

## Got Medicare Part A appeals? A new pilot program might be right for you!

March 16, 2016

Are you a hospital or other Medicare provider with Part A appeals pending? Have those appeals been lingering with no activity awaiting assignment to an Administrative Law Judge (ALJ) for hearing? If you answered “yes” to both of these questions, then a new pilot program might be the solution you have been looking for to get those appeals resolved and, hopefully, get paid for the services you provided to Medicare beneficiaries.

The Office of Medicare Hearings and Appeals (OMHA) is responsible for Level 3 of the Medicare claims appeal process. During an appeal, an OMHA ALJ conducts a *de novo* review of an appellant's case and issues a decision based on the facts and the law. However, as most Medicare providers are aware, there is significant delay in the appeals process, especially once an appeal reaches the ALJ level. In July 2013, OMHA “temporarily suspended the assignment of most new requests” to an ALJ to allow OMHA to address its backlog of claims. OMHA said that the moratorium was necessary because of dramatic growth in its workload, including:

- A two year workload increase of 184 percent;
- A backlog of appeals that had grown 500 percent in the past two years; and
- The fact that in January 2012, OMHA received approximately 1,250 appeals per week, but, by December 2013, it was receiving over 15,000 appeals per week.

In June 2014, OMHA began the first phase of a pilot program intended to resolve some ALJ appeals through a process called [Settlement Conference Facilitation](#) (SCF). The 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 [ALJ] hearing level of the Medicare claim appeals process.” The settlement conference is facilitated by an OMHA employee who uses mediation principles to assist the parties in reaching a mutual settlement agreement. While the OMHA facilitator may assist the Medicare provider in identifying the strengths and weaknesses of its position in comparison to that of CMS, the facilitator’s role is not that of an ALJ, and the facilitator does not serve as a fact-finder or issue official decisions on the merits of either party’s case.

Phases I and II of the SCF applied only to certain Part B appeals. However, on February 25, 2016, OMHA announced the Phase III expansion of the SCF pilot program to Part A providers. This seems like good news for Part A providers—if they can meet all the rules for participation.

Eligibility to participate in Phase III of the SCF program is conditioned on a number of factors, including the following:

1. You must have appealed the Qualified Independent Contractor (QIC) reconsideration decision (2<sup>nd</sup> level of the appeals process).
2. An ALJ hearing must not be scheduled yet.
3. The request for ALJ hearing must have been filed on or before December 31, 2015.
4. The amount of each individual claim must be \$100,000 or less. In the case of an extrapolated statistical sample, the

overpayment amount extrapolated from the universe of claims must be \$100,000 or less. This eligibility requirement could be a concern when a provider appeals claims that are part of an extrapolated statistical sample given this relatively low dollar limit for appeals involving extrapolated overpayment findings.

5. At least 50 claims must be at issue, and at least \$20,000 must be in controversy.
6. The request for resolution through the SCF pilot program must include all pending appeals for the same item or service at issue that meets the SCF criteria. The request also must include all items or services in a single appeal, even if they involve different items or services.

In addition, claims that were eligible for the CMS Part A Hospital Appeals Settlement option are **not eligible** for the SCF pilot **even if you did not participate** in the settlement process with CMS.

If you determine that you meet all of the eligibility requirements for Phase III of the SCF pilot program, you can start the process for SCF. To participate, you must have received an OMHA SCF Preliminary Notification stating that you may request SCF for the claims identified in the SCF spreadsheet. You cannot request a settlement conference until you receive that notice, but you can initiate the process by submitting a Part A Expression of Interest. This submission prompts OMHA to run a preliminary report of your pending ALJ appeals and initiate the SCF request process with those pending appeals. (Note: OMHA may also initiate the preliminary report on its own or at CMS's request.) If a provider has pending appeals for both Part A and Part B claims and wishes to have both types of claims resolved through the SCF process, a separate Part B Expression of Interest must also be submitted at the same time by email. Once OMHA forwards CMS a preliminary report of your pending ALJ appeals, the process starts moving relatively quickly:

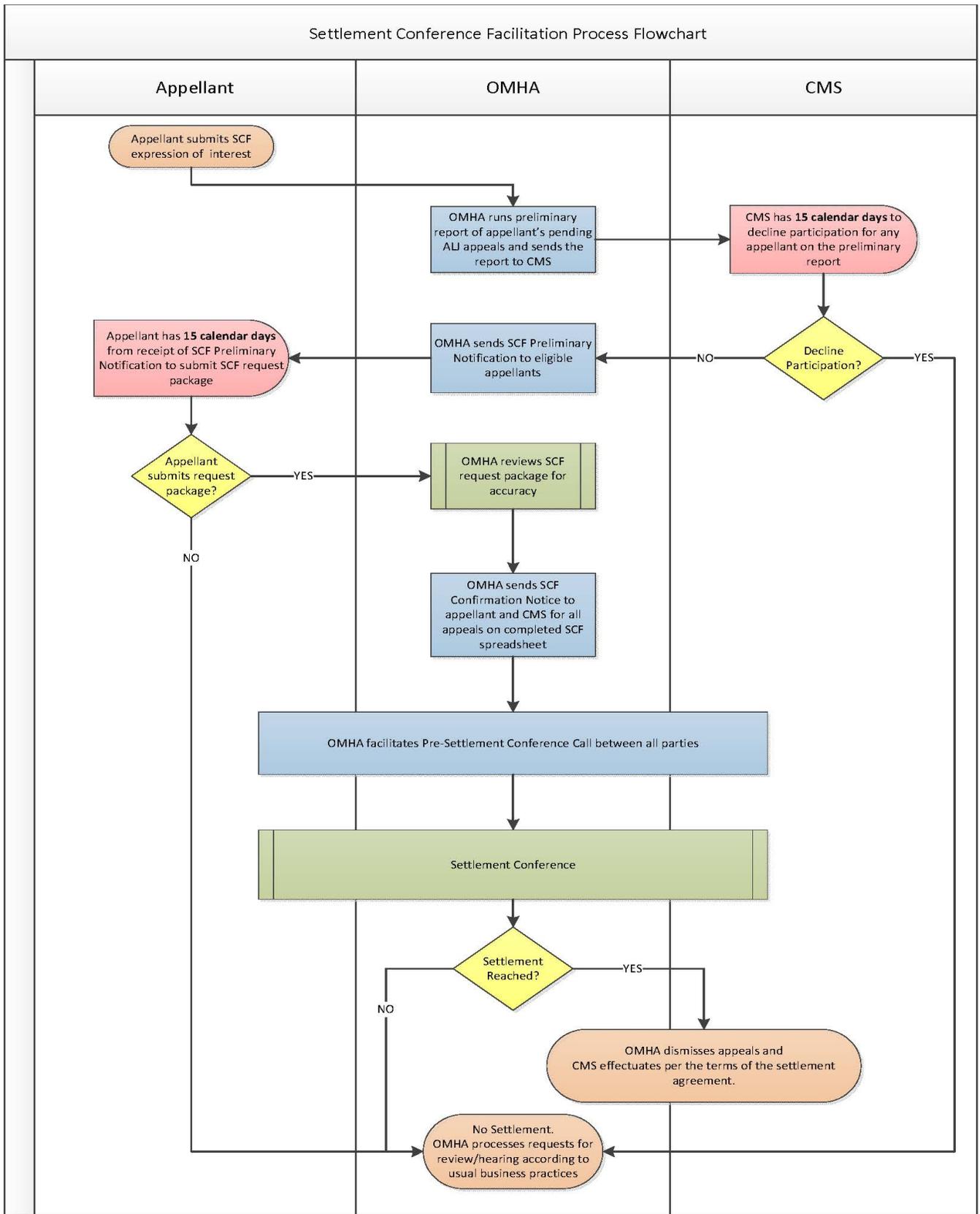
- CMS has 15 calendar days to determine whether it will participate. Pilot participation is not mandatory for CMS or providers, so any party may decline to participate at any time during the settlement conference process. Rejection of a request for SCF is not appealable.
- If CMS chooses to participate, OMHA will send you a compact disc with the SCF Preliminary Notification and SCF spreadsheet, and you have 15 calendar days from receipt of the SCF Preliminary Notification to file a complete SCF Request package.
- OMHA will send you a confirmation notice listing all appeals that will be subject to the settlement agreement if settlement is reached, and a pre-settlement conference call will be scheduled about four weeks after issuance of the confirmation notice.
- A settlement conference call will be scheduled approximately three to four weeks after the pre-settlement conference call.

Important to know: You should anticipate that any settlement reached will be less than 100 percent payment for the claims involved, and whatever percentage is agreed to by the parties will apply to all claims subject to the settlement agreement. If agreement is reached during the settlement conference, **the settlement agreement must be signed by both parties that same day**, and your requests for an ALJ hearing for the claims at issue will be dismissed. The settled claims will remain denied in Medicare's system, and new remittance notices will not be issued. You may be represented by an attorney at the settlement conference but do not need to be. The [settlement agreement template](#) is posted on the OMHA website, so there are no surprises during the process. If no settlement is reached, the appeals will return to the ALJ hearing process for adjudication in the order the requests for hearing were received, and **you won't lose your place in line**.

Anticipating questions from providers about the SCF pilot program, OMHA posted a Fact Sheet with questions and answers about the pilot program to its website.

The SCF process is a multi-step process, as shown on the [flow chart](#) developed by OMHA, and a positive result is not guaranteed. But given that providers are not required to waive their right to an ALJ hearing by choosing to participate in the SCF process and do not lose their place in line for an ALJ hearing by participating in the pilot program, there seems to be little risk or harm in trying the process if the eligibility requirements are met. It is unfortunate that the dollar limit for appeals involving extrapolation is so low, as that will disqualify many providers who might otherwise find the SCF pilot program to be of interest. There is currently no

deadline for participating in the SCF pilot program.



Source: [http://www.hhs.gov/omha/OMHA%20Settlement%20Conference%20Facilitation/SCF%20Part%20A%20Docs/settlement\\_conference\\_facilitation\\_proc](http://www.hhs.gov/omha/OMHA%20Settlement%20Conference%20Facilitation/SCF%20Part%20A%20Docs/settlement_conference_facilitation_proc)

# Authors

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