

CMS Low-Volume Appeals Initiative

FEBRUARY 13, 2018

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On February 5, 2018, the Centers for Medicare and Medicaid Services (“**CMS**”) began accepting Expressions of Interest (“**EOI(s)**”) from Medicare fee-for-service providers to participate in a new Low-Volume Appeals Initiative (“**LVA**”) in lieu of the standard Medicare appeals process.

The LVA is intended to help timely resolve pending Medicare appeals that meet qualifying criteria at a pre-established settlement amount.

If an appellant is approved for participation in the LVA, the resulting settlement will apply to all eligible appeals associated with the appellant provider’s NPI. The appellant provider cannot choose to settle some claims and not others.

Eligible Participants

The LVA is only available to qualifying Medicare Part A and Part B fee-for-service providers with fewer than five hundred (500) appeals pending before the Office of Medicare Hearings and Appeals (“**OMHA**”) and/or the Medicare Appeals Council (“**Council**”). The five hundred (500) appeal threshold is determined at the NPI-level. For a provider with multiple NPIs, the threshold is five hundred (500) appeals per NPI; pending appeals are not aggregated across multiple NPIs.

Providers and their related claim appeals ***must meet all of the following eligibility criteria:***

- The individual appeal was pending before the OMHA or Council as of November 3, 2017;
- The appeal was properly and timely filed at the OMHA or Council level as of November 3, 2017;
- The pending appeal has a total billed amount of \$9,000 or less;
- The individual claims included in the appeal were denied by a Medicare contractor and remain in a fully denied status in the Medicare system;
- The individual claims included in the appeal were submitted for payment under Medicare Part A or Part B;
- The claims included in the appeal were not part of an extrapolation; and
- As of the date of the required Administrative Agreement (described below), the appeal was still pending at the OMHA or Council level of review.

Ineligible Participants

CMS has deemed certain providers and individuals ineligible for participation in the LVA process. This includes Medicare beneficiaries, state Medicaid agencies, Part C organizations, and certain appellants who have or had False Claims Act litigation or investigations pending against them (or other program integrity concerns).

LVA Appeals Process

Eligible providers must initiate the LVA process by e-mailing a completed EOI to CMS (medicareappealssettlement@cms.hhs.gov) for each NPI associated with pending appeals.

CMS makes an eligibility determination within thirty (30) days of submission of the EOI. If approved following review of the EOI, CMS will send the appellant provider a spreadsheet with eligible appeals and associated claims, accompanied by an Administrative Agreement (i.e., settlement agreement), within the same thirty (30) day period. The provider is responsible for reviewing and validating the spreadsheet.

Once the Administrative Agreement is signed and submitted to CMS, the appellant will no longer have the opportunity to appeal or otherwise dispute the inclusion or exclusion of appeals and associated claims. The appellant may withdraw from the LVA at any time prior to signing and returning the Administrative Agreement to CMS.

The provider's Medicare administrative contractor ("**MAC**") determines final pricing and eligibility. There is a possibility that, during the final validation, the MAC may remove appeals and associated claims for not meeting eligibility criteria. The provider will be notified if this occurs.

Settled appeals are dismissed with payment issued to the appellant provider within one hundred eighty (180) days of CMS's countersignature of the Administrative Agreement.

Timing Considerations

An appellant provider must submit any and all completed EOIs based on CMS's established submission periods for participation in the LVA.

- NPIs ending with an even number (including zero): Submission required between February 5 and March 9, 2018
- NPIs ending with an odd number: Submission required between March 12 and April 11, 2018

If an appellant has multiple NPIs, an EOI for each NPI must be submitted during the appropriate submission period.

Settlement Amount

The net settlement amount determined through the LVA is only available after the Administrative Agreement is signed and returned to CMS with the finalized claims spreadsheet. The settlement will be sixty-two percent (62%) of the net claim approved amount, calculated per associated claim, and then aggregated for a single lump-sum payment to the provider. The settlement payment may be netted against any outstanding CMS overpayments, which could result in no payment being issued to the appellant provider.

Other Settlement Options

Providers who do not meet the above criteria may have the opportunity to settle pending claims through a process called Settlement Conference Facilitation (“**SCF**”). The SCF will be available to Medicare providers who have requests for an administrative law judge hearing or Council review filed on or before November 3, 2017.

Only limited information is currently available; however, the U.S. Department of Health and Human Services plans to publish additional information and implement the SCF program in April 2018.

About the Author

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