

that subpoena or a portion of the subpoena.

(2) Upon notice to the Council that an enrollee or Part D plan sponsor intends to seek the Secretary review of the subpoena, the Council must stay all proceedings affected by the subpoena, tolling the time period for the Council to issue a final action or remand a case in response to a request for review for 15 calendar days or until the Secretary makes a decision with respect to the review request, whichever occurs first.

(3) If the Secretary does not grant review within the time allotted for the stay, the stay is lifted and the subpoena stands.

(c) *Enforcement.* (1) If the Council determines that an enrollee or other person or entity subject to a subpoena issued under this section has refused to comply with the subpoena, the Council may request the Secretary to seek enforcement of the subpoena in accordance with section 205(e) of the Act, 42 U.S.C. 405(e).

(2) After submitting the enforcement request, the time period for the Council to issue a final action or remand a case in response to a request for review is stayed for 15 calendar days or until the Secretary makes a decision with respect to the enforcement request, whichever occurs first.

(3) Any enforcement request by the Council must consist of a written notice to the Secretary describing in detail the Council's findings of non-compliance and its specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the enrollee or other person or entity subject to the subpoena.

(4) The Council must promptly mail a copy of the notice and related documents to the enrollee or other person or entity subject to the subpoena, and to any other affected person.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5138, Jan. 17, 2017; 83 FR 16754, Apr. 16, 2018]

§ 423.2124 Oral argument.

An enrollee may request to appear before the Council to present oral argument.

(a) The Council grants a request for oral argument if it decides that the case raises an important question of law, policy, or fact that cannot be readily decided based on written submissions alone.

(b) The Council may decide on its own that oral argument is necessary to decide the issues in the case. If the Council decides to hear oral argument, it informs the enrollee of the time and place of the oral argument at least 10 calendar days before the scheduled date or, in the case of an expedited review, at least 2 calendar days before the scheduled date.

(c) In case of a previously unrepresented enrollee, a newly hired representative may request an extension of time for preparation of the oral argument and the Council must consider whether the extension is reasonable.

(d) The Council may also request, but not require, CMS, the IRE, and/or the Part D plan sponsor to appear before it if the Council determines that it may be helpful in resolving the issues in the case.

(e) The Council cannot draw any adverse inference if CMS, the IRE, and/or the Part D plan sponsor decide not to participate in the oral argument.

[74 FR 65363, Dec. 9, 2009, as amended at 82 FR 5138, Jan. 17, 2017]

§ 423.2126 Case remanded by the Council.

(a) *When the Council may remand a case to the ALJ or attorney adjudicator.*

(1) The Council may remand a case in which additional evidence is needed or additional action by the ALJ or attorney adjudicator is required. The Council will designate in its remand order whether the ALJ or attorney adjudicator will issue a decision or a recommended decision on remand.

(2) *Action by ALJ or attorney adjudicator on remand.* The ALJ or attorney adjudicator will take any action that is ordered by the Council and may take any additional action that is not inconsistent with the Council's remand order.

(3) *Notice when case is returned with a recommended decision.* When the ALJ or attorney adjudicator sends a case to the Council with a recommended decision, a notice is mailed to the enrollee