

§ 417.658

(1) Contains findings with respect to the HMO's or CMP's qualifications to enter into a contract with CMS under section 1876 of the Act;

(2) States the specific reasons for the reconsidered determination; and

(3) Informs the party of its right to a hearing if it is dissatisfied with the determination.

[60 FR 46234, Sept. 6, 1995]

§ 417.658 Effect of reconsidered determination.

A reconsidered determination is final and binding on all parties unless a request for a hearing is filed in accordance with § 417.662 or it is revised in accordance with § 417.692.

§ 417.660 Right to a hearing.

The following parties are entitled to a hearing:

(a) An entity that has been determined in a reconsidered determination to be unqualified to enter into a contract with CMS under section 1876 of the Act.

(b) An HMO or CMP that has been determined in a reconsidered determination to be qualified only for a reasonable cost contract.

(c) An HMO or CMP whose contract with CMS has been terminated or has not been renewed as a result of an initial determination as provided in § 417.640(c).

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38083, July 15, 1993]

§ 417.662 Request for hearing.

(a) *Method and place for filing a request.* A request for a hearing must be made in writing and filed by an authorized official of the entity or HMO or CMP that was the party to the determination under appeal. The request for a hearing must be filed with any CMS office.

(b) *Time for filing a request.* Except as provided in paragraph (c) of this section, a request for a hearing must be filed within 60 days after the date of receipt of the notice of initial or reconsidered determination.

(c) *Extension of time to file a request.* If good cause is shown, the 60-day period to request a hearing may be extended by CMS.

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(d) *Parties to a hearing.* The parties to a hearing must be—

(1) The parties described in § 417.660;

(2) At the discretion of the hearing officer, any interested parties who make a showing that their rights may be prejudiced by the decision to be rendered at the hearing; and

(3) CMS.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38083, July 15, 1993]

§ 417.664 Postponement of effective date of initial determination.

When a request for a hearing with respect to an initial determination is filed timely—

(a) The effective date of the initial determination to terminate a contract with an HMO or CMP will be postponed until a hearing decision is reached; and

(b) The current contract will be extended at the end of the contract period (in the case of a determination not to renew) only—

(1) If CMS finds that an extension of the contract will be consistent with the purpose of section 1876 of the Act; and

(2) For such period as CMS and the HMO or CMP agree.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38083, July 15, 1993]

§ 417.666 Designation of hearing officer.

CMS designates a hearing officer to conduct the hearing. The hearing officer need not be an ALJ.

[50 FR 1346, Jan. 10, 1985, as amended at 60 FR 46234, Sept. 6, 1995]

§ 417.668 Disqualification of hearing officer.

(a) A hearing officer may not conduct a hearing in a case in which he or she is prejudiced or partial to any party or has any interest in the matter pending for decision.

(b) A party to the hearing who objects to the designated hearing officer must notify that officer in writing at the earliest opportunity.

(c) The hearing officer must consider the objections, and may, at his or her discretion, either proceed with the hearing or withdraw.

(1) If the hearing officer withdraws, CMS designates another hearing officer to conduct the hearing.

(2) If the hearing officer does not withdraw, the objecting party may, after the hearing, present objections and request that the officer's decision be revised or a new hearing be held before another hearing officer. The objections must be submitted to CMS.

[50 FR 1346, Jan. 10, 1985, as amended at 60 FR 46234, Sept. 6, 1995]

§ 417.670 Time and place of hearing.

(a) The hearing officer fixes a time and place for the hearing and sends written notice to the parties. The notice also informs the parties of the general and specific issues to be resolved and information about the hearing procedure.

(b) The hearing officer may, on his or her own motion, or at the request of a party, change the time and place for the hearing. The hearing officer may adjourn or postpone the hearing.

(c) The hearing officer will give the parties reasonable notice of any change in the time or place of hearing, or of adjournment or postponement.

[50 FR 1346, Jan. 10, 1985, as amended at 58 FR 38081, July 15, 1993; 60 FR 46234, Sept. 6, 1995]

§ 417.672 Appointment of representatives.

A party may appoint as its representative at the hearing anyone not disqualified or suspended from acting as a representative before CMS or otherwise prohibited by law.

§ 417.674 Authority of representatives.

(a) A representative appointed and qualified in accordance with § 417.672 may, on behalf of the represented party—

(1) Give or accept any notice or request pertinent to the proceedings set forth in this subpart;

(2) Present evidence and allegations as to facts and law in any proceedings affecting that party; and

(3) Obtain information to the same extent as the party.

(b) A notice or request sent to the representative has the same force and effect as if it had been sent to the party.

§ 417.676 Conduct of hearing.

(a) The hearing is open to the parties and to the public.

(b) The hearing officer inquires fully into all the matters at issue and receives in evidence the testimony of witnesses and any documents that are relevant and material.

(c) The hearing officer provides the parties an opportunity to enter any objection to the inclusion of any document.

(d) The hearing officer decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

[50 FR 1346, Jan. 10, 1985, as amended at 60 FR 46234, Sept. 6, 1995]

§ 417.678 Evidence.

The hearing officer rules on the admissibility of evidence and may admit evidence that would be inadmissible under rules applicable to court procedures.

[50 FR 1346, Jan. 10, 1985, as amended at 60 FR 46234, Sept. 6, 1995]

§ 417.680 Witnesses.

(a) The hearing officer may examine the witnesses.

(b) The parties or their representatives are permitted to examine their witnesses and cross-examine witnesses of other parties.

[50 FR 1346, Jan. 10, 1985, as amended at 60 FR 46234, Sept. 6, 1995]

§ 417.682 Discovery.

(a) Prehearing discovery is permitted upon timely request of a party.

(b) A request is timely if it is made before the beginning of the hearing.

(c) A reasonable time for inspection and reproduction of documents is provided by order of the hearing officer.

(d) The hearing officer's order on all discovery matters is final.

[50 FR 1346, Jan. 10, 1985, as amended at 60 FR 46234, Sept. 6, 1995]

§ 417.684 Prehearing.

The hearing officer may schedule a prehearing conference if he or she believes that a conference would more clearly define the issues.