

# COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

June 30, 2016

Dr. Kate Goodrich, M.D.  
Director  
Center for Clinical Standards and Quality  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dr. Shantanu Agrawal, M.D.  
Deputy Administrator and Director  
Center for Program Integrity  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Dr. Goodrich and Dr. Agrawal:

We write today to express concerns over the Centers for Medicare and Medicaid Services (CMS) recent update on the review performance of the Beneficiary and Family Centered Care Quality Improvement Organizations' (BFCC-QIOs). On May 4, 2016, CMS informed QIOs of a temporary pause of inpatient hospital short stay status reviews conducted by QIOs.<sup>1</sup> CMS explained that the pause was due to improper auditing of the two-midnight policy for short hospital stays. Despite deciding to alter the policy in May, CMS did not inform Congress of the pause until June 6, 2016. Accurate reviews of claims are necessary to protect the solvency of the Medicare Trust Fund, and as such we request that CMS provide timely notification to Congress and further explanation of the current hospital short stay review process and the role QIOs play.

The Tax Equity and Fiscal Responsibility Act of 1982 established a program to assist Medicare providers with improving quality of care that has since become BFCC-QIOs.<sup>2</sup> The purpose of the program, as stated in Section 1862(g) of Title XI of the Social Security Act, is to "promot[e] the effective, efficient, and economical delivery of health care services."<sup>3</sup> Until recently, the QIOs have primarily been focused on quality improvement efforts.

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<sup>1</sup> <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/InpatientHospitalReviews.html>.

<sup>2</sup> Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324 (1982).

<sup>3</sup> 42 U.S.C § 1395y (g).

The two-midnight policy was established by CMS to clarify when an admission is considered medically necessary for purposes of an inpatient admission, rather than as an outpatient stay.<sup>4</sup> At the time the two-midnight policy went into effect, Recovery Audit Contractors (RACs), rather than QIOs were responsible for reviewing short stay inpatient hospital claims. However, CMS decided late last year to replace RAC audits with QIO audits. Under the new auditing structure, QIOs refer claim denials to Medicare Administrative Contractors (MACs) for payment adjustments and RACs only receive referrals if hospitals consistently fail to adhere to the billing rules. Further, QIOs became responsible for educating hospitals about Medicare's short hospital stay policy.

While educational feedback is important, accurate reviews on claims are necessary to protect the solvency of the Medicare Trust Fund. In FY 2015, the Medicare improper payment rate for hospital inpatient services was 6.2 percent, which translates to \$7 billion in improper payments.<sup>5</sup> With looming financial challenges facing the Medicare program, it is more important than ever to ensure taxpayer dollars are properly spent.

To assist the Committees in fully understanding the current hospital short stay review process and role the QIOs play, we respectfully request the following information by July 14, 2016:

1. Prior to the decision to allow QIOs to assume responsibility (October 1, 2015) for conducting patient status reviews of short stay hospital claims, describe the process CMS used to make the determination that QIOs were better equipped or more qualified to perform short stay patient status reviews compared to other CMS contractors? What factors did CMS consider when making the determination?
2. Were there modifications to the scope of work contracts for QIOs that reflected these new responsibilities? If so, please provide all such contract modifications. Was there additional funding provided to QIOs, if so, how much?
3. How did CMS become aware of auditing inconsistencies of the two-midnight standard by QIOs? How will CMS monitor QIOs to ensure appropriate auditing in the future?
4. Please provide further details on the claims that QIOs have referred to MACs for denial and those claims by QIOs that are being re-reviewed, including the following:
  - a. Since October 2015, how many claims were reviewed by QIOs?
  - b. How many of these claims have been referred to MACs for denial?
  - c. Which MS-DRGs (top 10) are most often targeted for review?
  - d. How many claims are being re-reviewed due to inconsistencies by QIOs?

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<sup>4</sup> <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Medical-Review/InpatientHospitalReviews.html>.

<sup>5</sup> <https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/CERT/index.html?redirect=/cert>.

5. When CMS announced that QIOs would monitor inpatient short stays, CMS indicated that persistent noncompliant providers would be referred to RACs. Since January 2016, how many of such referrals have been made? Will these claims need to be re-reviewed?
6. If RACs had been completing the inpatient reviews, rather than QIOs, how much in improper payment recoveries has CMS forgone because RACs had not done these audits?
7. What steps has CMS taken to address the inconsistent application of QIO reviews? When does CMS expect these reviews to continue?

Lastly, although QIOs were notified of the policy change on May 4, 2016, CMS waited until June 6, 2016, to notify Congress of this change in policy. Going forward, we request to be informed of policy changes that impact the program integrity of Medicare in a more timely manner.

Thank you for your attention to this matter. We look forward to your prompt responses to our questions.

Sincerely,



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Pat Tiberi  
Chairman  
Subcommittee on Health



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Peter J. Roskam  
Chairman  
Subcommittee on Oversight

cc: The Honorable Jim McDermott, Ranking Member, Subcommittee on Health  
The Honorable John Lewis, Ranking Member, Subcommittee on Oversight