DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF MEDICARE HEARINGS AND APPEALS (OMHA)

OMHA SETTLEMENT CONFERENCE FACILITATION
SETTLEMENT AGREEMENT

Appellant Name: [**Appellant]**

National Provider Identifier (NPI): [**NPI(s)]**

CMS Certification Number (CCN) or
Provider Transaction Number (PTAN): **[CCN/PTAN(s)]**

PARTIES

This Settlement Agreement (*Agreement*) is between Appellant (as identified by the NPI number(s) stated above) and the Centers for Medicare & Medicaid Services (*CMS*) (collectively referred to as the *Settlement Parties*) with respect to the Medicare fee-for-service appeals and associated claims identified in the attached Settlement Agreement Spreadsheet "[Spreadsheet Title]" (*Spreadsheet*). This Agreement is effective as of the date of the last signature hereto.

BACKGROUND

WHEREAS, Appellant has sought review, either by the Administrative Law Judge within the Office of Medicare Hearings and Appeals (OMHA) or by the Medicare Appeals Council (Council) at the Departmental Appeals Board, of CMS decisions denying pre-payment and/or post-payment reimbursement of the Medicare appeals and associated claims identified in the Spreadsheet; and

WHEREAS, Appellant and CMS desire to resolve the dispute regarding the appeals and associated denied claims identified in the Spreadsheet by entering into a Settlement Agreement; and

WHEREAS, the U.S. Department of Justice (DOJ) has approved the compromise in the instances that an appealed claim(s) or appeal of an extrapolated overpayment subject to the Settlement Agreement has billed charges or an extrapolated overpayment amount in excess of $100,000; and

WHEREAS, the purpose of this Agreement is to resolve the dispute regarding the appeals and associated denied claims specified in the Spreadsheet.

NOW THEREFORE, Appellant and CMS, intending to be legally bound, hereby enter into the following Settlement Agreement.

TERMS

1. **General Terms of Settlement and Payment Calculation:**

   - Basic Agreement: The appeals and associated claims at issue are specified in the Spreadsheet. With the exception of appealed claims involving down-coded Diagnosis Related Groups (DRGs), CMS agrees to calculate payment based upon a percentage term of **[Insert Percentage]%.** For appealed claims involving down-coded DRGs, CMS agrees to calculate payment based upon a percentage term of **30%**.
   - Percentage (%) terms in this Agreement: For pre-payment denials at issue in this Agreement, the percentage agreed to by CMS is a percentage of the Medicare approved amount less the applicable deductible and/or co-insurance (that is, the percentage is applied only after the deductible and/or co- insurance has been subtracted from the Medicare approved amount), if any. For post-payment denials at issue in this Agreement, the percentage agreed to by CMS is the percentage by which CMS will reduce the overpayments at issue. For claims involving down-coding, the percentage agreed to by CMS is a percentage of the amount at issue on appeal (e.g., if the Medicare payable

amount of the originally billed services is $100, but the services were down-coded by Medicare to a paid amount of $30, the percentage agreed to by CMS in this agreement is the percentage applied to the $70 difference).

- CMS will not perform claim-by-claim adjustments or reprocessing in order to effectuate this Agreement.
- CMS payments, if any, to Appellant will be made in accordance with CMS's usual business practices, including any applicable recoupment and/or offset.
- Any payment due based upon the terms in this document may be subject to offset, at the time of payment, for any amounts that may be due and owing to any department, agency, or agent of the United States by Appellant.
- CMS retains the right to recoup any duplicate or incorrect payments made for claims that are not eligible under this Agreement but are inadvertently included on the Spreadsheet. This includes, but is not limited to, payments that have been made in the appeals process.
- For payments due to the Appellant from CMS, CMS will issue payment, as appropriate, by electronic funds transfer or check within one-hundred-twenty (120) days from the effective date of this Agreement.
- For payments due to CMS from the Appellant after settlement effectuation, CMS' Medicare Administrative Contractors will use their normal debt collection procedures to recover monies owed.

2. Interest:

- Provider/Supplier will be charged interest on the amount due, if any, in accord with CMS's normal policies.
- CMS will not pay interest to Appellant pursuant to 42 CFR § 405.378(j) as there will be no Administrative Law Judge decision order for the appeals identified in the Spreadsheet.
- For post-payment denials, CMS will refund interest paid by the Appellant and/or reduce interest due to CMS, as appropriate, based on the settlement percentage.

3. Releases:

- The Settlement Parties understand and agree that this Agreement releases CMS from

all of the following:

- All claims, demands, obligations, causes of action, damages, costs, expenses, and compensation of any nature relating to the appeals in the Spreadsheet; and
- Any type of damages, whether compensatory or punitive relating to the appeals in the Spreadsheet;

- The Settlement Parties understand and agree that this Agreement does not release any of the following:
  - Any claim arising under criminal law;
  - Any criminal, civil, or administrative claims, rights, or defenses arising under Title 26, United States Code (Internal Revenue Code);
  - Any claims, rights, or defenses arising under 31 U.S.C. §§ 3729 et seq. (False Claims Act); 31 U.S.C. § 3801, et seq. (Program Frauds Civil Remedies Act); 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Statute); or any common law cause of action for fraud;
  - Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal health care programs.
  - Any contribution or indemnity claims against entities or individuals other than the Settlement Parties;
  - Any obligations created by this Agreement;
  - Any claims, rights, or defenses not specifically released or relinquished in this Agreement;
  - Any Medicare Secondary Payer (MSP) requirements or obligations;
  - Any requirements or obligations related to Medicare Part C or Part D;
  - Any Medicare obligations or requirements related to Medicare claims for items or services not identified in the Spreadsheet.
- This Agreement is binding on Appellant as represented by NPI number(s) identified above (and their successors, assigns, and agents), but not upon third parties.
- This Agreement releases any and all rights to further administrative review, judicial review, or waiver of recovery with respect to the appeals identified in the Spreadsheet.

4. Withdrawal of Existing Appeals:

- This Agreement, when executed by Appellant and submitted to OMHA, will serve to stay all appeals initially identified as eligible and included on the Spreadsheet, pending execution and effectuation of the Agreement by CMS. If, at any point prior to completion of settlement agreement effectuation, any appeals in the Spreadsheet cannot be included in this Agreement for any reason (including, but not limited to, failure to meet the SCF eligibility criteria), CMS will remove such appeals from the Agreement and inform OMHA and/or the Council that those appeals should return to their position in the appeals process. If necessary, the requirements for good cause for late filing of an appeal request (described in 42 C.F.R. §§ 405.942(b), 405.1014, and 405.1102(b)) will be deemed to be met.
- Appellant hereby withdraws its requests for hearing and requests for review for the appeals identified in the Spreadsheet. Appellant agrees that withdrawing its requests for hearing and requests for review will result in dismissal of all of the appeals in the Spreadsheet. Appellant agrees that it will not pursue further appeals for the claims identified in the Spreadsheet. If a representative is signing on behalf of the Appellant, the representative acknowledges that they have advised Appellant of the consequences of the withdrawal and dismissal of its requests for hearing and requests for review. Appellant's withdrawal of its requests for hearing and requests for review is effective as of the date of the last signature in this Agreement. Appellant and its appointed representative (if any) acknowledges and agrees that it will not receive a notice of dismissal or procedural order of dismissal from OMHA or the Council. Appellant agrees that, when fully executed, this Agreement will serve as the procedural order of dismissal and notice described at 42 C.F.R § 405.1052(d) and 42 C.F.R. § 405.1114(a) for all settled appeals pending at OMHA and Council level for all purposes. Claims settled under this Agreement are not appealable.

5. Miscellaneous:

- No Admission -- This Agreement does not constitute an admission of fact or law by the Settlement Parties and shall in no way affect the rights, duties, or obligations the Settlement Parties may have with respect to other issues not covered by this Agreement. This Agreement does not constitute an admission of liability by Appellant or CMS.
- This Agreement does not create precedent and does not create or represent any change in CMS policy.
- This Agreement does not constitute any acknowledgement or evidence that the claims in the Spreadsheet were billed in accordance with applicable guidance, regulation(s), or statute(s), or were medically reasonable and necessary.
- This Agreement shall not be changed by Appellant or CMS once executed.
- The Settlement Parties have entered into this Agreement voluntarily.
- Appellant agrees that it will not identify any claims subject to this Agreement, and as identified in the Spreadsheet, as bad debts for the purposes of any cost report.
- Costs and Attorney Fees --The Settlement Parties bear their own costs and attorney's fees in pursuance of this Agreement.
- Equal Access to Justice Act -- Appellant agrees that it will not make any claims for, and CMS will not pay, fees under the Equal Access to Justice Act (EAJA) for the Appellant's pursuit of administrative appeals involving claims identified in the Spreadsheet or for completion of this Agreement.
- Right to Void This Agreement -- CMS has the right to void this Agreement if there is reliable evidence that the initial determination regarding the claims at issue in this Agreement or a determination made at any level of appeal prior to entry into this settlement were procured by fraud or similar fault as defined in 42 C.F.R. 405.902, or if the United States obtains a criminal conviction, civil judgment, or administrative ruling against the Appellant in a matter involving the claims in the Spreadsheet.

- The persons who have executed this Agreement below represent that they are fully authorized to sign this Agreement on behalf of the Settlement Parties. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

Appellant or Representative Signature	Appellant or Representative Printed Name	Date
Appellant or Representative Signature	Appellant or Representative Printed Name	Date
CMS Authorized Staff Signature	CMS Authorized Staff Printed Name	Date

Last Modified August 3, 2020