

**Office of Medicare Hearings and Appeals
Settlement Conference Facilitation Pilot
FACT SHEET**

What is Settlement Conference Facilitation?

Settlement Conference Facilitation (SCF) is a pilot alternate dispute resolution process designed to bring the appellant and the Centers for Medicare & Medicaid Services (CMS) together to discuss the potential of a mutually agreeable resolution to the claims appealed to an Administrative Law Judge hearing. If a resolution is reached, a settlement document is drafted by the facilitator to reflect the agreement and the document is signed by the appellant and CMS at the settlement conference session. As part of the agreement, the requests for an Administrative Law Judge hearing for the claims covered by the settlement will be dismissed.

The facilitator uses mediation principles to assist the appellant and CMS in working toward a mutually agreeable resolution. The facilitator does not make official determinations on the merits of the claims at issue and does not serve as a fact finder, but may help the appellant and CMS see the relative strengths and weaknesses of their positions. The facilitator is an employee of the Office of Medicare Hearings and Appeals, which is a component of the HHS Office of the Secretary, and is organizationally and functionally separate from CMS.

Which claims or appeals are eligible for the Settlement Conference Facilitation process?

To be eligible for the SCF process:

- A request for hearing must appeal a Qualified Independent Contractor (QIC) reconsideration of a claim for Medicare Part B items or services;
- The appellant must be a Medicare provider or supplier that has been assigned a National Provider Identifier (NPI) number;
- The beneficiary must not have been found liable after the initial determination or participated in the QIC reconsideration;
- All jurisdictional requirements for a hearing before an Administrative Law Judge must be met for the request for hearing and all appealed claims;
- The request for hearing must have been filed in 2013 and not be currently be assigned to an Administrative Law Judge;
- The amount of each individual claim must be less than \$100,000. For the purposes of an extrapolated statistical sample, the extrapolated amount must be less than \$100,000.
- At least 20 claims must be at issue, or at least \$10,000 must be in controversy if fewer than 20 claims are involved;
- There cannot be an outstanding request for OMHA statistical sampling for the same claims; and
- The request must include all of the appellant's pending appeals for the same item or service at issue that meet the SCF criteria. For example, if an appellant has 50 wheelchair appeals pending that meet the requirements above, the appellant must submit a request for SCF for all 50 wheelchair appeals.
 - Appellants may submit an SCF request for appeals involving multiple items or services, provided the appellant has included all of the appeals that meet the above eligibility requirements in its SCF request, for all of the items or services involved in the appeals.
 - Appellants may not request an SCF for some but not all of the items or services included in a single appeal. For example, if an individual appeal has at issue 10 diagnostic tests and 10 drugs/biologicals, an appellant may not request that the diagnostic tests go to SCF and the drugs/biologicals go to hearing.

Beneficiary-initiated appeals of QIC reconsiderations are not included in this pilot because those appeals are being prioritized for a hearing before an Administrative Law Judge. Medicare Part A, Medicare Part C, Medicare Part D, and appeals of Social Security Administration decisions regarding entitlement, Part B late enrollment penalties, and Part B and Part D income related monthly adjustment amounts (IRMAAs) are not eligible for the SCF process at this time. In addition, requests for reviews of QIC dismissals are not eligible for the SCF process.

How can I request a Settlement Conference Facilitation?

We encourage you to read this entire fact sheet before requesting a settlement conference. Please visit the SCF page at www.hhs.gov/omha for the most up-to-date instructions, information requirements, and helpful templates for requesting a settlement conference.

Can I submit my Request for Settlement Conference Facilitation electronically?

Electronic submission of the SCF Request Spreadsheet via CD is mandatory; however, submitting your entire request package via CD is strongly encouraged. Note: Saving your SCF Request Spreadsheet on a CD as a Microsoft Excel document is also strongly encouraged.

Electronic signatures of SCF request documents are not acceptable. You are encouraged to scan your Agreement of Participation, with original signatures, into PDF format and submit that document on a CD with your other SCF request documents.

My organization shares the same name with other legally affiliated organizations (e.g., subsidiaries), but we all have different NPI numbers. Do I have to include claims eligible for SCF for all of the affiliated organizations?

No. For the purposes of this pilot, an appellant is a Medicare provider or supplier who has been assigned an NPI number.

Can organizations that are legally affiliated with each other, but maintain separate NPI numbers, include claims into one request for Settlement Conference Facilitation?

Yes. Please be sure to list all of the relevant NPI numbers in your *Request for Settlement Conference Facilitation* and in the Provider/Supplier Identification section of the *Settlement Conference Facilitation Agreement of Participation* (Note: The *Settlement Conference Facilitation Request Spreadsheet* will still need to be completed by CMS Certification Number (CCN) or Provider Transaction Number (PTAN)).

Please be aware that logistical arrangements may require that this type of request be grouped and scheduled into multiple settlement conference sessions which may lead to multiple settlements for effectuation purposes.

Can I include claims from requests for hearing that are currently assigned to an Administrative Law Judge?

Not at this time. The pilot is limited to claims in unassigned requests for hearing.

Can I include claims from requests for hearing filed in 2014?

Not at this time. The pilot is limited to claims in requests for hearing filed in 2013.

What if I want to request a Settlement Conference Facilitation for a claim that was over \$100,000 or an extrapolated overpayment determination that was over \$100,000?

The SCF process cannot be used for an individual claim exceeding \$100,000. For the purposes of an extrapolated statistical sample, the extrapolated amount must be less than \$100,000. We will continue to explore expanding the pilot for larger claims in the future.

What if I want some of the claims in my appeal to be heard by an Administrative Law Judge, but other claims to be settled?

All claims in the appealed QIC reconsiderations must be eligible for SCF and must be included in any settlement that results from the SCF process. Claims from the same QIC reconsideration may not be split and addressed under separate processes.

Additionally, all claims in unassigned requests for Administrative Law Judge hearing filed in 2013 for the same or similar services or items must be included in any settlement that results from the SCF process. For example, if a supplier has filed 50 requests for hearing for wheelchairs in 2013, and all of those requests are currently unassigned, the provider must request settlement conference for all 50 appeals.

Who is involved in the Settlement Conference Facilitation process?

The settlement conference must involve individuals authorized to enter into a binding agreement at the conference session. For the appellant, the individual may be an employee or representative of the appellant, provided that the employee or representative is authorized to enter into the agreement on behalf of the appellant. If the appellant does not offer an individual authorized to enter into the agreement at the conference, the conference will be concluded and there will be no further action on the appellant's request for SCF. CMS will provide individuals authorized to enter into a binding agreement at the conference session.

Where does the Settlement Conference occur?

At this time, the SCF process is based out of the OMHA Arlington, Virginia Headquarters office. In-person facilitations in the metro-Washington, D.C. area (including Baltimore) may be available. However, CMS settlement officials will participate by telephone only. VTC sessions are also available, through a party's private VTC connection (if compatible with the OMHA system) or an OMHA VTC vendor.

Can I appeal a decision by the facilitator to exclude claims from Settlement Conference Facilitation or deny my Settlement Conference Facilitation request?

No. The facilitator's review of a SCF request and the claims involved in the request ensure that the request meets the requirements for the SCF process. The facilitator's review of the request is not appealable. If the facilitator's review suggests that an Administrative Law Judge would not have jurisdiction over the claims appealed, the appeal(s) will be referred to an Administrative Law Judge for potential dismissal. If a dismissal is issued, appeal rights will attach to the dismissal.

If the facilitator's review suggests that claims in a QIC reconsideration do not meet the other SCF requirements (for example, the claims are for a different item or service than was stated in the SCF request), the reconsideration will not be considered in the SCF process and will return to the Administrative Law Judge hearing process for adjudication in the order the request for hearing was received (for example, if you filed your request for hearing in October 2013, the request will be processed with other October 2013 requests for hearing).

Does CMS have to settle claims?

No. CMS has exclusive authority to approve the payment of claims or settle a claim in the SCF process. CMS will make a good faith effort to resolve the claim(s) involved, but neither CMS nor the appellant is required to enter into a settlement agreement and both have the discretion to reject offers.

Is CMS waiving Medicare coverage or payment policies if it agrees to settle claims?

No. CMS settlement officials are open to discussing the circumstances of the claims at issue and how coverage and/or payment policies were applied, as well as potential limitation of liability and

overpayment waiver issues that may apply to a claim denial. However, by agreeing to a settlement in the SCF request, CMS is not waiving coverage or payment policies.

How much time do I have to agree to any settlement proposal?

The facilitator will work with the appellant and CMS to reach an agreement on the claims at issue during the settlement conference session. In order to efficiently resolve the pending appeals, any settlement must be agreed to and signed by the appellant and CMS at the settlement conference session. There will not be an opportunity to ratify the settlement at a later date.

What happens if a settlement cannot be agreed to?

If the appellant and CMS cannot reach an agreement and the facilitator believes further efforts to reach an agreement will be futile, the facilitator will conclude the process. At that time, the appealed claims will return to the Administrative Law Judge hearing process for adjudication in the order the request for hearing was received (for example, if you filed your request for hearing in October 2013, the request will be processed with other October 2013 requests for hearing).

Why does a settlement have to be specific to a Medicare provider or supplier?

Any settlement that results from the SCF process must be specific to a Medicare provider or supplier to ensure the proper effectuation of any payment to or recoupment from the provider or supplier.

Why can't pre-payment and post-payment claim denials be addressed in the same settlement document?

Pre- and post-payment denials may have different governing rules and policies that must be addressed. Because of the different governing rules and policies, and to make effectuating any settlement that results from the SCF process as efficient as possible, pre-payment and post-payment claim denials must be addressed in separate settlement agreements.

What if I want to request Settlement Conference Facilitation for both pre- and post-payment claim denials?

You will need to file separate SCF requests and if agreements are reached, separate settlement documents will have to be written and signed.

Can I request a statistical sample of the appealed claims?

OMHA has a separate option for requesting adjudication based on a review of a statistical sample of appealed claims, which would be conducted by an Administrative Law Judge through the traditional hearing process. OMHA will not conduct a settlement conference on appealed claims for which you have requested the use of statistical sampling through the OMHA statistical sampling option. However, you and CMS could agree to a sampling of the appealed claims in the SCF process. You can discuss this potential with the facilitator. In addition, if you and CMS cannot reach an agreement and the facilitator ends the facilitation process, you can then request the OMHA statistical sampling option to adjudicate the claims.

What happens if I change my mind after I agree to a settlement? Can I appeal the settlement agreement?

Settlement agreements are binding and cannot be appealed. If you agree to a settlement with CMS, you must agree that you withdraw your request(s) for Administrative Law Judge hearing and that you will not pursue further appeals or reviews of the claims subject to the settlement.

What happens if another party to a claim involved in the settlement (for example, the beneficiary), challenges the dismissal that results from the settlement agreement?

All parties to the initial determination are parties to the Administrative Law Judge Hearing (42 C.F.R. § 405.906). While non-appellant parties often do not participate in the hearing process, they do have a right to the hearing and we must ensure that right is preserved. A non-appellant party will receive notice of the dismissal that results from the settlement and may request a review by the Medicare Appeals Council to vacate the dismissal. If the Medicare Appeals Council vacates the dismissal and remands the claim for a hearing before an Administrative Law Judge, a standard term in the settlement will remove the claim from the settlement agreement (that is, the agreement will be nullified for the specific claim). We expect this circumstance to be rare, but a waiver of a non- appellant party's right to a hearing may be obtained and submitted at the discretion of the appellant to avoid the possibility.

What do I have to agree to in order to begin the Settlement Conference Facilitation process?

Regardless of whether you use the OMHA supplied template to request a settlement conference, you must complete the SCF Agreement of Participation. If you do not complete the agreement, the process will be concluded and appealed claims will return to the standard hearing process for adjudication in the order the request for hearing was received (for example, if you filed your request for hearing in October 2013, the request will be processed with other October 2013 requests for hearing).

Are there standard terms for the settlements?

Yes. Certain terms must be agreed to by both the appellant and CMS. If an appellant or CMS is unwilling to agree to the terms, the SCF process will be concluded and appealed claims will return to the standard hearing process for adjudication in the order the request for hearing was received (for example, if you filed your request for hearing in October 2013, the request will be processed with other October 2013 requests for hearing). Please visit the SCF page at www.hhs.gov/omha for the most up-to-date standard terms.

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