

**Additional Questions and Answers on DOH's Proposed Nursing Home Universal Litigation and Appeals Settlement**

1) Would a settlement on a negative rate appeal due to a DOH error on the capital component be subject to OMIG audit down the road?

- Any specific appeal included in the universal settlement (i.e., pending as of the effective date of settlement, covering rate periods prior to 1/1/12 and not on the exclusion list) would no longer be subject to OMIG audit.

2) Will OMIG honor these settlements?

- Yes, OMIG will honor these settlements and be party to the agreement.

3) Will OMIG come back to recoup outstanding 3rd party liabilities or other negatives?

- Medicare Part B offset reconciliations underway (where final reports **have not** been issued) will be included in the universal settlement. Audits where final reports **have** been issued and recoupments may be underway will not be impacted by the settlement.

4) What does OMIG have to say about this settlement agreement? Do they have the ability to audit later?

- OMIG is supportive of the settlement and will be a party to the agreement.
- Any rate appeal items that are included in the settlement will not be auditable by OMIG in the future. OMIG will still be able to audit anything related to appeals excluded from the settlement.

5) Does the Settlement preclude DOH and OMIG from auditing the rates prior to 1/1/12?

- OMIG isn't precluded from auditing rates prior to 1/1/12, but specific items in appeals that are included in this settlement agreement will not be subject to OMIG audit, provided that a final audit report has not been issued prior to the date of the settlement. All other issues remain auditable.

6) How will the Dept of Health handle outstanding appeals that contain both capital and rate issues? How will they carve out the capital? Will the facility be able to re-file the appeal with capital only?

- In this scenario, the capital appeal not subject to the settlement will remain an outstanding appeal. Re-filing will not be necessary.

7) If a facility has to give up its "litigation" rights related to capital, would OMIG's recoupment under a capital audit also be terminated?

- No, any rate appeal items that are included in the settlement will not be auditable by OMIG in the future. OMIG will still be able to audit anything related to appeals excluded from the settlement.

8) Our facility currently has no part B offset. We have an appeal on file with DOH for them to add one to our rate. This could be considered a combination of a Part B reconciliation and a negative rate adjustment. Would this type of appeal be included in the settlement?

- The settlement applies to all appeals filed for rates in effect for periods prior to 1/1/12 except those specifically excluded (see Q&A from 2/29 for exclusions) as well as Medicare Part B reconciliations for rate periods prior to 1/1/12.

9) My facility's Medicaid Part B offset is quite large. At present it is estimated that we are owed approximately \$600,000. The settlement would not allow us to recover all of these receivables. In addition will my Part B rate be reduced to a more appropriate level and/or is the Part B reflected in the statewide price?

- The settlement applies to all appeals filed for rates in effect for periods prior to 1/1/12 except those specifically excluded (see Q&A from 2/29 for exclusions).
- Under statewide pricing effective 1/1/12 there are no longer any facility-specific Part B offsets nor will there be any Part B reconciliations for rate periods after 1/1/12.

10) We haven't appealed the Medicare Part B reconciliation since 2006 because we haven't received the Medicare NPR's. Does this preclude us from appealing it?

- No, the settlement only applies to appeals filed for rates in effect for periods prior to 1/1/12.

11) Including the Medicare B offset is not appropriate since it is a reconciliation issue not an appeals issue. Would DOH be willing to reconsider their position on Part B?

- No.

12) If DOH's position in the settlement is that facilities must waive their right to pursue Part B positive rate appeals, will DOH work with OMIG to suspend OMIG efforts pursue Part B recoveries? If an organization is giving up a positive rate appeal right, if there are corresponding recoveries being sought on the same issue, those should be suspended as well.

- Recoveries in process related to a final audit report would continue to be collected.

13) Require further clarification on "dropped services" relating to ancillaries.

- Appeals related to dropped services are excluded from the settlement

14) Clarification on JATF Add On reconciliation for 2007 and 2008

- DOH will reconcile these payments. They are not part of the universal settlement.

15) Please clarify DOH's position on negative rate appeals.

- Appeals **not** on the list of excluded items are included in the settlement agreement regardless of negative or positive status.

16) What happens to the appeals settlement program? For new facilities with new base years what happens to base year operating cost appeals?

- The negotiated settlement process will still continue for all excluded appeals. New facility rate appeals and appeals to initial 12-month cost reports for eligible rebasings are excluded from the settlement.

17) How is the "Bedhold Calculation" Class Action lawsuit affected by this Settlement?

- This lawsuit would be included in the settlement agreement.

18) How will the universal settlement affect the following scenario: A facility is currently working on a negotiated settlement and has signed the affidavit but are still awaiting OMIG approval?

- Negotiated settlements signed by the facility and submitted to DOH as of the effective date of the settlement would go forward (assuming standard OMIG and DOB approval). They would be excluded from the settlement agreement.

19) We would like confirmation, that if we relinquish our rights for any filed litigation included on the DOH list that any related Medicaid liabilities that are outstanding as of 12/31/2011 will also be eliminated.

- Liabilities that are part of a final audit report will not be eliminated.

20) It does not seem appropriate that the funds distribution removes all negative impacts for the first two years for those facilities that will fare poorly under the new statewide pricing at the expense of the other facilities. The funds will be used for a purpose unrelated to appeals. Would the State be willing to revise the proposed funds distribution?

- The proposal remains unchanged. Please note that of the \$200 million that would be added in the first two years under the settlement proposal, \$89 million would be used to remove negative impacts for facilities that fare poorly under pricing while the remaining \$111 million would be used to accelerate the benefit phase-in for "winning" facilities.