

# Settlement Conference Facilitation Pilot

Thursday, July 14, 2016



# About the Alliance

- 501(c)(3) non-profit research foundation
- Mission: To support research and education on the value home health care can offer to patients and the U.S. health care system. Working with researchers, key experts and thought leaders, and providers across the spectrum of care, we strive to foster solutions that will improve health care in America.
- [www.ahhqi.org](http://www.ahhqi.org)

# About VNAA

- 501(c)(3) non-profit research foundation
- VNAA is a national association that supports, promotes and advances mission driven providers of home and community-based healthcare, hospice and health promotion services to ensure quality care for their communities. VNAA members share a mission to provide cost- effective and compassionate care to some of the nation's most vulnerable individuals, particularly the elderly and individuals with disabilities.
- [www.vnaa.org](http://www.vnaa.org)

# Today's Speaker

**The Honorable C.F. Moore**  
**Deputy Chief Administrative Law Judge**  
**Office of Medicare Hearings and Appeals (OMHA)**

Judge C.F. (Spike) Moore was appointed Deputy Chief Administrative Law Judge for the Office of Medicare Hearings and Appeals (OMHA) effective November 6, 2011. In this capacity, he serves as the alter-ego to Chief Administrative Nancy J. Griswold, OMHA's agency head and presides over the second largest federal administrative adjudicative system in the nation. OMHA's administrative law judges resolve disputes involving coverage and payment issues under the Medicare act and regulations.

Judge Moore has extensive management experience having served not only as a Hearing Office Chief ALJ, but also in acting capacities as the Associate Chief ALJ and Deputy Chief ALJ in the Office of the Chief ALJ, for the Social Security Administration (SSA). In these capacities, he was a key figure in SSA's ALJ hiring, designing the interview process as well as the background investigation process for administrative law judge candidates referred by the Office of Personnel Management. From 2004-2011, Judge Moore was involved in the selection of over 750 ALJs for SSA, over half of the SSA ALJ Corps. In his role as the acting Associate Chief ALJ, he developed and directed the program of service area realignment to transfer approximately 40,000 cases nationally, along with related service areas and their receipts from heavily backlogged hearing offices to hearing offices with better capacities to be held via video teleconferencing. He also designed the decision writer statistical index, a mechanism to enhance case assignments to SSA attorneys and paralegals.



# Today's Speaker

**Cherise Neville, JD**

**Senior Attorney/Settlement Conference Facilitation (SCF) Program Coordinator Office of Medicare Hearings and Appeals (OMHA)**

Cherise Neville is a Senior Attorney and the Settlement Conference Facilitation (SCF) Program Coordinator at the Office of Medicare Hearings and Appeals' (OMHA) headquarters office in Falls Church, Virginia. As a Senior Attorney with OMHA, Ms. Neville serves as a legal advisor to OMHA senior executives regarding administrative law and policy. Additionally, Ms. Neville was instrumental in developing the SCF pilot initiative and currently coordinates nearly all aspects of the SCF program.

Ms. Neville has a broad background in administrative law, health law and policy, and alternative dispute resolutions. Prior to joining OMHA Headquarters, Ms. Neville was an Attorney-Advisor in the OMHA-Miami field office. Ms. Neville has also worked as a Consultant and/or Legal Intern in various operational divisions of the U.S. Department of Health and Human Services such as the Substance Abuse and Mental Health Services Administration, the HIV/AIDS Bureau, the National Institutes of Health's Clinical Center and National Institute of Diabetes and Digestive and Kidney Diseases. Additionally, Ms. Neville has had extensive training in negotiations and mediations and has served as a settlement facilitator/mediator for the District Court of Maryland.

# Today's Speaker

**Carla McGregor, JD, MPH**  
**Deputy Director of Field Operations**  
**Office of Medicare Hearings and Appeals (OMHA)**

Carla McGregor has over 17 years of Federal government experience within the Department of Health and Human Services on matters including Medicare and Medicaid Programs, compliance regulations, ethics regulations, labor and employee relations, hiring and personnel procedures, program integrity, and security. Ms. McGregor began her career at HHS, working at the Centers for Medicaid and Medicare Services (CMS) working on matters related to survey, certification, and compliance in a variety of roles for 10 years. She joined OMHA in 2009, working on a number of cross-agency issues, Federal ethics as OMHA's Senior Ethics Advisor, Deputy Director for Human Capital and program integrity and policy development. Ms McGregor took a slight detour to serve as Chief of Staff with the Office of Security and Strategic Information (OSSI) in the HHS Headquarters building, working closely with Deputy Assistant Secretary for Security and the Secretary's Senior Intelligence Official. In her last year with OSSI, Carla spent a year on detail as Assistant General Counsel with the DOJ/FBI in the Terrorist Screening Center's Law Unit working on matters related to National Security and Terrorism. Carla recently returned to OMHA and currently serves as the Deputy Director of the Field Operations Division and is assuming responsibility for oversight of a number of special initiatives, including Statistical Sampling, Settlement Conference Facilitation, and the Part B DME Demonstration project.

# Today's Speaker

**Amanda Axeen, JD**  
**Director of Program Evaluation and Policy Division**  
**Office of Medicare Hearings and Appeals (OMHA)**

Amanda Axeen currently serves as the Director of OMHA's Program Evaluation and Policy Division. In this capacity, Ms. Axeen coordinates OMHA's development and implementation of appeals policy and supports the agency's continued efforts to address its workload challenges. Prior to joining OMHA in 2014, Ms. Axeen served as an attorney advisor at the U.S. Department of Health and Human Services (HHS) Departmental Appeals Board (DAB) for seven years, where she provided legal support to the Administrative Appeals Judges who comprise the Medicare Appeals Council. Ms. Axeen holds a J.D. from The Catholic University of America's Columbus School of Law and is licensed in both the Commonwealth of Virginia and the District of Columbia.

# Today's Webinar

- During the presentation submit questions to “Teresa Lee” through the webinar chat box.
- A replay and slides will be made available publically following the webinar.





# SETTLEMENT CONFERENCE FACILITATION

**Cherise Neville**

**Senior Attorney**

**Office of Medicare Hearings and Appeals**

**Office of Operations**



# What is Settlement Conference Facilitation?

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



# Who is the Settlement Conference Facilitator?

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



# What Does the Facilitator Do?

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



# Settlement Conference Facilitation: Eligibility Requirements



## SCF Phase III: Eligibility Requirements

- The appellant must be a Medicare provider or supplier (for the purposes of this pilot, “appellant” is defined as a Medicare provider or supplier that has been assigned a National Provider Identifier (NPI) number);
  - All Part A provider types are eligible to request participation in the OMHA SCF Pilot, including acute care hospitals.
  - Claims that were eligible for the CMS Part A Hospital Appeals Settlement option are **ineligible** for the pilot regardless of actual provider participation in the settlement process with CMS.



## SCF Phase III: Eligibility Requirements

- A request for hearing must appeal a Medicare Part A Qualified Independent Contractor (QIC) reconsideration decision;
- The claims at issue are covered under Medicare Part A law and policy;
- The beneficiary must not have been found liable after the initial determination or participated in the QIC reconsideration;



## SCF Phase III: Eligibility Requirements

- The amount of each individual claim must be \$100,000 or less
  - For the purposes of an extrapolated statistical sample, the overpayment amount extrapolated from the universe of claims must be \$100,000 or less;
- At least 50 claims must be at issue and at least \$20,000 must be in controversy





## SCF Phase III: Eligibility Requirements

- The appellant has received a Settlement Conference Facilitation Preliminary Notification stating that the appellant may request SCF for the claims identified in the SCF spreadsheet.



# Requesting SCF

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



## SCF Expansion: Requesting SCF

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



## SCF Expansion: Requesting SCF

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

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

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

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



## SCF Expansion: Requesting SCF

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



## SCF Expansion: Requesting SCF

- Once OMHA has received the appellant's complete SCF package, OMHA will issue a confirmation notice to the appellant and CMS identifying all of the appealed claims which will be subject to the settlement conference.



## SCF Expansion: Requesting SCF

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



## SCF Expansion: Completing the SCF Process

- ❑ If an agreement is reached:
  - ❖ The OMHA facilitators will draft a settlement agreement in accordance with the instructions of all of the parties.
  - ❖ CMS and the appellant will sign the settlement agreement. The appellant must sign the agreement on the date of the settlement conference and not later.





## SCF Expansion: Completing the SCF Process

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



## SCF Expansion: Completing the SCF Process

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

# Discussion & Questions

- As a reminder, you may submit questions to “Teresa Lee” through the webinar chat box.

# Thank you!

