

ELECTION OF SPECIAL APPEALS FUND PROCESS

You may recall from previous communications on the Universal Settlement (“US”) from provider associations and attorneys that a fund of up to \$10 million (“Special Appeals Fund”) was allocated to adjudicate specific rate appeals that would otherwise be included in the US. Based on how the US is structured, your facility is eligible to elect to participate in the Special Appeals Fund. The purpose of this document is to explain this opportunity.

The Special Appeals Fund was allocated within the US for certain facilities that have pending rate appeals on matters that are included in the US, but for which the facility believes the value of the appeals exceeds the US payment they will receive. Please understand that this fund relates only to appeals that are included – and will be eliminated as part of – the US; excluded appeals (those appeals not covered by the US) will be subject to adjudication by the Department of Health outside of the US based on the longstanding rate appeal process.

Specifically, the US is comprised of several pools of funding, including a pool of funding to ensure that every facility would receive from the US a minimum payment of at least \$227,747 or approximately 4.5 percent of its estimated annual Medicaid revenue. This allocation is referred to as the “Minimum Facility Payment Fund.” Under the terms of the US, any facility that is slated to receive monies from the Minimum Facility Payment Fund qualifies to participate in the Special Appeals Fund. As indicated in Appendix A to the Settlement Agreement, your facility is slated to receive an allocation from the Minimum Facility Payment Fund.

For those facilities electing to participate in the Special Appeals Fund process, an industry-appointed Special Master (e.g., an independent accountant, auditor or retired rate setter, not affiliated with the facility or the State) would allocate funds, based on the merits of each rate appeal, to those facilities that are: (1) eligible to receive funding from the Minimum Facility Payment Fund; and (2) willing to elect to give up the funding they are receiving from their Minimum Facility Payment Fund amount if they receive greater funding from the Special Appeals Fund. Participating facilities will be required to provide all Medicaid rate information and supporting documentation necessary to review and reach a determination on their submitted appeals. Decisions of the Special Master will be based strictly on the merits of each appeal, utilizing the submitted information and the prevailing regulations/methodologies relevant to the issue(s) that are the subject of the appeal.

Even if your facility has estimated the value of the appeals that it would submit through this process, the amount the facility would be awarded is unknown, as it is unclear at this point how many facilities will participate in the Special Appeals Fund process and the aggregate value of the meritorious appeals in relation to the total allocation of up to \$10 million. As noted above, if your facility receives funding from the Special Appeals Fund, it will then elect between the amounts received under the Minimum Facility Payment Fund or the amounts received under the Special Appeals Fund.

If your facility elects to participate in the Special Appeals Fund process, you will be asked to sign a release committing to the US and election of the Special Appeals Fund process. This release will include an agreement to be bound by the decision of the Special Master charged with reviewing and valuing appeal claims. There will be no appeals permitted for determinations by the Special Master.