



SETTLEMENT CONFERENCE FACILITATION

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Open Door Teleconference Objectives

- Understand the concept of Settlement Conference Facilitation (SCF) or mediation at the Administrative Law Judge level;
- Understand the basic eligibility requirements for Phase II of the SCF Pilot; and
- Understand the SCF Phase II process



What is Settlement Conference Facilitation?

- Settlement Conference Facilitation is an 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 for claims appealed to the Administrative Law Judge hearing level.
- If a resolution is reached, the settlement conference facilitator drafts a settlement document to reflect the agreement. As part of the agreement, the request(s) for an Administrative Law Judge hearing for the claims covered by the settlement will be withdrawn and dismissed.



Who is the Settlement Conference Facilitator?

Settlement conference facilitators are specially trained employees of the Office of Medicare Hearings and Appeals (OMHA), which is a component of the HHS Office of the Secretary, and is organizationally and functionally separate from CMS.



What Does the Facilitator Do?

- Uses mediation principles to assist the appellant and CMS in working toward a mutually agreeable resolution.
- Does not make official determinations on the merits of the claims at issue and does not serve as a fact finder.
- May help the appellant and CMS see the relative strengths and weaknesses of their positions.



Settlement Conference Facilitation: Phase I



SCF: Phase I

- The first phase of OMHA's SCF pilot began in June 2014.
- Limited to Part B claims appealed to OMHA in calendar year 2013.
- Phase I of the pilot successfully resolved over 2,400 unassigned Administrative Law Judge appeals.



Settlement Conference Facilitation Expansion



SCF Expansion

SCF will be expanded in two phases:

- Phase II: Expansion of the settlement conference facilitation eligibility requirements for Part B appeals beginning October 1, 2015.
- Phase III (2016): Expansion of the pilot to include some Part A appeals.



SCF Phase II: Eligibility Requirements

- The appellant must be a Medicare provider or supplier;
- A request for hearing must appeal a Medicare Part B Qualified Independent Contractor (QIC) reconsideration decision;
- 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 amount of each individual claim must be \$100,000 or less;
- There cannot be an outstanding request for OMHA statistical sampling for the same claims;



SCF Phase II: Eligibility Requirements

- The request must include all of the appellant's pending appeals for the same item or service at issue that meet the SCF criteria;
- The request for hearing must be unscheduled for ALJ hearing and must have been filed by September 30, 2015;
- At least 20 claims must be at issue, or at least \$10,000 must be in controversy if fewer than 20 claims are involved;
- The appealed claim(s) must not involve items or services billed under unlisted, unspecified, unclassified, or miscellaneous healthcare codes (e.g., CPT Code 38999 *Unlisted procedure, hemic or lymphatic system*; HCPCS Code E1699 *Dialysis equipment, not otherwise specified*; J3490 *Unclassified drugs*);



SCF Phase II: Eligibility Requirements

- The appellant has not filed for bankruptcy and/or does not expect to file for bankruptcy in the future; **and**
- The appellant has received an Office of Medicare Hearings and Appeals SCF Notification stating the appellant may request SCF for the claims identified in the SCF spreadsheet;



SCF Expansion: Requesting SCF

- ❑ Appellant submits SCF Expression of Interest which requests that OMHA run a preliminary report of its pending appeals and initiate the SCF process.
- ❑ OMHA creates the preliminary report containing appellant claims which are eligible for SCF and sends to CMS.
- ❑ CMS will then have the opportunity to respond whether it will participate in SCF for the appellant based on the preliminary report.



SCF Expansion: Requesting SCF

- ❑ Post CMS response, OMHA will complete an SCF Spreadsheet for the appellant(s) listed on the preliminary report. The SCF Spreadsheet will contain all OMHA appeals which OMHA believes are eligible for SCF.



SCF Expansion: Requesting SCF

- ❑ OMHA will send the SCF Preliminary Notification and SCF Spreadsheet to the appellant(s). The appellant will have **15 calendar days** from receipt of the SCF Preliminary Notification to submit a Request for SCF Package.

The appellant request package must include the following items electronically on a flash drive or a compact disc:

- ❖ Request for SCF form
- ❖ SCF Agreement of Participation form
- ❖ A complete SCF Request Spreadsheet: the responsibility of ensuring all claims meet SCF eligibility requirements lies with the appellant

**We will presume the appellant received the preliminary notification within 5 calendar days of the date of the notice.*



SCF Expansion: Requesting SCF

- If an appellant objects to an appealed claim on the SCF Spreadsheet (e.g., the claim was never appealed), the SCF administrative team will work with the appellant to address any issues and produce a revised SCF Spreadsheet, if necessary. Appellants may not request that claims be removed from the spreadsheet simply because they prefer Administrative Law Judge review of specific claims.



SCF Expansion: Requesting SCF

- If an appellant does not submit a proper SCF request package within 15 calendar days of receipt of the preliminary notification, the SCF process will close for the appeals at issue on the SCF spreadsheet.
- Once OMHA has received the appellant's complete SCF package, OMHA will issue a confirmation notice to the appellant and CMS identifying all of the appealed claims which will be subject to the settlement conference.



SCF Expansion: Requesting SCF

- OMHA facilitates Pre-Settlement Conference Call between all parties
- OMHA facilitates Settlement Conference between all parties



SCF Expansion: Completing the SCF Process

- If an agreement is reached:
 - ❖ The OMHA facilitators will draft a settlement agreement in accordance with the instructions of all of the parties.

 - ❖ CMS and the appellant will sign the settlement agreement. The appellant must sign the agreement on the date of the settlement conference and not later.



SCF Expansion: Completing the SCF Process

- If an agreement is reached:
 - ❖ OMHA will combine the appealed claims subject to the settlement agreement into one Administrative Law Judge Appeal number for administrative efficiency and issue a single dismissal order.

 - ❖ CMS Medicare Administrative Contractors (MACs) will effectuate the settlement agreement.



SCF Expansion: Completing the SCF Process

- If an agreement is not reached, the appealed claims will be returned to their prior place in OMHA's docket:
 - ❖ If appeal was assigned to a judge, it will return to the same judge.
 - ❖ If appeal had not been assigned to a judge yet, it will return to its original place in the queue for assignment (based on the date the request for hearing was received.)



Settlement Conference Facilitation Expansion: Forms



SCF Expression of Interest Form

DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF MEDICARE HEARINGS AND APPEALS

SETTLEMENT CONFERENCE FACILITATION EXPRESSION OF INTEREST

To request an OMHA Settlement Conference Facilitation, you must first receive an OMHA *Settlement Conference Facilitation Preliminary Notice*. In order to initiate production of this notice on your own behalf, you must first complete this *Settlement Conference Facilitation (SCF) Expression of Interest* form.

You may e-mail this completed form in PDF format to OMHA.SCF@hhs.gov. Electronic signatures are not acceptable. Please scan your expression of interest form, with original signature, into PDF format and then send it as an attachment.

You must not email any beneficiary personally identifiable information including beneficiary first or last names, beneficiary names represented by initials, beneficiary addresses, or truncated health insurance claim numbers (HICN). You must only provide the information requested in this form. Failure to comply with protection of beneficiary private data will result in rejection of your appeals from the SCF process.

For more information on the OMHA SCF process, please visit the OMHA website at www.hhs.gov/omha or contact us at OMHA.SCF@hhs.gov.

Appellant (the provider or supplier that appealed the QIC reconsideration):

Please note, if you are a Medicare beneficiary or a Medicaid State Agency, your claim appeals are not currently eligible for the OMHA Settlement Conference Facilitation process.

Appellant point of contact (not necessary if represented)			Representative name (if applicable) (must be an individual)		
Point of Contact Title (not necessary if represented)			Representative firm or business (if applicable)		
Address			Address		
City	State	Zip Code	City	State	Zip Code
Phone Number	Fax Number		Phone Number	Fax Number	

Provider/Supplier National Provider Identifier (NPI):

If claims were submitted under multiple NPI's, please list all NPI numbers.



SCF Request Spreadsheet

f your SCF request package. You
 ow. Electronic submission of the
 xcel format (.xlsx). Do **not** submit
 of this spreadsheet by adding
 at the bottom of this document
 ise contact OMHA at

Appellant must complete the columns below.									
Payer Claim Control Number	Billed Amount	Post-Payment Claim? (Enter Y for "Yes", leave blank if no)	CMS Certification Number (CCN) or Provider Transaction Number (PTAN)	Claim Adjustment Reason Code (CARC)	MIA/MIAO or RARC (if any)	HCPCS/CPT Code	To/From Date of Service	QIC Decision Letter Mailed Date	OMHA Complete Request Received Date
123456789123456	\$10,000.00					E0000	1/1/2013 - 2/1/2013	1/1/2014	2/1/2014
789456121378945	\$10,000.00					E0001	1/1/2013 - 2/1/2014	1/1/2014	2/1/2014
456789123456789	\$10,000.00					E0002	1/1/2013 - 2/1/2015	1/2/2014	2/2/2014



Settlement Agreement Template

- Basic Agreement: The claims at issue are specified in the Spreadsheet and pages Page X– Page Y of this agreement. CMS agrees to calculate payment based upon a percentage term of **[agreed percentage number]**.
- Percentage (%) terms in this agreement: For pre-payment denials at issue in this agreement (including down-coding), the percentage agreed to by CMS is a percentage of the Medicare approved amount less the applicable deductible and/or co-insurance (that is, the percentage is applied only after the deductible and/or co-insurance has been subtracted from the Medicare approved amount), if any. Where down-coding is involved, the amount already paid by Medicare (constructively or otherwise) is subtracted from the preceding calculated amount. For post-payment denials at issue in this agreement, the percentage agreed to by CMS is the percentage by which CMS will reduce the overpayment(s) at issue.

