

FACT SHEET

CMS ANNOUNCES VOLUNTARY INPATIENT REHABILITATION FACILITY (IRF) APPEALS SETTLEMENT OPTION

As part of our commitment to reduce burden on the hundreds of providers with Inpatient Rehabilitation (IRF) appeals pending in the administrative appeals process, the Centers for Medicare and Medicaid Services (CMS) will accept Expressions of Interest (EOIs) for the IRF Settlement Option beginning June 17, 2019. Appellants with IRF appeals pending at the Medicare Administrative Contractor (MAC), the Qualified Independent Contractor (QIC), the Office of Medicare Hearings and Appeals (OMHA) and/or Medicare Appeals Council (Council) levels of review, will be able to take advantage of this settlement option. This option is also available for IRF appeals that are eligible for further appeal at the QIC, OMHA, or Council level, as of the date the appellant and CMS sign the Settlement Agreement.

Specifically, appellants that filed appeals at the MAC for redetermination no later than August 31, 2018, and appeals that are currently pending or eligible for further appeal at the MAC, QIC, OMHA, or Council will have the opportunity to settle their eligible appeals, as follows:

CMS will pay 69% of the net payable amount for all claims associated with pending IRF appeals that do not otherwise meet the special criteria below:

- Specific to Intensity of Therapy Appeals, CMS will pay 100% of the net payable amount for all IRF appeals in which the claim was denied based *solely* on a threshold of therapy time not being met where the claim did not undergo further review for medical necessity of the intensive rehabilitation therapy program based on the individual facts of the case.
- CMS will pay 100% of the net payable amount for all IRF appeals in which the claim was denied *solely* because justification for group therapy was not documented in the medical record.

Although the appeal must have been filed no later than August 31, 2018, CMS relies on the date the settlement agreement is signed to determine whether appeals are ultimately included in the settlement. Appeals must be pending at the MAC, QIC, OMHA, and/or the Council, as of the date the settlement agreement is signed. CMS will also include appeals that are no longer pending, but eligible for further appeal.

The settlement process is initiated by the appellant submitting their EOI to CMS at MedicareAppealsSettlement@cms.hhs.gov.

If approved for participation, CMS will send the appellant (1) a list of potentially eligible appeals and the associated claims for the appellant's review; and (2) an Administrative Agreement. The

INTERNAL CMS USE ONLY! INFORMATION NOT RELEASABLE TO THE PUBLIC UNLESS AUTHORIZED BY LAW: This information has not been publically disclosed and may be privileged and confidential. This document must not be disseminated, distributed, or copied to persons not authorized to receive the information. Unauthorized disclosure may result in prosecution to the full extent of the law.

appellant is required to validate the spreadsheet, sign and return the Administrative Agreement to CMS. CMS will counter sign and send a copy of the fully executed Agreement to the appellant.

To request participation in the process, appellants must complete the EOI and submit it to MedicareAppealsSettlement@cms.hhs.gov.

Related Background

Since 2014, CMS, in collaboration with other components in the Department of Health and Human Services, has undertaken a variety of administrative initiatives to reduce the volume of pending appeals and prevent future appeals. CMS believes the IRF settlement option is a viable solution to substantially reduce the administrative burden for all parties involved.

- On November 1, 2018, the district court in *AHA v. Azar*, 14-c-00851 (D.D.C.) issued an order requiring a 19% reduction in the backlog pending with OMHA by the end of FY 2019; a 49% reduction by the end of FY 2020; a 75% reduction by the end of FY 2021; and elimination of the backlog by the end of FY 2022.
- The IRF settlement option specifically addresses challenges that appellants have faced with IRF claims that were denied based *solely* on a threshold of therapy time not being met, as well as IRF claims that were denied *solely* because justification for group therapy was not documented in the medical record. This option will contribute to both CMS's and OMHA's efforts to create efficiencies and ultimately improve the Medicare Appeals Process.

More information on the IRF settlement process will be available at <https://go.cms.gov/IRF>.