

PUBLICATION

The New Option in Town: Applying for the Low Volume Appeals Settlement

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In November 2017, the Department of Health and Human Services (HHS) announced new settlement options for providers and suppliers stuck in the backlog of the Medicare appeals process. One of the new options available is the Low Volume Appeals Settlement Options (LVA), which is geared towards providers and suppliers with fewer than 500 Medicare Part A or Part B claim appeals pending at the Office of Medicare Hearing and Appeals (OMHA).

HHS provided little information on LVA at the time of the announcement, as we noted in our previous alert, "HHS Reveals New Settlement Options to Address Medicare Appeals Backlog." Since that time, HHS held a webinar on January 9, 2018 covering the logistics of the LVA process and clarifying any outstanding issues.

The LVA process allows current providers and suppliers to settle their outstanding appeals for a partial payment at sixty-two percent (62%) of the net approved amount of the appeal. The settlement is calculated per claim and then added together to be issued to the provider or supplier as a one-time lump sum payment. There are eligibility requirements for providers and suppliers, which include:

- Must be a Medicare Part A and Part B provider, physician, and/or supplier;
- Fewer than 500 appeals pending collectively at OMHA, and the Medicare Appeals Council (Council) at the Departmental Appeals Board (DAB). This means there needs to be fewer than 500 appeals across all associated National Provider Identifier numbers (NPIs). For example, if an appellant has six NPIs and 100 appeals pending for each NPI, the appellant has 600 appeals pending in total and, therefore, is ineligible to participate in the LVA process;
- Appeals must have been filed as of November 3, 2017 with the OMHA, DAB, or Council and is still pending as an appeal; and
- Total billed amount for the appeal must be \$9,000 or less.

Providers may be excluded from this settlement opportunity due to False Claims Act litigation or investigations, or other program integrity concerns, including pending civil, criminal, or administrative investigations.

Applying for LVA

All providers and suppliers interested in pursuing this option and who meet the eligibility criteria must fill out an Expression of Interest (EOI) form and submit it via email at this settlement address: cmsmedicareappealssettlement@cms.hhs.gov. Providers and suppliers only need to submit one EOI per NPI. If a provider or supplier has many NPIs, then the provider or supplier should submit one EOI per NPI during the allotted application timeline. There are two different timeframes when provider or suppliers can apply:

1. Providers or supplier with NPIs ending in an **even** number can start applying now (the form went live on February 5) and have until March 9, 2018 to submit their EOI form.
2. Providers or suppliers with NPIs ending in an **odd** number must submit their EOI form between March 12 and April 11, 2018.

If the EOI is not submitted during the correct timeframe, HHS will reject it. There isn't a specific restriction or limitation for participation based on dates of service. Once the EOI form has been submitted, HHS will review

eligibility criteria and let providers and suppliers know within 30 days whether they are eligible to participate in LVA. If HHS determines an applicant is ineligible, applicants can appeal this decision through the Eligibility Determination Request (EDR).

Once the provider or supplier has passed the eligibility review, they will receive an Administrative Agreement and spreadsheet of potentially eligible appeals within 30 days of submitting the EOI. The provider or supplier has 15 days to review the Administrative Agreement and spreadsheet. If the provider or supplier doesn't respond within the 15-day timeline, HHS will consider the provider or supplier to have abandoned the application process and remove them from the settlement. Once the provider or supplier signs the Administrative Agreement, HHS will send the Administrative Agreement and spreadsheet to the Medicare Administrative Contractor (MAC) for eligibility verification and pricing.

For the provider or supplier to receive any payment as part of the LVA, the provider or supplier must settle all eligible appeals for each NPI submitted. The provider may not choose to settle some eligible appeals and continue to appeal others. However, the provider or supplier may withdraw from the LVA process at any time prior to signing the Administrative Agreement.

If you have any questions regarding LVA or want to discuss submitting an EOI form, please contact any member of the [Baker Ober Health Law Group](#).