

record hearing consists of all the evidence and written argument or comments submitted to the Board and included in the record (as described in § 405.1865 of this subpart).

(g) *Hearing decisions.* The Board's hearing decision must be based on the transcript of any oral hearing before the Board, any matter admitted into evidence at a hearing or deemed admissible evidence for the record (as described in § 405.1855 of this subpart), and any written argument or comments timely submitted to the Board (as described in § 405.1865 of this subpart).

(h) *Remands.* (1) Except as provided in paragraph (h)(3) of this section, a Board remand order may be reviewed solely during the course of Administrator review of one of the Board decisions specified in § 405.1875(a)(2) of this subpart), or of judicial review of a final agency decision as described in § 405.1877(a) and (c)(3) of this part, as applicable.

(2) The Board may order a remand requiring specific actions of a party to the appeal. In ordering a remand, the Board must—

(i) Specify any actions required of the party and explain the factual and legal basis for ordering a remand;

(ii) Issue the remand order in writing; and

(iii) Send the remand order promptly to the parties and any affected nonparty, such as CMS, to the appeal.

(3) A Board remand order is not subject to immediate Administrator review unless the Administrator determines that the remand order might otherwise evade his or her review (as described in § 405.1875(a)(2)(iv) of this subpart).

[39 FR 34515, Sept. 26, 1974, as amended at 41 FR 52051, Nov. 26, 1976. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 73 FR 30256, May 23, 2008; 85 FR 59019, Sept. 18, 2020]

EFFECTIVE DATE NOTE: At 89 FR 69909, Aug. 28, 2024, § 405.1845 was amended by revising paragraphs (a) and (b) and the paragraph (c) paragraph heading, effective Jan. 1, 2025. For the convenience of the user, the revised text is set forth as follows:

§ 405.1845 Composition of Board; hearings, decisions, and remands.

(a) *Composition of the Board.* The Board consists of five members appointed by the Secretary.

(1) All members must be knowledgeable in the field of payment of providers under Medicare Part A.

(2) At least one member must be a certified public accountant.

(3) At least two Board members must be representative of providers of services.

(b) *Terms of office.* The term of office for Board members must be 3 years, except that initial appointments may be for such shorter terms as the Secretary may designate to permit staggered terms of office.

(1) No member may serve more than three consecutive terms of office.

(2) The Secretary has the authority to terminate a Board member's term of office for good cause.

(c) *Role of the Chairperson.* * * *

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§ 405.1847 Disqualification of Board members.

No Board member shall join in the conduct of a hearing in a case in which he is prejudiced or partial with respect to any party or in which he has any interest in the matter pending for decision before him. Notice of any objection which a party may have with respect to a Board member shall be presented in writing to such Board member by the objecting party at its earliest opportunity. The Board member shall consider the objection and shall, in his discretion, either proceed to join in the conduct of the hearing or withdraw. If he does not withdraw, the objecting party may petition the Board, presenting its objection and reasons therefor, and be entitled to a ruling thereon before the hearing can proceed.

§ 405.1849 Establishment of time and place of hearing by the Board.

The Board shall fix the time and place for the hearing and shall send notice thereof to the parties' contact information on file, not less than 30 days prior to the scheduled time. Either on its own motion or for good cause shown by a party, the Board may, as appropriate, reschedule, adjourn, postpone, or reopen the hearing, provided that reasonable written notice is given to the parties.

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