February 10, 2014

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20001

Dear Secretary Sebelius,

Providing Medicare beneficiaries with the services they deserve is of paramount importance to the Congress. It is in light of this obligation that we write to express our concerns regarding the Recovery Audit Contractor (RAC) program and the problems facing both Medicare beneficiaries and providers of Medicare inpatient services, hospitals, and health systems.

As you know, Recovery Audit Contractors (RACs) are tasked with evaluating the accuracy of Medicare payments to providers. Although the intent of the program is laudable, operational problems within the program have persisted without corrective action by the Centers on Medicaid and Medicare Services (CMS). RACs are able to audit medical records and claims three years after services have been provided. They are paid a commission on the dollar amount of the claims they deny, which ranges between 9 and 12.5 percent. Due to this payment structure, RACs are incentivized to deny claims, even when the claims are correct. In fact, according to a November 2012 OIG report, 72 percent of hospital Medicare Part A appeals that have reached the third level of the Medicare appeals process are overturned in favor of the hospital. Without more oversight measures in place, RACs have imposed a huge administrative burden on hospitals, which must spend valuable time and resources to appeal denied claims in order to be reimbursed for Medicare services provided.

Furthermore, Medicare beneficiaries suffer when their inpatient stay is inaccurately denied by a RAC. They pay higher out-of-pocket expenses under Medicare Part B and are sometimes held financially responsible for the post-acute care services they require. This is not the way the Medicare program was intended to operate.

The need for reform of the RAC program has been further illuminated by a recent announcement from the Department of Health and Human Services Office of Medicare Hearings and Appeals (OMHA) that it has suspended assignment of claim appeals to an Administrative Law Judge (ALJ) for at least the next two years. It states that this temporary halt was “necessitated by a dramatic increase in the number of decisions being appealed to OMHA”. In its notice, OMHA further reveals that from 2010 to 2013, its claim and entitlement workload has grown by 184 percent and that it has accumulated a backlog of 460,000 claims for services and entitlement in just under two years. Even more alarming, OMHA operates with 65 Administrative Law Judges, who already have 375,000 claims currently before them.

In closing, we strongly recommend that CMS consider dedicating additional resources to help resolve OMHA’s backlog issue in order for the claims appeal process to resume as usual. Furthermore, we strongly urge CMS to immediately reform the RAC process. We believe CMS should implement reforms to ensure that auditors are charged with identifying real claim coding and medical documentation errors, as well as provide a more transparent mechanism through which providers can be informed of errors so as
to avoid them in the future. An alternative payment arrangement with auditors should be considered by the Congress and CMS in order to ensure RACs are not improperly incentivized to deny claims for profit and to ensure they focus on prevention of errors. This can be accomplished by paying RACs a retainer, as many other government contractors are paid. We also urge CMS to adopt the commonsense reforms supported by 184 bipartisan Members of Congress that are contained in the Medicare Audit Improvement Act of 2013 (H.R. 1250).

Medicare beneficiaries and those who provide them with care have an important stake in ensuring the RAC auditing process is fair and effective. We urge you to take immediate action before we see further problems with the RAC auditing program.

Sincerely,

Sam Graves  
Member of Congress

Adam B. Schiff  
Member of Congress

Jim Langevin  
Member of Congress

Scott Perry  
Member of Congress

Glenn Thompson  
Member of Congress

Tim Huelskamp  
Member of Congress

Jeff Duncan  
Member of Congress

Lou Barletta  
Member of Congress

Jackie Speier  
Member of Congress

Steve Daines  
Member of Congress
Nick J. Rahall  
Member of Congress

Louise M. Slaughter  
Member of Congress

Michael K. Conaway  
Member of Congress

Ben Ray Lujan  
Member of Congress

Robert J. Wittman  
Member of Congress

Wm. Lacy Clay  
Member of Congress

Harold Rogers  
Member of Congress

Ed Pastor  
Member of Congress

Blaine Luetkemeyer  
Member of Congress

Sanford D. Bishop  
Member of Congress

Thomas E. Petri  
Member of Congress

Robert E. Latta  
Member of Congress

Emanuel Cleaver  
Member of Congress

Collin Peterson  
Member of Congress