



## **CMS Announces Low Volume Appeal Settlement Option for Providers Mired in ALJ Backlog**

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On January 9, 2018, the Centers for Medicare and Medicaid Services (CMS) announced details on the new low volume appeal settlement option, which is the latest alternative available to Medicare Part A and Part B providers and suppliers (“Appellants”) with appeals pending at the Office of Medicare Hearings and Appeals (OMHA) and the Medicare Appeals Council (“Council”). As of December 2017, OMHA reported about 530,000 appeals still in queue for Administrative Law Judge (ALJ) hearings with the average wait time for hearing at over 1000 days at the end of FY 2017. With little chance of relief from the ALJ backlog in sight, more and more providers and suppliers have expressed interest in alternative options to ALJ hearings.

This new settlement option allows all eligible Appellants to enter into a settlement agreement of certain outstanding claims under appeal at 62% of the net approved amount. Specifically, the Appellant must have fewer than 500 total appeals pending at both the OMHA and Council levels of review as of November 3, 2017. Also, each claim must be fully denied with a billed amount of \$9,000 or less, and none of the claims may be part of a statistical sample used for extrapolation.

CMS announced that, to participate, an Appellant must timely submit an Expression of Interest based on its NPI numbers. Appellants with NPIs ending in an even number must submit their Expressions of Interest between February 5, 2018 and March 9, 2018. Appellants with NPIs ending in an odd number must submit their Expressions of Interest between March 12, 2018 and April 11, 2018. CMS has also noted that any Expression of Interest that is submitted during the wrong timeframe will be rejected.

After CMS verifies the Appellant’s eligibility<sup>1</sup>, the Appellant will receive an Administrative Agreement and a spreadsheet listing the potentially eligible appeals for review. If the Appellant and CMS come to an agreement, CMS reports that payment will be made within 180 days. While an Appellant is pursuing settlement until it signs the Administrative Agreement, the Appellant may continue to pursue the normal appeals process including participating in ALJ hearings. If an Appellant does not wish to participate in the settlement option or chooses to no longer pursue this settlement option after starting the process, its appeals will remain in the normal appeal process.

<sup>1</sup> Certain Appellants may be ineligible for the settlement option including those that are currently in or are expected to be in bankruptcy and those that are a party to False Claims Act litigation or investigations.

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