

SETTLEMENT CONFERENCE FACILITATION (SCF)

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 Medicare Part A and Part B claims appealed to the Office of Medicare Hearings and Appeals (OMHA) or the Medicare Appeals Council (Council) of the Departmental Appeals Board. If a resolution is reached, a settlement document is drafted to reflect the agreement. The document is signed by the appellant and CMS.¹ As part of the agreement, the requests for hearing or review for the appeals covered by the settlement will be dismissed.

If the appellant elects to negotiate payment through a settlement conference, 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 SCF program is centered on facilitating payment negotiations.

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). Both parties may utilize specifics such as historic overturn rates, types of claim or service, and medical review to substantiate their negotiation position; however, SCF is not the appropriate forum for arguing Medicare law and policy. Additionally, if the party prefers to have an evaluation on the merits of its appealed claims, then adjudication through the normal Medicare claims appeal process would be the more appropriate venue.

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 Spreadsheet*.

How is the settlement percentage effectuated?

For pre-payment denials at issue in the Agreement, 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

¹ If any of the individual appealed claims has a billed amount in excess of \$100,000 or is an appeal of an extrapolated overpayment with a demand amount in excess of \$100,000, the settlement agreement will be subject to U.S. Department of Justice approval prior to full execution of the settlement agreement.

amount), if any. For post-payment denials at issue in the Agreement, the percentage agreed to by CMS is the percentage by which CMS will reduce the overpayments at issue.

For claims involving down-coding, the percentage agreed to by CMS is a percentage of the amount at issue on appeal (e.g., if the Medicare payable amount of the originally billed services is \$100, but the services were down-coded by Medicare to a paid amount of \$30, the percentage agreed to by CMS in this agreement is the percentage applied to the \$70 difference).

What are post-payment denials?

Appeals related to post-payment denials are appeals of Medicare overpayment determinations.

I want CMS to provide me the actual dollar amount I will receive prior to signing the agreement. Can OMHA assist me with obtaining this information?

No. There is no mechanism within SCF to provide actual dollar amounts to appellants prior to fully executing the settlement agreement. There are no exceptions regarding this issue for any appellant.

How am I supposed to know the actual dollar amount I will receive from CMS?

Settlement agreements in this program authorize payments as a percentage of the Medicare approved amount. It is the responsibility of the appellant to estimate the dollar amount it expects to receive in accordance with the settlement agreement percentage.

Are CMS or its contractors bound to my actual dollar amount estimates when effectuating the settlement agreement?

No. Appellant estimates are for appellant guidance only.

Can I enter into an Extended Repayment Schedule (ERS) as part of my SCF settlement?

The appellant would need to submit an ERS request to the appropriate Medicare Administrative Contractor (MAC). Any settlement reached through the SCF process does not guarantee approval of an ERS request. OMHA and its SCF Initiative do not assist, intervene, or any way participate with the drafting, filing, or review of your ERS request to the MAC.

I received an overpayment demand notice from the MAC but I do not know how much I have paid on the overpayment or its current balance. Will SCF assist me in confirming the current balance of my assessed overpayment or confirming previous payments?

No. Confirmation of balances or historical payment data made toward an overpayment determination(s) is outside of the SCF process. OMHA will not facilitate or otherwise assist appellants with these efforts. Further, the SCF process will not be delayed or altered for any appellant due to questions regarding overpayment determination status, balance, payments, or other related accounting issues.

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 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.

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

No. Unlike CMS settlement programs (e.g., 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.

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 pending, OMHA or Council appealed claims that were eligible for settlement through the CMS Part A Hospital Appeals Settlement Process can participate in SCF; however, the pending OMHA or Council appealed claims must meet all SCF eligibility criteria.

I am inpatient rehabilitation facility that has appeals that were eligible for the CMS Inpatient Rehabilitation Facility Settlement (IRF) Appeal Initiative; however, my facility decided not to participate in that settlement program. Can I now attempt a settlement of my pending appealed claims through the Settlement Conference Facilitation process?

Yes. Appellants with pending, OMHA or Council appealed claims that were eligible for settlement through the CMS IRF Initiative can participate in SCF; however, the pending OMHA or Council appealed claims must meet all SCF eligibility criteria.

How do I begin the SCF process?

You must file a *Request for SCF*. This form is located on our website at <https://www.hhs.gov/about/agencies/omha/about/special-initiatives/settlement-conference-facilitation/index.html>. We encourage you to read our website and all SCF FAQs before filing a *Request for SCF*.

Is there a deadline to submit a Request for SCF?

Currently, there is no deadline to request SCF.

Is a wet signature (i.e., handwritten signature) required for SCF documents?

Parties must sign SCF documents by wet signature or digital/electronic signature.

CMS has asked the Council to review my ALJ decision. Is this appeal eligible for SCF?

No. Only Council request(s) for review filed solely by the appellant are potentially eligible for SCF.

I already know all of my appeals that are pending at OMHA. Can I just submit my Request for SCF and a spreadsheet to you to make things go faster?

No. OMHA has found that most appellants do not have an accurate accounting of their pending appeals. In order to maximize OMHA's limited staff time and resources, OMHA and the Council will be responsible for the initial accounting of a provider's/supplier's pending appeals.

Can I 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 appeals on the *SCF Spreadsheet* because they would prefer an OMHA or Council decision for those appeals. Objections will only be considered if the appellant has knowledge that the appeal on the spreadsheet does not meet the SCF eligibility criteria (e.g., no OMHA request for hearing filed for a listed appeal, the beneficiary participated in the Qualified Independent Contractor (QIC) review, etc.).

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

No. SCF eligibility determinations are final and cannot be appealed. If you have questions, you may contact the SCF Coordinator in accordance with the instructions listed on your *SCF Preliminary Notification*.

Additionally, if OMHA or the Council's review suggests jurisdiction was not established for any appeal(s) at issue, such 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).

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 a particular 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.

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.

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

No. SCF is limited to appealed claims that have not been scheduled for an Administrative Law Judge hearing. Once a hearing has been scheduled for an appeal, that appeal is no longer eligible for SCF and remains ineligible for SCF even if the hearing is subsequently canceled or rescheduled. Additionally, appeals are ineligible for SCF if a hearing has been conducted.

Can I request an Administrative Law Judge to postpone the hearing so that my appeal can be settled in SCF?

No. Appeals scheduled for hearing are ineligible for SCF. There will be no exceptions to this requirement. If your appeal has been scheduled for hearing, then you will continue with adjudication of the appeal with the ALJ assigned to the appeal.

What if I want to request SCF for an appealed claim that was over \$100,000 or an extrapolated overpayment determination that was over \$100,000?

You may participate in SCF provided you meet all of the SCF eligibility criteria. Proposed settlement agreements with any appealed claim or extrapolated overpayment demand amount in excess of \$100,000 will be subject to U.S. Department of Justice (DOJ) approval prior to full execution and effectuation of the settlement agreement.

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

When you are ready to submit your SCF Agreement of Participation package, you must indicate on the *SCF Spreadsheet* which appeals are post-payment denials. Please follow the directions on the *SCF Spreadsheet* when identifying post-payment denials.

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 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 conclude 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 that is organizationally and functionally separate from CMS.

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.

Why is CMS given an opportunity to decline participation?

All parties' time is valuable and the preference is to give all parties the opportunity to respectfully decline participation at their earliest convenience. Any party may decline to participate at any time during the settlement conference process (e.g., before a preliminary notification is issued, after an SCF express offer is declined, after a settlement conference is scheduled, etc.). SCF participation is not mandatory for any party.

CMS has declined to participate in SCF with me. Can OMHA demand CMS provide a reason why CMS is declining participation?

All parties must make their own determinations regarding participation in SCF. Any party may decline to participate at any time, and parties are not required to provide a rationale for why they declined to participate in SCF.

Does CMS have to settle claims?

No. CMS will make a good faith effort to resolve the claim(s) involved, but neither CMS nor the appellant are required to enter into a settlement agreement. Both parties have discretion to reject offers. Further, all proposed settlement agreements with an appealed claim billed amount in excess of \$100,000 or an appeal of an extrapolated overpayment demand amount in excess of \$100,000 are subject to DOJ approval.

Is there a template for settlement agreements?

Yes. The agreement contains standard terms that cannot be altered in any form or fashion. If an appellant does not agree with the terms in the settlement agreement template, it should not participate in the SCF process. The settlement agreement template can be found on the SCF page of our website at <https://www.hhs.gov/about/agencies/omha/about/special-initiatives/settlement-conference-facilitation/index.html>.

I disagree with some of the standard terms on the SCF settlement agreement template. Can we negotiate some changes?

No. The standard terms cannot be changed or negotiated.

What is SCF Express?

With SCF Express, CMS provides a settlement offer to the appellant based on preliminary data available to CMS (e.g., ALJ overturn rates, type of claim or service, etc.). The appellant can then choose to take the SCF Express offer. Additionally, some appellants have the option of declining the SCF Express offer and electing to negotiate with CMS at a settlement conference.

Who can participate in SCF Express?

Appellants with individual appealed claims with billed amounts of \$100,000 or less, or an extrapolated overpayment demand amount of \$100,000 or less, are eligible for SCF Express.

Does CMS conduct a medical review of my appeals prior to presenting an offer through SCF Express?

CMS will not conduct a medical review of your appeals to present an SCF Express offer. CMS will consult other data including historic appellant disposition rates at OMHA and/or the Council.

What are the benefits of SCF Express?

As stated above, CMS will not conduct a medical review of appeals for SCF Express, which will expedite the resolution of your SCF eligible appeals that are pending an OMHA or Council decision.

All of my appeals combined have a total billed amount less than \$10,000. If I decline SCF Express, can I elect to go to a settlement conference?

No. Providers/suppliers who do not have at least \$10,000 in billed amounts may not participate in an SCF settlement conference.

I am eligible for both SCF Express and a settlement conference. If I decline the offer presented by CMS in SCF Express, can I accept it later at the settlement conference?

Once you decline SCF Express, the SCF Express offer percentage expires. Nevertheless, parties could agree to the same or similar percentage at the settlement conference, but this is in no way guaranteed.

The SCF Spreadsheet does not contain Health Insurance Claim Numbers (HICNs). Can OMHA please provide this information to me so I can identify the claims on the spreadsheet?

HICNs are Personally Identifiable Information (PII) belonging to beneficiaries. OMHA will not place any beneficiary PII on the *SCF Spreadsheet*. Appellants must use other data on the spreadsheet to identify claims including the claim numbers, dates of service, appeal numbers, billed amounts, and other data. This is a security policy and applied to all appellants without exception.

Some of my appealed claims have billed amount(s) in excess of \$100,000 or my appeal of an extrapolated overpayment is in excess of \$100,000. Since I do not qualify for SCF Express, what happens after my SCF Confirmation Notice is issued?

After issuance of your SCF Confirmation Notice, OMHA will contact you and CMS to schedule a pre-settlement conference.

I will be moving forward to a settlement conference with CMS. How do I know which appeals CMS will review for medical necessity?

OMHA will randomly select a limited number of appealed claims from the final spreadsheet. This is not a statistical sample, but appeals will be selected indiscriminately and without preference to either party. These selected claims will be the focus of CMS's and the appellant's review. The focus of the settlement conference on these selected claims ensures that both parties are considering similar material when determining negotiation posture. This is not a statistical sample.

All of my appealed claims have billed amount(s) of \$100,000 or less or my appeal(s) of an extrapolated overpayment is \$100,000 or less. How much time do I have to agree to a settlement proposal at the settlement conference?

The facilitator will work with the appellant and CMS to reach an agreement on the appeals 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 conference day that an agreement is reached. Parties must sign the settlement agreement via wet signature or digital/electronic signature.

If the settlement conference session concludes after 2:00pm Eastern Time, or the appellant returns its signed portion of the agreement after 2:00pm Eastern Time, the agreement will be fully executed the next business day. Settlement negotiations will not continue on the next business day.

Some of the appealed claims in my proposed settlement agreement have billed amount(s) in excess of \$100,000 or my appeal(s) of an extrapolated overpayment is in excess of \$100,000. How much time do I have to agree to a settlement proposal at the settlement conference?

The facilitator will work with the appellant and CMS to reach a proposed agreement on the appeals at issue during the settlement conference session. In order to efficiently resolve the pending appeals, any proposed settlement must be established by the appellant and CMS on the day of the settlement conference session.

Once both parties state firmly to the facilitators their agreed percentage, the facilitators will end the settlement conference. There will be no further negotiations once the settlement conference has ended. The facilitators will draft the proposed settlement agreement; however, the parties will not sign the agreement at this time.

Such proposed agreements are subject to DOJ approval. If DOJ approves, the facilitators will notify the appellant and send the draft agreement to the appellant. The appellant will have one business day to return their portion of the proposed agreement to the facilitators. The appellant must sign the settlement agreement by wet signature or digital/electronic signature.

If the appellant does not return the proposed agreement within one business day, the appellant's SCF request will be cancelled and the appeals returned to OMHA and/or Council docket. If the appeal(s) were previously assigned to an adjudicator, the appeals will return to that adjudicator's docket.

When the facilitators receive the appellant's signed, proposed settlement agreement, the facilitators will forward the proposed settlement agreement to CMS. CMS will have one business day to return its signed portion of the settlement agreement via wet signature or digital/electronic signature. The agreement will be fully executed only after all of the actions above have occurred.

When will DOJ approve my proposed settlement agreement?

There is no prescribed timetable for DOJ to render its decision regarding SCF proposed agreements with individual appealed claims or extrapolated overpayment demand amounts in excess of \$100,000.

Can I request expedited DOJ review of my proposed settlement agreement?

There is no mechanism for expedited DOJ review in SCF. Further, OMHA has no authority to compel or issue deadlines to the DOJ.

Can we agree to different percentage terms for specific claims?

Generally, no. Only down-coded, Diagnosis Related Group (DRG) claims will be effectuated with a standard percentage term of 30%. For all other appealed claims, the percentage term agreed to by the appellant and CMS applies to all appealed claims on the *SCF Spreadsheet*.

All of my appeals are of DRG down-codes. How much will I receive via SCF for these appeals?

There is a standard percentage of 30% for appeals of DRG down-coded claims. This is the percentage of the amount at issue on appeal (e.g., if the Medicare payable amount of the originally billed services is \$100, but the services were down-coded by Medicare to a paid amount of \$30, the percentage agreed to by CMS is thirty percent (30%) of the \$70 difference).

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

If the appellant and CMS cannot reach an agreement, and the facilitators believe further efforts to reach an agreement will be futile, the facilitators 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 2020, the request will be processed with other requests for hearing received in October 2020). If an appeal was already assigned to an adjudicator, the appeal will return to the adjudicator's docket.

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.

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.

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 of the dismissal, respectively. If the Council vacates an OMHA dismissal, the Council will remand the claim for a hearing before an Administrative Law Judge. 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.

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

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

Can I bill the beneficiary or 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 over the manner in which other insurance carriers determine secondary payer reimbursement.

Are ambulance transportation claims eligible for SCF?

Appeals are ineligible for SCF if the beneficiary was held financially responsible 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 financially responsible for the denied claim. Consequently, most ambulance/medical transportation appeals are ineligible 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*.

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.

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.

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.

Who from CMS attends the settlement conference?

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

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 hearing/review for the first three months are eligible for SCF so long as all other eligibility requirements are met.

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.

For SCF requests where all of the appealed claims' billed amounts are \$100,000 or less (or where the appeal of an extrapolated overpayment demand amount is \$100,000 or less), will the settlement agreement be signed electronically at the settlement conference since everyone won't be in the same room? By everyone I mean the provider and CMS.

The settlement agreement is emailed to the appellant for review and signature. The appellant returns the signed copy by email to OMHA, and OMHA then forwards the agreement to CMS for signature. The appellant and CMS must sign the agreement by wet signature or electronic/digital signature. Once fully executed, OMHA will forward the completed settlement agreement to all parties.

If any party can decline participation in the SCF process, can a MAC or 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 process 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. Nevertheless, CMS is free to consult with its contractors when determining its negotiation posture prior to the settlement conference.

What criteria are used to determine settlement percentages?

The settlement conference is a negotiation between the parties. As such, the parties determine how they wish to discuss the appeals; 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 appeal, an ALJ hearing or Council review would be the appropriate venue.

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