



FREQUENTLY ASKED QUESTIONS

Hospital Appeals Settlement for Fee-For-Service Denials Based on Patient Status Reviews for Admissions Prior to October 1, 2013

Last Updated: 09/9/14

A. GENERAL QUESTIONS:

1. Why is CMS offering a settlement?

CMS believes that the changes in Final Rule 1599-F,¹ the so called “the 2 midnight rule,” (published in August 2013) will reduce *future* appeals volume. However, in order to more quickly reduce the volume of inpatient status claims currently pending in the appeals process, CMS is offering an administrative agreement to any provider willing to withdraw their pending appeals in exchange for timely partial payment (68% of the net allowable amount). CMS encourages providers with inpatient status claims currently in the appeals process to make use of this administrative agreement mechanism to alleviate the administrative burden of current appeals on both the provider and Medicare.

2. What authority does CMS have to do this type of settlement?

CMS is offering this settlement pursuant to the Social Security Act and CMS’s regulations regarding claims collection and compromise at 42 C.F.R. 401.601 and 401.613, and regarding compromise of overpayments at 42 C.F.R. 405.376.

3. What is the deadline for a hospital to submit the signed administrative agreement?

Providers should submit the required documents by October 31, 2014. However, providers may request an extension from CMS if they are not able to meet this deadline.

4. Is this settlement indicative of fault on behalf of CMS policy or the provider requesting the settlement?

The parties will make no admission of fault or liability with regard to the administratively-resolved eligible claims. This is an effort to quickly reduce the volume of inpatient claims currently in the appeals process.

5. Who is authorized to sign the administrative agreement on behalf of the provider?

The person who executes the administrative agreement represents and warrants that they are fully authorized to sign on behalf of the provider.

¹ Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2014 Rates; Quality Reporting Requirements for Specific Providers; Hospital Conditions of Participation; Payment Policies Related to Patient Status



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6. How long will it take CMS to complete the settlement?

CMS and its contractors will work as expediently as possible to validate the eligible claim spreadsheet submitted. Once the claims are validated, payment will be made within 60 days of a signed agreement from CMS.

7. How are Recovery Auditor contingency fees impacted by this settlement offer?

Recovery Auditor contingency fees are governed by contract requirements and will be handled accordingly.

New 8. What happens if we do not accept the 68% reimbursement? *9/9/14*

The settlement offer is completely voluntary. Providers are not required to submit a settlement request. Providers who do not submit a settlement request will remain in the normal appeal process.

New 9. Will these claims be excluded from future audits by any/all auditing entity, e.g., MAC, RAC, QIO, CERT, OIG? *9/9/14*

Claims that have already been reviewed are always excluded from future review by a MAC and Recovery Auditor. Because CERT chooses claims randomly, it is possible that a handful of these claims will be selected for CERT review. This settlement does not impact reviews being conducted under the false claims act, so ZPIC or OIG reviews of potentially fraudulent claims will continue.

New 10. Any settlements in the works for appeals of coding denials? *9/9/14*

No.

New 11. Confirm this is a onetime option. *9/9/14*

Yes. This is a one-time settlement offer.

New 12. Are there any organizations that have already gone through this process? *9/9/14*

As of September 9, four providers had submitted settlement requests. All passed the "eligible hospital" test and have been forwarded to the appropriate Medicare contractor for validation.



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B. ELIGIBILITY:

1. Which providers are eligible for the settlement?

The following facility types ARE ELIGIBLE to submit a settlement request:

- Acute Care Hospitals, including those paid via Prospective Payment System (PPS), Periodic Interim Payments (PIP), and Maryland waiver; and
- Critical Access Hospitals (paid under both Method I and II)

The following facility types are NOT eligible to submit a settlement request:

- Psychiatric hospitals paid under the Inpatient Psychiatric Facilities (IPF) PPS;
- Inpatient Rehabilitation Facilities (IRFs);
- Long-Term Care Hospitals (LTCHs);
- Cancer hospitals; and
- Children's hospitals.

A full definition of each of these facility types can be found at §1886(d) or §1820(c) of the Social Security Act.

2. Must Hospitals under common ownership or control submit a single Administrative Agreement and Spreadsheet? Consider the following 2 examples:

- **EXAMPLE ONE:** ABC Hospital Chain comprises five hospitals, and each hospital has its own provider number. Will CMS allow some of those hospitals to participate while the other ones might decide to continue with appeals?
- **EXAMPLE TWO:** XYZ Hospital Chain comprises five hospitals all under a single provider number. Will CMS allow some of those hospitals to participate while the other ones might decide to continue with appeals?

The settlement process requires EACH PROVIDER NUMBER to submit a separate administrative agreement and spreadsheet. EACH ORGANIZATION WITH A PROVIDER NUMBER must choose to accept the settlement offer (allowing ALL of its eligible appeals to be dismissed), or choose to continue with appeals. Regarding the examples above:

- **EXAMPLE ONE:** Each hospital in the ABC Chain may decide whether to participate or not. If an ABC Hospital chooses to participate, it must include all claims from that provider number on its spreadsheet. If one ABC Hospital participates, that does not mean that all other ABC Hospitals have to. Each ABC Hospital can make its own decision whether to participate or not.
- **EXAMPLE TWO:** Because XYZ Hospital Chain has a single provider number, the XYZ Chain must decide whether to participate or not. If XYZ Chain chooses to participate, it must include all claims from its provider number on its spreadsheet.



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3. Must a hospital settle all eligible appeals?

Yes, for the provider to receive any payment as part of this settlement, the provider must settle all eligible appeals. The provider may not choose to settle some claims and continue to appeal others. See Q&As B1 and B2 for a full definition of the term “provider” in this settlement process.

4. What claims are eligible for settlement?

Claims are eligible to be included in a provider’s request if:

- The claim was not for items/services provided to a Medicare Part C enrollee
- The claim was denied due to a patient status audit conducted by a Medicare contractor, on the basis that services may have been reasonable and necessary, but treatment on an inpatient basis was not, and
- The claim has a dates of admission prior to October 1, 2013, and
- As of the date the provider signs and submits their first administrative agreement with the list of eligible claims:
 - a. the appeal decision was still pending at the MAC, QIC ALJ or DAB; **or**
 - b. the provider had not yet exhausted their appeal rights at the MAC, QIC, ALJ or DAB levels

5. What if the hospital claim was denied for a reason other than “patient status,” such as coding?

Provider inpatient claims denied for reasons *other than* inpatient status, when the “services may have been reasonable and necessary but treatment on an inpatient basis was not” are not eligible for this agreement.

New **6. Can we pick and choose the cases we want to settle? Or is an all or nothing selection?**

9/9/14

All claims that meet the criteria must be included in the settlement. Each organization with a 6-digit provider number must list all eligible claims on the spreadsheet they submit with their request for settlement.

New **7. Will inpatient rehabilitation facilities (IRF) also be considered for this settlement?**

9/9/14

No. IRFs are not eligible.



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New 9/9/14 *If our acute hospital has an IRF and we have had RAC denials for both acute and rehabilitation number, is the IRF eligible for the settlement offer?*

Assuming you have one provider number for your IRF and one provider number for your acute care hospital, the acute care hospital is eligible to submit a settlement request. The IRF is not.

New 9/9/14 *8. What categories of denials are included? Just complex RAC reviews, or also CERT, OIG, MAC pre-pay, RAC pre-pay, etc.?*

It doesn't matter who made the denial: MAC, RAC, CERT, OIG or ZPIC.

It doesn't matter if the denial was made on a prepayment or post-payment basis

New 9/9/14 *9. Does it cover only short stay or does it cover minor surgery etc.?*

The settlement offer is open to all patient status denials including minor surgery admissions denied because although the surgery was necessary, an inpatient stay was not.

New 9/9/14 *10. Does this pertain to coding denials?*

No. This settlement is for patient status denials only.

New 9/9/14 *11. Do claims that were "technically denied" (non-submission of records) meet the criteria for this option?*

No. Claims that were denied for failure to submit medical records are not eligible for this settlement offer.

New 9/9/14 *12. What must be prior to 9/30/13? The Date of Service? The denial? The appeal? or all three?*

To be eligible for settlement, the claim's date of admission must be prior to 10/1/13.

New 9/9/14 *13. Does it matter what step of the appeal process the claim is currently in? Or does the settlement only apply to appeals that are stuck at the ALJ level?*

No. A claim is eligible if there is a valid appeal pending at ANY level of appeal so long as all other criteria are met. A claim is also eligible if it is within the timeframe to be appealed to the next level of appeal so long as all other criteria are met.

New *14. What is the cutoff date for "currently pending appeals" as stated in the administrative*



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9/9/14 **agreement?**

The important date is the date the provider SUBMITS the initial administrative agreement to the CMS email box (MedicareAppealsSettlement@cms.hhs.gov). CMS will send an acknowledgement email when it receives a settlement request to this mailbox.

***EXAMPLE:** A provider submits an initial settlement request to CMS on September 15, 2014. All valid appeals pending in the process and all claims still within the timeframe to appeal to the next level as of September 15, 2014 would be eligible for inclusion on the spreadsheet (so long as all other criteria are met).*

New 9/9/14 **15. Can denied claims that have not been appealed be included?**

Yes, but only if they are within the timeframe to be appealed to the next level of appeal and all other criteria are met.

New 9/9/14 **16. Is the settlement offer restricted to appeals in process or can pending appeals that are being appealed to another level be included? Or can we attach past appeals that have been denied?**

A claim is eligible for settlement if there is a valid appeal pending in the appeal process OR within the timeframe to be appealed to the next level as of the date the provider submits its settlement request to CMS (so long as all other criteria are met).

New 9/9/14 **17. How far back, regarding date of service can you appeal?**

All claims with dates of admission prior to October 1, 2013 are eligible for settlement, regardless of how far back the date of admission goes, assuming the appeal is pending at any point at any level of appeal (or within the timeframe to appeal to the next level of appeal so long as all other criteria are met).

***EXAMPLE:** A claim with a date of admission of January 24, 2009 is denied by the RAC, a valid appeal is submitted by the hospital and remains pending at the ALJ as of the date the hospital submits its settlement request to CMS. This claim is eligible for settlement.*

C. PROCESS:

1. Who is authorized to be the point of contact on the eligible claims spreadsheet?

Anyone can be listed as the provider's point of contact.



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2. Can CMS clarify the Provider Number requested on the spreadsheet?

The 6-digit Provider Number is also known as the CMS Certification Number (CCN), Online Survey Certification and Reporting (OSCAR) or Provider Transaction Access Number (PTAN).

3. Can providers include multiple provider numbers on one spreadsheet?

No, CMS needs to receive one administrative agreement and spreadsheet per provider number. If a chain hospital has multiple provider numbers, separate settlement requests (including administrative agreement and eligible claims spreadsheet) must be submitted for each. The spreadsheet can include multiple National Provider Identifications (NPIs) associated with each provider number.

4. How will the hospital and CMS reconcile discrepancies between the claims lists?

CMS and its contractors will work collaboratively to validate the claims list submitted by the provider. If necessary, CMS and its contractors will engage in discussions with the provider to reconcile discrepancies. CMS will proceed with a fully executed administrative agreement on those claims with which both the provider and CMS agree are subject to settlement while working to reconcile the remaining outstanding claims.

5. Is there a deadline for hospitals to submit their Round 2 settlement request and spreadsheet?

Providers should submit their round two request within 14 days of receipt of an email from CMS containing a list of “disagreement” claims.

6. Will the provider have the opportunity to review the final settlement amount before CMS executes the administrative agreement?

After validation, the MAC will send the eligible claim spreadsheet back to the provider for final review. After review, the provider shall email CMS whether it wants to proceed with settlement for the amount as determined by the MAC, or whether it wants to abandon the settlement process. If the provider chooses to proceed, CMS will sign the administrative agreement and the MAC will proceed with issuing the settlement payment.

7. How will the settlement affect the claim’s history?

The claim will remain as denied and no claim-level adjustments will take place. A Medicare Summary notice (MSN) will not be sent to the beneficiary.



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New 8. Is the 68% partial payment negotiable?

9/9/14

No.

New 9. Is the 68% settlement offer calculated per claim or is the 68% applied to the sum of all the claims submitted?

9/9/14

The 68% is calculated per claim and then summed into one or two lump-sum payments.

New 10. Payment at 68% of what amount? Expected Inpatient DRG or expected APC?

9/9/14

The payment will be 68% of the inpatient net paid amount.

Net Payable Amount is the “bottom line” of the claim.

Net Payable Amount = DRG + Add-on payments – deductible/co-insurance

New 11. Do we have to resubmit all the claims or can we just fill out the agreement?

9/9/14

Claims included in a settlement will not be resubmitted by the provider. Nor will they be reprocessed by the MAC. Instead, the MAC will issue one or two lump-sum payments.

New 12. Does each claim in appeal have to be submitted separately by completing the form and spreadsheet or can they be submitted in groups?

9/9/14

For each provider number, an eligible provider will submit one administrative agreement and one spreadsheet listing all eligible claims.

New 13. How will payment be made? Will CMS clearly and specifically tell which claims have been paid? How will the payment be handled, i.e. patient level or lump sum?

9/9/14

Payment will be made by the MAC in one or two lump sum payments. Before each lump sum payment, CMS will send the hospital an email containing a pdf file containing a list of all claims involved in that payment.

New 14. Will there be account level information with the payment in order to verify on an account level once account is settled?

9/9/14

Payment will be made by the MAC in one or two lump sum payments. Before each lump sum payment, CMS will send the hospital an email containing a pdf file containing a list of all claims involved in that payment.



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New 9/9/14 15. Approximately how long does CMS foresee the settlement process taking (exchanging of spreadsheets etc.)?

CMS has 60 days to issue payment from the date each agreement is signed. However, CMS expects that most payments will be issued much less time.

CMS expects the following maximum timeframes will apply from the date the hospital submits a settlement request until the time of a fully executed agreement:

- Medicare "round one" review: 31 days*
- Provider time to make abandon/proceed decision: 14 days*
- Medicare signs Initial Administrative Agreement: 3 days (sign date starts payment clock)*
- Medicare issues email containing pdf of fully executed Initial Administrative Agreement and list of claims included in initial payment: 3 days.*
- Medicare "round two" review: 31 days*
- Provider time to decide if discussion period is needed: 14 days*
- Medicare signs Secondary Administrative Agreement: 3 days (sign date starts payment clock)*
- Medicare issues email containing pdf of fully executed Secondary Administrative Agreement and list of claims included in second payment: 3 days.*

New 9/9/14 16. Are there a minimum or maximum number of claims that will be accepted on the application?

There is no minimum or maximum number of claims that can be included in a settlement request.

New 9/9/14 17. Do we still have appeal rights if we disagree with your assessment?

After the initial round of validation, the MAC will send an email to the provider containing a list of all validated claims, including pricing information. At this point, the provider has 2 choices:

- 1. abandon the settlement process or*
- 2. proceed with the settlement process.*

Providers that choose to proceed with the settlement process are agreeing to dismissal of their pending appeals and waiver of their appeal rights for claims that are within the timeframe to file an appeal for all eligible claims. Providers who disagree with the CMS list of claims and/or pricing should abandon the process and remain in the normal appeal process.

D. APPEALS IMPACT:



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- New 9/9/14* **1. If we choose the settlement option, will we need to submit withdrawals for the applicable pending appeals?**

If a provider finalizes a settlement agreement with CMS, they agree to have all eligible claims dismissed from the appeal process.

The hospital is not required to submit withdrawals for the appeals. The finalized settlement agreement serves as a request for withdrawal of appeals of all eligible claims. Therefore, the MAC/QIC/ALJ/DAB will dismiss any applicable cases based on the finalized settlement agreement.

- New 9/9/14* **2. If facilities elect to participate, do they forfeit appeal rights for all claims even if they are for issues other than inpatient status or just those eligible per the criteria?**

No. Providers are only agreeing to dismissal of appeals of eligible claims. Eligible claims include those where a patient status denial occurred. The provider retains their full rights to appeal other types of denials.

E. ABANDONING THE SETTLEMENT PROCESS :

1. What if the hospital wishes to withdraw from the settlement process?

At any point prior to a fully executed administrative agreement, the provider may abandon the settlement process. The term “fully executed agreement” means that an administrative agreement has been signed by both the provider and CMS. If a provider and CMS have signed an initial administrative agreement to settle a partial list of agreed upon claims, then the provider may only opt out of the process for those claims that were not captured by that initial administrative agreement.

F. PAYMENT:



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1. Will the Medicare Cost Report be impacted by the administrative agreement?

No. The administrative agreement results in 1-2 lump-sum payments made to the provider. Claims and the cost reports will not be adjusted for any reason. This includes reimbursement for Disproportionate Share (DSH) payments, Indirect Medical Education (IME), Graduate Medical Education (GME), and any other payments made on the cost report.

2. What is the provider's refund responsibility related to the Beneficiary's co-insurance and deductible?

The providers refund responsibility is as follows:

- a. If the Beneficiary co-insurance has been collected at the time the INITIAL administrative agreement is signed by the provider, no refund is required.
- b. If the Beneficiary co-insurance has not been collected at the time the INITIAL Administrative Agreement is signed by the provider, the provider must cease collections.
- c. If a Beneficiary repayment plan has been executed at the time the INITIAL Administrative Agreement is signed by the provider, the provider may continue to collect the co-insurance in accordance with the repayment plan.

3. What happens to recoupment of overpayments for claims that are in the appeal process (or still within the time frame to request an appeal review) that are part of the settlement request?

As part of the validation process at the MACs, recoupments will be suspended.