
LOW VOLUME APPEALS (LVA) SETTLEMENT
ADMINISTRATIVE AGREEMENT

Appellant Name: [**Appellant Name**]

National Provider Identifier (NPI): [**NPI**]

PARTIES

This Administrative Agreement (Agreement) is between Appellant (as identified above) and the Centers for Medicare & Medicaid Services (CMS) (collectively referred to as the Settlement Parties) with respect to the Medicare fee-for-service appeals identified in the attached Administrative Agreement Spreadsheet (Spreadsheet). This Agreement is effective as of the date of the last signature hereto.

BACKGROUND

WHEREAS, Appellant has a total of fewer than 500 appeals pending at the Office of Medicare Hearings and Appeals (OMHA) and the Medicare Appeals Council (Council) at the Departmental Appeals Board level(s) of appeal, combined, and wishes to settle each and all of its eligible appeals. An eligible appeal is defined as follows: 1) the appeal was pending before the OMHA and/or Council level of appeal as of November 3, 2017; 2) the appeal has a total billed amount of \$9,000 or less; 3) the appeal was properly and timely filed at the OMHA or Council level as of November 3, 2017; 4) the claims included in the appeal were denied by a Medicare contractor and remain in a fully denied status in the Medicare system; 5) the claims included in the appeal were submitted for payment under Medicare Part A or Part B; 6) the claims included in the appeal were not part of an extrapolation; and 7) as of the date this Agreement is fully executed by CMS, the appeal was still pending at the OMHA or Council level of review.

WHEREAS, Appellant and CMS desire to resolve the dispute regarding the appeal and associated

denied claims as identified in the Spreadsheet by entering into an Agreement; and

WHEREAS, the sole purpose of this Agreement is to resolve the dispute regarding the appeals and associated denied claims specified in the Spreadsheet attached to this Agreement.

NOW THEREFORE, Appellant and CMS, intending to be legally bound, hereby enter into the following Agreement.

TERMS

1. General Terms of Settlement. Payment Calculation

- Basic Agreement: The appeals covered by this settlement are specified in the Spreadsheet. CMS agrees to calculate payment based upon a percentage term of 62%.
- Percentage (%) terms in this Agreement: The percentage agreed to by the Settlement Parties shall be in full and final satisfaction of all of the Appellant's appeals that are specified in the Spreadsheet. For appeals specified in the Spreadsheet that involve pre-payment denials, the percentage agreed to by CMS is a percentage of the Medicare approved amount less the applicable deductible and/or co-insurance (that is, the percentage is applied only after the deductible and/or co-insurance has been subtracted from the Medicare approved amount), if any. For appeals specified in the Spreadsheet that involve post-payment denials, the percentage agreed to by CMS is the percentage by which CMS will reduce the overpayment(s) at issue.
- This Agreement resolves all claims included in each appeal identified in the Spreadsheet.
- The Appellant agrees that s/he or it will not seek additional payment from any Medicare beneficiary or collect any deductible or coinsurance amount regarding any claim resolved through this Agreement that is not subject to a repayment plan between the Appellant and the beneficiary existing as of the effective date of this Agreement. The Appellant may retain any Medicare beneficiary deductible or coinsurance amounts already paid as of the effective date of this Agreement.
- CMS will not reprocess any claim in order to effectuate this Agreement.
- CMS payments, if any, to Appellant will be made in accordance with CMS' usual business practices, including any applicable recoupment and/or offset.
- Any payment due to the Appellant based upon the settlement terms in this document

may be subject to offset, at the time of payment, for any amounts that may be due and owing to any department, agency, or agent of the United States by Appellant.

- CMS retains the right to recoup any duplicate or incorrect payments made for claims that were included on the Spreadsheet inadvertently, but that are not eligible for settlement. This includes, but is not limited to, payments that have been made in the appeals process.
- CMS will issue payment, as appropriate, by electronic funds transfer or check within one hundred and eighty calendar (180) days from the effective date of this Agreement.

2. Interest:

- CMS will pay any amount due to the Appellant in accordance with this Agreement within one hundred and eighty calendar (180) days of the last signature on the agreement. If payment is not made by day one-hundred-eighty (180), CMS will pay interest to the Appellant for the period beginning on day one-hundred-eighty-one calendar (181) through the date of payment. The interest rate shall be Current Value of Funds Rate as promulgated by the United States Department of Treasury.

3. Releases:

- The Settlement Parties agree that this Agreement releases CMS and its contractors from all of the following:
 - All claims, demands, obligations, causes of action, damages, costs, expenses, and compensation of any nature relating to the claims in the Spreadsheet;
 - Any type of damages, whether compensatory or punitive relating to the claims in the Spreadsheet; and
- The Settlement Parties agree that this Agreement does not release any of the following:
 - Any claim arising under criminal law;
 - Any criminal, civil, or administrative claims, rights, or defenses arising under Title 26, United States Code (Internal Revenue Code);
 - Any claims, rights, or defenses arising under 31 U.S.C. §§ 3729 et seq. (False Claims Act); 31 U.S.C. § 3801, et seq. (Program Frauds Civil Remedies Act); 42 U.S.C. §§ 1320a-7a (Civil Monetary Penalties Law); or any common law cause of

action for fraud;

- Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs.
 - Any contribution or indemnity claims against entities or individuals other than the Settlement Parties;
 - Any obligations created by this Agreement;
 - Any claims, rights, or defenses not specifically released or relinquished in this Agreement;
 - Any Medicare Secondary Payer (MSP) requirements or obligations;
 - Any requirements or obligations related to Medicare Part C or Part D;
 - Any Medicare obligations or requirements related to Medicare claims for items or services not identified in this Agreement's Spreadsheet.
- This Agreement is binding on Appellant as represented by the NPI number identified above (and their successors, assigns, and agents), but not upon third parties.
 - This Agreement releases any and all rights to further administrative review, judicial review, or waiver of recovery with respect to the appeals and associated claims identified in the Spreadsheet of this Agreement.

4. Withdrawal of Existing Appeals

- Receipt by CMS of an Agreement signed by the Appellant will serve to stay all appeals initially identified as eligible and included on the Spreadsheet, pending execution and effectuation of the Agreement by CMS. If at any point the appeals are not able to be included in settlement, for any reason, CMS will inform OMHA and/or the Council that those appeals should return to their position in the appeals process. In such case, the requirements for good cause for late filing of an appeal request (described in 42 C.F.R. §§ 405.942(b), 405.1014, and 405.1102(b)) will be deemed to be met.
- Appellant hereby withdraws his, her, or its requests for hearing and requests for review for the appeals identified in the Spreadsheet of this Agreement. Appellant agrees that withdrawing its request(s) for hearing and request(s) for review will result in dismissal of all of the appeals in the Spreadsheet of this Agreement. Appellant agrees that s/he or it will not pursue further appeals on the appeals identified in the Spreadsheet. If a representative is signing on behalf of the Appellant, the representative acknowledges

that s/he has advised Appellant of the consequences of the withdrawal and dismissal of its request(s) for hearing and request(s) for review.

- Appellant's withdrawal of his, her, or its request(s) for hearing and request(s) for review is effective as of the date of the last signature in this Agreement. Appellant acknowledges and agrees that, for appeals pending at the OMHA and Council level and covered under this Agreement, Appellant and his, her, or its appointed representative (if any) will not receive a notice of dismissal or procedural order of dismissal from the OMHA or the Council. Appellant agrees that, when fully executed this Agreement will serve as the procedural order of dismissal and notice described at 42 C.F.R § 405.1052(d) and 42 C.F.R. § 405.1114(a) for all settled appeals pending at the OMHA and Council level for all purposes. Claims settled under this Agreement are not appealable.

5. Miscellaneous:

- No Admission -- This Agreement does not constitute an admission of fact or law by the Settlement Parties and shall in no way affect the rights, duties, or obligations the Settlement Parties may have with respect to other issues not covered by this Agreement. This Agreement does not constitute an admission of liability by Appellant or CMS.
- This Agreement does not create precedent and does not create or represent any change in CMS policy, nor does it constitute any acknowledgement or evidence that the claims in the Spreadsheet were billed in accordance with applicable guidance, regulation(s), or statute(s) or were medically reasonable and necessary.
- This Agreement shall not be changed by Appellant or CMS once executed.
- Appellant agrees that s/he or it will not attempt to introduce this Agreement in any criminal, civil, or administrative proceeding as evidence that CMS has deemed the claims in the Spreadsheet or any other claims submitted or to be submitted by Appellant for reimbursement to be payable. Appellant further agrees that s/he or it will not otherwise attempt to rely on this Agreement to support any argument that CMS has deemed the claims in the Spreadsheet or any other claims submitted or to be submitted for reimbursement to be payable.

- Appellant agrees that s/he or it will not attempt to introduce this Agreement in any criminal, civil, or administrative proceeding as evidence of what CMS deems material to payment with respect to the claims in the Spreadsheet or any other claims submitted or to be submitted for reimbursement. Appellant further agrees that s/he or it will not otherwise attempt to rely on this Agreement to support any argument regarding what CMS deems material to payment with respect to the claims in the spreadsheet or any other claims submitted or to be submitted by the Appellant for reimbursement.
- The Settlement Parties have entered into this Agreement voluntarily.
- Appellant agrees that s/he or it will not identify any claims subject to this Agreement, and as identified in the Spreadsheet of this Agreement, as bad debts for the purposes of any cost report.
- Costs and Attorney Fees --The Settlement Parties bear their own costs and attorney's fees in pursuance of this Agreement.
- Equal Access to Justice Act -- Appellant agrees that s/he or it will not make any claims for, and CMS will not pay, fees under the Equal Access to Justice Act (EAJA) for pursuing administrative appeals and this Agreement on the appeals and associated claims identified in the Spreadsheet of this Agreement.
- Right to Void This Agreement -- CMS has the right to void this Agreement if there is reliable evidence that the initial determination regarding the claims at issue in this Agreement or a determination made at any level of appeal prior to entry into this settlement were procured by fraud or similar fault as defined in 42 CFR 405.902 , or if the United States obtains a criminal conviction, civil judgment, or administrative ruling against the Appellant in a matter involving the claims in the Spreadsheet.
- The persons who have executed this Agreement below represent that they are fully authorized to sign this Agreement on behalf of the Settlement Parties. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement

Appellant or Representative Signature	Appellant or Representative Printed Name	Date
CMS Authorized Staff Signature	CMS Authorized Staff Printed Name	Date