

Centers for Medicare & Medicaid Services, HHS

§ 405.1821

hearing officer decisions specified in § 405.1834(b)(2) of this subpart.

[73 FR 30245, May 23, 2008, as amended at 80 FR 70598, Nov. 13, 2015; 85 FR 59019, Sept. 18, 2020]

§ 405.1815 Parties to proceedings before the contractor hearing officer(s).

When a provider files a request for a contractor hearing in accordance with § 405.1811 of this subpart, the parties to all proceedings before the contractor hearing officer(s) are the provider and, if applicable, any other entity found by the contractor hearing officer(s) to be a related organization of the provider under the principles enunciated in § 413.17 of this chapter. The parties must be given reasonable notice of the time, date, and place of any contractor hearing. Neither the contractor nor CMS may be made a party to proceedings before the contractor hearing officer(s).

[73 FR 30246, May 23, 2008]

§ 405.1817 Hearing officer or panel of hearing officers authorized to conduct contractor hearing; disqualification of officers.

The contractor hearing provided for in § 405.1809 shall be conducted by a hearing officer or panel of hearing officers designated by the contractor. Such hearing officer or officers shall be persons knowledgeable in the field of health care reimbursement. The hearing officer or officers shall not have had any direct responsibility for the program reimbursement determination with respect to which a request for hearing is filed; no hearing officer (or officers) shall conduct a hearing in a case in which he is prejudiced or partial with respect to any party, or where he has any interest in the matter pending for determination before him. Notice of any objection which a party may have with respect to a hearing officer shall be presented in writing to such officer by the objecting party at the party's earliest opportunity. The hearing officer shall consider the objection and shall, at his discretion, either proceed in the conduct of the hearing or withdraw. If the hearing officer does not withdraw, the objecting party may, after the hearing, present his objec-

tions to an executive official of the contractor, who shall rule promptly on the objection.

§ 405.1819 Conduct of contractor hearing.

The hearing shall be open to all parties thereto (see § 405.1815) and to representatives of the contractor and of the Centers for Medicare & Medicaid Services (see § 405.1815). The hearing officer(s) shall inquire fully into all of the matters at issue and shall receive into evidence the testimony and any documents which are relevant and material to such matters. If the hearing officer(s) believes that there is relevant and material evidence available which has not been presented at the hearing, he (they) may, at any time prior to the sending of notice of the decision, reopen the hearing record for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the hearing officer(s).

[39 FR 34515, Sept. 26, 1974, as amended at 85 FR 59019, Sept. 18, 2020]

§ 405.1821 Prehearing discovery and other proceedings prior to the contractor hearing.

(a) *Discovery rule: Time limits.* (1) Limited prehearing discovery may be permitted by the contractor hearing officer(s) upon request of a party, provided the request is timely and the hearing officer(s) makes a preliminary finding of its jurisdiction over the matters at issue in accordance with § 405.1814(a) of this subpart.

(2) A prehearing discovery request is timely if the request by a party is served no later than 120 days before the initially scheduled starting date of the contractor hearing, unless the contractor hearing officer(s) extends the time for requesting discovery.

(3) In the absence of a specific schedule for responses set by the contractor hearing officer(s), responses to interrogatories and requests for production of documents are due according to the schedule agreed upon by the party serving discovery and the party to which the discovery is directed. Responses by a party to interrogatories

or requests for production of documents must be served no later than 45 days before the initially scheduled start of the contractor hearing, unless the contractor hearing officer(s) orders otherwise. Responses by a nonparty to requests for production of documents must be served no later than 75 days after the date the requests were served on the nonparty, unless the party requesting the documents and the nonparty to which the requests are directed agree on a different time for responding, or unless the contractor hearing officer(s) extends the time for responding.

(4) Before ruling on a request to extend the time for requesting discovery or for responding to discovery, the hearing officer(s) must give the other parties to the appeal and any nonparty subject to a discovery request a reasonable period to respond to the extension request.

(5) If the extension request is granted, the hearing officer(s) sets a new deadline and has the discretion to reschedule the hearing date.

(b) *Discovery criteria*—(1) *General rule.* The contractor hearing officer(s) may permit discovery of a matter that is relevant to the specific subject matter of the contractor hearing, provided the matter is not privileged or otherwise protected from disclosure and the discovery request is not unreasonable, unduly burdensome or expensive, or otherwise inappropriate. In determining whether to permit discovery, and in fixing the scope and limits of any discovery, the hearing officer(s) uses the Federal Rules of Civil Procedure and Rules 401 and 501 of the Federal Rules of Evidence for guidance.

(2) *Limitations on discovery.* Any discovery before the contractor hearing officer(s) is limited as follows:

(i) A party may request of another party, or of a nonparty other than CMS, HHS or any Federal agency, the reasonable production of documents for inspection and copying.

(ii) A party may request another party to respond to a reasonable number of written interrogatories.

(iii) A party may not request admissions, take oral or written depositions, or take any other form of discovery not permitted under this section.

(c) *Discovery procedures. Rights of nonparties: Motions to compel or for protective order.* (1) A party may request discovery of another party to the proceedings before the contractor hearing officer(s) or of a nonparty other than CMS, HHS or other Federal agency. Any discovery request filed with the contractor hearing officer(s) must be sent promptly to the party or nonparty from which the discovery is requested, and to any other party to the contractor hearing (as described in § 405.1815 of this subpart).

(2) If a discovery request is made of a nonparty to the contractor hearing, the nonparty has the rights any party has in responding to a discovery request. The rights of the nonparty include, but are not limited to, the right to select and use any attorney or other representative, and to submit discovery responses, objections, or motions to the hearing officer(s).

(3) Each party and nonparty is required to make a good faith effort to resolve or narrow any discovery dispute, regardless of whether the dispute is with another party or a nonparty.

(i) A party may submit to the contractor hearing officer(s) a motion to compel discovery that is permitted under this section, and a motion for a protective order regarding any discovery request may be submitted to the hearing officer(s) by a party or nonparty.

(ii) Any motion to compel or for protective order must include a self-sworn declaration describing the movant's efforts to resolve or narrow the discovery dispute. A self-sworn declaration describing efforts to resolve or narrow a discovery dispute also must be included with any response to a motion to compel or for a protective order.

(iii) The hearing officer(s) must—

(A) Decide the motion in accordance with this section and any prior discovery ruling; and

(B) Issue and send to each party and any affected nonparty a discovery ruling that grants or denies the motion to compel or for protective order in whole or in part; if applicable the discovery ruling must specifically identify any part of the disputed discovery request

upheld and any part rejected, and impose any limits on discovery the hearing officer(s) finds necessary and appropriate. Nothing in this section authorizes the contractor hearing officer to compel any action from the Secretary or CMS.

(d) *Reviewability of discovery or disclosure rulings*—(1) *General rule.* A discovery ruling issued in accordance with paragraph (c)(3) of this section, or a disclosure ruling (such as one issued at a hearing), is not subject to immediate review by a CMS official (as described in § 405.1834(b)(3) of this subpart). A discovery ruling may be examined solely during the course of CMS review under § 405.1834 of this subpart of a jurisdictional dismissal decision (as described in § 405.1814(c)(2) of this subpart) or a hearing decision (as described in § 405.1831 of this subpart) by the contractor hearing officer(s).

(2) *Exception.* To the extent a ruling authorizes discovery or disclosure of a matter for which an objection based on privilege or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before the contractor hearing officer(s), that portion of the discovery or disclosure ruling may immediately be reviewed by a CMS reviewing official in accordance with § 405.1834(b)(3).

(i) Upon notice to the contractor hearing officer that the provider intends to seek immediate review of a ruling, or that the contractor or other affected nonparty intends to suggest that the Administrator through the CMS reviewing official, take own motion review of the ruling, the contractor hearing officer stays all proceedings affected by the ruling.

(ii) The contractor hearing officer must determine, under the circumstances of a given case, the length of any stay, but in no event may the stay be less than 15 days.

(iii) If the Administrator through the CMS reviewing official—

(A) Grants a request for review, or takes own motion review, of a ruling, the ruling is stayed until such time as the CMS reviewing official issues a written decision that affirms, reverses, modifies, or remands the contractor hearing officer's ruling.

(B) Does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the ruling is not subject to immediate review.

(e) *Prehearing conference.* The contractor hearing officer(s) has discretion to schedule a prehearing conference. A prehearing conference may be conducted in person or telephonically, at the discretion of the contractor hearing officer(s). When a panel of contractor hearing officers is designated, the panel may appoint one or more hearing officers to act for the panel for any prehearing conference or any matter addressed at the conference.

[73 FR 30246, May 23, 2008; 73 FR 49356, Aug. 21, 2008; 85 FR 59019, Sept. 18, 2020]

§ 405.1823 Evidence at contractor hearing.

Evidence may be received at the contractor hearing even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer(s) shall give the parties opportunity for submission and consideration of facts and arguments, and during the course of the hearing, should in ruling upon admissibility of evidence, exclude irrelevant, immaterial, or unduly repetitious evidence. The hearing officer(s) shall render a final ruling on the admissibility of evidence.

§ 405.1825 Witnesses at contractor hearing.

The hearing officer(s) may examine the witnesses and shall allow the parties and their representatives to do so. Parties to the proceedings may also cross-examine witnesses.

§ 405.1827 Record of proceedings before the contractor hearing officer(s).

(a) The contractor hearing officer(s) must maintain a complete record of all proceedings in an appeal.

(b) The record consists of all documents and any other tangible materials timely submitted to the hearing officer(s) by the parties to the appeal and by any nonparty (as described in § 405.1821(c) of this subpart), along with all correspondence, rulings, orders, and decisions (including the final decision) issued by the hearing officer(s).