

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).

§ 405.1829

(c) The record must include a complete transcription of the proceedings at any contractor hearing.

(d) A copy of the transcription must be made available to any party upon request.

[73 FR 30247, May 23, 2008]

§ 405.1829 Scope of authority of contractor hearing officer(s).

(a) The hearing officer(s) in exercising his authority must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as with CMS Rulings issued under the authority of the Administrator of the Centers for Medicare & Medicaid Services (as described in § 401.108 of this chapter), and with the general instructions issued by the Centers for Medicare & Medicaid Services in accordance with the Secretary's agreement with the contractor.

(b)(1) If the contractor hearing officer(s) has jurisdiction to conduct a hearing on the specific matters at issue under § 405.1811, and the legal authority to fully resolve the matters in a hearing decision (as described in § 405.1831 of this subpart), the hearing officer(s) must affirm, modify, or reverse the contractor's findings on each specific matter at issue in the contractor or Secretary determination for the cost year under appeal.

(2) The contractor hearing officer(s) also may make additional revisions on specific matters regardless of whether the contractor considered the matters in issuing the contractor determination for the cost year, provided the hearing officer(s) does not consider or decide any specific matter for which it lacks jurisdiction (as described in § 405.1814(b) of this subpart) or which was not timely raised in the provider's hearing request.

(3) The authority of the contractor hearing officer(s) under this paragraph to make the additional revisions is limited to those revisions necessary to fully resolve a specific matter at issue if—

(i) The hearing officer(s) has jurisdiction to grant a hearing on the specific matter under §§ 405.1811 and 405.1814 of this subpart; and

(ii) The specific matter was timely raised in an initial request for a con-

42 CFR Ch. IV (10–1–23 Edition)

tractor hearing filed in accordance with § 405.1811(b) of this subpart or in a timely request to add issues to an appeal submitted in accordance with § 405.1811(c) of this subpart.

[39 FR 34515, Sept. 26, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 73 FR 30247, May 23, 2008]

§ 405.1831 Contractor hearing decision.

(a) If the contractor hearing officer(s) finds jurisdiction (as described in § 405.1814(a) of this subpart) and conducts a hearing, the contractor hearing officer(s) must promptly issue a written hearing decision.

(b) The contractor hearing decision must be based on the evidence from the contractor hearing (as described in § 405.1823 of this subpart) and other evidence as may be included in the record (as described in § 405.1827 of this subpart).

(c) The decision must include findings of fact and conclusions of law on jurisdictional issues (as described in § 405.1814(c)(1) of this subpart) and on the merits of the provider's reimbursement claims, and include appropriate citations to the record evidence and to the applicable law, regulations, CMS Rulings, and other interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice established by CMS.

(d) A copy of the decision must be sent promptly to the contractor, to each party and to the appropriate component of CMS (which currently is the Center for Medicare Management).

(e) When the contractor's denial of the relief that the provider seeks before the contractor hearing officer(s) was based on procedural grounds (for example, the alleged failure of the provider to satisfy a time limit), or was based on the alleged failure to supply adequate documentation to support the provider's claim, and the contractor hearing officer(s) rule(s) that the basis of the contractor's denial is invalid, the contractor hearing officer(s) remands to the contractor for the contractor to make a determination on the merits of the provider's claim.

[73 FR 30248, May 23, 2008; 73 FR 49356, Aug. 21, 2008; 85 FR 59019, Sept. 18, 2020]