

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).