

# Publications

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## Back to Backlog? Polsinelli Shareholders Share Insight on how Terminations of DAB Attorneys and Potential Removal of Administrative Law Judges May Impact Medicare Appeals

As the new administration continues its efforts to contract and streamline the federal government, recent developments at the U.S. Department of Health and Human Services (“HHS”) and the Department of Justice (“DOJ”) hint at a potential ballooning of the Medicare appeals backlog.

### 1. HHS Terminates at least 15 Departmental Appeals Board (“DAB”) Attorneys

In 2017, approximately 31,000 appeals of Medicare claim denials sat waiting to be addressed and decided by the Medicare Appeals Council (“MAC”).<sup>1</sup> While that number has decreased since then, about 11,000 appeals remain backlogged.<sup>2</sup> The now-terminated DAB attorneys were hired within recent years to help reduce that backlog; each attorney was tasked with working on anywhere from 120 to 144 cases per year. Without them, an estimated 2,000 fewer appeals will be addressed through the end of this year, and the current backlog has the potential to grow.

### 2. The DOJ Implies Intent to Remove Administrative Law Judges

The terminations of DAB attorneys arise after another potential blow to the efficiency of Medicare appeals. Even before a provider can appeal a claim denial to the MAC—which is the fourth level of the Medicare appeal process—that provider must request a hearing in front of an Administrative Law Judge (“ALJ”).

In February, Acting Solicitor General Sarah Harris made it be known that the DOJ believes two statutes—5 U.S.C. § 7521(a) and 5 U.S.C. § 1202(d)—present multiple layers of removal restrictions for ALJs which runs afoul of Article II’s vesting of the executive power in the President.<sup>3</sup> Ms. Harris stated that the “President may not be restricted in his ability to remove a principal executive officer, who is in turn restricted in his ability to remove an inferior executive officer.”<sup>4</sup> If the President goes through with removing ALJs, there will be fewer available to hear providers’ Medicare appeals.

### Related People

- Alessandra Stewart
- Dmitry Shifrin
- R. Ross Burris, III
- Hunter A. Morgan
- Melissa M. Yates

### Related Capabilities

- Health Care
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So, what may fewer DAB attorneys and the potential removal of ALJs mean for providers' Medicare appeals moving forward? Polsinelli Shareholders and industry experts Ross Burris, Alessandra Stewart and Dmitry Shifrin weigh in:

Ross Burris: "At a minimum, we are going to see a lot of delays at the third and fourth levels of appeal, the Office of Medicare Hearings and Appeals and Medicare Appeals Council, respectively, unless providers and suppliers choose to escalate their matters without hearings."

Alessandra Stewart: "If the administration succeeds in its goal of being able to remove ALJs at will, or with fewer restrictions, it may raise additional due process concerns for providers seeking to appeal agency actions. In addition to the likelihood of increased delays in the administrative appeals process, there is legitimate concern that the increased threat of removal may affect the impartiality of ALJs and compromise a provider's right to a meaningful hearing. This could increase the likelihood that a provider will have to escalate their appeal to federal district court to obtain the appropriate legal remedy."

Dmitry Shifrin: "The message to providers in this confusing time is don't lose focus and continue to follow all available steps to get in the pipeline so that your rights are protected. The administration's moves at the onset of this term are sudden, and could very well be retracted or challenged."

Polsinelli's Health Care Disputes and Litigation attorneys have extensive experience guiding Medicare providers through the labyrinth of Medicare appeals and are prepared to assist with any health care compliance, defense or litigation needs.

[1] [https://www.law360.com/health/articles/2305847?nl\\_pk=f777bea7-8342-4260-9c2c-738b0972956d&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=health&utm\\_content=2025-03-05&read\\_main=1&nlsidx=0&nlaidx=0&detected=1](https://www.law360.com/health/articles/2305847?nl_pk=f777bea7-8342-4260-9c2c-738b0972956d&utm_source=newsletter&utm_medium=email&utm_campaign=health&utm_content=2025-03-05&read_main=1&nlsidx=0&nlaidx=0&detected=1).

[2] *Id.*

[3] <https://www.democracymocket.com/wp-content/uploads/2025/02/GkReX9bWEAAVpyK.jpg>.

[4] *Id.*