

Chapter IV-7 Scheduling & Notices of Hearing

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IV-7-1 When to Schedule a Hearing

NOTE: The CMS contractors described in the regulations as Independent Review Entities (IREs) or Independent Outside Entities (IOEs) are commonly referred to as Part D QICs. This manual adopts this common usage and uses the term “Part D QIC” for ease of identification only.

Citations: §§ 423.2000, 423.2004, 423.2034, 423.2038, 423.2050

This chapter describes the process for scheduling a hearing when a hearing is necessary. In general, a hearing is required unless a request is dismissed or remanded, or a decision can be issued based on the record (OTR). Scheduling a hearing involves establishing the date, time, and place of the hearing, as well as the manner in which the parties and others will appear (the hearing method).

A. Requests for Hearing

When an enrollee files a request for hearing following a reconsideration decision, a hearing must be scheduled, unless:

1. The request for hearing is dismissed § 423.2052;
2. The evidence supports a fully favorable decision §§ 423.2000(g), 423.2038(a);
3. The enrollee has waived the right to an oral hearing in accordance with §§ 423.2000(e) and 423.2038(b)(i);
4. The enrollee lives outside the United States and does not inform the ALJ that he or she wants to appear § 423.2038(b)(ii);
5. The ALJ remands the case to the QIC in accordance with § 423.2034; or
6. The request for hearing is removed from the ALJ to the Council pursuant to § 423.2050.

NOTE: The ALJ is not required to conduct a hearing when the enrollee has requested an ALJ review of a Part D QIC’s dismissal of a request for reconsideration under § 423.2004.

B. Remands from the Medicare Appeals Council

If the Council remands a case and orders a hearing, a hearing must be scheduled and conducted in accordance with the remand order. If there is a conflict between the Council remand order and an instruction in this manual, the remand order controls.

IV-7-2 Determining Time and Place

Citations: §§ 423.2000, 423.2016, 423.2020, 423.2022;

A. Selecting the Hearing Date

When selecting the date for hearing, the ALJ will consider any applicable adjudication time frame in § 423.2016. The hearing should be scheduled so that the case can be heard, and a decision issued within the applicable adjudication time frame.

In addition, the ALJ must account for the 20-day (non-expedited) or 3-day (expedited) notice requirement when scheduling the hearing, which requires that notice of a hearing be mailed or served at least 20 (or 3) calendar days prior to the scheduled hearing date. § 423.2022(a)(2). If the Notice of Hearing is mailed, this requirement applies to the date the Notice of Hearing is mailed, not the date it is received by the enrollee and other potential participants. See IV-7-3 B for more information on advance notice requirements.

B. Selecting the Hearing Time

1. Scheduling during normal business hours.

Hearings must be scheduled with a specific start time that must be within normal business hours for the enrollee and any representative, unless the enrollee and representative who will be appearing agree to other times before the hearing is scheduled.

- Normal business hours are 8:00 a.m. to 4:30 p.m. in the time zone where the enrollee or enrollee's representative is appearing. Where there are other participants besides the enrollee who will be appearing in a time zone other than the time zone where the enrollee is appearing, every effort will be made to ensure that the hearing is also scheduled within normal business hours in their respective time zones.

NOTE: Non-specific start times (for example, advising enrollees that a hearing will begin sometime between 8:00 a.m. and 4:00 p.m.) are not permitted, as 5 U.S.C. § 554(b) requires that the convenience and necessity of the parties or their representatives is considered when setting the time, place, and nature of the hearing.

Example: The ALJ is located in the Eastern time zone. The enrollee is located in the Central time zone. The hearing should be scheduled to occur (that is, start and end) between 9:00 am EST and 4:30 EST to ensure that hearing is conducted during normal business hours for the enrollee.

2. Determining hearing length.

The total amount of time allotted for a hearing must be of sufficient duration to provide the enrollee and participants with a reasonable opportunity to present their arguments and testimony on the claims/issues under appeal and address any questions the ALJ may have.

Factors to be considered when setting the hearing length include, but are not limited to:

- The ALJ's assessment of the need for developing the record in the case, including any questions the ALJ may have for the enrollee and participants;
- The number of appeals to be heard (in a consolidated hearing);
- The number of claims/enrollees involved in each appeal;
- The number of distinct dates of service in each claim;
- The complexity of the issues to be heard and the ALJ's familiarity with the issues; and
- The number of participants, and witnesses other than the enrollee that will attend the hearing.

3. Requests for specific hearing lengths.

If the enrollee requests a specific hearing length, the ALJ will consider the enrollee's stated reason(s) when determining whether to grant such a request. However, the length of the hearing is determined by the ALJ.

If the ALJ determines that the enrollee did not have a reasonable opportunity to present his or her arguments and testimony on the claims/issues under appeal at the hearing, the ALJ may take one or more of the following actions:

- a. If the schedules of the ALJ and of all hearing participants permit, the ALJ may extend the length of the hearing;
- b. The ALJ may offer a continuance to the enrollee; or
- c. The ALJ may keep the record open and give the enrollee the option of submitting a supplemental brief that the ALJ will admit into evidence and consider when rendering a decision.

C. Selecting the Hearing Place and Method

Hearings may be conducted by video-teleconference (VTC), by telephone or in-person. [§ 423.2000\(b\)](#).

1. Telephone hearings.

Although VTC is the default hearing method by regulation, the ALJ may offer a telephone hearing if the request for hearing or the administrative record suggests that a telephone hearing may be more convenient than a VTC hearing for one or more of the parties. [§ 405.1020\(b\)](#). Telephone hearings may be offered, but may not be mandated. The ALJ determines whether OMHA will initiate the hearing by calling the hearing participants, or whether the hearing participants are required to call into a teleconference number at the time of the hearing.

- If the hearing participants are notified that OMHA will initiate the hearing by calling the hearing participants, the Notice of Hearing informs the recipients that they are responsible for ensuring their correct contact information has been provided and will be updated, if necessary, prior to the hearing date and time.
- If the hearing participants are notified that they must call into a teleconference number, the Notice of Hearing must include the teleconference line number for the parties to call, along with any required passcode or meeting number.
- If a telephone hearing has been offered and a party objects, a VTC appearance must be made available, unless an in-person hearing is more appropriate. See subsections **2.b** and **3.b**, below, for additional information on objections to telephone hearings.

2. VTC hearings.

- a. VTC is the default hearing format. The ALJ will direct that the hearing be conducted by VTC if VTC technology is available to conduct the appearance and a telephone hearing is not more convenient for one or more of the parties. [§ 405.1020\(b\)](#).
 - For purposes of determining availability of VTC technology, the VTC site will typically be within 75 miles of the party's home, and must be generally convenient, accessible, and easy to operate.
 - As the default hearing format, conducting a hearing by VTC is considered appropriate unless special or extraordinary circumstances exist. See subsection **C.3** below for examples of special or extraordinary circumstances.
- b. Because VTC hearings are the default hearing format, a party who objects to a telephone hearing need not show special or extraordinary circumstances to justify a VTC appearance. A written objection to the proposed method of hearing will suffice, in accordance with [II-7-6 E](#) below. See subsection **3.b**, below, for additional information on objections to VTC hearings.

3. In-person hearings.

If VTC technology is not available, or if the case on appeal presents special or extraordinary circumstances, the ALJ may, with the concurrence of the Associate Chief Administrative Law Judge (ACALJ), determine that an in-person hearing should be conducted. [§ 423.2020\(b\)\(3\)](#).

a. Specific instances where special and extraordinary circumstances may be found to exist include:

- Cases that present complex, challenging, or novel presentation issues that necessitate an in-person hearing;
- Cases where witness credibility and veracity are at issue;
- An enrollee's close proximity to and ability to go to the local hearing office; and
- An enrollee's visual, hearing, or cognitive impairments that would result in difficulties using telephone or VTC technology.

[70 Fed. Reg. 11420, 11457 \(Mar. 8, 2005\)](#), [74 Fed. Reg. 65296, 65321 \(Dec. 9, 2009\)](#).

b. An enrollee who objects to a VTC hearing or an ALJ's offer to conduct a hearing by telephone may also request, in writing, an in-person hearing (except for expedited hearings, where the objection may be provided orally). When such a request is received, the ALJ may grant the request, with the concurrence of the ACALJ, only upon a showing of good cause. [§ 423.2020\(i\)](#). An enrollee may object to the use of a VTC or telephone hearing only with respect to his or her own testimony, but not with respect to the entire hearing.

NOTE: The ACALJ's concurrence should include an assessment of the need for an in-person hearing and confirm that there is available budget for any related travel or other in-person hearing expenses.

c. In-person hearings may occur at either an on-site or off-site location.

- On-site in-person hearings are held in the field office of the ALJ conducting the hearing, usually when the enrollee's home or work address is within 75 miles of an OMHA field office and the enrollee is able to travel to that site.
- Off-site in-person hearings are held at a venue other than the field office of the ALJ conducting the hearing. Off-site hearings may be appropriate where the enrollee's home or work address is not within 75 miles of an OMHA field office location, or when the enrollee is physically unable to travel to an OMHA field office location.

4. Multiple hearing formats.

If there are multiple participants in a hearing, the method of appearance may differ. In such instances, the Notice of Hearing must disclose how the enrollee and other potential participants intend to appear, in accordance with [§ 423.2022\(a\)\(3\)](#). See [IV-7-3](#) for more information regarding Notices of Hearing.

5. Travel reimbursement.

Hearing participants who travel to a VTC or in-person hearing site may be eligible for reimbursement of a portion of their travel expenses, subject to certain limitations. See form OMHA-26 for more information about travel polices. See subsections **C.2** and **C.3**, above for additional requirements related to VTC and in-person hearings.

D. Changes to the Hearing Date, Time, or Place/Method

See [IV-7-7](#) for provisions relating to rescheduling of the hearing. For parties' objections to the hearing date, time, or place/method, see section [IV-7-6 E](#).

IV-7-3 The Notice of Hearing

Citations: §§ 405.910, 423.560, 423.2020, 423.2022 423.2036, 423.2044

When the date, time, and place/method of hearing have been determined, a Notice of Hearing (form OMHA-1024 for standard appeals, or form OMHA-1024 (expedited) for expedited appeals, both available in MATS) is sent to the individuals and entities identified in subsection A. Notice is typically sent via standard mail to the last known address of the recipient.

A. Who must receive Notice of the Hearing

1. Generally

A notice of hearing must be sent to the following individuals/entities:

- The enrollee;
- The Part D plan sponsor that issued the coverage determination; and
- The QIC that issued the reconsideration;
- Expert witnesses whose services the ALJ has procured;

NOTE: Staff must follow OMHA's policy on the use and disclosure of PII when sending the Notice of Hearing to expert witnesses.

- Any other participant whose presence at the hearing is requested by the ALJ (for example, CMS or CMS contractors attending as non-party participants). See subsection **A.3** below for ALJ requests for CMS or CMS contractor participation.

The Notice of Hearing is mailed to the enrollee and other potential participants at their last known address, or given by personal service. However, notice does not have to be sent to an enrollee who indicates in writing that he or she does not wish to receive this notice. § 423.2022(a). See I-4 for information on who may be a party to an appeal.

2. Representatives

If the enrollee is being represented by an authorized or appointed representative, only the representative should be contacted for purposes of scheduling the hearing. The Notice of Hearing and all related correspondence are sent only to the representative. § 405.910(i)(2), (j).

NOTE: In accordance with I-5-3 A, staff must verify that an appointment of representative received with the case file from the lower level of review, or an appointment submitted for the first time to OMHA, is valid and meets all regulatory requirements.

NOTE: In accordance with I-5-3 B, the record must contain written documentation granting an individual claiming to be an authorized representative that status. For example, documentation of a power of attorney must be made part of the exhibited record.

See I-5 for additional information on representatives.

3. CMS and CMS Contractors

The ALJ is not required to send a Notice of Hearing to CMS or to any CMS contractor other than the QIC that issued the reconsideration and the Part D plan sponsor that issued the coverage determination.

See I-6 for more information on CMS and CMS contractor roles.

B. Method of Delivery [§ 423.2022\(a\)](#)

Notices of hearing must be sent via one of the following methods of delivery:

1. Oral.

For expedited hearings only, the Notice of Hearing may be provided orally. However, the oral notice must be followed by an equivalent written notice within 1 calendar day of the oral notice.

2. Mail.

If the Notice of Hearing is mailed, it must be sent via United States Postal Service (USPS) first class mail, or other OMHA approved delivery service, to the last known address of the recipient.

Absent any other current information furnished by the recipient, OMHA will consider the following sources, in the following order, when determining the last known address:

- a. The enrollee's address reflected on a request for hearing or later OMHA-level filed correspondence;
- b. For enrollees who have not filed any OMHA-level correspondence, or for enrollees who filed OMHA-level correspondence that did not contain their address, OMHA will look to the address where the reconsideration decision was mailed, including addresses to which any courtesy copies were sent.
- c. For enrollees who have not filed OMHA-level correspondence, and whose address is not present in the reconsideration decision, OMHA will look to addresses present in systems available to OMHA staff and other procedural documentation received with the request for an ALJ hearing or contained in the administrative record.

If the administrative record does not contain an address for the enrollee, but contains other contact information, such as a telephone number, OMHA will reach out to the enrollee to obtain a current mailing address.

3. Fax.

As an alternative to mail, the Notice of Hearing may be faxed, but only where the recipient has expressly consented to receipt by fax and all of the requirements for fax transmission of PII have been observed. Staff must:

- a. Confirm the Notice of Hearing does not contain any PII other than the enrollee's first initial, last name, and truncated HICN.
- b. Confirm the fax machine on the other end is secure, meaning the fax machine is located where only the intended recipient(s) can receive the fax or is in a limited access environment (for example, faxing to a Part D QIC fax machine located in an access-restricted area). If not secure, alert the recipient prior to sending to ensure the recipient is waiting at the fax machine.
- c. Immediately remove the documents with PII from the fax machine after sending.
- d. Wait for the transmission completion notification.

4. Personal service.

In exceedingly rare instances where delivery via mail, certified mail with return receipt or fax would be insufficient, the Notice of Hearing may be given by personal service. The use of this method of delivery requires the concurrence of the ACALJ to ensure that requirements for personal service can be met (for example, sufficient budget is available).

C. Timing of the Notice [§ 423.2022\(a\)\(2\)](#)

1. Generally.

Generally, the Notice of Hearing must be mailed or served at least 20 calendar days prior to the scheduled date of a non-expedited hearing, or 3 calendar days prior to the scheduled date of an expedited hearing. Correspondence is considered mailed as of the date it is received by the USPS or another OMHA approved delivery service.

2. Waivers of the 20-day notice requirement.

An enrollee may waive the 20-day or 3-day notice requirement in writing. Use of form HHS-752 is preferred, but not required. If a party verbally waives the 20-day notice requirement, OMHA will send the party a copy of form HHS-752 to complete

and return. The OMHA-142 cover letter explaining the waiver is available for use if mailing.

D. Content of the Notice

The Notice of Hearing must be sent using mandatory form OMHA-1024, (available in MATS). Each of the following items must be included in the mandatory form (follow MATS prompts):

- A statement of the specific issues to be decided at the hearing;
- A statement informing the enrollee that he or she may designate a person to represent him or her during the proceedings;
- A statement explaining the procedures for requesting a change in the time or place of the hearing, a reminder to the enrollee that, if the enrollee fails to appear at the scheduled hearing without good cause, the ALJ may dismiss the hearing request, and other information about the scheduling and conduct of the hearing;
- A statement advising the enrollee if his or her appearance, or that of any other participant or witness, is scheduled by VTC, telephone, or in person. If any participant is scheduled to appear by VTC, the notice will advise that the scheduled place for the hearing is a VTC site and explain what it means to appear at the hearing by VTC; and
- A statement advising the enrollee that, if the enrollee objects to appearing by VTC or telephone, and wishes instead to have the hearing at a time and place where the enrollee may appear in person before the ALJ, the enrollee must follow the procedures set forth at [§ 423.2020\(i\)](#) for notifying the ALJ of the enrollee's objections and for requesting an in-person hearing.

In addition, the Notice of Hearing must include:

- A list of any expert witnesses scheduled to appear, along with their specialty;
- A list of other recipients of the Notice of Hearing; and
- OMHA contact information, including:
 - A direct line to the ALJ team that has been assigned to the appeal;
 - A toll-free number for the OMHA field office where the ALJ is located; and
 - For telephone hearings where the enrollee is directed to call into a teleconference number, the telephone number for the parties to call at the time scheduled for hearing, along with any required passcode or meeting number.

E. Other Documentation Sent with the Notice

The following documentation must be mailed, served, or faxed along with the form OMHA-1024, or OMHA-1024 (expedited) Notice of Hearing:

- Form HHS-729 Response to Notice of Hearing;
- Form OMHA-156 Exhibit List (if prepared when the hearing is scheduled, but must be sent prior to hearing if not sent with notice of hearing);
- Form OMHA-25 Information Sheet: What to Expect in a Video-teleconference Hearing (VTC appearances only);
- Form OMHA-26 Travel Policy, and Attachments (in-person and VTC appearances only);

F. Consolidated Notices

If appeals are consolidated for hearing under the provisions of [§ 423.2044](#), but the ALJ elects to maintain separate administrative records, a single Notice of Hearing may be issued for the consolidated hearing. Notice of the consolidated hearing must be provided with the Notice of Hearing, and the Notice of Hearing (or an attachment thereto) must list the individual appeal numbers involved in the consolidated hearing. See [I-6-C](#) for further information on notices of consolidation.

NOTE: If a consolidated hearing is to be held and a consolidated Notice of Hearing is issued, the Notice of Hearing must be redacted to display only the information pertaining to the individual enrollee that receives it.

IV-7-4 Accommodating Special Needs

Citations: [§ 423.2020](#)

A. Language Barriers

1. Known language barriers.

If the request for hearing was completed in a language other than English or states that the enrollee does not read and/or speak English, or if the ALJ is informed by any other means that translation services are required for the enrollee to the hearing, OMHA will arrange for interpreter services to be provided during the hearing.

2. Suspected language barriers.

If the administrative record suggests that the enrollee may have a language barrier (for example, lower-level procedural documentation was issued in a foreign language or the medical records indicate that the enrollee does not speak English), OMHA staff will reach out to the enrollee to attempt to confirm whether translation services for the hearing are required.

B. Physical Impairments

If the enrollee requests a special accommodation, or it is evident from the administrative record that the enrollee may have a physical or mental impairment or limitation, OMHA staff will contact the enrollee to confirm that special accommodations are needed.

Reasonable accommodations include, but are not limited to:

- Telephone hearings for the blind;
- Text Telephone Yoke/teletypewriter (TTY) at a VTC hearing site for the deaf; and
- Telebraille relay services for the deaf-blind.

If the enrollee is unable to travel to an off-site or VTC hearing site due to physical or mental impairment or limitation, and it has been determined that a telephone hearing is not appropriate, an off-site in-person hearing may be held (with the concurrence of the ACALJ) at a place where the enrollee can appear, including the enrollee's place of residence, if required. [§ 423.2020\(f\)\(1\)](#).

IV-7-5 Amended Notices of Hearing

Citations: [§ 423.2022](#)

A. Changes Requiring an Amended Notice of Hearing

OMHA must issue an Amended Notice of Hearing whenever:

- The enrollee did not receive the original notice of hearing;
- The hearing date or time is rescheduled; or
- The ALJ determines that a new participant's attendance at the hearing is reasonably necessary, and that participant did not receive the original Notice of Hearing.

Unless waived, the 20-day (non-expedited) and 3-day (expedited) notice requirement in [§ 423.2022\(a\)\(2\)](#) still applies to Amended Notices of Hearing. That is, if a hearing is scheduled to occur fewer than 20 (or 3) calendar days from the date the Amended Notice of Hearing is issued, the hearing must be rescheduled, unless the enrollee agrees in writing to waive the notice requirement, in accordance with [IV-7-3 C.2.](#)

B. Changes not Requiring an Amended Notice of Hearing

The ALJ may update information that does not change the substantive information regarding the time or place of a scheduled hearing without the need to issue an Amended Notice of Hearing. Written correspondence sent to the parties, in lieu of an Amended Notice of Hearing, may be used to make the following updates:

- Changes to the issues;
NOTE: If the issues are changed during the course of a hearing, the change must be memorialized in the hearing decision.
- Changes to the place/method of hearing;
- Changes to the list of OMHA experts;
- Changes to OMHA contact information; and
- Changes to the Exhibit List.

The 20-day (or 3-day) notice requirement does not apply to written correspondence that makes one or more of the above-listed changes to a scheduled hearing. However, the ALJ, at the request of the enrollee and within the ALJ's discretion, may reschedule the hearing if the ALJ believes that the enrollee will be disadvantaged by having fewer than 20 (or 3) calendar days after the correspondence is issued to prepare for the hearing.

NOTE: A copy of the correspondence issued to the hearing participants informing them of any changes must be included in the administrative record.

C. Sending the Amended Notice of Hearing

1. Generally.

OMHA staff will make the necessary revisions to the original Notice of Hearing and re-title it as the “Amended Notice of Hearing.” The Amended Notice of Hearing must be mailed or otherwise transmitted to all of the recipients of the original Notice of Hearing (and to any newly identified recipients) in accordance with subsection **A**, above.

2. If the enrollee states that he or she did not receive the notice of hearing.

If the Notice of Hearing is amended because the enrollee states he or she did not receive the original Notice of Hearing, an amended notice is issued in accordance with subsection **C.1**, above and must be sent to the enrollee by certified mail. [§ 423.2022\(c\)](#).

NOTE: The regulation at [§ 423.2022\(c\)](#) states that this service may also be made by e-mail, if available; however, e-mail notices are not supported by OMHA systems at this time.

IV-7-6 Responses to the Notice of Hearing

Citations: §§ 405.910, 405.966, 423.560, 423.2010, 423.2016, 423.2018, 423.2020, 423.2022, 423.2024, 423.2026, 423.2052

A. Acknowledging Receipt

The enrollee (and any potential participant from CMS, the Part D QIC, or the Part D plan sponsor) or his or her representative who was sent a Notice of Hearing must acknowledge the Notice of Hearing by indicating whether the recipient plans to attend the hearing or (for the enrollee only) by objecting to the proposed time and/or place of the hearing.

§ 423.2020(c)(2). While recipients may acknowledge the Notice of Hearing either verbally or in writing (including fax), certain objections must be made in writing, as detailed in subsection F below.

If CMS or a CMS contractor that plans to join a hearing as a participant, it may respond to the notice for hearing no later than 5 calendar days after receiving the Notice of Hearing for a non-expedited hearing, and no later than 1 calendar day after receiving the Notice of Hearing for an expedited hearing. § 423.2010(b). Use of form HHS-732 (Centers for Medicare and Medicaid Services (CMS) or CMS Contractor Participation as a Non-Party or as a Party to an Administrative Law Judge (ALJ) Hearing) is encouraged, but not required.

NOTE: The ALJ has discretion not to allow CMS, the IRE, and/or the Part D plan sponsor to participate. § 423.2010(c).

NOTE: CMS or CMS contractors may not elect party status in a Part D appeal. § 423.2008.

See I-6 for more information on CMS and CMS contractor elections and roles.

B. Unacknowledged Notices

1. If the enrollee or a representative to whom a Notice of Hearing was sent does not acknowledge receipt of the Notice of Hearing and does not appear at a scheduled hearing, OMHA must attempt to contact the party for an explanation.
 - If the enrollee or representative states that he or she did not receive the Notice of Hearing, an amended notice is sent via certified mail. See IV-7-5 for more information on Amended Notices of Hearing. § 423.2052.
 - If the enrollee or the enrollee's representative states that he or she received the Notice of Hearing, staff will confirm documents the conversation in a report of contact (form OMHA-101) and includes the report of contact in the administrative record.

- If the ALJ finds that the enrollee did not establish good cause for missing the hearing after a reasonable attempt to contact the party or representative is made, the ALJ dismisses the hearing request in accordance with [§ 423.2052](#).

C. Written evidence submitted with the Response

Enrollees must submit written evidence they wish to have considered at the hearing with their request for hearing, on a date specified in their request, or within 10 calendar days after receiving the Notice of Hearing for a non-expedited hearing (or within 2 calendar days for an expedited hearing). [§ 423.2018\(b\)-\(c\)](#). If evidence is submitted later than 10 calendar days after receiving the Notice of Hearing for a non-expedited hearing, or 2 calendar days for an expedited hearing, the additional days will not be counted toward any applicable adjudication time frame specified in [§§ 423.2016; 423.2018\(b\)\(2\)](#).

D. New Individuals Identified as Appearing on Behalf of a Party

If an enrollee's response to the Notice of Hearing names a new individual to appear on the enrollee's behalf, an Appointment of Representative form ([form CMS-1696](#) or another written instrument that conforms to the requirements in [§ 405.910\(c\)](#)) must be completed and submitted. If the new individual is an authorized representative, a copy of the document that grants that individual legal status as an authorized representative (for example, power of attorney, health care proxy, or letter of guardianship) must be submitted.

If an existing appointed representative names a new individual to appear on his or her behalf, the existing appointed representative must delegate his or her appointment to the new individual in accordance with [§ 405.910\(l\)](#), and the enrollee must accept the delegation in writing unless the existing appointed representative and the new individual are both lawyers in the same law firm or organization.

See [I-5](#) for more information on representatives.

E. Objections to the Proposed Time and Place

If an enrollee objects to the time and/or place of the hearing, the enrollee must notify the ALJ at the earliest possible opportunity before the time set for the hearing, and must state the reason for the objection and the time and/or place where he or she would like the hearing to be held instead. This objection must be made in writing, except for an expedited hearing when the objection may be provided orally. [§ 423.2020\(c\)\(2\)\(ii\), \(e\), \(f\), \(g\)](#).

The ALJ may change the time or place of the hearing if the ALJ finds good cause for doing so. The ALJ will find good cause where the information available to the ALJ supports an enrollee's contention that ([§ 423.2020\(f\)](#)):

1. The enrollee or his or her representative is unable to attend or to travel to the scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in the family; or
2. Severe weather conditions make it impossible to travel to the hearing.

Good cause may also be found to exist in circumstances other than those listed above. In determining whether such good cause exists, the ALJ will consider the enrollee's reason for requesting the change, the facts supporting the request, and the impact of the proposed change on the efficient administration of the hearing process. Factors to be considered in determining the impact of the change include, but are not limited to, the effect on other scheduled hearings, potential delays in rescheduling the hearings, and whether any prior changes were granted to the enrollee. [§ 423.2020\(g\)](#).

Examples of other circumstances an enrollee might give for requesting a change in the time or place of the hearing include, but are not limited to [§ 423.2020\(g\)\(3\)](#):

- The enrollee has attempted to obtain a representative, but needs additional time;
- The enrollee's representative was appointed within 10 calendar days of the scheduled non-expedited hearing (or within 2 calendar days of the scheduled expedited hearing) and needs additional time to prepare for the hearing;
- A necessary witness is unavailable to attend the scheduled hearing, and the evidence cannot be otherwise obtained;
- The enrollee's representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for the hearing;
- Transportation is not readily available for the enrollee to travel to the hearing; and
- The enrollee is unrepresented and is unable to respond to the Notice of Hearing because of a physical, mental, educational, or linguistic limitation (including any lack of facility with the English language) that he or she has.

If the ALJ finds good cause to change the time or place of the hearing, an amended Notice of Hearing must be issued in accordance with [IV-7-5](#), above.

F. Objections to the Issues

If the enrollee objects to the issues described in the Notice of Hearing, he or she must notify the ALJ in writing at the earliest possible opportunity before the time set for the hearing, and no later than 5 calendar days before the scheduled non-expedited hearing (or 2 days before the scheduled expedited hearing). Objections may be oral for expedited cases, and the ALJ will document the objection for the administrative record. The enrollee must state

the reasons for his or her objections. A copy of the objections does not have to be sent to non-party participants. The ALJ will make a decision on the objections either in writing or at the hearing. [§ 423.2024](#).

G. Objections to the ALJ Hearing the Case

An ALJ cannot conduct a hearing if he or she is prejudiced or partial to the enrollee, or if he or she has any interest in the matter pending for decision. If an enrollee wishes to object to the ALJ who will conduct the hearing, the enrollee must notify the ALJ within 10 calendar days of the date that the Notice of Hearing is mailed, or received if transmitted by fax or personal service. The ALJ will consider the enrollee's objections and decide whether to proceed with the hearing or withdraw. [§ 423.2026](#)

1. If the ALJ withdraws.

If the ALJ withdraws, another ALJ will be appointed to conduct the hearing and issue a decision, dismissal, or remand in the appeal.

2. If the ALJ does not withdraw.

If the ALJ does not withdraw, the enrollee may present his or her objections to the Council, but only after the ALJ has issued a decision or dismissal in the appeal.

IV-7-7 Rescheduling the Hearing

Citations: §§ 423.2016, 423.2020

A. In General

The ALJ sets the time and place for the hearing, and may change the time and place, if necessary. § 423.2020(a).

B. Effect of Rescheduling on Adjudication Time Frame

Depending on the reason a hearing needs to be rescheduled, any applicable adjudication time frame specified in § 423.2016 may be extended from the originally scheduled hearing date to the rescheduled hearing date.

1. Examples of reasons for rescheduling that will extend an adjudication time frame: (§ 423.2020(h))

- An enrollee's objection to the hearing date, time, or place/method, with the exception of the enrollee's objection to a VTC or telephone hearing and associated request for an in-person hearing; and
- An enrollee's failure to appear at the originally scheduled time and place for hearing (where the ALJ finds good cause for rescheduling).

2. Examples of reasons for rescheduling that will not extend an adjudication time frame:

- The ALJ's need to postpone or continue a hearing in process;
- An enrollee's objection to a VTC or telephone hearing and associated request for an in-person hearing; and
- OMHA's failure to send a copy of the Notice of Hearing to the enrollee or a necessary participant to the hearing.

See I-7 for additional information on adjudication time frames, including information regarding circumstances that extend adjudication time frames.

C. Notifying the Hearing Participants

When an ALJ has determined that a hearing must be rescheduled, the ALJ must send an Amended Notice of Hearing to all recipients of the original Notice of Hearing, as well as any newly identified participants whose attendance at the hearing is reasonably necessary, in accordance with IV-7-5.

IV-7-8 Canceling the Hearing

A hearing may need to be canceled for a variety of reasons, including, but not limited to:

- Death or unexpected illness of the enrollee;
- Withdrawal of the request for hearing;
- Receipt of an enrollee's waiver of the right to appear at the hearing and a request for a decision on the record from the enrollee or
- A need to reschedule, but a new hearing date and time have not yet been identified.

When an ALJ has determined that a hearing must be canceled, OMHA contacts all hearing participants by telephone or in writing to inform them of the cancellation, including CMS or any CMS contractors that elected participant status. If the hearing is canceled fewer than 5 calendar days before the scheduled hearing date, OMHA must first attempt to provide notice of the cancellation by telephone call or fax.

NOTE: Any fax sent must be made in compliance with OMHA's PII policy, as outlined above in IV-7-3 B.2.

IV-7-9 Supplemental (Reopened) Hearings

If the ALJ determines that a supplemental hearing is necessary, the ALJ follows the same notice procedures as for the original hearing, with the following exceptions:

1. The Notice of Hearing must indicate that the hearing is supplemental, or reopened; and
2. The ALJ has the discretion to limit the hearing to the enrollee and those other participants who took part in the original hearing.