

telephone, or in person, as determined under § 423.2020.

(3) Witness testimony may be given and CMS, IRE, and Part D plan sponsor participation may also be accomplished by video-teleconferencing, telephone, or in person, as determined under § 423.2020.

(b) *Waiver of the right to appear.* (1) An enrollee may submit to OMHA a written statement indicating that he or she does not wish to appear at the hearing.

(i) For expedited hearings, an enrollee may indicate in writing or orally that he or she does not wish to appear at the hearing.

(ii) The OMHA hearing office must document all oral waivers in writing and maintain the documentation in the case files.

(2) The enrollee may subsequently withdraw his or her waiver in writing at any time before the notice of the hearing decision is issued; however, by withdrawing the waiver the enrollee agrees to an extension of the adjudication period as specified in § 423.2016, that may be necessary to schedule and hold the hearing.

(3) Even if the enrollee waives his or her right to appear at a hearing, the ALJ may require him or her to attend an oral hearing if the ALJ believes that a personal appearance and testimony by the enrollee is necessary to decide the case.

(c) *Presenting written statements and oral arguments.* An enrollee or an enrollee's representative, as defined at § 423.560, may appear before the ALJ to state the enrollee's case, to present a written summary of the case, or to enter written statements about the facts and law material to the case in the record.

(d) *Witnesses at a hearing.* Witnesses may appear at a hearing. They testify under oath or affirmation, unless the ALJ finds an important reason to excuse them from taking an oath or affirmation. The ALJ may ask the witnesses any questions relevant to the issues and allow the enrollee or his or her representative, as defined at § 423.560, to do so.

(e) *What evidence is admissible at a hearing.* The ALJ may receive evidence at the hearing even though the evidence is not admissible in court under

the rules of evidence used by the court. However, the ALJ may not consider evidence on any change in condition of an enrollee after a coverage determination or at-risk determination. If the enrollee wishes for the evidence to be considered, the ALJ must remand the case to the Part D IRE as set forth in § 423.2056(e).

(f)(1) *Subpoenas.* When it is reasonably necessary for the full presentation of a case, an ALJ may, on his or her own initiative, issue subpoenas for the appearance and testimony of witnesses and for the enrollee and/or the Part D plan sponsor to make books, records, correspondence, papers, or other documents that are material to an issue at the hearing available for inspection and copying. An ALJ may not issue a subpoena to CMS, or the IRE to compel an appearance, testimony, or the production of evidence, or to the Part D plan sponsor to compel an appearance or testimony.

(2) *Reviewability of an ALJ Subpoena.* A subpoena issued by an ALJ is not subject to immediate review by the Council. The subpoena may be reviewed solely during the Council's review specified in § 423.2102 and § 423.2110.

(3) *Exception.* To the extent a subpoena compels disclosure of a matter which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before an ALJ, the Council may review immediately the ruling of the ALJ on the objections to the subpoena or that portion of the subpoena as applicable.

(i) Upon notice to the ALJ that the enrollee or a non-party, as applicable, intends to seek Council review of the ALJ's ruling on the subpoena, the ALJ must stay all proceedings affected by the subpoena.

(ii) The proceedings are stayed for 15 calendar days or until the Council issues a written decision that affirms, reverses, or modifies the ALJ's subpoena, whichever comes first.

(iii) If the Council does not take action within the 15 calendar days, then the stay is lifted and the enrollee or non-party must comply with the ALJ's subpoena.

(4) *Enforcement.* (i) If the ALJ determines that an enrollee or person other