CMS ANNOUNCES VOLUTNARY INPATIENT REHABILITATION FACILITY APPEALS SETTLEMENT OPTION

1. Which appeals qualify for the Inpatient Rehabilitation Facility Appeals Settlement Option?

An Inpatient Rehabilitation Facility appeal is potentially eligible for settlement if:

- It is either currently pending or is eligible for further appeal at the Medicare Administrative Contractor (MAC), the Qualified Independent Contractor (QIC), the Office of Medicare Hearing and Appeals (OMHA), or the Medicare Appeals Council (Council) level of appeal, as of the date of CMS's signature on the Settlement agreement;
- It was filed with the MAC for redetermination no later than August 31, 2018;
- It was correctly and timely filed at its most recent level of appeal.

2. What is the anticipated impact of the Inpatient Rehabilitation Facility Appeals Settlement Option on the backlog? What percentage of the backlog do you expect this settlement opportunity will resolve?

Close Hold--- Not to be widely shared or for external public use: CMS estimates that as many as 20,000 appeals are potentially eligible for this process. The number of appeals removed from the backlog will depend greatly on how many appellants decide to participate and how many settlements are reached.

3. What is the relationship between this settlement option and the *AHA v. Azar* litigation?

Even before the AHA litigation, the Department of Health and Human Services developed a strategy to improve the Medicare Appeals process through: investing new resources at all levels of appeal to increase adjudication capacity and to implement new strategies to alleviate the current backlog; taking administrative actions to reduce the number of pending appeals and encourage resolution of cases earlier in the process; and, proposing legislative reforms that provide additional funding and new authorities to address the appeals volume.

CMS decided to establish the Inpatient Rehabilitation Facility Appeals Settlement Option both as part of CMS' strategic priority to reduce provider burden and as part of the Department's effort to resolving the Medicare appeals backlog as expeditiously as possible.

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4. Are these settlements indicative of fault on behalf of CMS policy or the provider or supplier requesting the settlement?

The parties will make no admission of fault or liability with regard to the eligible appeals that are settled. This is solely an effort to reduce the appeals backlog and avoid the costs of adjudication.

5. Where can I find additional details on the Inpatient Rehabilitation Facility Appeals Settlement Option?

More information on this option will be available at https://go.cms.gov/IRF.

6. When will the Inpatient Rehabilitation Facility Appeals Settlement Option be available?

CMS will accept Expressions of Interest between June 17, 2019 and September 17, 2019.

7. Is the Inpatient Rehabilitation Facility Appeals Settlement Option rate pre-determined or will the rate be negotiated with each participating appellant?

The settlement percentage for appellants approved for participation in this process is a pre-determined rate of 69% of the Medicare net payable amount. However, CMS will pay 100% of the Medicare 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. Additionally, CMS will pay 100% of the Medicare 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. These rates are not negotiable.

8. How did CMS arrive at 69% and 100%? What's the justification for this percentage?

In developing the settlement percentage, CMS reviewed historic Administrative Law Judge overturn rates in conjunction with costs of adjudication and set the eligibility criteria, as well as the settlement percentage, based on points where those parameters will save the Trust Fund money because those parameters will enable HHS to avoid adjudication costs and mitigate HHS's litigation risk.

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