

those ends, including but not limited to authority to take the following actions:

(1) Change the date, time, and place of the hearing after due notice to the parties. This includes authority to postpone or adjourn the hearing in whole or in part. In a hearing on disapproval of a State plan, or State plan amendments, changes in the date of the hearing are subject to the time limits imposed by section 1116(a)(2) of the Act.

(2) Hold conferences to settle or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the issues.

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items, including issuance of protective orders or other relief to a party against whom discovery is sought.

(6) Regulate the course of the hearing and conduct of counsel.

(7) Examine witnesses.

(8) Receive, rule on, exclude or limit evidence or discovery.

(9) Fix the time for filing motions, petitions, briefs, or other items.

(10) If the presiding officer is the Administrator, make a final decision.

(11) If the presiding officer is a designee of the Administrator, certify the entire record including recommended findings and proposed decision to the Administrator.

(12) Take any action authorized by the rules in this subpart or in conformance with the provisions of 5 U.S.C. 551 through 559.

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

(c) If the presiding officer is a designee of the Administrator, his or her authority pertains to the issues of compliance by a State with Federal requirements, and does not extend to the question of whether, in case of any noncompliance, Federal payments will be denied in respect to the entire State plan or only for certain categories

under, or parts of, the State plan affected by the noncompliance.

§ 430.83 Rights of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings.

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 430.86 Discovery.

HCFA and any party named in the notice issued under § 430.70 has the right to conduct discovery (including depositions) against opposing parties. Rules 26-37 of the Federal Rules of Civil Procedures apply to such proceedings; there will be no fixed rule on priority of discovery. Upon written motion, the presiding officer promptly rules upon any objection to discovery action initiated under this section. The presiding officer also has the power to grant a protective order or relief to any party against whom discovery is sought and to restrict or control discovery so as to prevent undue delay in the conduct of the hearing. Upon the failure of any party to make discovery, the presiding officer may issue any order and impose any sanction (other than contempt orders) authorized by Rule 37 of the Federal Rules of Civil Procedure.

§ 430.88 Evidence.

(a) *Evidentiary purpose.* The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues involved in the proceeding. Argument is not received in

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evidence. It must be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, concerning the party's position and what he or she intends to prove, may be made at hearings.

(b) *Testimony.* Testimony is given orally under oath or affirmation by witnesses at the hearing. Witnesses are available at the hearing for cross-examination by all parties.

(c) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Those stipulations, and any exhibit proposed by any party, are exchanged before the hearing if the presiding officer so requires.

(d) *Rules of evidence.* (1) Technical rules of evidence do not apply to hearings conducted under this subpart. However, rules or principles designed to ensure production of the most credible evidence available and to subject testimony to test by cross-examination are applied by the presiding officer when reasonably necessary.

(2) A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his or her direct examination.

(3) The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

(4) All documents and other evidence offered or taken for the record are open to examination by the parties and an opportunity is given to refute facts and arguments advanced on either side of the issues.

§ 430.90 Exclusion from hearing for misconduct.

The presiding officer may immediately exclude from the hearing any person who—

(a) Uses disrespectful, disorderly, or contumacious language or engages in contemptuous behavior;

(b) Refuses to comply with directions; or

(c) Uses dilatory tactics.

§ 430.92 Un-sponsored written material.

Letters expressing views or urging action and other un-sponsored written material regarding matters in issue in a hearing are placed in the correspondence section of the docket of the pro-

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ceeding. These data are not considered part of the evidence or record in the hearing.

§ 430.94 Official transcript.

(a) *Filing.* The official transcripts of testimony, together with any stipulations, briefs, or memoranda of law, are filed with HCFA.

(b) *Availability of transcripts.* HCFA designates an official reporter for each hearing. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not in excess of the maximum rates fixed by the contract between HCFA and the reporter.

(c) *Correction of transcript.* Upon notice to all parties, the presiding officer may authorize corrections that affect substantive matters in the transcript.

§ 430.96 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision constitute the exclusive record for decision.

§ 430.100 Posthearing briefs.

The presiding officer fixes the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law. The presiding officer may also permit reply briefs.

§ 430.102 Decisions following hearing.

(a) *Administrator presides.* If the presiding officer is the Administrator, he or she issues the hearing decision within 60 days after expiration of the period for submission of posthearing briefs.

(b) *Administrator's designee presides.* If the presiding officer is other than the Administrator, the procedure is as follows:

(1) Upon expiration of the period allowed for submission of posthearing briefs, the presiding officer certifies the entire record, including his or her recommended findings and proposed decision, to the Administrator. The Administrator serves a copy of the recommended findings and proposed decision upon all parties and amici, if any.

(2) Any party may, within 20 days, file with the Administrator exceptions