

PUBLICATION

CMS Offers 100 Percent or 69 Percent Recovery Settlement Option for Backlogged Medicare IRF Claim Appeals

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In the wake of its recent efforts to settle claims (see the [2014 initial hospital inpatient settlement](#) and the [2016 second-round wave](#)), in the heavily backlogged Medicare administrative appeals system, CMS has introduced a new initiative aimed at Inpatient Rehabilitation Facility (IRF) providers. Beginning on June 17, 2019, CMS began accepting expressions of interest for a settlement option targeted at certain IRF appeals pending at the Medicare Administrative Contractor (MAC), Qualified Independent Contractor (QIC), Office of Medicare Hearings and Appeals (OMHA), or Medicare Appeals Council levels of review.

CMS is offering 69 percent of the allowable amount (which is 80 percent of charges) across the board for those IRF appellants that filed appeals at the MAC for redetermination no later than August 31, 2018 that are currently pending, or are eligible for further appeal at the MAC, QIC, OMHA, or Council.

Notably, for two specific classes of appeals, CMS will pay 100 percent of the allowable amount for all IRF appeals that meet the following criteria:

- For Intensity of Therapy appeals where the claim was denied *solely* on a threshold of therapy time not being met where the claim did not undergo more comprehensive review for medical necessity of the intensive rehabilitation therapy program based on the individual facts of the case.
- All IRF appeals where the *sole* basis for denial was that the justification for group therapy was not documented in the medical record.

There are quite a few technical requirements for an IRF appeal to be eligible for settlement. Among those restricted from participating are IRFs that filed for bankruptcy or expect to file for bankruptcy; certain appellants that are, or were involved in False Claims Act litigation or investigations; or those that have other program integrity concerns, including pending civil, criminal, or administrative investigations. The settlement offer also does not extend to claims that were part of an extrapolated overpayment determination.

An appellant may initiate the settlement process by submitting its expression of interest to CMS at MedicareAppealsSettlement@cms.hhs.gov. The expression of interest period began on June 17, 2019 and ends on September 17, 2019. Once accepted into the settlement program, the provider will exchange information with CMS on the claims eligible for settlement.

Baker Donelson's Comment

The aspect of the settlement offering the higher 100 percent of allowable appears to be an acknowledgment by CMS that adjudicators were being overly aggressive when basing denial solely on a threshold of therapy time or no documentation of group therapy. The use of 100 percent recovery for these types of claims might suggest an indication by CMS that it is now more willing to acknowledge internal inconsistencies and inappropriate policies employed by adjudicators involved in Medicare claim denials.

This settlement option comes amidst an interesting landscape for IRFs; a [recent proposed rule](#) would, among other policy and payment changes, update the prospective payments for FY2020 for a projected 2.3 percent

rise (or \$195 million increase) relative to payments in FY2019. This is a shift from the [attention IRFs received nine months ago](#) from the OIG who reported an estimated \$5.7 billion paid to IRFs for care to beneficiaries that the OIG did not believe was reasonable and necessary.