,269,675
$300	$5,671,989
$225	$3,995,987

THE HCFA DOES NOT REQUIRE CARRIERS TO ADJUST REPORTED COST SAVINGS DUE TO FAIR HEARING REVERSALS OF MEDICAL NECESSITY DENIAL EDITS.

Carrier prepayment claim edits are designed to ensure that Medicare pays only for medically necessary services. These consist of Category I and Category II screens. Category I screens are medical necessity denials, and Category II screens are HCFA mandated and carrier initiated computer edits. The carriers submit reports to HCFA on savings achieved using these screens. When a carrier denies a claim for lack of medical necessity, it is claimed as a savings. For example, a denial of payment for a seat lift chair is a claimed savings in the period it is denied. Savings identified through the use of prepayment screens are used by HCFA to evaluate contractors. Carriers must meet, or exceed, a five dollar savings to a one dollar cost from prepayment and postpayment review to receive a satisfactory CPEP evaluation by HCFA.

We identified fair hearing reversals totalling $18,876 which involve screen denials in Category I. While the Medicare Part B Carriers Manual (MCM), Part 3, Section 7536.2, requires an adjustment for fair hearing reversals of Category II screen denials, HCFA does not require carriers to make subsequent adjustments for fair hearing reversals of Category I screen denials. Based on this amount, we project reversals totalling almost $4.4 million that would have reduced claimed savings in the fourth quarter of FY 1989 (APPENDIX C). Assuming equal amounts for the remaining 3 quarters of the year, this projects to $17.5 million for the year.

SOME CARRIERS MAY NOT BE CORRECTLY REPORTING COST SAVINGS DUE TO HEARING REVERSALS.

The MCM requires an adjustment for Category II reversals. All carriers reviewed, except one, had a process to reduce carrier savings by subtracting from it the monetary value of the fair hearing reversals of Category II prepayment screens. The medical review section of that carrier did not consider it their responsibility to adjust Category II savings for fair hearing reversal decisions after completion of the review. The manager stated that the carrier's manual instruction was "vague" concerning adjustment of fair hearing reversals from Category II savings. The potential exists, since one of seven carriers did not adjust savings as a result of fair hearing reversals, that other carriers may not correctly reduce savings as a result of fair hearing reversals.

RECOMMENDATIONS

THE HCFA SHOULD SEEK LEGISLATION TO INCREASE THE $100 THRESHOLD AMOUNT FOR A FAIR HEARING AND THE THRESHOLDS FOR SUBSEQUENT LEVELS OF APPEAL.

The HCFA should pursue a legislative initiative to raise the fair hearing threshold. Alternatives to the current threshold include the following suggestions.

- Increase the threshold amount to $225 which is approximately equal to the administrative cost to conduct a fair hearing at the seven carriers sampled. Projected savings would be $3,995,987 (APPENDIX B). The threshold should be indexed to the administrative cost of a fair hearing. This would achieve greater savings in future years.

- Increase the threshold amount to $300 which approximately reflects the increase in the CPI since 1973. Projected savings would be $5,671,989 (APPENDIX B). The threshold should be indexed to the CPI in future years.

- Increase the threshold amount to $400 which approximately reflects the increase in the MCPI since 1973. Projected savings would be $6,269,675 (APPENDIX B). The threshold should be indexed to the MCPI in future years.

- Increase the Part B thresholds for requesting an ALJ hearing and other levels of appeal proportionally.

THE HCFA SHOULD REQUIRE THAT CARRIERS ADJUST FOR FAIR HEARING REVERSALS OF MEDICAL NECESSITY DENIAL EDIT SCREENS.

The HCFA's instructions to carriers should require adjustment of reported medical necessity denial edits in the quarterly period when the fair hearing reversals occur. There were approximately $17.5 million in savings that should have been adjusted from the claimed savings in FY 1989 due to fair hearing reversal decisions.

THE HCFA SHOULD ASSURE THAT CARRIERS ADJUST FOR FAIR HEARING REVERSALS OF HCFA MANDATED AND CARRIER INITIATED EDIT SCREENS.

The HCFA should assure that all carriers adjust affected savings after a fair hearing reversal. This adjustment should be made in the quarterly period when the fair hearing reversal occurs. The HCFA should also review the clarity of the MCM section that pertains to the handling of these savings.

COMMENTS ON THE DRAFT REPORT

We did not receive comments from HCFA on the draft of this report.

We received comments on the draft of this report from the Assistant Secretary for Planning and Evaluation. They fully concurred with our recommendations. The complete text of their comments are contained in Appendix D.

APPENDIX A

CONSUMER PRICE INDEX (CPI) and
FAIR HEARINGS ADMINISTRATIVE COST
1973 TO 1990

Year	CPI(1)	Medical CPI(1)	Carrier Fair Hearings Administrative Cost(2) (in millions)
1973	44.4	38.8	Not Available (NA)
1974	49.3	42.4	NA
1975	53.8	47.5	NA
1976	56.9	52.0	NA
1977	60.6	57.0	NA
1978	65.2	61.8	NA
1979	72.6	67.5	NA
1980	82.4	74.9	NA
1981	90.9	82.9	NA
1982	96.5	92.5	NA
1983	99.6	100.6	NA
1984	103.9	106.9	NA
1985	107.6	113.5	NA
1986	109.6	122.1	NA
1987	113.6	130.1	$ 8.3
1988	118.3	138.6	$11.8
1989	124.0	149.3	$14.3
1990	130.7*	162.8**	$16.4

* The 1990 CPI is over 2.9 times greater than the 1973 Index.
** The 1990 MCPI is almost 4.2 times greater than the 1973 Index.

SOURCES:

(1) The CPI is from the Office of Management and Budget Consumer Price Index Table B-58 CPI, Major Expenditure Classes.
The 1988, 1989 and 1990 CPI and the Medical CPI are from the Economic Report of the President, February 1991.

(2) Carrier Fair Hearings Administrative Costs for 1987, 1988, 1989, and 1990 represent costs (HCFA Fair Hearings Cost Data from Carriers' Final Administrative Cost Proposal).

APPENDIX B

ESTIMATED ANNUAL BUDGET SAVINGS BASED UPON INCREASED FAIR HEARING THRESHOLD AMOUNTS

Proposed Threshold Amount	95 Percent Confidence Interval Lower Estimate - Upper Estimate		Estimated Budget Savings
$400	$4,498,013	$8,041,337	$6,269,675
$300	$3,756,611	$7,587,367	$5,671,989
$225	$3,387,682	$4,604,292	$3,995,987

The budget savings calculations are based on the varying thresholds within each strata utilized in drawing the sample of carriers. We estimated the amount of savings within the sample based on the average cost per request and the number of cases below the threshold. We projected these estimated savings within each strata, and summed the amounts to obtain the total for each threshold.

APPENDIX C

ESTIMATED TOTAL AMOUNT OF FAIR HEARING REVERSALS OF MEDICAL NECESSITY DENIAL EDITS NOT ADJUSTED FROM THE QUARTERLY CARRIER MEDICAL REVIEW REPORTS

FOURTH QUARTER OF FISCAL YEAR 1989

Strata (1)	Sample Savings	Weight (2)	Estimated Total Amount
I	$4,758.30	.487	$1,993,141.63
II	$1,850.90	.351	$1,870,323.02
III	$9,395.60	.083	$ 338,053.76
IV	$2,872.00	.079	$ 181,422.12
Totals	$18,876.80		$4,382,940.53

At the 95 percent confidence level, this estimate may vary by as much as $1.1 million. Therefore, the estimated fair hearing reversals of medical necessity denial edits range from $3.3 - $5.5 million.

(1) Strata I Carriers with high volume of claims and high reversal rate
Strata II Carrier with high volume of claims and low reversal rate
Strata III Carriers with low volume of claims and high reversal rate
Strata IV Carriers with low volume of claims and low reversal rate

(2) This represents the proportion of claims processed by the various strata.

APPENDIX D

ASSISTANT SECRETARY FOR
PLANNING AND EVALUATION

COMMENTS

DEPARTMENT OF HEALTH & HUMAN SERVICES Office of the Secretary

Washington, D.C. 20201

SEP 6 1991

TO: Richard P. Kusserow
Inspector General
Office of Inspector General

FROM: Assistant Secretary for
Planning and Evaluation

SUBJECT: OIG Draft Report: "Medicare Prepayment Review - Fair Hearings" (OEI-07-89-01680)--CONCURRENCE

I concur with the draft Office of Inspector General (OIG) report entitled "Medicare Prepayment Review - Fair Hearings" which recommends that the Health Care Financing Administration (HCFA) seek legislation to increase the $100 threshold amount for fair hearings and subsequent levels of appeal.

I also concur with the report's recommendation that HCFA require carriers to adjust claimed savings for fair hearing reversals of medical necessity denial edits and assure that carriers adjust for fair hearing reversals of HCFA mandated and carrier initiated edit screens.

If you have any questions, please contact Elise D. Smith at 245-1870.

Martin H. Gerry