

§ 405.1823

be reviewed by a CMS reviewing official in accordance with § 405.1834(b)(3).

(i) Upon notice to the intermediary hearing officer that the provider intends to seek immediate review of a ruling, or that the intermediary or other affected nonparty intends to suggest that the Administrator through the CMS reviewing official, take own motion review of the ruling, the intermediary hearing officer stays all proceedings affected by the ruling.

(ii) The intermediary hearing officer must determine, under the circumstances of a given case, the length of any stay, but in no event may the stay be less than 15 days.

(iii) If the Administrator through the CMS reviewing official—

(A) Grants a request for review, or takes own motion review, of a ruling, the ruling is stayed until such time as the CMS reviewing official issues a written decision that affirms, reverses, modifies, or remands the intermediary hearing officer's ruling.

(B) Does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the ruling is not subject to immediate review.

(e) *Prehearing conference.* The intermediary hearing officer(s) has discretion to schedule a prehearing conference. A prehearing conference may be conducted in person or telephonically, at the discretion of the intermediary hearing officer(s). When a panel of intermediary hearing officers is designated, the panel may appoint one or more hearing officers to act for the panel for any prehearing conference or any matter addressed at the conference.

[73 FR 30246, May 23, 2008; 73 FR 49356, Aug. 21, 2008]

§ 405.1823 Evidence at intermediary hearing.

Evidence may be received at the intermediary hearing even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer(s) shall give the parties opportunity for submission and consideration of facts and arguments, and during the course of the hearing, should in ruling upon admissibility of evidence, exclude irrelevant, immate-

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rial, or unduly repetitious evidence. The hearing officer(s) shall render a final ruling on the admissibility of evidence.

§ 405.1825 Witnesses at intermediary hearing.

The hearing officer(s) may examine the witnesses and shall allow the parties and their representatives to do so. Parties to the proceedings may also cross-examine witnesses.

§ 405.1827 Record of proceedings before the intermediary hearing officer(s).

(a) The intermediary hearing officer(s) must maintain a complete record of all proceedings in an appeal.

(b) The record consists of all documents and any other tangible materials timely submitted to the hearing officer(s) by the parties to the appeal and by any nonparty (as described in § 405.1821(c) of this subpart), along with all correspondence, rulings, orders, and decisions (including the final decision) issued by the hearing officer(s).

(c) The record must include a complete transcription of the proceedings at any intermediary hearing.

(d) A copy of the transcription must be made available to any party upon request.

[73 FR 30247, May 23, 2008]

§ 405.1829 Scope of authority of intermediary hearing officer(s).

(a) The hearing officer(s) in exercising his authority must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as with CMS Rulings issued under the authority of the Administrator of the Centers for Medicare & Medicaid Services (as described in § 401.108 of this chapter), and with the general instructions issued by the Centers for Medicare & Medicaid Services in accordance with the Secretary's agreement with the intermediary.

(b)(1) If the intermediary hearing officer(s) has jurisdiction to conduct a hearing on the specific matters at issue under § 405.1811, and the legal authority to fully resolve the matters in a hearing decision (as described in § 405.1831 of this subpart), the hearing officer(s) must affirm, modify, or reverse the