

of a civil money penalty issued pursuant to §156.805 or a notice of decertification pursuant to §156.810(c) or (d).

**§ 156.903 Scope of Administrative Law Judge's (ALJ) authority.**

(a) The ALJ has the authority, including all of the authority conferred by the Administrative Procedure Act (5 U.S.C. 554a), to adopt whatever procedures may be necessary or proper to carry out in an efficient and effective manner the ALJ's duty to provide a fair and impartial hearing on the record and to issue an initial decision concerning the imposition of a civil money penalty or the decertification of a QHP offered in a Federally-facilitated Exchange.

(b) The ALJ's authority includes the authority to modify, consistent with the Administrative Procedures Act (5 U.S.C. 552a), any hearing procedures set out in this subpart.

(c) The ALJ does not have the authority to find invalid or refuse to follow Federal statutes or regulations.

**§ 156.905 Filing of request for hearing.**

(a) A respondent has a right to a hearing before an ALJ if it files a request for hearing that complies with §156.907(a), within 30 days after the date of issuance of either HHS' notice of proposed assessment under §156.805, notice of decertification of a QHP under §156.810(c) or §156.810(d). The request for hearing should be addressed as instructed in the notice of proposed determination. "date of issuance" is five (5) days after the filing date, unless there is a showing that the document was received earlier.

(b) The ALJ may extend the time for filing a request for hearing only if the ALJ finds that the respondent was prevented by events or circumstances beyond its control from filing its request within the time specified above. Any request for an extension of time must be made promptly by written motion.

**§ 156.907 Form and content of request for hearing.**

(a) The request for hearing must do the following:

(1) Identify any factual or legal bases for the assessment or decertifications with which the respondent disagrees.

(2) Describe with reasonable specificity the basis for the disagreement, including any affirmative facts or legal arguments on which the respondent is relying.

(b) Identify the relevant notice of assessment or decertification by date and attach a copy of the notice.

**§ 156.909 Amendment of notice of assessment or decertification request for hearing.**

The ALJ may permit CMS to amend its notice of assessment or decertification, or permit the respondent to amend a request for hearing that complies with §156.907(a), if the ALJ finds that no undue prejudice to either party will result.

**§ 156.911 Dismissal of request for hearing.**

An ALJ will order a request for hearing dismissed if the ALJ determines that:

(a) The request for hearing was not filed within 30 days as specified by §156.905(a) or any extension of time granted by the ALJ pursuant to §156.905(b).

(b) The request for hearing fails to meet the requirements of §156.907.

(c) The entity that filed the request for hearing is not a respondent under §156.901.

(d) The respondent has abandoned its request.

(e) The respondent withdraws its request for hearing.

**§ 156.913 Settlement.**

HHS has exclusive authority to settle any issue or any case, without the consent of the ALJ at any time before or after the ALJ's decision.

**§ 156.915 Intervention.**

(a) The ALJ may grant the request of an entity, other than the respondent, to intervene if all of the following occur:

(1) The entity has a significant interest relating to the subject matter of the case.

(2) Disposition of the case will, as a practical matter, likely impair or impede the entity's ability to protect that interest.

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(3) The entity's interest is not adequately represented by the existing parties.

(4) The intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties.

(b) A request for intervention must specify the grounds for intervention and the manner in which the entity seeks to participate in the proceedings. Any participation by an intervenor must be in the manner and by any deadline set by the ALJ.

(c) The Department of Labor (DOL) or the Internal Revenue Service (IRS) may intervene without regard to paragraphs (a)(1) through (3) of this section.

### § 156.917 Issues to be heard and decided by ALJ.

(a) The ALJ has the authority to hear and decide the following issues:

(1) Whether a basis exists to assess a civil money penalty against the respondent.

(2) Whether the amount of the assessed civil money penalty is reasonable.

(3) Whether a basis exists to decertify a QHP offered by the respondent in a Federally-facilitated Exchange.

(b) In deciding whether the amount of a civil money penalty is reasonable, the ALJ—

(1) Will apply the factors that are identified in §156.805 for civil money penalties.

(2) May consider evidence of record relating to any factor that HHS did not apply in making its initial determination, so long as that factor is identified in this subpart.

(c) If the ALJ finds that a basis exists to assess a civil money penalty, the ALJ may sustain, reduce, or increase the penalty that HHS assessed.

### § 156.919 Forms of hearing.

(a) All hearings before an ALJ are on the record. The ALJ may receive argument or testimony in writing, in person, or by telephone. The ALJ may receive testimony by telephone only if the ALJ determines that doing so is in the interest of justice and economy and that no party will be unduly prejudiced. The ALJ may require submission of a witness' direct testimony in writ-

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ing only if the witness is available for cross-examination.

(b) The ALJ may decide a case based solely on the written record where there is no disputed issue of material fact the resolution of which requires the receipt of oral testimony.

### § 156.921 Appearance of counsel.

Any attorney who is to appear on behalf of a party must promptly file, with the ALJ, a notice of appearance.

### § 156.923 Communications with the ALJ.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

### § 156.925 Motions.

(a) Any request to the ALJ for an order or ruling must be by motion, stating the relief sought, the authority relied upon, and the facts alleged. All motions must be in writing, with a copy served on the opposing party, except in either of the following situations:

(1) The motion is presented during an oral proceeding before an ALJ at which both parties have the opportunity to be present.

(2) An extension of time is being requested by agreement of the parties or with waiver of objections by the opposing party.

(b) Unless otherwise specified in this subpart, any response or opposition to a motion must be filed within 20 days of the party's receipt of the motion. The ALJ does not rule on a motion before the time for filing a response to the motion has expired except where the response is filed at an earlier date, where the opposing party consents to the motion being granted, or where the ALJ determines that the motion should be denied.