



**OFFICE OF HEARINGS’**

**MEDICARE ADVANTAGE RISK  
ADJUSTMENT DATA VALIDATION**

**LEVEL II APPEAL PROCEDURES**

**Effective January 17, 2025**

**Version 1.0**



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## OFFICE OF HEARINGS'

### MEDICARE ADVANTAGE RISK ADJUSTMENT DATA VALIDATION

#### LEVEL II APPEAL PROCEDURES

#### I. OVERVIEW

##### A. Introduction

The Centers for Medicare & Medicaid Services (CMS) Office of Hearings (OH) Division of Hearing Officer Services (DHOS) is an impartial hearing office that adjudicates institutional-level appeals and is substantively independent from the CMS policy components that issue the determinations subject to OH adjudication.

Congress has granted agencies broad discretion to promulgate procedural rules governing adjudications. *See* 5 U.S.C. § 559 (“Except as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons. Each agency is granted the authority necessary to comply with the requirements of this subchapter through the issuance of rules or otherwise.”).

Additionally, for the Medicare Advantage Risk Adjustment Data Validation (MA RADV) appeals process, 42 C.F.R. § 422.311(c)(7)(vii)(A) provides that the Hearing Officer has full power to make rules and establish procedures, consistent with the law, regulations, and Secretary rulings. These powers include the authority to dismiss the appeal with prejudice and take any other action that the Hearing Officer considers appropriate, including for failure to comply with such rules and procedures.

The MA RADV Level II Appeal Procedures document will be referred to as “Procedures.” These Procedures provide instructions, guidance, and formatting requirements for the hearing stage of the MA RADV appeals process. The object of these Procedures is to provide consistency, administrative efficiency, and direction to all parties to an MA RADV appeal. These Procedures are meant to be read in conjunction with regulations,<sup>1</sup> OH directives, and other authorities. These Procedures only apply to the MA RADV Appeals (42 C.F.R. § 422.311). For all other OH Hearing Officer authorities, please refer to <https://www.cms.gov/medicare/regulations-guidance/cms-hearing-officer>.

OH may periodically update these Procedures and reserve the right to infrequently issue orders and/or alerts, as necessary. For such updates and issuances, parties must check the RADV website <https://www.cms.gov/medicare/regulations-guidance/cms-hearing-officer/medicare-advantage-risk-adjustment-data-validation-appeals>.

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<sup>1</sup> If any of the Procedures unintentionally conflict with the applicable regulations, the regulations prevail.

## **B. Hearing Officer's Authority**

For the hearing stage of a MA RADV appeal, a Hearing Officer will conduct the MA RADV hearing. 42 C.F.R. § 422.311(c)(7)(iv). The Hearing Officer's authority involves deciding whether to uphold or overturn a reconsideration official's decision. 42 C.F.R. § 422.311(c)(7)(vii). The Hearing Officer may dismiss appeals or take other action as appropriate for the failure to follow procedural or filing requirements. 42 C.F.R. § 422.311(c)(7)(vii).

The Hearing Officer may review jurisdiction on their own motion at any time. Any appeal/matter found to be outside the Hearing Officer's jurisdiction will be dismissed. While a motion challenging jurisdiction may be raised at any time during the appeal, for judicial economy, the Hearing Officer strongly encourages filing any challenges as soon as possible. The parties cannot waive jurisdictional requirements.

## **C. Accessibility Standards**

The Hearing Officer is committed to making the appeals process accessible to people with disabilities and strives to meet or exceed the requirements of § 508 of the Rehabilitation Act (codified at 29 U.S.C. § 794d), as amended in 1998. If the electronic appeals system cannot be accessed due to a disability, please contact our Section 508 Team via email at [508Feedback@cms.hhs.gov](mailto:508Feedback@cms.hhs.gov). For more information on CMS Accessibility and Compliance with Section 508, see the CMS Accessibility & Nondiscrimination for Individuals with Disabilities Notice at <https://www.cms.gov/about-cms/web-policies-important-links/accessibility-nondiscrimination-disabilities-notice>.

If accommodations are required at any time during the appeal process, including at a hearing, contact your Hearing Officer through the Office of Hearings Case and Document Management System (OH CDMS). If you cannot access the electronic appeals system, contact the OH CDMS Help Desk at 1-833-783-8255 or email [helpdesk\\_ohcdms@cms.hhs.gov](mailto:helpdesk_ohcdms@cms.hhs.gov).

## **II. OFFICE OF HEARINGS CASE AND DOCUMENT MANAGEMENT SYSTEM**

### **A. Parties' Submissions to the Hearing Officer through OH CDMS**

OH CDMS is a web-based portal for parties to electronically file and maintain their cases and to correspond with the Hearing Officer. Registration to use OH CDMS is required prior to filing an appeal request. Therefore, the parties are encouraged to complete registration for OH CDMS as early as possible in the timely filing period as it is a multi-step process that involves obtaining secure access to both the web-based portal and OH CDMS. Access to specific cases is limited to the parties of each case, including representatives. OH CDMS will notify the parties of all submissions (e.g., appeal requests, correspondence, briefs, exhibits, motions, Administrative Record or medical records) into the system.

All case submissions must be filed electronically using OH CDMS. Likewise, questions about a case must be filed in OH CDMS to ensure that the opposing party is notified of the question/communication. The timing of data entry and document uploads to OH CDMS is

captured in OH CDMS via a Confirmation of Filing/Submission document. The system-generated notice confirming the filing will satisfy the requirement for service on the opposing party. Electronic submissions through OH CDMS will be accepted as timely filed until 11:59 p.m. Eastern Time on the filing due date. Please consult the OH CDMS MA RADV Module External User Manual for further instructions on how to file documents and navigate within OH CDMS.

Password protected documents must not be filed in OH CDMS.

Refer to the webpages at:

<https://www.cms.gov/medicare/regulations-guidance/cms-hearing-officer/medicare-advantage-risk-adjustment-data-validation-appeals>

and

<https://www.cms.gov/medicare/regulations-guidance/cms-hearing-officer/hearing-officer-electronic-filing>

to access links for the following:

- The CMS Salesforce Enterprise Integration (SEI) Portal. — The CMS SEI portal is the website portal through which OH CDMS may be accessed.
- The OH CDMS External Registration Manual. — This manual provides instructions on how to initially register as a user of OH CDMS through the CMS SEI Portal. Be aware that you must first register for access to the SEI portal before you can proceed with registering for access to OH CDMS.
- The OH CDMS MA RADV Module External User Manual — This manual, with its related supplements, provides instruction on how to properly file appeal-related documents within OH CDMS and manage your appeals.
- The MA RADV Module Quick Start Appeal Filing Instructions. — These abbreviated instructions address the process for filing a written request for a hearing in OH CDMS.

The manuals and other documents on this webpage will be revised as necessary to reflect modifications and enhancements to OH CDMS. It is the user's responsibility to check regularly for updates, modifications, and changes to the OH CDMS MA RADV Module External User Manual. For any technical system issues, please contact the OH CDMS Help Desk at 1-833-783-8255 or email [helpdesk\\_ohcdms@cms.hhs.gov](mailto:helpdesk_ohcdms@cms.hhs.gov).

## **B. Exemptions to Electronic Filing**

The Hearing Officer recognizes that, in limited circumstances, it may be necessary for a party to request to file an appeal or other documents in an existing case(s) outside of OH CDMS. A party who desires an exemption to the electronic filing requirement must file a request as described below. An exemption may be granted for a specified period of time or on a permanent basis. If the Hearing Officer grants a request, then the Hearing Officer will explain the scope and duration of the exemption.

- Disability. — If filing through the electronic appeals system cannot be completed or is materially hindered due to a disability (*see* Procedure I(C)), the party should contact the Hearing Officer at least five (5) calendar days prior to the filing deadline at the email or number listed below.
- Extraordinary Circumstances. — A party may file a request for an OH CDMS exemption due to extraordinary circumstances. Except in cases of impossibility, the request must be filed via email at [MARADVHearings@cms.hhs.gov](mailto:MARADVHearings@cms.hhs.gov), and received by the Hearing Officer at least five (5) calendar days prior to any filing deadline(s) impacted by the extraordinary circumstances. If a party is unable to file by email, please contact the OH CDMS Help Desk at 1-833-783-8255 or email [helpdesk\\_ohcdms@cms.hhs.gov](mailto:helpdesk_ohcdms@cms.hhs.gov).

**C. All Hearing Officer Issuances will be Sent through OH CDMS**

The Hearing Officer utilizes OH CDMS to send emails notifying the parties of all Hearing Officer issuances, including but not limited to, the Request for Information, Notice of Hearing, jurisdictional and substantive decisions, etc. The email notification will include an attachment containing the issuance. Hearing Officer issuances may also be viewed within the OH CDMS case record.

**D. Deadline Extension Due to Technical Difficulties with Electronic Filing**

The Hearing Officer will set deadlines for filings in existing appeals. If a party experiences technical issues during filing within OH CDMS (including technical issues related to becoming a registered user), they should seek assistance from the OH CDMS Help Desk both to document their issue and resolve it prior to the set deadline. To the extent the issue cannot be resolved by the set deadline and the party submits a late filing, the party should document their issues and submit their filing electronically within twenty-four (24) hours of the issue being resolved by the Help Desk. As part of this filing, the party must request an extension due to technical difficulties and provide satisfactory proof to establish good cause for the late filing. In this regard, the request should:

- Describe the technical issue;
- Describe when the issue was identified;
- Describe efforts to resolve the issue;
- Identify the OH CDMS Help Desk ticket number opened to address the issue;
- Include a copy of the notice from the OH CDMS Help Desk confirming that the technical issue was resolved; and
- Confirm whether there are any other registered users in the case representative's organization and, if so, explain why the other user(s) could not make the filing.

If the Hearing Officer finds good cause for the requested extension, then the Hearing Officer will accept the filing as timely. Note that, for purposes of this Procedure, an extension may not be based on administrative oversight, an ongoing discussion for an administrative resolution, a change in case representative, or scheduled maintenance for OH CDMS.

### **III. GENERAL REQUIREMENTS**

#### **A. Case Representative and OH CDMS Access**

##### **1. Case Representative**

For OH CDMS purposes, each party may designate a case representative. There may only be one case representative per party. In the case of the MA organization, the case representative may be an individual external to the MA organization or the MA organization's parent organization (e.g., attorney or consultant) or an individual employed by the MA organization or the MA organization's parent organization.

All actions taken by the case representative are considered to be those of the party and notice of any action or a decision sent to the case representative has the same effect as if it had been sent to the party itself. The email address of the case representative for each party is the only recipient of notifications issued via OH CDMS. Therefore, the case representatives should regularly check their email (including any filtered email) to ensure they do not miss notifications related to their pending case(s) (e.g., notice of Hearing Officer deadlines, Hearing Officer rulings or decisions, or documents filed by the other party).

The case representative is responsible for ensuring their contact information is current, including a current email address and phone number.

##### **2. Change of Representation**

If the MA organization wishes to change its case representative, the required Change Representative letter must be uploaded into OH CDMS. *See* OH CDMS MA RADV Module External User Manual for complete instructions on how to change the representative.

#### **B. Title, Caption and File Naming Convention**

##### **1. Title**

Each document should contain a title that includes the party's name and describes the document, e.g., Appeal Request, MA Organization's Brief, Motion to Strike, MA Organization's Reply Brief, etc.

##### **2. Caption**

All party filings and correspondence must contain the following information in the caption or Re: line for the filing:

- The docket number (except for the Appeal Request);
- The name of the MA organization;
- MA organization contract number;

- The year, referred to as payment year (“PY”) or contract (“CON”) year being appealed; and
- Reason for communication, i.e., Request for Extension.

### 3. **File Naming Convention**

The electronic file naming convention should be as follows:

XXXX.XX.XX [Year.Month.Date] [MA Organization Name], [Description of Submission]

For example:

2024.06.02 ABC Plan, MA Organization’s Appeal Request  
2024.07.09 XYZ Plan, CMS’ Responsive Brief

### C. **Confidential and Proprietary Information**

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule and the Privacy Act of 1974 requires a covered entity and its business associates to make reasonable efforts to limit the use, disclosure, and requests for protected health information (PHI) or personally identifiable information (PII) to the minimum necessary to accomplish the intended purpose.

While OH prefers the MA organization to redact medical records, OH will accept unredacted records if the MA organization believes that redacting the records would be overwhelmingly burdensome. For all materials other than medical records (e.g., brief, motion or exhibit), OH expects each party to carefully review their documents to ensure that they do not contain items such as patient names, Social Security Numbers, patient and family addresses or other identifying information. Unless unredacted PHI/PII is (1) necessary to support the party’s position, or (2) redaction of PHI/PII is determined to be overwhelmingly burdensome, OH requests that it not be included in filings.

If an MA organization has difficulty submitting medical records through OH CDMS, please **call** the OH CDMS help desk at 1-833-783-8255 for further instructions. **Do not email any documents with PHI/PII to the help desk or OH.**

Password protected documents must not be filed in OH CDMS.

### D. **Foreign-Language Documents and Translations**

All documents filed with OH should be in the English language or accompanied by an authenticated English translation.

An affidavit in English by a person who does not understand English must include a separate translator’s affidavit under oath stating that the underlying affidavit has been read to the person in a language that the person understands and that, to the best of the translator’s knowledge, the affiant understood it before signing. The translator’s affidavit must also state facts demonstrating

that the translator is competent to translate the language of the witness as well as a representation that the interpretation was true and accurate to the best of the translator's abilities.

A translator's affidavit authenticating the translation of a foreign-language document must be typed, signed by the translator, and identify and accompany the foreign language document. If a translator's affidavit is filed in connection with the translation of multiple documents, the certification must specify the documents covered by the translator's affidavit. A translator's affidavit must include facts providing a basis to conclude that the translator is competent to translate the language of the document and a representation that the translation is true and accurate to the best of the translator's abilities.

A translated document accompanied by a proper translator's affidavit is admissible in the adjudication to the same extent as it would be if it were not translated.

In the alternative, parties may submit a joint stipulation regarding an agreed upon translation. *See* Procedure VI(H) on "Stipulations."

#### **E. Due Dates — Nonwork Days**

If the due date falls on a Saturday, a Sunday, a federal legal holiday or on any other day all or part of which is declared to be a nonwork day for federal employees by statute or Executive Order, or a day on which the Hearing Officer is unable to conduct business in the usual manner (e.g., if OH CDMS were down for the entire last day of a deadline), the deadline becomes the next day that is not one of the aforementioned days. 42 U.S.C. § 1395ii; Social Security Act § 216(j); *see* Rule 6(a) of the Federal Rules of Civil Procedure.

### **IV. FILINGS**

#### **A. Appeal Request**

##### **1. Filing Deadline**

An MA organization must file an appeal request within sixty (60) days from the date that the MA organization receives the reconsideration officer's written reconsideration decision. 42 C.F.R. § 422.311(c)(7)(iii). OH considers the issue date as the date the MA organization received its decision.

##### **2. General Requirements**

Within the appeal request, an MA organization should include the following information:

- Identify the MA organization by using the same name that appears on the reconsideration decision being appealed;
- Identify the audited PY (also referred to as CON year) being appealed; and

- Identify whether the appeal request concerns the medical record review reconsideration determination (also called the “MRRD,” “Medical Record Appeal” or “MRA” for short) or the payment error calculation reconsideration determination (also called the “PEC”).

## **B. Two Stage Appeal Process**

### **1. Mandatory Appeal Sequence**

An MRA **must** precede a PEC appeal **if** an MA organization chooses to appeal both determinations.

The regulation at 42 C.F.R. § 422.311(c)(5)(iii), specifies that

[f]or MA organizations that intend to appeal both the medical record review determination and the RADV PEC, the MA organization’s request for appeal of its RADV PEC may not be filed and will not be adjudicated until

(1) the administrative appeal process for the RADV medical record review determinations filed by the MA organization has been exhausted or

(2) the MA organization does not timely request a RADV medical record review determination appeal at the hearing stage and/or the CMS Administrator review stage, as applicable.

### **2. PEC Appeal Request Following Revised RADV Audit Report**

Once an MA organization’s MRA has been completed pursuant to 42 C.F.R. § 422.311(c)(5)(iii), the MA organization will be issued a revised RADV audit report. An MA organization has sixty (60) days from the date of issuance of a revised RADV audit report to file a written request with CMS for a RADV PEC appeal. 42 C.F.R. § 422.311(c)(5)(iv). For the hearing stage of the appeals process, the MA organization must file its written request for a PEC appeal within sixty (60) days of the date the MA organization receives the reconsideration officer’s written reconsideration decision. 42 C.F.R. § 422.311(c)(7)(iii). OH considers the issue date as the date the MA organization received its decision.

### **3. Use of Former Docket Number**

For administrative efficiency, an MA organization must file its PEC appeal under the same docket number that was assigned to its medical record appeal. Please note that the MA organization will be filing its request for a PEC hearing into a **closed** case/docket number but OH will reopen the case once the PEC hearing request has been received. Please consult the OH CDMS MA RADV Module External User Manual for the specific procedures regarding filing a PEC appeal.

## **C. Medical Record Appeal/MRA**

Under 42 C.F.R. § 422.311(c)(7)(iii)(A), an MA organization’s appeal request of its medical record review reconsideration determination must:

- Include a copy of the written decision of the reconsideration official;
- Specify the audited HCCs that the reconsideration official confirmed as being in error and for which the MA organization has chosen to appeal (the HCCs you appeal must be selected from the list populated within OH CDMS); and
- For those HCCs selected for appeal, specify a justification why the MA organization disputes the reconsideration official's determination (within the text box provided).

**Note:** Summarize the reason for the appeal in the box provided in OH CDMS. While the text characters are limited, provide a specific and concise justification. For example, "The MA organization does not agree" or "Please review" are not specific justifications. For each discrepant HCC, the MA organization will be afforded the opportunity to more fully explain their argument later in the process. *See* Procedure VI(B). *See* OH CDMS MA RADV Module External User Manual.

#### **D. PEC Appeal**

Under 42 C.F.R. § 422.311(c)(7)(iii)(B), an MA organization's appeal request of its PEC reconsideration determination must

- Include a copy of the written decision of the reconsideration official; and
- Include the MA organization's own RADV PEC that clearly specifies where the Secretary's PEC was erroneous.

**NOTE:** An MA organization must file a single PEC appeal request per audit report. If an MA organization is challenging multiple components of its RADV enrollee total overpayment amount, it should identify the underlying component(s) with which it disagrees and must provide a specific and concise justification for its disagreement. As a reminder, under the RADV PEC appeal regulations, MA organizations may not appeal RADV medical record review-related errors. 42 C.F.R. § 422.311(c)(3)(iii).

#### **V. DEADLINES AND EXTENSION REQUESTS**

OH will issue a Request for Information that will set a deadline for CMS to provide the Administrative Record (*see* Procedure VI(A)(1) on "Administrative Record") and a Due Dates and Submission Requirements notification (also known as a briefing schedule) within which the Hearing Officer will establish the applicable procedural and briefing deadlines for both parties. If a party requires a due date extension, it should file an extension request using the "Other" case action functionality in OH CDMS and not by filing a motion using the "motion" case action functionality. When filing an extension request, the filing party should consult with the opposing party to ascertain whether the opposing party objects to the request and then indicate the opposing party's position within the request. Parties should submit any extension requests as early as possible to ensure that the Hearing Officer has ample time to consider the request before the deadline. Deadlines will remain in force unless an extension is granted. If granted, however, all subsequent deadlines will also be extended, and a new Due Dates and Submission Requirements

will be issued to reflect such revised deadlines.

## **VI. SUBMISSION REQUIREMENTS**

### **A. Administrative Record and Briefing**

#### **1. Administrative Record**

In accordance with the Request for Information (described above), CMS will provide the underlying Administrative Record that includes all materials that CMS considered and issued at the audit level and during the reconsideration appeal. *See, generally*, 5 U.S.C. § 706. Please note that OH does not have access to the records or systems of CMS' policy components, thus the Administrative Record must contain copies of all materials (including MA organization submissions, agency guidance and coding authorities) that were considered, issued or reviewed below.

Every page of the Administrative Record must be Bates numbered centered at the bottom of the page with "AR XXXX." The Bates numbering must be sequential, starting with the first page of the first document continuing through the last page of the last document. CMS must separate and number each document by tab page with identification as TAB 1, TAB 2, etc. The Administrative Record must also contain a Table of Contents identifying each document submitted, tab identification, and the applicable Bates number page range.

While the Administrative Record should contain all materials that were considered when issuing the appealable determination, the MA organization may file objections — a Motion to Strike materials filed within the Administrative Record, or a Motion to Supplement if it believes materials were improperly excluded from the Administrative Record. *See* Procedure VI(G) on "Motions."

#### **2. Due Dates for Objections to the Administrative Record**

On or before the same date that the MA organization files its initial brief, the MA organization must file any objections to the Administrative Record by using the "File Motion" case action, whether a Motion to Strike or Motion to Supplement. For any motion that CMS might file in response to the MA organization's motions, follow Procedure VI(G) on "Motions."

### **B. Due Dates and Submission Requirements (i.e., Briefing Schedule) for MRA**

The MA organization must file its appeal materials in accordance with the Due Dates and Submission Requirements issued by OH.

The MA organization must provide the following information on an ARN by ARN basis:

- ICD Code. The ICD code that primarily supports the discrepant HCC. Please note that within its narrative for the ARN, the MA organization may provide arguments for any additional ICD codes that support the HCC in question.

- Medical Record. The same medical record that was reviewed by the reconsideration official. The unedited medical record must contain the medical record coversheet that was added to each record during the audit process. *See* Procedure III(C) on “Confidential and Proprietary Information.”
- Brief. For each ARN, upload a narrative that fully explains the MA organization’s argument in support of its discrepant HCC.
- Exhibits (optional). The MA organization should provide the specific reconsideration official’s decision for each discrepant HCC. *See* 42 C.F.R. § 422.311(c)(7)(vii)(B)(4).
- List of Exhibits. Required only if exhibits are filed.

**NOTE:** If an MA organization selects an ARN for appeal within the Appeal Request but fails to provide the required information above, Hearing Officer may find the ARN abandoned and dismiss it from the appeal.

**C. Due Dates and Submission Requirements (i.e., Briefing Schedule) for PEC Appeal**

The MA organization should file its appeal materials in accordance with the Due Dates and Submission Requirements issued by OH.

The MA Organization must provide the following information:

- Brief. A narrative brief that explains why the reconsideration official’s determination is incorrect.
- Exhibits (optional). *See* 42 C.F.R. § 422.311(c)(7)(vii)(B)(4).
- List of Exhibits. Required only if exhibits are filed.

**D. CMS’ Responsive Brief for MRA and PEC Appeals**

If CMS elects to respond to any ARN narrative brief uploaded by the MA organization in support of its discrepant HCC(s), it must timely file a responsive narrative brief. *See* 42 C.F.R. § 422.311(c)(7)(vii)(B)(3)(iii).

If CMS determines that the medical record selected by the MA organization is not the same record reviewed by the reconsideration official, CMS must file an objection.

If CMS elects not to respond to any/all of the MA organization’s narrative briefs (and has no objection to the exhibits or medical record that the MA organization filed), it should check off the associated box which states “CMS relies upon the Reconsideration Official's written determination as its response for this ARN.”

**E. MA Organization’s Optional Reply Brief for MRA and PEC Appeals**

The MA organization may only file a reply brief if CMS files a responsive narrative brief. The reply brief must be confined to issues raised in any CMS responsive narrative brief.

## **F. Exhibits and Exhibit List**

With the briefs, the parties may upload exhibits to support their respective positions (OH does not have access to the records or systems of CMS' policy components), to the extent permissible. *See* 42 C.F.R. § 422.311(c)(7)(vii)(B)(4). The parties are responsible for ensuring that any references cited within their respective materials (reconsideration decision, appeal request, briefs) are filed in the Administrative Record and/or as an exhibit. *See* Procedure VI(A)(1) on "Administrative Record." To avoid duplication, if a particular document was filed within the Administrative Record, it is unnecessary to include such document as a briefing exhibit.

Briefing exhibits should be identified as either the MA organization's exhibits (P-1, P-2, etc.) or CMS' exhibits (C-1, C-2, etc.). Each exhibit shall be Bates numbered centered at the bottom of the page. If a party wishes to submit additional exhibits after their first brief, the exhibit numbering should continue from the party's previously-filed exhibits.

If a party is submitting exhibits, an exhibit list must also be filed. The exhibit list should identify each document submitted and include the exhibit number and applicable Bates number page range.

Either party may file a Motion to Strike any exhibits proffered by the opposing party. *See* Procedure VI(G) on "Motions."

Additionally, any documents filed in OH CDMS should not be password protected.

## **G. Motions**

A motion is a formal request directed to the Hearing Officer. If applicable, the moving party should indicate whether the non-moving party concurs with the request. All motions should include the legal and factual basis supporting the motion, as well as any necessary supporting documentation. Parties should submit motions as early as possible to ensure the Hearing Officer has ample time to consider the request.

A non-moving party may file a response to a motion with relevant supporting documentation within fifteen (15) calendar days from the date that the motion was filed.

If a party files a Motion for Summary Judgment, the non-moving party has 30 days to file a response. *See* 42 C.F.R. § 422.311(c)(7)(vii)(B)(5).

## **H. Stipulations**

A stipulation is a written agreement between the parties regarding factual evidence or the application of law or policy. Stipulations may be utilized in all hearing types (record, virtual, or in-person) before the Hearing Officer. While the Hearing Officer encourages the parties to file written stipulations in advance of the hearing to assist the parties and Hearing Officer in preparing for hearing, oral stipulations may also be entered into the record during the hearing.

**I. Withdrawal of Appeal or Issue**

An MA organization must file a request to formally withdraw an appeal or specific issues (for example, specific ARNs) within an appeal. When an MA organization requests to withdraw its appeal, the Hearing Officer will subsequently send an Order dismissing the case. However, the Hearing Officer will not issue an Order when the MA organization withdraws specific issues from a case. The Hearing Officer will note any withdrawal(s) in the final decision.

**VII. HEARINGS**

**A. Methods of Appearance**

The hearing will be on the record unless the parties request an in-person or virtual hearing. 42 C.F.R. § 422.311(c)(7)(vii)(B)(2)(i). The Due Dates and Submission Requirements notification contains a due date by which a party should submit its preferred hearing type (record, virtual, in-person). Additionally, the Hearing Officer may schedule a hearing on their own motion.

A Notice of Hearing will not be issued for a record hearing.

**B. Postponement of Hearing Date**

If a party wishes to change their hearing date, they must file a request for postponement through the “Other” Case Action, as soon as possible, with a brief explanation indicating why the postponement should be granted. The moving party must also indicate whether the non-moving party concurs and, if so, provide several mutually agreed-upon hearing dates for the Hearing Officer’s consideration.

**C. Conference Notification**

The parties may request, or the Hearing Officer may schedule, a virtual conference (e.g., scheduling/briefing, procedural issue, pre-hearing, etc.).

**D. No Witness Testimony Permitted**

Under 42 C.F.R. § 422.311(c)(7)(vii)(B)(4), the Hearing Officer neither receives testimony nor accepts any new evidence that is not part of the record. Thus, witness testimony is not permitted in the MA RADV appeals process.

**E. Participant List**

No later than five (5) calendar days prior to a scheduled in-person or virtual hearing, each party should file a participant list containing the name, organization and professional title of each hearing attendee. Additionally, an email address or phone number should be provided for each attendee (in the event of technical difficulties).

**F. Order of Hearing**

Generally, the MA organization presents its case first. The parties may agree to a different order of presenting evidence, or the Hearing Officer may request a different order. In cases involving multiple issues, the parties may propose presenting the case issue-by-issue as opposed to each party presenting all their issues consecutively.

**G. Transcript**

The court reporter should be contacted directly for information on how to obtain a copy of the hearing transcript. The court reporter contact information may be obtained at the hearing.

**VIII. EX PARTE COMMUNICATIONS**

All communications are expected to be filed within OH CDMS. *See* Procedure II(A). However, limited circumstances may necessitate communication outside OH CDMS. While discussions regarding routine or logistical matters may be allowable, discussions with OH regarding substantive matters are not permitted unless all parties are included in the communication.

**IX. LEVEL III APPEAL RIGHTS**

Instructions for requesting CMS Administrator review (Level III) of a Hearing Officer's decision will be conveyed within the cover letter accompanying the Hearing Officer's final decision.

**Appendix I: Record of Changes**

<u>Version Number</u>	<u>Effective Date</u>	<u>Description of Change</u>
1.0	1/17/2025	Issued Procedures in conjunction with new appeal regulations.