

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

|  |   |                                    |
|--|---|------------------------------------|
| AMERICAN HOSPITAL ASSOCIATION, <i>et al.</i> , | ) |                                    |
|  | ) |                                    |
| Plaintiffs,                                    | ) |                                    |
|  | ) |                                    |
| v.   | ) | Civil Action No. 14-cv-00851 (JEB) |
|  | ) |                                    |
| ALEX M. AZAR II, in his official capacity as   | ) |                                    |
| SECRETARY OF HEALTH                            | ) |                                    |
| AND HUMAN SERVICES,                            | ) |                                    |
|  | ) |                                    |
| Defendant.                                     | ) |                                    |

**DECLARATION OF SHERRI G. MCQUEEN**

I, Sherri G. McQueen, declare as follows:

1. I am the Director of the Financial Services Group (FSG) within the Office of Financial Management (OFM) of the Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services (HHS or Department). I have held this position since April 5, 2015. Among my duties at HHS, I have responsibility for CMS’ debt collection activities, provider and health plan audit and reimbursement operations, banking services, settlements, and coordination of benefits functions. I have also served as the FSG Deputy Director and Director of the Division of Medicare Benefits Coordination. Prior to joining CMS in 2008, I worked over 19 years in the private sector for one of the largest health insurers in the New York metropolitan area.

2. The statements made in this declaration are based on my personal knowledge, information contained in agency files, and information furnished to me in the course of my official duties.

3. On June 8, 2018, the expression-of-interest period closed for the Low Volume Appeals settlement initiative (LVA). As of June 30, 2018, 8,382 appellants submitted expressions of interest in the LVA program, and 4,575 of those appellants had potentially eligible appeals pending at the Office of Medicare Hearings and Appeals (OMHA) and/or and the Medicare Appeals Council (Council) at the Departmental Appeals Board. As of June 30, 2018, CMS has settled 13,315 appeals from those appellants. CMS expects to settle over 25,000 appeals through LVA.

4. CMS is actively negotiating with Inpatient Rehabilitation Facility (IRF) representatives, including the American Medical Rehabilitation Providers Association (AMRPA) and the Fund for Access to Inpatient Rehabilitation (FAIR), which have indicated that they represent a significant number of IRFs. The last settlement meetings CMS had with IRF representatives were on May 23, 2018 and August 2, 2018. The negotiations were fruitful, and CMS expects that additional settlement meetings will be scheduled in the upcoming months. If settlement talks are successful, and appellants agree, nearly 12,000 IRF appeals could be removed from the backlog.

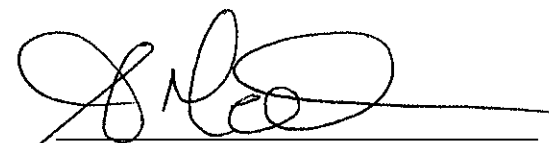
5. During every Settlement Conference Facilitation (SCF), CMS presents a good-faith settlement offer to the provider or supplier. In determining the settlement offer to give through SCF, CMS considers the following factors: (1) the type of item or service at issue, (2) the governing policy regarding the item or service at issue, (3) the cost to the Department for adjudicating the appeals at issue, (4) a sample of provider's claims, and (5) the provider's historical overturn rate on appeal at the Administrative Law Judge level. During the SCF negotiation, providers have the opportunity to submit position papers regarding the claims at issue. If a provider submits information in the position paper on claims that could have been

payable if the provider had billed with a different code, CMS would consider that information in its offer.

6. CMS is also now offering an “express” SCF option. Beginning in June 2018, after CMS confirms the provider’s eligibility for the SCF program, CMS automatically provides a settlement offer to appellant based on preliminary data available to CMS, e.g., ALJ overturn rates, cost of adjudication, and type of claim or service. Eligible appellants can choose to take the SCF Express offer or proceed to the full SCF process. *See* SCF Program Details at <https://www.hhs.gov/about/agencies/omha/about/special-initiatives/settlement-conference-facilitation/index.html>.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on August 3, 2018 in Baltimore, Maryland



Sherri G. McQueen