

(1) The hearing is open to CMS and the organization requesting the reconsideration, including—

- (i) Authorized representatives;
  - (ii) Technical advisors (individuals with knowledge of the facts of the case or presenting interpretation of the facts); and
  - (iii) Legal counsel;
- (2) The hearing is conducted by the hearing officer who receives testimony and documents related to the proposed action;

(3) Testimony and other evidence may be accepted by the hearing officer even though it would be inadmissible under the usual rules of court procedures;

(4) Either party may call witnesses from among those individuals specified in paragraph (b)(1) of this section; and

(5) The hearing officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

**§ 488.209 Hearing officer's findings.**

(a) Within 30 days of the close of the hearing, the hearing officer will present the findings and recommendations to the accreditation organization or State laboratory program that requested the reconsideration.

(b) The written report of the hearing officer will include—

- (1) Separate numbered findings of fact; and
- (2) The legal conclusions of the hearing officer.

**§ 488.211 Final reconsideration determination.**

(a) The hearing officer's decision is final unless the Administrator, within 30 days of the hearing officer's decision, chooses to review that decision.

(b) The Administrator may accept, reject or modify the hearing officer's findings.

(c) Should the Administrator choose to review the hearing officer's decision, the Administrator will issue a final reconsideration determination to the accreditation organization or State laboratory program on the basis of the hearing officer's findings and recommendations and other relevant information.

(d) The reconsideration determination of the Administrator is final.

(e) A final reconsideration determination against an accreditation organization or State laboratory program will be published by CMS in the FEDERAL REGISTER.

**Subpart E—Survey and Certification of Long-Term Care Facilities**

SOURCE: 59 FR 56238, Nov. 10, 1994, unless otherwise noted.

**§ 488.300 Statutory basis.**

Sections 1819 and 1919 of the Act establish requirements for surveying SNFs and NFs to determine whether they meet the requirements for participation in the Medicare and Medicaid programs.

**§ 488.301 Definitions.**

As used in this subpart—

*Abbreviated standard survey* means a survey other than a standard survey that gathers information primarily through resident-centered techniques on facility compliance with the requirements for participation. An abbreviated standard survey may be premised on complaints received; a change of ownership, management, or director of nursing; or other indicators of specific concern.

*Abuse* means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish.

*Deficiency* means a SNF's or NF's failure to meet a participation requirement specified in the Act or in part 483, subpart B of this chapter.

*Dually participating facility* means a facility that has a provider agreement in both the Medicare and Medicaid programs.

*Extended survey* means a survey that evaluates additional participation requirements subsequent to finding substandard quality of care during a standard survey.

*Facility* means a SNF or NF, or a distinct part SNF or NF, in accordance with § 483.5 of this chapter.