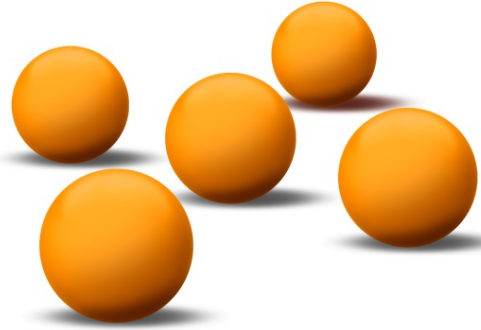


CMS Offers To Settle All Acute Care Inpatient Claim RAC Appeals

By James A. Hoover

Reprinted with Permission from the [Birmingham Medical News](#)



CMS is offering to pay hospitals 68 percent of the allowable amount for all claims that are currently on appeal. Specifically, CMS is offering to settle "inpatient status" claims at 68 percent of the "net paid amount" within 60 days of CMS' execution of an "Administrative Agreement." The settlement only covers claims involving inpatient status of the patient. It is interesting to note that the settlement rate is roughly equivalent to the rate at which Administrative Law Judges ("ALJs") have rendered favorable decisions on appealed claims. In a January 14, 2014 letter to the CMS Administrator, the American Hospital Association claimed that nearly 70 percent of appeals of Part A claims are overturned in the hospitals' favor.

CMS hopes that this will alleviate the long backlog of cases awaiting a hearing before an ALJ. As a refresher, effective as of July 15, 2013, the US Department of Health and Human Services Office of Medicare Hearings and Appeals ("OMHA") temporarily suspended the assignment of most new requests for an ALJ hearing in order to permit OMHA Field Offices to work through a massive backlog of approximately 357,000 claims. OMHA stated ALJ-level appeals rose over 184% from 2010 to 2013. The backlog was created, in large part, by an exponential increase in appeals of inpatient reimbursement denials resulting from Recovery Audit Contractor ("RAC") audits. According to a memo from Nancy Griswold, Chief Administrative Law Judge for OMHA, "in just under two years, the OMHA backlog has grown from pending appeals involving 92,000 claims for services and entitlements to appeals involving over 460,000 claims for services and entitlements. The majority of these cases involve RACs' decisions that an inpatient claim was not reasonable or necessary based upon CMS' argument that services should have been provided in an outpatient setting. According to figures released by the American Hospital Association, nearly \$1.5 billion in claims are currently being appealed because of this issue.

Eligible hospitals include acute care hospitals paid under the inpatient prospective payment system (IPPS) or that receive periodic interim payments (PIP), hospitals operating under a waiver in Maryland, and critical access hospitals. Claims from psychiatric hospitals, inpatient rehabilitation facilities, long-term care hospitals, cancer hospitals, and children's hospitals are not eligible for the settlement.

Hospitals wishing to participate in the settlement must email CMS a signed Administrative Agreement and an Excel spreadsheet of the claims on appeal that would be eligible for the settlement. Specific directions for submitting the email are available on CMS' website. Hospitals have until October 31, 2014 to submit their Administrative Agreement. Hospitals who are not able to meet this deadline should request an extension from CMS.

CMS will review the Administrative Agreement and the claims spreadsheet to validate the information and will then notify the hospital if there are any discrepancies from the Hospital's eligible claims list. It will pay 68 percent of the allowable amount for each claim on the spreadsheet that it can verify is currently being appealed for inpatient status. For those claims, CMS will sign the Administrative Agreement, make a payment, and the appeals will be dismissed. Hospitals will get a chance to discuss with CMS the claims CMS could not verify that are pending appeal for inpatient status. An additional agreement will be signed and an additional payment will be made for those claims if the discussion leads to the conclusion that those claims were properly on appeal for inpatient status.

Only claims with dates of admission prior to October 1, 2013 will be eligible for the settlement offer because CMS believes that the institution of the two-midnight rule has alleviated the problem. In that Final rule, CMS instructed RACs not to dispute any inpatient claims if the inpatient stay is more than one beneficiary day or spans two midnights.

Hospitals should seriously consider whether or not to participate in the Administrative Settlement. Some factors a hospital should consider include whether or not 68 cents on the dollar adequately compensates the hospital for the services rendered and the continued cost of pursuing an appeal. Another factor that is hard to predict is the actual time saved by accepting the settlement. The Administrative Settlement Agreement states that CMS must pay the settlement amount to a provider within 60 days of a fully executed Administrative Agreement. However, there is no timetable for when CMS must countersign an Administrative Agreement after reconciling a provider's list of eligible claims. Similar to the original backlog that led to the Administrative Settlement, reconciling thousands of appeals submitted by thousands of hospitals will likely be a resource-intensive process and there is no deadline to complete that analysis before executing an Administrative Agreement. Hospitals should review the case mix of claims on appeal to determine if it wants to participate in the settlement process.

For more information, please contact:



James A. Hoover
Partner Birmingham Office
Phone (205) 458-5111
E-Mail jhoover@burr.com

Jim Hoover is a partner in the Health Care Practice Group at Burr & Forman LLP and exclusively represents health care providers in regulatory and litigation matters.