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## Medicare Change Will Limit Access to Claim Hearing

By [ROBERT PEAR](#)

**W**ASHINGTON, April 23 - A new federal policy will make it significantly more difficult for Medicare beneficiaries to obtain hearings in person before a judge when the government denies their claims for home care, nursing home services, prescription drugs and other treatments.

For years, hearings have been held at more than 140 Social Security offices around the country. In July, the Department of Health and Human Services will take over the responsibility, and department officials said all judges would then be located at just four sites - in Cleveland; Miami; Irvine, Calif.; and Arlington, Va.

Under the new policy, Medicare officials said, most hearings will be held with videoconference equipment or by telephone. A beneficiary who wants to appear in person before a judge must show that "special or extraordinary circumstances exist," the rules say.

But a beneficiary who insists on a face-to-face hearing will lose the right to receive a decision within 90 days, the deadline set by statute.

The policy change comes as Bush administration officials are predicting an increase in the volume of cases, with the creation of a Medicare drug benefit expected to generate large numbers of claims and appeals. But in a recent study, the Government Accountability Office, an investigative arm of Congress, questioned the heavy reliance on videoconferences, saying that "beneficiaries are often uncomfortable using videoconference facilities and prefer to have their cases heard face to face."

All beneficiaries are 65 or older or disabled. About 5 million of the 41 million beneficiaries are 85 or older, and some are so sick they die while pursuing appeals.

When claims are denied, beneficiaries and their health care providers can challenge the decisions in an appeals process that has several levels of review. Their best chance to win coverage comes when they appear before impartial, independent adjudicators known as administrative law judges.

Over the last five years, beneficiaries and providers prevailed in two-thirds of the 283,000 cases decided

by these judges.

The Department of Health and Human Services defended its new policy, saying the use of videoconference equipment would enable judges to "complete more cases" within the 90-day deadline, because they would not have to spend time traveling to remote sites. In a summary of its plans, the department said it was "not economically or administratively feasible" to station judges around the country.

"Having fewer offices is more cost-effective in terms of management, technology and training," the department said in a letter answering questions from Congress.

Michael O. Leavitt, the secretary of health and human services, said, "Access to hearings for Medicare beneficiaries will be as good as or better than" what is now available. For some beneficiaries, he said, video hearings could be more convenient.

"Video teleconferences will allow hearings to be provided more timely, with vastly more access points than Social Security currently provides through its offices," Mr. Leavitt said.

But lawmakers, judges, consumer groups and lawyers for beneficiaries expressed concern.

Senator Charles E. Grassley, the Iowa Republican who is chairman of the Finance Committee, and Senator Max Baucus of Montana, the senior Democrat on the panel, said four hearing offices were not enough.

Mr. Grassley and Mr. Baucus were among the principal authors of the 2003 Medicare law. The law, they noted, says Medicare judges are to be distributed "throughout the United States."

Under the new arrangement, hearings for Medicare beneficiaries in New York, New Jersey and all of New England will normally be held by judges in Cleveland. Hearings for people in Iowa, Kansas, Missouri and Nebraska will be held by judges in Southern California.

Judith A. Stein, director of the Center for Medicare Advocacy, which has represented thousands of people in hearings since 1986, said: "The videoconferences are one of many changes that will reduce the beneficiaries' ability to get fair, favorable decisions. Sick, old and disabled people can be much more effective in person because the judge can see their illnesses and infirmities - how they walk, how they get up from a chair, how their hands shake with tremors."

Nancy M. Coleman, director of the Commission on Law and Aging, a policy and research arm of the American Bar Association, said, "It's a travesty, what's happening to the appeal rights of Medicare beneficiaries."

Videoconference equipment transmits a picture and sound so that a Medicare beneficiary, a judge and

witnesses in different parts of the country can see and hear one another over secure networks. Signals will be encrypted to protect the privacy of medical information. The judge will have the file, but a beneficiary can send and receive additional documents using a fax machine.

Ronald G. Bernoski, president of the Association of Administrative Law Judges, said face-to-face hearings were valuable for judges and beneficiaries alike.

"Video teleconferences will undermine the judges' ability to assess the credibility and demeanor of witnesses," said Mr. Bernoski, a judge based in Milwaukee. "And it could reduce the beneficiaries' confidence in the proceedings. The intrinsic value of a Medicare hearing is that citizens have an opportunity to sit down in front of a high-ranking official and tell their story to someone who listens carefully and makes a reasoned decision."

One person who benefited from a Medicare hearing is Ethel L. Swarm, 76, of Bethel, Conn. She said she had excruciating pain in her left leg, was unable to walk and spent four days at Danbury Hospital. But Medicare refused to cover her stay, saying it was not medically necessary. Medicare also refused to pay for a subsequent 37-day stay in a nursing home.

After reviewing the medical evidence, administrative law judges ruled in favor of Mrs. Swarm. She won \$7,437 for her hospital care and \$9,250 for the nursing home stay, which helped her walk again.

The 2003 law shifted the responsibility for hearing Medicare appeals from Social Security to the Department of Health and Human Services, which is in the process of hiring 50 judges.

The government is still working out details and lining up sites with the necessary videoconference links. Nancy A. Thompson, director of the transition team at the department, refused to answer questions about the new hearing and appeal procedures or the logistical arrangements.

Ronald T. Osborn of Charlotte, N.C., who has been an administrative law judge since 1974 and has specialized in Medicare cases since 1996, said he had no interest in moving to the Department of Health and Human Services.

"Under the department's procedural rules," Mr. Osborn said, "judges will have less freedom to handle individual cases as they see fit."

**Ms. Stein said that under the rules "it will be easier for Medicare officials to participate in hearings and to influence decisions, often to the detriment of beneficiaries."**

Bill Hall, a spokesman for the department, said such concerns were unfounded because the judges would report to the health secretary, not the Medicare program chief.

Medicare and Social Security officials have long contended that some administrative law judges were

improperly favoring beneficiaries. For their part, the judges have periodically complained that officials put pressure on them to approve fewer claims. In the early 1980's, the tension became so acute that the judges filed suit against the secretary of health and human services to preserve their independence.

Under the new rules, issued in March by the Centers for Medicare and Medicaid Services, administrative law judges must follow the Medicare law and regulations and must "give substantial deference" to manuals and guidelines issued by Medicare officials. In a particular case, a judge can decline to follow a Medicare policy but must explain why.

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