



Settlement Conference Facilitation Expansion Call

Moderated by: Hazeline Roulac
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Operator: At this time, I would like to welcome everyone to today's Medicare Learning Network® Event. All lines will remain in a listen-only mode until the question-and-answer session. This call is being recorded and transcribed. If anyone has any objections, you may disconnect at this time.

I will now turn the call over to Hazeline Roulac. Thank you. You may begin.

Announcements & Introduction

Hazeline Roulac: Thank you, Dorothy. Hello, everyone. Thank you for joining us today. I am Hazeline Roulac from the Provider Communications Group here at CMS, and I am your moderator for this call. I would like to welcome you to this Medicare Learning Network call on the Settlement Conference Facilitation Expansion.

As part of the broader commitment by HHS to improving the Medicare claims appeals process, the Office of Medicare Hearings and Appeals is expanding the current Settlement Conference Facilitation program to reach additional providers and suppliers. SCF is an alternative dispute resolution process that gives certain providers and suppliers an opportunity to resolve their eligible Part A and Part B appeals pending at OMHA and the Medicare Appeals Council. During this call, you will learn about the newly expanded SCF initiative, which appeals are eligible for SCF, and the SCF process.

As part of the registration process, you were able to submit questions in advance of this call. We want to thank everyone who submitted questions. Most questions received should be addressed during this call. And there will be a question-and-answer session following the presentation.

There is a slide presentation for this call. A link to the presentation was included in your call confirmation email. If you haven't already done so, you can download the presentation from the CMS website at go.cms.gov/npc. Again, that URL is go.cms.gov/npc.

At this time, it is my pleasure to turn the call over to our presenter, Cherise Neville. Cherise?

Presentation

Cherise Neville, Esq.: Thank you, Hazeline. Hello, everyone. Good afternoon. My name is Cherise Neville. I'm a senior attorney at the Office of Medicare Hearings and Appeals. And I'm happy to be here today to discuss with you the Settlement Conference Facilitation expansion. If you have the slides, I'm going to periodically call out the slide number that I'm on. So we're going to go ahead and begin.

Slides 2 and 3 have some of the acronyms that will be used during this presentation. If you haven't already reviewed it, I suggest that you do because I will be using them throughout the presentation.

So on slide 4, you have our agenda. It's fairly straightforward. We're going to start with the basics: basically, what is SCF, discuss the role of the facilitator, and the settlement conference. And then we'll go on to the eligibility requirements for SCF, the process, some reminders, and then the question-and-answer session.



SCF Basics

We can go ahead and move on to slide 6, and we'll talk about the basics. So for those of you who are not familiar: What Is Settlement Conference Facilitation at the Office of Medicare Hearings and Appeals? So basically, SCF is an alternative dispute resolution process. Specifically, it's a mediation process. So, you do have a mediator, or what we call a facilitator. It's designed to bring the parties together to come to a mutually agreeable resolution. In this case, the parties are the provider or supplier who filed the appeal and the – and CMS.

And if a resolution is reached, a settlement agreement is drafted; it's signed by both parties. And as part of the agreement, the appeals in the settlement will be withdrawn and dismissed.

I do want to point out that SCF is separate and distinct from CMS's LVA option. Although both programs resolve OMHA and Council appeals, SCF should not be confused with the LVA option. SCF is an OMHA in-house program. It does not have an end date. LVA does have an end date. It's a CMS program, and it ends on June 8, 2018.

So on to slide 7, as we mentioned, this is a mediation program, so you do have a mediator, or a facilitator. For those who are wondering who is the facilitator, the facilitators are specially trained employees of OMHA. Usually, it is – not usually – it is going to be a senior attorney or a senior program analyst who is trained in mediation techniques.

Now, because this is a mediation program, obviously your mediator needs to be neutral. So, we do want to emphasize – excuse me – to the appellant community that OMHA is a component of the Department of Health and Human Services Office of the Secretary. OMHA is functionally organizationally separate from CMS, independent of CMS. So, your OMHA facilitator will be a neutral if you decide to go to a settlement conference.

Now, I know what I just said leads to another question, which is, What do you mean “if you decide to go to a settlement conference”? But we will discuss that a little bit later. Basically, there are – in this expansion, there will be two avenues to a settlement agreement: something new that we are calling SCF Express and then the traditional settlement conference. But we'll get to that a little bit later.

So moving on to slide 8: What Is the Facilitator's Role? So if you do go to a conference, we want you to understand what the facilitator will do. The facilitator will use mediation principles to help you and CMS come to a resolution. What the facilitator will not do is be an adjudicator. The facilitator's not going to make any official determinations on the merits of the appeals and they will not serve as a fact finder, although they may help the appellant and CMS see the relative strengths and weaknesses of their positions.

If you're coming into a settlement conference because you want to discuss each of your appeals one by one, or want someone to evaluate the quality of your appeals and tell you which ones should be paid, which ones should not, what policies should be used, all of those kinds of things should go to an ALJ for review or to an attorney adjudicator for review or to the Council for review. That's not appropriate for SCF. So, if that's what you're looking for, your appeals would be better served in the OMHA docket or in the Council docket for review.

SCF Eligibility Requirements

Okay, so we're going to talk about the eligibility requirements. I'm on slide 9. I do want to point out that our website currently has the SCF expansion requirements; however, there has recently been a change and so – to one of those requirements. And so, this presentation will discuss the most up-to-date revision. I will discuss a little bit later when things will be updated on our website. But for now, I just want to point that out that there is a slight difference between this presentation and what's on our – currently on our website.

Okay, on slide 10, we're going to start with the SCF eligibility requirements. Basically, there are two different types of requirements: there are appellant requirements, and there are appeals requirements. So basically, the appellant has to be eligible. And then the appellant appeals have to be eligible for SCF.

So first and foremost, how is an appellant eligible for SCF? Well, SCF is only for Medicare providers or suppliers that have an NPI. So, no beneficiary-filed appeals will be eligible for SCF.

If you look on the second bullet on slide 10, this is something that has recently been revised to include more appeals. So hopefully, that is something that's appreciated to our appellant community. The appellant must have 25 or more SCF-eligible appeals pending at OMHA and the Council combined. If you do not have 25 SCF-eligible appeals pending at OMHA or the Council, that still may be eligible for SCF if at least one of your appeals has billed charges in the amount of \$9,001 or more. (I think that's correct.) So we hope that this opens this up – SCF expansion up to more providers and suppliers in the Medicare Part A and Part B world.

Now, the last two bullets, I think, are pretty self-explanatory. If you have filed for bankruptcy or expect to file for bankruptcy or you have some False Claims Act litigation activities going on, you will not be eligible for SCF. I do want to point out that organizations that are legally affiliated with each other but maintain separate NPI numbers can be included on one request for SCF, and we'll talk about how you can request SCF a little bit later. The request just has to indicate all of the NPIs and PTANs for each appellant to be included in the process.

So we can move on to the appeals eligibility criteria, of which there are many. So we'll go to slide 11. So the first requirement is that SCF is concentrating on appeals filed at OMHA or the Council on November 3rd, 2017, or earlier. So if you filed November 4th, 2017, or later, those appeals will not be eligible for SCF.

The request for ALJ hearing or Council review must arrive from a Medicare Part A or Part B QIC reconsideration decision. So what this means is that the QIC decision has to be a decision: unfavorable or partially favorable. It cannot be a Dismissal Order. If the QIC issued a Dismissal Order and that's what you appeal, then that's going to be ineligible for SCF.

Of course, all jurisdictional requirements for OMHA or the Council have to be met. So that means that you have to timely file your request for a hearing and that the amount in controversy has been met. I do want to point out that if, on its face, OMHA and the Council find that your request for review was filed untimely, then those appeals will be ineligible for SCF. No one is going to accept any evidence to evaluate whether you should receive an extension of the timely filing deadline for SCF purposes. That kind of decision has to be made by an adjudicator.



And then, finally, in this slide, all pending OMHA and Council appeals associated with a single NPI and corresponding PTAN must be included in SCF. I want to practically point out something that a lot of appellants—and I know, when I say it seems pretty insignificant but – or not something that’s a really big deal—but, unfortunately, having done this for several years, this is something that happens many, many times. On the SCF request, you must provide the NPI and PTAN for a provider or supplier. If you only provide one of these numbers, your request will automatically be rejected. You can resubmit your request with the correct data, but that will, of course, cause an unnecessary delay for you. So, you do have to ensure that you complete the request properly. And the request will be a document that is on the OMHA website. We’ll talk about it a little bit later. But I just want to point out that when the request states “provide the NPI and the PTAN,” you have to provide both of those numbers.

Okay, on to slide 12. We’re continuing with the appeals eligibility criteria. Appeals must not be scheduled for an ALJ hearing, or an ALJ hearing must not have been conducted. I want to note, for this requirement, that it becomes effective when your appeals are gathered for the SCF Preliminary Notification. And remember that because we’re going to talk about it again. But OMHA adjudicators will continue to process your appeal until your Preliminary Notification is issued. So what that means is that you may receive an ALJ Notice of Hearing or even a decision after you filed your SCF request. This is normal and within SCF parameters. So, if you file your SCF request and a week or two later you get an ALJ Notice of Hearing, you need to go to the hearing. The ALJ processing will not stop until a little bit later in the SCF process.

So for the vast majority of appellants, this sort of applies to you—and that is that the amount of each individual claim must be \$100,000 or less. And for the purposes of an extrapolated statistical sample, the overpayment amount extrapolated from the universe of claims must be \$100,000 or less. And so, for folks whose claims fit into this category, when they do SCF Express or the settlement conference, they will sign the day of the conference, or when they receive the SCF Express offer, which we’ll talk about later, they will sign the agreement. It’ll be fully effectuated when both parties sign it. And that’ll be done. For settlement of individual claims and extrapolated overpayments between \$100,001 and \$1 million, those types of claims – settlement of those claims will be subject to the U.S. Department of Justice approval.

Okay now, OMHA has its own initiative—it’s called the Statistical Sampling Initiative—that’s separate from what we just discussed, which is basically like statistical samples coming from ZPICs or RACs. OMHA has an initiative we call the Statistical Sampling Initiative, which is more about gathering the universe of appeals for an appellant, reviewing only a sample of those appeals, and then issuing a decision that applies to the universe of appeals pending at OMHA.

If you are involved in this initiative, you cannot simultaneously be involved in SCF. And then likewise, that goes for CMS Medicare appeals initiatives, whether it’s LVA or QIC Demo or Serial Claims. You cannot actively be engaged in LVA, for example, and also have the same appeals engaged in SCF.

Okay, I’m on slide 13 now. The first one is really important and something that, I would say, the – a significant amount of appellants have appeals that drop out of SCF because of this. And that’s okay so long as they have enough appeals pending after that. But the beneficiary must not have been found liable for the amount in controversy or participated in the reconsideration.



If you're not sure what that means, "found liable," I would recommend that you go back to your QIC reconsideration decision; your – if you're bringing in Council appeals, your ALJ decision; and then also your redetermination decision. And in all of those decisions, you will see a section that addresses whether the beneficiary has to pay the amount in controversy. If your decision indicates the beneficiary does have to pay, then that appeal will not be eligible for SCF. Obviously, we are not bringing beneficiaries to the settlement conference table to negotiate their own settlement agreement. So, if an appeal at any level—whether that be the OMHA level, QIC level, or at the redetermination level—if at any of those decisions found the beneficiary liable, then that appeal will be ineligible for SCF.

Next, this criteria has changed a little bit from previous versions of SCF. For the expansion, I want to make clear that appeals that involve items, services, or drugs, or biologicals billed under unlisted, unspecified, unclassified, or miscellaneous health care codes are ineligible for SCF. That applies to all providers and suppliers, including durable medical equipment suppliers. So, all of those K0108 wheelchair component or accessory-type appeals will not be eligible for SCF.

Next, for those who have been through SCF, you're probably familiar with our facilitators stating this at the presettlement conference, but we wanted to make it clear in the expansion requirements that appeals must not involve payment dispute. So let me explain what that is.

A payment dispute is when the appellant—that's the provider or supplier—was paid as billed in full by the contractor – or the CMS contractor, but the appellant believes the fee schedule or contractor price amount is insufficient payment. If that is what has happened—for example, let's say you're a surgeon and you billed a surgery and you filed the claim to Medicare and the CMS contractor reviewed it and said, "Yes, this was really good surgery that was done properly, and it's medically necessary. Here is \$5,000." And you as the surgeon state, "Well, you know what, this surgery was actually really complicated and it took a long time, and I think I should get more money for this surgery. So, I'm going to appeal what I was paid." That is a payment dispute. And that type of appeal is ineligible for SCF because, on its face, CMS and the provider or supplier do not agree on what the actual payment even should be.

Now, you should not confuse payment disputes with down codes. Down codes are something different. When it comes to skilled nursing facility care or—I'm trying to think what—or DRG codes for a hospital, a down code is when you—now, I'm going to throw something out there—for example, it's a skilled nursing facility, an appellant has provided services to a beneficiary and has billed a RUG code. And when you bill the RUG code to Medicare, Medicare has come back and said, "Well, we were going to pay you, but you used the wrong code. You should have used this code. And so it's a lesser payment, but here, this is what you're going to get." Same thing with DRG codes. If you are appealing a down code, down codes are eligible for SCF. So that's okay. So I hope you understand the distinction between a payment dispute and a down code. Down codes are good. Payment disputes are not going to work.

Okay, so the next two, you know, hopefully, you understand. We've kind of already mentioned this a little bit. But appeals must not arise from a QIC or ALJ Dismissal Order. So, if you are trying to settle Council decisions, if you have appeals your Council – your ALJ dismissal to the Council, then that appeal will be ineligible for SCF. Likewise, if you have appealed your QIC dismissal to the OMHA level, then that appeal will be ineligible for SCF. And the final criteria on slide 13 is really more for beneficiaries in other organizations who have appeals before OMHA and the Council.



Okay, on to slide 14. So this is something that appellants sometimes ask when they come through SCF. And we want to make clear that this is not an option. All appeals that are eligible for SCF have to be included into SCF. So, you as the appellant do not get to pick and choose, “Well, I really think this appeal will do really well before an ALJ or before an attorney adjudicator and, so, I want them to issue a decision, but the rest of them can go to SCF.” No, that’s not how it works. It’s really an all-or-nothing process. All of your SCF-eligible appeals have to come in to SCF. You do not get to pick and choose. That being said, if you know an appeal is ineligible for SCF because, for example, the beneficiary was held liable or for whatever other reason, then, yes, it is your responsibility to make sure that appeal is not subject to the settlement agreement.

SCF Process

So we’re going to go ahead and move on to the SCF process, exactly how this will all work. So if you follow me to slide 16, we’ll see the very first step.

Requesting SCF

And that is requesting SCF. And how that will work is that you will submit an SCF request to the email on the request document for all of your pending OMHA and Council appeals that are associated with an NPI and PTAN. And I want to point out that the SCF request is an OMHA document. It’s not like a letter that you write and then send in to someone. It’s not like what you can do for, like, a request for a hearing. But that’s not what this is. The SCF request document will be posted at a later date, and we’ll talk about that a little bit later. So that is the document that you would use to request SCF. And I’m going to show you a sample of it in the next slide.

But before I do, I just want to point out that there is the Appellant section on the first page and then the Representative section. You don’t have to complete the Representative section unless you have an attorney who’s representing you. A lot of times, appellants just get a little bit confused with that.

I do want to point out that, besides the Representative section, all other sections on the form do have to be completed. If you don’t complete the sections – all the sections on the form that you are supposed to complete, then your request will be rejected. You can resubmit a corrected request. But, again, you’re just causing yourself unnecessary delay.

And then, finally, an important reminder is to provide the name of your organization in the Appellant box. So if you go to slide 17 – again, I know this seems very basic and practical, but I cannot tell you how many appellants do not do this. If you look at slide 17, you will see all those very helpful arrows pointing to the Appellant Name box. We need the name of your organization. Unless the name of your organization, because you’re a physician or chiropractor, is your actual name, which does happen for physicians and chiropractors and other sole proprietors and whatnot, but unless your company name is your name, your personal name should not be in this box.

We have to find your appeal. But we can’t find the appeals under Jane Doe. We need to know who Jane Doe works for, which is the provider or supplier who’s filing this request. So, if the name of the organization you work for, for example, is Maryland South Hospital, put “Maryland South Hospital” in that box. Do not leave it blank. If you leave it blank, it will get rejected.



Now, if you are filling this form out for multiple entities affiliated with each other, you need to pick the legal name. So, for example, if you have multiple subsidiaries that are all under a parent and the parent group's name is New York Hospice Expert System—let's say you're many different hospice facilities—then you put that one parent group's name in that box. If you have multiple affiliated organizations and no parent name, just pick an organization name and then you can do a “doing business as” multiple hospitals or multiple suppliers or however it applies to you.

I just want to be clear because this is something that happens – I mean, I can't give a percentage, but it happens, I would say, like every fifth SCF request, that it's not completed. It happens frequently. So, please make sure you complete the Appellant Name box on the request form.

CMS Participation and the SCF Preliminary Notification

Okay, so what happens after you file the SCF request? Well, we're on slide 18. Once you have filed the SCF request, your request is forwarded to CMS, and CMS will have 15 calendar days to determine whether it wishes to participate in SCF.

Some people may be wondering why. Well, both you and CMS are on equal footing. Just as you had the time to determine whether you wanted to participate in SCF with CMS, CMS needs time to determine if it wants to participate in SCF with you. So, CMS will have 15 calendar days to do that.

Now, assuming everything works out well with you there and CMS has said it's willing to participate, at that point, we will start gathering – creating a spreadsheet of appeals that OMHA and the Council believe are eligible for SCF. So this SCF spreadsheet (sometimes we call it the SCF request spreadsheet, which is this long title) is not something that you create for us; it's something that OMHA and the Council will create for you. And then, you'll get a chance to review it and tell us if things are missing or something needs to be changed.

I do want to point out that, with the SCF expansion, there will be no beneficiary PII on the SCF spreadsheet. So, you will not receive any truncated HICN numbers on the spreadsheet. We never provided beneficiary names on the spreadsheet for any version of SCF. But we have in the past provided truncated HICNs. We will no longer be doing that with the SCF expansion.

Okay, on to slide 19. Once OMHA and the Council have drafted your spreadsheet of appeals that we believe are eligible for SCF, you will receive a Preliminary Notification, and that Preliminary Notification will receive the spreadsheet. And so you will have 20 calendar days to do the following: to review that spreadsheet and make sure all of the appeals are eligible for SCF, and you will also have to complete some data on the spreadsheet for the appeals that are on there and we'll talk about that in the next slide.

And then, you will need to review the SCF Agreement of Participation, and you will need to sign it if you decide to continue with SCF. And then, what you will return to OMHA and the Council (and there will be instructions on how to do that in your Preliminary Notification) is the completed SCF spreadsheet and the signed Agreement of Participation.

Now, you have 20 calendar days to do that. I know you all are familiar with our regulations. We, typically in our regulations, say 5 days presumed for mailing. But, I want to point out that the 5 days presumed for mailing are



already included in your 20 calendar days for SCF. So you get 20 calendar days. That's it. Not 25. You get 20. That's it.

Now, if you – when you receive your spreadsheet, there will be instructions on how you can discuss with an – with someone how to remove something if it's ineligible or if you have questions on why something – or you believe there's an appeal that should be there. You know, it's a process, obviously. It's a process where everybody works together to resolve these appeals. So, you should not be afraid to ask why something is missing or, you know, "I think that – you know, I understand why these aren't there, but those appeals should be there." And we can all try to work it out or at least try to explain to you why something can't be on the spreadsheet. Likewise, if you know that there is something on the spreadsheet that shouldn't be there, it is your responsibility to say that. And so, if you don't and you leave, for example, a beneficiary liability appeal on your spreadsheet, you'll be responsible for whatever happens if there's an agreement and that appeal tries to – the MAC tries to effectuate that appeal.

So once you return the Agreement of Participation and your completed SCF spreadsheet, a Confirmation Notice is issued to you and to CMS so that everyone can know, "Okay, the appeals have been set. This is the – these are the appeals that will be subject to a settlement agreement if one is reached."

On slide 20, you will see a screenshot—and I emphasize that because the spreadsheet is much longer than this—of the relevant portions that we want to point out today of the SCF spreadsheet. And you'll notice in the center there are these yellow columns with arrows pointed to them. This is what you will need to complete as the appellant for each appeal on the spreadsheet.

I will note that hospitals will get something a little bit different. It'll have an additional column where we just want you to identify the appeals that are DRG down codes.

And then you'll also notice the tabs. There'll be two tabs, but you will really actually have two spreadsheets to review: an OMHA one and then the second one that says DAB and that's really the Council, so a Council spreadsheet to review as well. And the Council spreadsheet will look very similar to the OMHA one.

SCF Express

Okay, on to slide 21. So once you receive your Confirmation Notice, the next step in the SCF process is SCF Express. And this is a new feature to SCF. With SCF Express, CMS will provide a settlement offer to the appellant, and it'll be based on preliminary data that CMS is – has available to the appellant.

Once you receive your Express – SCF Express offer, you – as the appellant provider/supplier, you have two options—and it's completely up to you. You can accept CMS's offer. Again, this is not the actual conference; so there's no negotiation on the SCF Express offer. It's a standalone offer. You can accept it. And if you accept it, you would sign the settlement agreement and return it. And CMS would sign it and that's it. You're done.

Now, if you do not want to accept the SCF Express offer, that's perfectly okay. In that case, you will let us know that you decline the SCF Express offer and you want to proceed to the presettlement and settlement conference stage. The important thing about this is that you'll – number 1, you will have 7 calendar days to do this, to decide what you want to do. And number 2, if you don't provide an answer, then your SCF request will



be canceled. So you cannot assume that because I did not provide an answer, everyone knows I want to go to presettlement conference. You have to tell us what you want to do. You either want to do the SCF Express or you want to go to the presettlement conference. You have to tell us. If you do not tell us, then your SCF journey will end right here. So, it's important that you make sure that you actually give a response.

So what are the benefits to SCF Express? We're on slide 22. One of the benefits is that CMS does not do a – conduct a medical review of the appeals at this stage. And it's a faster resolution as there are no conferences, obviously.

All right. Now, that that's been said, I want to point out that there's no guarantee you will get a higher percentage resolution in the settlement conference. So if you decline SCF Express, there's no guarantee you'll get something better in the settlement conference. Maybe you will. Maybe you won't. It is important to know that, at the settlement conference, CMS will have had an opportunity to conduct medical review. So, if your appeals are particularly strong—and this requires some honesty on your part—but if you believe your appeals are really strong, then you may want to wish – weigh your options. Do you want to do SCF Express or do you want to go to conference? It's up to you. No one's going to tell you what to do or advise you the best way. No one at OMHA, or the Council for that matter, but particularly at OMHA because SCF is an OMHA initiative—no one here can tell you “In the past, appellants have done better at the conferences.” We don't know because this is the first time we're doing it. So, this is really up to you as the appellant what avenue you want to take. It's completely your choice.

So, let's assume you decided to decline the SCF Express offer then – and you told us you decline the SCF Express offer and you want to go to the conferences. Well, the next step is that we will do the presettlement conference. We'll schedule it. And then you'll have two facilitators assigned to your conference and they will conduct it. And then after that they will do the settlement conference.

Let me explain what you should expect at the presettlement conference. The presettlement conference is for logistical matters only. A lot of appellants call me and say, “Cherise, we're doing the presettlement conference. What do I have to do? Do I need to get all of our physician experts and get our calculators out and determine what we want to – the percentage we want to settle at and all of these other things?” You don't have to do any of that for the presettlement conference. Presettlement conference is logistical only. The presettlement conference is for scheduling the settlement conference and for determining whether you want to draft a position paper for CMS's consideration, things of that nature. And the facilitators will also discuss what you should expect at the settlement conference.

Now, the settlement conference, that is where you're going to need all of that prep work ready and you're going to be – want to be ready to go forward. The settlement conference is the payment negotiation part of SCF. It is not meant to take the place of an ALJ hearing. It is a payment negotiation session.

Completing the SCF Process

So on slide 24, Completing the SCF Process, if an agreement is reached—and this is at the settlement conference—then the facilitators will draft the agreement. The parties will sign it at the session. And so I just want to point out that, if the conference ends—and this is logistical, but I think it's important for people to know—if the conference ends at 2 pm, after – I'm sorry – 2 pm Eastern Time or the appellant returns its portion



of the signed agreement after 2 pm Eastern Time, the agreement will be fully executed the next business day. Settlement discussions will not continue the next business day. But the agreement can be signed the next business day.

If the appellant refuses to sign the agreement in this situation, the facilitators will inform OMHA and the Council that no agreement was reached and all appeals will return to OMHA or the Council docket in the order in which the request for hearing was filed or to the originally assigned adjudicator. And I do think this is important for you to understand, that if an agreement's not reached, your appeals do not go back to the end of the line for assignment—they go back to their original space in line. So you don't lose anything by participating in SCF and not reaching an agreement. Your appeals will still be reviewed by an adjudicator.

On slide 25, you'll see that the fully executed settlement agreement will serve as your Dismissal Order. This is a change from previous versions of SCF where you did receive a separate Dismissal Order. In this version, the fully executed settlement agreement serves as your Dismissal Order. And then, of course, with the fully executed agreement, the CMS MACs will effectuate the actual settlement agreement.

Now, on slide 26 is something that actually did not happen for the most part. But sometimes it does happen where an agreement is not reached. And if that's the case, then the appeals go back to the OMHA or Council docket. Again, you do not lose your space in line. You go back to your original space in line. And if the appeal was assigned to an adjudicator, it goes back to that adjudicator.

SCF Reminders

All right. We're on slide 28. We're going to start with some reminders. This is I think really important and I really hope that everyone is listening to this very first reminder. It's something that throws a lot of appellants off if they – when they get – go through this process, particularly if they go to a settlement conference.

SCF is a payment negotiation process. It is similar to negotiating a home sale or car purchase. That's really how you should be looking at this. If you desire to discuss application of law and policy or evaluate each appeal on its merit, SCF is not the appropriate venue.

So, I think we've all been in a situation when we've tried to purchase a car or lease a car or we have purchased a home. We all understand, yes, it's a bit sometimes stressful. But we all understand what the back and forth is when you're purchasing something and you're negotiating that purchase. That is how S – the settlement conferences in SCF work. If you're looking for something else, something that's more like settlement in a district court or something that's more like an ALJ hearing, this is not what this process is.

All right. Next, I want to just point out that if you do decline the SCF Express offer, then the percentage – offer percentage is expired. Also, there is no guarantee that you will receive the percentages associated with initiatives like LVA and HASP. A lot of appellants think that because of LVA or HASP, they're going to get at least 62 percent. Well, that's not necessarily the case. Each settlement conference – or I should actually say each SCF request is specific to that appellant and that appellant's appeals.

So, if you're coming in to this process thinking, "I'm definitely going to get at least 62 percent," then you may be disappointed. You need to be realistic. And if you're coming in looking at LVA and HASP as some sort of



barometer of how much you're going to get, then I would suggest you reevaluate because it is not any indication of what you may or may not get in the SCF process.

If you do – I'm on slide 29. If you do decide to go to a settlement conference, it's important to note that we do allow opening remarks in the settlement conference. But opening remarks are not the same thing as opening statements. Again, this is a payment negotiation conference. It is not necessary to have opening remarks going for 40 minutes or even for 15 or – minutes. It's just not necessary. We start negotiating quickly. We don't have a lot of time. We have a lot of appellants who are waiting for conferences. Your conference is usually scheduled for 1 day or 2 days at max. So if you're going to spend an hour or two hours or something just talking everyone's ear off on your opening remarks – you are not going to get to your negotiation. So I just really want to stress that. You need to keep your opening remarks at 5 minutes.

Although you cannot pick and choose which appeals go to SCF, you really do have the responsibility of letting us know which appellant – I'm sorry – which of your appeals are ineligible for SCF. And I know I mentioned that before, but it bears repeating. It is your responsibility to let us know that all the appeals on the spreadsheet meet the SCF eligibility criteria.

And then finally, in previous iterations – I'm on slide 30, by the way. In previous iterations of SCF, we have allowed appellants sort of informally to go to an ALJ and let the ALJ know, "Hey, I'm trying to do SCF. Can you cancel or postpone my hearing so that my appeals can go to SCF?" And there was a sort of impromptu informal process that we did. For the expansion, we will not be doing that. If your appeal is scheduled for ALJ hearing, then that appeal is ineligible for SCF. There will be no exceptions to this criteria.

So I know what this slide says. And I know some people may be thinking, "Well, I can quickly this week or next week call an ALJ and tell them to cancel my hearing." And I'm just letting you know that, no, if I – if we hear from an ALJ that they're cancelling hearings specifically for the expansion, we will tell them that they need to go ahead and have the hearing. So I just want to make that clear. We will not be – and I know LVA is a little bit different; it does allow that. But for SCF, we will not be allowing that. If it's scheduled for hearing, it needs to go to hearing.

And then on slide 31, we do encourage you to visit our website for information related to SCF, including our frequently asked questions. And also, when we update the website with all of the documents, including all the expansion documents, you know, if you go to our website, there will be a listserv. And so, you can join the listserv so you'll know when that update happens. You should expect this update – the website to be fully updated for the expansion including all the expansion documents, like the SCF request and the Agreement of Participation, to happen in early June. So in a few weeks, that will happen. Again, I do encourage you to – if you have not already, to sign up for our listserv so that you will be the first to know when the expansion is publicly implemented. We've already started internal implementation procedures. But the public implementation will happen early June 2018. So with that, we're ready for the question-and-answer period. And I will turn it over to Hazeline.

Question & Answer Session

Hazeline Roulac: Thank you, Cherise. That was a lot of good information on SCF. We will now start the question-and-answer portion of our call. But before we open the phone line to take your questions, Cherise will address several questions received in advance of the call.

Cherise Neville, Esq.: All right. So we have about four questions that we're going to go ahead and answer. Before I do, I just want to make a note that we are prepared to answer questions on how the SCF process works and who is eligible. Questions from the media and others regarding other facets of SCF need to be submitted by making an appropriate media or Freedom of Information Act request.

All right. So our first question, I'm going to read it through and then I'm going to answer it. It's a little bit long, so bear with me. If a provider has already participated in the SCF program for Part A appeals but did not accept the settlement offer, is the provider eligible to participate in the expanded SCF program? If so, will all of the claims that were previously settled be included in the universe of claims for an expanded SCF program if they meet eligibility requirements?

So the answer to that is: Yes, if you've previously participated in SCF, whether you're Part A or Part B, you can participate in the SCF expansion. As far as the appeals that will be subject to your new SCF request, it's what's ever pending – whatever is pending still that's eligible for SCF will be subject to your new SCF request. So, I don't – we wouldn't know if that's the base of the appeals that were part of your previous SCF request until we gather your appeals for this new one.

All right. The next question is: How are the amounts or the percentages of – how are the amount/percentage of claims appealed of the settlement determined? And I think this question is really asking about percentage amount. How is that determined? Basically, what criteria are used to determine the settlement amount? So I'm going to – and I think I've explained this before, but I'll say it again.

The conference is a negotiation between the parties. As such, the parties determine how they wish to discuss the appeal. However, the appellant should note that the conference is not an ALJ hearing or review by the Council. So, the short answer to that is: It depends on how you and CMS decide to discuss payment negotiation. At your settlement conference, there's no one way for how things are determined. It's really specific to each appellant's appeal.

And then the third question: What is the payment status after a claim is settled after conferring with CMS? And this has been true of previous iterations of SCF and it's true of the expansion that these claims remain in denied status if a settlement agreement is reached.

So the followup question to that is: For equipment rentals, does this mean that subsequent claims would have to be appealed because the payment status of the original claim remains denied? Also, would all the supplies needed to use the base equipment have to go through the appeal process?

So again, OMHA does not administer the Medicare trust fund. So, we did consult with CMS on this. And the answer to that question is: Because the subsequent – the initial claim remains denied that's settled, then for subsequent claims, yes, you would need to appeal those. And yes, you would also have to appeal the supplies



needed for the base equipment. Yes, they would also have to go through the appeals process because the initial rental claim was – will remain denied.

So those are the questions that we had that were submitted prior to the call. And we can go to questions for those who are on the line.

Hazeline Roulac: Thank you, Cherise. We will now take your questions. As a reminder, this event is being recorded and transcribed. Dorothy, we are ready for our first caller.

Operator: To ask a question, press star followed by the number 1 on your touchtone phone. To remove yourself from the queue, press the pound key. Remember to pick up your handset before asking your question to assure clarity. Once your line is open, state your name and organization. Please note your line will remain open during the time you are asking your question, so anything you say or any background noise will be heard in the conference. If you have more than one question, press star 1 to get back into the queue, and we will address additional questions as time permits.

Please hold while we compile the Q&A roster.

Please hold while we compile the Q&A roster.

Your first question comes from the line of Laura Gray.

Laura Gray: Hi. This is Laura from Providence. And I was wondering, are IRF or rehab claims included in this one?

Cherise Neville, Esq.: Hi, Laura. This is Cherise. Yes. All Part A and Part B appeals filed by a provider or supplier may be eligible for SCF. Thank you.

Operator: Your next question comes from the line of Stephen Bittinger.

Stephen Bittinger: Hello. This is Stephen Bittinger. My question is regarding on slide 12, for the criteria, there's an asterisk. It says "Settlement of individual claims and extrapolated overpayments up to \$1 million are subject to the DOJ approval." I'm trying to see if extrapolated figures up to \$1 million are eligible for SCF with that asterisk. Thank you.

Hazeline Roulac: Just one second. We'll be right with you.

Cherise Neville, Esq.: Hi. So depending on whether the appeals meet the other eligible criteria and the appellant meets the other criteria, the appeals of extrapolated overpayments up to \$1 million can be eligible for SCF. We will have more information on this on our website when it's updated in early June. Thank you.

Operator: Your next question comes from the line of Nick Alarif.



Nick Alarif: Hi. This is Nick Alarif with McDermott Will & Emery. Thank you so much for the presentation. I was curious if OMHA had any idea related to how much faster the SCF Express route to the settlement conference would be compared to a traditional settlement conference. Thank you.

Cherise Neville, Esq.: I don't have any specific information as far as days or timeframe. But obviously, with Express, it would be faster because you don't have to do a presettlement conference and then also do a settlement conference. Typically, the settlement conference happens about 4 weeks after – 4 to 6 weeks after the presettlement conference. So if you did SCF Express, you would not have to wait those additional weeks to possibly get a settlement agreement. Thank you.

Operator: Your next question comes from the line of Mark Reiner.

Mark Reiner: Hi. This is Mark Reiner from St. Anthony's Rehabilitation Hospital. We have several cases that have assigned to an ALJ but not yet scheduled. Are they eligible for the SCF?

Cherise Neville, Esq.: So when you – after you file your request, when – and, of course, after CMS states that it will participate, when OMHA and the Council—if you have Council appeals as well—when we go to gather your appeals, if they're still in unscheduled status, then they will be eligible for SCF, assuming they also meet all of the other eligibility criteria for SCF.

Operator: Your next question comes from the line of Susan Hackney.

Susan Hackney: Hi. This is Susan Hackney in the Research Triangle Park, North Carolina. When will the SCF request form be available? And once that is available and CMS determines that it does want to participate in the settlement, how long will it take between that timing and when we would get the spreadsheet?

Cherise Neville, Esq.: So the SCF expansion materials will go up on our website in early June. So again, we do encourage everyone to join the listserv so you will get an email letting you know exactly when those materials are up on the website.

I can state that, once you file your request and, of course, assuming that you file – you complete the SCF request properly, CMS will have 15 calendar days upon receipt of the request to determine whether it will participate in SCF. From there, there has to be some data work to gather all of your appeals at OMHA and the Council. But specifically, I can state that CMS will have 15 calendar days to determine whether it will participate in SCF. And that will happen at some point after your file your request for SCF.

Operator: Your next question comes from the line of Mary Myslajek.

Mary Myslajek: Yes. Thank you for taking my call. My question is on slide 21 where the appellant must respond within 7 calendar days of the date on the Express Settlement Notice. Can you tell me how you will communicate that to the appellant? Will you be sending an email? Seven calendar days is short. We wouldn't want to miss it. So any help on that?



Cherise Neville, Esq.: So you – the individual that is identified on your SCF request as your point of contact, that person will receive an email with the offer and the attached agreement for you to print and sign and scan and return if you decide to accept the offer.

Operator: Your next question comes from the line of Lester Perling.

Lester Perling: Good afternoon. My question relates to the fact that – the requirement that if a provider has more than one appeal pending, they have to both be included. One is – one of the appeals is an extrapolated overpayment. It's not eligible because it's over \$1 million. But the other appeal would be eligible. Can the other appeal still be included in the settlement process? Thank you.

Cherise Neville, Esq.: So if you have an appeal that's ineligible for SCF, then, obviously, it would not be included. If you have other appeals pending, it just depends on whether you have met all of the other SCF requirements for those appeals.

Operator: As a reminder, if you would like to ask a question, please press star, then the number 1 on your telephone keypad. Your next question comes from the line of Rebecca Tobias.

Rebecca Tobias: Hi. This is Rebecca Tobias. My question is: If a provider initially filed their appeal and request for hearing before the November 2017 date but that their request was sent back to the QIC for additional review and then, subsequently, they had to do a secondary request for hearing, would they qualify under this phase? And if not, when would they qualify?

Cherise Neville, Esq.: So can – I just want to clarify that I understand it before – I understand your question before I answer it. So you filed an ALJ request for hearing and then your appeal was sent back – remanded to the QIC for additional development.

Rebecca Tobias: Correct.

Cherise Neville, Esq.: And then, the QIC issued, like, a new decision. And so you filed a new request. Correct?

Rebecca Tobias: Correct.

Cherise Neville, Esq.: Okay, so we would have looked at the date of your new request. So if it's after November 3rd, 2017, then it would be ineligible for SCF.

Rebecca Tobias: And you have a timeline for when the post–November 2017 appeals would be eligible?

Cherise Neville, Esq.: No, I don't have a timeline currently. But, you know, it's something that we are always reevaluating. So, it's possible that it can happen in the future. But, at this time, we don't have any plans to change this date at any time in the near future.

Operator: As a reminder, if you would like to ask a question, press star, then the number 1 on your telephone keypad. Your next question comes from the line of Kris Siefring.



Kristine Siefring: Yes, we were just wondering – we are interested in pursuing the settlement – the Express settlement. What form do we need to fill out to initially get enrolled in this process? Is it the settlement conference Expression of Interest or is it the request for Settlement Conference Facilitation form? Or what do we need to do as a facilitator to get into – potentially participate in this process?

Cherise Neville, Esq.: So just to clarify, the SCF expansion has not been publicly implemented as of today. It will begin early June 2018. When that happens, all the materials that you need to initiate the SCF, which is – and specifically, the SCF Expansion Request Form, will be available. It's not available to you now. What's currently up on the website is the current version of SCF. That is different than what we're discussing today. Today we're discussing the expansion, that is not publicly implemented yet. It will be in early June.

Operator: There are no further questions at this time. I will turn the call back to you, Hazeline.

Hazeline Roulac: Thank you, Dorothy. Well, that was a lot of great information, Cherise. Thank you. If we did not address your question, you can email it to the address that's listed on slide 17, which is omha.scf@hhs.gov.

Additional Information

For information on evaluating today's call, see slide 33. We hope you will take a few moments to evaluate your experience with today's call.

If you missed any information presented today or would like to review again, an audio recording and written transcript of today's call will be posted to the CMS website, which is go.cms.gov/npc, in approximately 2 weeks.

So my name is Hazeline Roulac. I want to thank Cherise Neville and also thank you, our participants, for joining us today for the Medicare Learning Network call on Settlement Conference Facilitation Expansion. Have a great day, everyone.

Operator: Thank you for participating in today's conference call. You may now disconnect.