

# SETTLEMENT CONFERENCE FACILITATION (SCF)

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## SCF EXPANSION FREQUENTLY ASKED QUESTIONS

### ***What is SCF?***

SCF is an alternative 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 Office of Medicare Hearings and Appeals (OMHA) level or the Medicare Appeals Council (Council) level of the Medicare claims appeals process. If a resolution is reached, a settlement document is drafted to reflect the agreement. The document is signed by the appellant and CMS at the settlement conference session. As part of the agreement, the requests for hearing or review for the appeals covered by the settlement will be dismissed.

A 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 OMHA, which is a component of the Department of Health and Human Services (HHS) Office of the Secretary, and is organizationally and functionally separate from CMS. Mediation within this program is centered on facilitating payment negotiations.

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### ***What is a payment negotiation?***

A real-world example of a payment negotiation is when two parties negotiate a price for goods or services (e.g., when buying a home, both parties negotiate the sale price, usually through their representatives). Since SCF concentrates solely on agreeing to a payment, SCF is not the appropriate venue for arguing medical necessity, Medicare policy, or the strength of Medicare claims. If the appellant wishes to argue Medicare policy or have an evaluation on the merits of its appealed claims, the appellant should cancel its request for SCF so that its appeals may be adjudicated through the normal Medicare claims appeals process.

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### ***Will the settlement agreement state the actual dollar amount I will receive from CMS?***

No. Settlement agreements in this program authorize payments as a percentage of the Medicare approved amount. For example, settlement parties could agree that CMS will pay 25% of the approved amount on the claims in the *SCF Request Spreadsheet*.

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### ***I believe all of my appeals were denied in error. Is it realistic to expect I will receive 100% of the approved amount of the appealed claims on my SCF Request Spreadsheet?***

No. The appellant and CMS must have realistic expectations of the outcome of this process. Appellants should not expect full payment on the claims at issue, nor should CMS expect to pay a negligible amount on the claims at issue if the goal is to resolve the appeals at issue.

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***Should I expect to receive at least 62% of the approved amount of the appealed claims on my SCF Request Spreadsheet?***

No. Unlike CMS settlement programs (i.e., Low Volume Appeals Initiative or the CMS Hospital Appeals Settlement Program), there is no prescribed settlement percentage in SCF. The settlement agreement percentage is negotiated between both parties and based on the unique circumstances of each appellant's appeals. Appellants could receive less than 62% or more than 62%. The agreement will be unique to each appellant.

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***I am an acute care hospital that has appeals that were eligible for the CMS Hospital Settlement in 2014 and 2016; however, my hospital decided not to participate in those settlements. Can I now attempt a settlement of these claims through the Settlement Conference Facilitation process?***

Yes. Appellants with claims that were eligible for settlement through the CMS Part A Hospital Appeals Settlement Process can participate in SCF so long as all other SCF eligibility criteria are met.

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***Can I pick and choose which appeals are part of SCF?***

All eligible appeals associated with an NPI/PTAN on the Request for SCF will be included in SCF. Appellants may not object to appealed claims on the SCF Request Spreadsheet because they would prefer an OMHA decision or Council review for those claims. Objections will only be considered if the appellant has knowledge that the appealed claim(s) on the spreadsheet does not meet the SCF eligibility criteria (e.g., no OMHA request for hearing filed for a claim, the beneficiary participated in the QIC's review, etc.).

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***My organization shares the same name with other legally affiliated organizations (e.g., subsidiaries), but we all have different NPI numbers. Are we all considered the same Medicare provider or supplier?***

No. For the purposes of SCF, an appellant is a Medicare provider or supplier who has been assigned an NPI/PTAN. Even if organizations have the same or similar name, they will be considered separate and distinct appellants if each organization has a different NPI/PTAN.

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***Can organizations that are legally affiliated with each other, but maintain separate NPI numbers, be included on one Request for SCF?***

Yes. The *Request for SCF* must indicate all of the NPI/PTAN numbers for each appellant to be included in the process.

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***Are appealed claims that are currently scheduled for an Administrative Law Judge hearing eligible for SCF?***

No. SCF is limited to appealed claims that have not yet been scheduled for an Administrative Law Judge hearing. Additionally, appeals are ineligible for SCF if a hearing was already conducted.

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***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. The settlement conference facilitator is a specially-trained employee of OMHA, which is a component of the HHS Office of the Secretary, and is organizationally and functionally separate from CMS.

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***Where does the Settlement Conference occur?***

At this time, settlement conferences are conducted via telephone only. CMS settlement officials will participate by telephone only. Similarly, OMHA cannot accommodate in-person conferences within OMHA headquarters or field offices.

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***Can I appeal a decision by OMHA or the Council to exclude pending appeals from SCF or deny my Request for SCF?***

No. OMHA and the Council will review appeals to ensure that the appealed claims meet the requirements for the SCF process. This review is not appealable. Additionally, if OMHA or the Council's review suggests that jurisdiction is not established for the appeals at issue, the appeal(s) may be referred to an adjudicator for further review and potential dismissal. If a dismissal is issued, standard appeal rights will attach to the dismissal (if applicable).

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***Does CMS have to settle claims?***

No. CMS has exclusive authority to agree to the settlement of claims 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.

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***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 on the day of the settlement conference session. If the settlement conference session concludes after 2:00pm Eastern Time, the agreement must be signed the next business day. Settlement negotiations will not continue on the next business day.

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***What happens if the appellant and CMS cannot agree to a settlement?***

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 OMHA or Council docket for adjudication. Appeals will return to the docket in the order in which the appeal request was received (for example, if you filed your ALJ request for hearing in October 2016, the request will be processed with other requests for hearing received in October 2016). If an appeal was already assigned to an adjudicator, the appeal will return to the adjudicator's docket.

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***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.

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***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 hearing/review and that you will not pursue further appeals or reviews of the claims subject to the settlement.

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***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 an appeal at the OMHA or Council level (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 or Council review, and we must ensure that right is preserved.

A non-appellant party will receive notice of the OMHA or Council dismissal that results from the settlement and may request a review by the Council or judicial review or the dismissal, respectively. If the Council vacates an OMHA dismissal, the Council will remand the claim for a hearing before an Administrative Law Judge, and a standard term in the settlement will remove the claim from the settlement agreement (i.e., the agreement will be nullified for the specific appealed claim). Similarly, if the district court vacates a Council dismissal, the court will remand the claim for Council review and a standard term in the settlement will remove the claim from the settlement agreement.

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 appellant's discretion to avoid the possibility.

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***Will I receive a new Remittance Notice pursuant to a settlement agreement?***

No. Per CMS, the claims will remain denied in Medicare's systems, and new remittance notices will not be issued.

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***Can I bill beneficiary secondary payers pursuant to a settlement agreement?***

As the claims remain denied, the appellant agrees that it will not seek further reimbursement from the beneficiary. Reimbursement from other insurance carriers will depend on those organizations' internal payment policies. CMS, OMHA, and the Council do not have authority on the manner in which other insurance carriers determine secondary payer reimbursement.

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***Are ambulance transportation claims eligible for SCF?***

Appealed claims are ineligible for SCF if the beneficiary was held liable for the amount in controversy at lower levels of appeal and/or the beneficiary participated in the appeal review. In many ambulance or medical transportation appealed claims, the beneficiary has been held liable for the amount in controversy. Consequently, most ambulance/medical transportation appeals are not eligible for SCF.

If a supplier has appeals pending that meet all of the SCF eligibility requirements, including the beneficiary liability/beneficiary participation conditions, then the supplier is welcome to file a Request for SCF.

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***If a settlement is reached, will CMS create/allow edits in the system so that it shows that this claim was paid and any requirements for future downstream normally allowable payments have been met or are***

***moot? For example, will the system show that: the DIF/CMN requirement is met or moot, normally allowable repairs may be made, or normally allowable future rental months may be paid?***

CMS is responsible for the processing of Medicare claims and any effectuation of payment related to those claims or their appeals. OMHA does not perform these functions.

Currently, all claims that are resolved as part of a final SCF settlement agreement will remain denied in Medicare's systems. This could cause future claims related to the settled claims for items and services to be denied, for example repair of a wheelchair, or future rental months. CMS acknowledges this issue and is looking into possible ways to allow for payment of these types of claims in the future.

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***Can an appeal arising from a claim with a "PR96 denial" qualify for SCF?***

Claims with PR96 denials are eligible for the SCF. Please note: If, upon review of the claim, CMS believes the denial was appropriate because Medicare does not cover the item or service at issue, CMS will take this into account during the negotiations and this non-covered item or service will likely impact the amount of any settlement offer.

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***Who from CMS attends the settlement conference?***

Individuals from CMS' Office of Financial Management attend the settlement as CMS representatives.

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***I have rental claims that have been denied at lower levels of appeals for the first three months the beneficiary rented the equipment. Subsequent rentals for the same beneficiary, and for the same items, were approved at lower levels of appeal. Do these subsequent appeal decisions have any impact on requesting SCF for the first three months of rental (which are still denied and in appeal)?***

No, this scenario does not have any impact on requesting SCF for the first three rental months. Your requests for ALJ hearing for the first three months are eligible for SCF so long as all other eligibility requirements are met.

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***Can the appellant be represented by an appointed representative?***

Appellants may be represented by an attorney or other representative, if they so choose. Appellants do not need to complete a separate appointment of representation form. They only need to complete the SCF forms found on our website and as instructed by OMHA.

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***If the settlement agreement must be signed on the day the agreement is made, will it be signed electronically since everyone won't be in the same room? By everyone I mean the provider and CMS.***

Yes, the settlement agreement is emailed or faxed first to the appellant for review and signature. The appellant returns the signed copy via fax/email to OMHA, and OMHA then forwards the agreement to CMS for signature. Once fully executed, OMHA will forward the completed settlement agreement to all parties. All signatures must be handwritten. Electronic signatures or signature stamps created by software (i.e., Adobe Acrobat or similar software) will not be accepted.

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***Is there a deadline to submit a request for SCF?***

There is currently no deadline to request SCF.

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***If any party can decline participation in the SCF process, can a Medicare Administrative Contractor (MAC) or Qualified Independent Contractor (QIC) speak up and cause a cancellation of the SCF process or is it just between the appellant and OMHA?***

The settlement parties in the SCF pilot are the appellant and CMS. MACs and QICs are not parties in the SCF process, and they do not participate or attend the settlement conference. Notwithstanding, CMS is free to consult with its contractors when determining its negotiation posture prior to the settlement conference.

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***What criteria are used to determine settlement amounts?***

The settlement conference is a negotiation between the parties. As such, the parties determine how they wish to discuss the claims; however, appellants should note the settlement conference is not an ALJ hearing or review by the Council. If an appellant desires the establishment of findings of fact and/or application of law or policy to each individual claim, an ALJ hearing or Council review would be the appropriate venue.

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