Modifications to the Chairman's Mark of
The Audit & Appeal Fairness, Integrity, and Reforms in Medicare Act of 2015

To modify Section 8 – Improvements to the Office of Medicare Hearings and Appeals

On page 12 of the Mark, in Section 8, after the first paragraph, insert a new standalone paragraph to reads as follows:

"Beginning on January 1, 2017,in the instance the Magistrate or ALJ reach a different decision than the QIC, the written decision of the Magistrate or ALJ must explain the reason the decision reached by the Medicare Magistrate or ALJ is different than the decision made by the QIC."

On page 13 of the Mark:

Strike "by a provider of services" in the seventh line of the last paragraph of Section 8.

To Accept Brown #1

On page 14 of the Mark, strike the first paragraph and replace with the following:

"The Chairman's Mark would require the Secretary of HHS to promote transparency and consistency in Medicare payment and coverage policy, as appropriate, and ensure that review entity contractors uniformly and consistently apply these policies and that Medicare Magistrates, ALJs, and the Departmental Appeals Board are aware of and trained in these policies. Nothing in this section should be construed as questioning the independence of Medicare Magistrates, ALJs, or the Departmental Appeals Board, but is to help ensure that consistent guidelines and methodologies exist and are available to those entities reviewing reimbursement claims submitted by providers and suppliers."

And on page 14, strike the first numbered paragraph and replace with the following text:

"1. Develop a comprehensive strategy for claims review determinations made on either a prepayment, post-payment, or prior-authorization basis. The strategy shall focus on identifying and reducing those claim errors that have the largest impact on the error rate, pose the greatest risk to the Medicare Trust Fund, or are likely to negatively affect quality of care. In developing such strategy, the Secretary shall consider ways to reduce unnecessary burden on providers and suppliers and minimize any unintended effects of these policies on beneficiaries. Such strategy should utilize data and other sources including: claims data, Office of Inspector General reports, GAO reports, news reports, Medicare Payment Advisory Commission reports, and Comprehensive Error Rate Testing (CERT) reports;"

To modify Section 9 – Review Program Improvements

On page 14 of the Mark, in the second paragraph of Section 9:

Insert, "Review topics shall be posted and publically available for a reasonable amount of time before they are used." before the last sentence of the paragraph.

To Accept Burr #2, as modified

On page 15 of the Mark, in Section 9, numbered paragraph 3:

Insert, “and supplier” after “to reduce provider” in the second line.

Strike “. Such efforts could include” in the second and third lines and replace with “by including”.

Insert, “and supplier” after “communication with providers” in the fourth line.

Strike “or” after “for providing review results;” and replace with “and” in the fifth line.

Insert, “and any other areas in which the Secretary determines provider and supplier burdens may be decreased;” after “payments or other errors;” in the last line of the paragraph.

To Accept Brown #2

On page 15 of the Mark, strike numbered paragraph 4 and replace with the following text:

“4. Identify CMS local coverage determinations (LCDs), national coverage determinations (NCDs), regulations, and program instructions that need updating or inappropriately conflict with other Medicare policies and make the appropriate modifications. Nothing in this section shall be construed as undermining the independent authority of Medicare Magistrates, ALJs, or the Departmental Appeals Board; rather, these policies should be modified and updated in a manner consistent with all existing statute and regulations. In the event that the Secretary of HHS identifies a lack of necessary Medicare policies and review guidelines related to a particular issue, the Secretary of HHS shall establish such instructions, with input from stakeholders, as appropriate;”

To modify Section 9 – Review Program Improvements

On page 15 of the Mark, in Section 9, numbered paragraph 7:

Insert, “and suppliers” after “Ensure that providers” in the first line.

To Accept Carper #1, as modified

On page 15 of the Mark, in Section 9, after numbered paragraph 9, insert a new standalone paragraph to read as follows:

“The Chairman’s Mark would require the Secretary to establish a secure internet based system for access by providers, and other appropriate entities, in order to determine status of claims under review by any Medicare audit or oversight contractor, or that is being processed as an appeal by a MAC, QIC, ALJ, or the Departmental Appeals Board. This system could be based on the existing database system of claims under review used by audit contractors, or a similar existing system. The Secretary shall report to Congress within 180 days of passage of the Act on a plan to establish and operate such a portal. The Secretary shall ensure that such system does not impede any ongoing investigations of potential fraud.”

To Accept Cardin #1, as modified

On page 15 of the Mark, in Section 9, after numbered paragraph 9 and the new standalone paragraph inserted above, insert a second new standalone paragraph to read as follows:

"The Chairman's Mark would require, as part of the annual RA report to Congress required under current law, the following information be included: (1) include number of claims corrected in the discussion period; (2) a separate calculation that identifies a total overturn rate for appeals in which an appealed claim is only once, based upon the decision made at the highest appeal level; (3) carefully describe the denominator of total audits and appeals, given the likelihood that many appeals in a given year will not have a decision in that year; and (4) consistently report complex Part A, complex Part B, semiautomated, and automated reviews separately."

To modify Section 10 – Creation of Medicare Provider and Supplier Ombudsman for Reviews and Appeals

On page 16 of the Mark, in Section 10, numbered paragraph 1:

Insert "and inquiries" after "resolution of complaints" in the first line.

On page 16 of the Mark, in Section 10, numbered paragraph 2:

Insert "and inquiries" after "trends in complaints" in the first line.

On page 16 of the Mark, in Section 10, numbered paragraph 3:

Insert "and supplier" after "addressing provider" in the second line.

On page 16 of the Mark, in Section 10, numbered paragraph 5:

Strike "contractor and provider" and replace with "contractor, provider, and supplier" in the second line.

To Accept Brown #3

On page 16 of the Mark, in Section 10, after numbered paragraph 6, add a new numbered paragraph 7 to read as follows:

"7. Communicating with the Medicare Beneficiary Ombudsman to assist with the identifying, investigating, and resolution of beneficiary-related complaints, including those that overlap with reviews and appeals submitted by a provider."

To Accept Burr #2, as modified

On page 18 of the Mark, in the second paragraph of Section 11:

Insert, "the potential burden on providers and suppliers of the look-back period under current law and" after "the Secretary to study" in the second line. Add "The Chairman's Mark would require the Secretary to make the study publically available." at the end of the paragraph.

To Accept Stabenow #2, as modified

On page 18 of the Mark, after second paragraph of Section 11, add a new standalone paragraph to read as follows:

"The Chairman's Mark would direct the Secretary of Health and Human Services no later than six months after the enactment of this bill to submit a report to Congress with recommendations to change the recovery audit payment structure, in a budget-neutral matter, from an incentive-based model to a non-incentive based approach without additional financial burdens on providers."

To correct a drafting error in Section 12 – Incentives and Disincentives for Medicare Contractors, Providers, and Suppliers.

On page 19 of the Mark:

Strike "by a provider of services" in the seventh line of the first paragraph.