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***INPATIENT REHABILITATION  
FACILITY APPEALS SETTLEMENT  
ADMINISTRATIVE AGREEMENT***

Appellant Name: **[IRF Name]**  
Provider Transaction Number (PTAN)(6-digit): **[PTAN]**  
National Provider Identifier (NPI): **[NPI]**

**PARTIES**

This Administrative Agreement (*Agreement*) is between the Medicare certified Inpatient Rehabilitation Facility (*IRF*) identified above and the Centers for Medicare & Medicaid Services (*CMS*) (collectively referred to as the *Settlement Parties*) with respect to appeals for the Medicare fee-for-service claims identified in the attached Administrative Agreement Spreadsheet (*Spreadsheet*).

**BACKGROUND**

WHEREAS, IRF is certified by Medicare as an IRF and wishes to settle all eligible non-extrapolated appeals with claims that meet the following eligibility criteria for settlement: 1) the claim was denied in full by any entity that conducted a review on behalf of CMS and remain in a fully denied status in the Medicare system; 2) the claim was not for items or services furnished to a Medicare Part C enrollee; 3) the IRF properly and timely appealed the denial on or before August 31, 2018; and 4) as of the date of an executed Agreement submitted to CMS by the IRF, the appeal decision was still pending at the Medicare Administrative Contractor (MAC), the Qualified Independent Contractor (QIC), the Office of Medicare Hearings and Appeals (*OMHA*) or Medicare Appeals Council (*Council*) levels of review, or the IRF had not yet exhausted its appeal rights at the QIC, OMHA, or Council level.

WHEREAS, IRF and CMS desire to resolve the dispute regarding the claims identified in the Spreadsheet of this Agreement by entering into an administrative agreement; and

WHEREAS, the purpose of this agreement is solely to terminate the dispute surrounding the denied

claims specified in the Spreadsheet of this Agreement.

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

## TERMS

### 1) General Terms of Settlement, Payment Calculation

- a) Basic Agreement: The appeals with claims at issue are specified in the Spreadsheet attached to this Agreement. CMS agrees to calculate payment based upon a percentage term of **69%** of the net payable amount for all claims associated with pending IRF appeals that do not include extrapolations and do not otherwise meet the criteria under “Intensity of Therapy Appeals” immediately below.
- b) Intensity of Therapy Appeals: CMS agrees to calculate payment based upon a percentage term of **100%** of the net payable amount for all IRF appeals in which the claim was denied based *solely* on a threshold of therapy time not being met where the claim did not undergo further review for medical necessity of the intensive rehabilitation therapy program based on the individual facts of the case. Additionally, CMS will pay **100%** of the net payable amount for all IRF appeals in which the claim was denied *solely* because justification for group therapy was not documented in the medical record.
- c) Net Payable Amount: For pre-payment denials covered by this Agreement, the percentage agreed to by CMS is a percentage of the Medicare approved amount less the applicable deductible and/or co-insurance, if any (that is, the percentage is applied only after any deductible and/or co-insurance has been subtracted from the Medicare approved amount). For post-payment denials covered by this Agreement, the percentage agreed to by CMS is the percentage by which CMS will reduce the overpayment(s). CMS’ MACs will apply a downward adjustment to the principal based on the settlement percentage. Then, CMS’ accounting system will automatically calculate any associated interest and any payable amounts that may be due to the provider, physician, or other supplier after the adjustment is made.
- d) Payment at the percentage agreed to by CMS shall fully and finally satisfy all of the IRF’s claims and appeals covered by this Agreement, which are specified in the Spreadsheet of this

Agreement.

- e) The IRF agrees that, as of the date of the last signature in this Agreement, it will not seek additional payment from any Medicare beneficiary or collect any deductible or coinsurance amount regarding any claim resolved through this Agreement that is not subject to a repayment plan existing as of the effective date of this Agreement. The IRF may retain any Medicare beneficiary deductible or coinsurance amounts already paid as of the effective date of this Agreement.
- f) CMS will not reprocess any claim in order to effectuate this Agreement.
- g) Any payment due based upon the settlement terms in this Agreement may be subject to any 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 IRF.
- h) CMS retains the right to recoup any duplicate or incorrect payments made for claims that were included on the Spreadsheet inadvertently, but that are not eligible for settlement.
- i) CMS will issue payment, as appropriate, by electronic funds transfer or check within one hundred and eighty (180) days from the effective date of this Agreement.

**2) Interest:**

- a) CMS will pay the agreed amount to the IRF in accordance with this Agreement within one hundred and eighty calendar (180) days of the last signature on the Agreement. If payment is not made by day one hundred and eighty (180), CMS will pay interest to the IRF for the period beginning on day one hundred and eight one (181) through the date of payment. The interest rate shall be Current Value of Funds Rate as promulgated by the United States Department of Treasury.

**3) Releases:**

- a) The Settlement Parties understand that this Agreement releases CMS from all of the following:
  - i) From all claims, demands, obligations, causes of actions, compensatory damages, costs, expenses, compensation, interest, and penalties of any nature relating to the claims in the Spreadsheet of this Agreement.
- b) The Settlement Parties understand that CMS' payment for claims identified in the attached Spreadsheet is final.
- c) This Agreement does not release the IRF of any of the following:
  - i) Any claim arising under criminal law;

- ii) Any criminal, civil, or administrative claims, rights, or defenses arising under Title 26, United States Code (Internal Revenue Code);
  - iii) 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);
  - iv) 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Statute); or any common law cause of action for fraud;
  - v) Any contribution or indemnity claims against entities or individuals other than the Settlement Parties;
  - vi) Any claims, rights, or defenses not specifically released or relinquished in this Agreement;
  - vii) Any Medicare Secondary Payer (MSP) requirements or obligations;
  - viii) Any requirements or obligations related to Medicare Part C or Part D;
  - ix) Any Medicare obligations or requirements related to Medicare claims for items or services not identified in this Agreement's Spreadsheet.
- d) This Agreement releases any and all rights to further administrative review, judicial review, or waiver of recovery with respect to the claims on the Spreadsheet attached to this Agreement and are paid, or otherwise resolved, through this Agreement.

#### **4) Withdrawal of Existing Appeals**

- a) Receipt by CMS of an Agreement executed by the IRF will serve to stay all appeals with claims included in the Spreadsheet. If certain appeals cannot be effectuated, for any reason (including, but not limited to, failure to meet the eligibility criteria) at any time before settlement effectuation is complete, CMS will remove such appeals from the Agreement and will take action to have such appeals reinstated into their current position in the appeals process. In such case, CMS agrees that the requirements for good cause for late filing of an appeal request (described in 42 C.F.R. §§ 405.942(b), 405.962(b), 405.1014(e), and 405.1102(b)) will be deemed to be met.
- b) IRF hereby withdraws its requests for hearing and requests for review for the appeals with claims identified in the Spreadsheet attached to this Agreement. IRF understands that withdrawing its request(s) for hearing and request(s) for review will result in dismissal of all appeals with claims included in the Spreadsheet attached to this Agreement. IRF acknowledges that it will not pursue further appeals on the claims identified in the Spreadsheet. If a representative is signing on behalf of the IRF, the representative

acknowledges that he or she has advised the IRF of the consequences of the withdrawal and dismissal of its request(s) for hearing and request(s) for review.

- c) IRF withdrawal of its request(s) for hearing and request(s) for review is effective as of the date of the last signature in this Agreement. IRF acknowledges and agrees that, for appeals pending at the MAC, QIC, OMHA, and/or Council level and covered under this Agreement, IRF and its appointed representative (if any) will not receive a dismissal notice, notice of dismissal or procedural order of dismissal from MAC, QIC, OMHA, and/or the Council. IRF is solely responsible for notifying any non-participating parties that the settled appeals have been withdrawn and dismissed. IRF agrees that, when fully effectuated, this Agreement will serve as the procedural order of dismissal and notice described at 42 C.F.R. § 405.952(c), 42 C.F.R. § 405.972(c), 42 C.F.R. § 405.1052(b) and 42 C.F.R. § 405.1114(a) for all settled appeals pending at the MAC, QIC, OMHA, and Council level for all purposes. Claims settled under this Agreement are not appealable.

**5) Miscellaneous:**

- a) 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 IRF or CMS.
- b) This Agreement does not create precedent and does not create or represent any change in CMS policy.
- c) The Settlement Parties have entered into this Agreement voluntarily.
- d) IRF agrees that it will not identify any claims subject to this Agreement, and as identified in the Spreadsheet of this Agreement, as bad debts for the purposes of any cost report.
- e) Costs and Attorney Fees --The Settlement Parties bear their own costs and attorney's fees in pursuance of this Agreement.
- f) Equal Access to Justice Act -- IRF understands and agrees that it will not make any claims for, and CMS will not pay, fees under the Equal Access to Justice Act (EAJA) for pursuing administrative appeals and this Agreement on the claims identified in the Spreadsheet of this Agreement.
- g) This Agreement constitutes the complete Agreement between the Settlement Parties. This Agreement may not be amended except by written consent of the Parties.

- h) This Agreement is governed by the laws of the United States. Any dispute between the Settlement Parties under this Agreement shall be resolved by a federal court of competent jurisdiction.
- i) 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 of this Agreement were procured by fraud as defined in 42 C.F.R. § 405.902.
- j) This Agreement is effective as of the date of the last signature hereto. The Parties' obligations under this Agreement become binding as of the effective date. Electronic copies of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
- k) This Agreement is binding on the IRF as represented by the NPI identified above (and their successors, assigns, and agents), but not upon third parties.
- l) 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

<b>Appellant or Representative Signature</b>	<b>Appellant or Representative Printed Name</b>	<b>Date</b>
<b>CMS Authorized Staff Signature</b>	<b>CMS Authorized Staff Printed Name</b>	<b>Date</b>