

<b>CMS Manual System</b>	<b>Department of Health &amp; Human Services (DHHS)</b>
<b>Pub 100-08 Medicare Program Integrity</b>	<b>Centers for Medicare &amp; Medicaid Services (CMS)</b>
<b>Transmittal 853</b>	<b>Date: January 4, 2019</b>
	<b>Change Request 10641</b>

**SUBJECT: Updates to the Appeals Prioritization Process**

**I. SUMMARY OF CHANGES:** The purpose of this Change Request (CR) is to update Chapter 3 of Publication (Pub.) 100-08 to account for recent enhancements to the prioritization process for contractor selection and participation in Administrative Law Judge (ALJ) Hearings.

**EFFECTIVE DATE: February 5, 2019**

*\*Unless otherwise specified, the effective date is the date of service.*

**IMPLEMENTATION DATE: February 5, 2019**

*Disclaimer for manual changes only: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.*

**II. CHANGES IN MANUAL INSTRUCTIONS:** (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED-Only One Per Row.

<b>R/N/D</b>	<b>CHAPTER / SECTION / SUBSECTION / TITLE</b>
R	3/3.9/Defending Medical Review Decisions at Administrative Law Judge (ALJ) Hearings
R	3/3.9/3.9.1/Election of Status

**III. FUNDING:**

**For Medicare Administrative Contractors (MACs):**

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

**IV. ATTACHMENTS:**

**Business Requirements  
Manual Instruction**

# Attachment - Business Requirements

Pub. 100-08	Transmittal: 853	Date: January 4, 2019	Change Request: 10641
-------------	------------------	-----------------------	-----------------------

**SUBJECT: Updates to the Appeals Prioritization Process**

**EFFECTIVE DATE: February 5, 2019**

*\*Unless otherwise specified, the effective date is the date of service.*

**IMPLEMENTATION DATE: February 5, 2019**

**I. GENERAL INFORMATION**

**A. Background:** This CR updates Chapter 3 of Pub. 100-08 instructions related to contractor participation in ALJ Hearings to account for recent updates in the prioritization process, including the shift in oversight responsibility to the Administrative Qualified Independent Contractor (AdQIC) and the creation of a portal system for contractor selection of desired participant roles.

**B. Policy:** This CR does not involve any legislative, statutory, or regulatory changes.

**II. BUSINESS REQUIREMENTS TABLE**

*"Shall" denotes a mandatory requirement, and "should" denotes an optional requirement.*

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
10641.1	Contractors shall adhere to the instructions outlined in Pub. 100-08, Chapter 3, Section 3.9 to utilize the prioritization process and take a participant status for appeals pending at the Office of Medicare Hearings and Appeals.  NOTE: While these business requirements emphasize the updated or added Pub.100-08 text, Contractors are reminded to review this section and pertinent regulatory citations in their entirety, to ensure compliance with the ALJ process.	X	X	X	X					
10641.2	Contractors requesting 'leave' of an ALJ--or formally requesting to be a secondary party in the hearing-- shall be aware that such process exists outside of the AdQIC portal.	X	X	X	X					

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
10641.2.1	Contractors should elect to participate as a participant or as a witness if their request for leave is denied.	X	X	X	X					
10641.3	Contractors who are interested in acting as a witness should indicate their interest via the AdQIC Portal.  NOTE: CMS contractors should indicate interest in participating as a witness without first making a request for 'leave' with an ALJ.	X	X	X	X					
10641.3.1	Contractors shall note that, in accordance with 42 CFR §405.1020, witness designations/elections shall be made during the coordination of interest/role selection process, as described below, and shall be included in the response to a given Notice of Hearing (NOH).	X	X	X	X					
10641.4	Contractors electing participation status prior to receipt of a formal NOH should note that there is a risk that the case may be later resolved by the ALJ, or an Attorney Adjudicator within the OMHA, without a hearing.	X	X	X	X					
10641.5	Contractors should note that because the AdQIC is tasked with coordinating contractor interest in participation among the related CMS contractors and/or CMS, all NOHs will be sent directly to the AdQIC from the OMHA. The AdQIC, within two (2) calendar days of receipt of the formal NOH from OMHA, will create a record in the AdQIC portal that will generate an email notification to all applicable CMS contractors (e.g., DME	X	X	X	X					

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
	MAC, A/B MAC, UPIC, SMRC and/or RAC) notifying them that a hearing has been scheduled.									
10641.6	Contractors shall, upon receipt of the formal NOH e-mail alert, log onto the AdQIC website, <a href="https://participation.q2a.com">https://participation.q2a.com</a> , to access the NOH information.	X	X	X	X					
10641.7	Contractors shall make their elections, via the AdQIC website, within five (5) calendar days of the formal NOH e-mail sent date.  NOTE: To make an election, contractors shall sign-in on the website (see above), and a dashboard will be available listing all appeals for the respective contractor that they may choose to participate in. Users can also search for appeals based on the information provided in the notification email.	X	X	X	X					
10641.8	Contractors shall select the applicable NOH identifier and complete/submit the CMS Contractor Participation Form indicating for each appeal whether they would like to participate as a party, participant, or witness, and/or if they would like to call a witness if made a party to the hearing.  NOTE: CMS contractors that fail to sign-in to the AdQIC system and make their respective participation role selections, in the required timeframe, may be precluded from the prioritization process.	X	X	X	X					
10641.9	Contractors should note that users will not be able to view the actual NOH document on the site. The website/dashboard will allow	X	X	X	X					

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
	contractors to view all scheduled hearings for which they received an NOH.									
10641.10	Contractors shall note that for all NOH communications (e.g., NOHs received from OMHA, NOH email alerts) received after standard business hours (e.g., 4:00 p.m., ET) and/or during weekends or business Holidays, as defined by the respective entity, the AdQIC portal is programmed to calculate the response time beginning with the next applicable business day [e.g., if the AdQIC receives the formal NOH on a Friday at 4:00 pm, the five (5) calendar day timeframe begins on Monday (with Monday being day zero (0))].	X	X	X	X					
10641.11	Contractors should note that the AdQIC portal will evaluate all submissions based on CMS' prioritization logic and prioritize contractor roles in a respective ALJ hearing (i.e., which contractor shall be the 'party', 'participants,' etc.), within 2 calendar days of receipt of the completed Contractor Participation forms.  NOTE: The website will automatically calculate the contractor's Participation Form response due date and each contractor's role determination, and prioritize participation elections on the next calendar day after the contractor response timeframe expires. Participation/role designations will be sent via a system-generated email notification to any contractors who expressed interest in participation. The status of	X	X	X	X					

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
	elections for a given NOH will be available on the AdQIC's website once determinations have been made and notifications have been sent to the applicable CMS contractors.									
10641.12	Contractors should note that within 10 calendar days from the initial NOH receipt date, the AdQIC will reply on behalf of all applicable CMS contractors to the NOH and OMHA with a consolidated response. (The consolidated response shall include a Notice of Election form for each applicable CMS contractor for a given NOH.)	X	X	X	X					
10641.13	Contractors shall, if an amended NOH is issued and they wish to change their method of participation, notify/work with the AdQIC and OMHA, as applicable.  NOTE: In the event that OMHA issues an amended NOH, the amended NOH email will be sent from OMHA directly to the AdQIC. The AdQIC will alert all applicable CMS contractors of the amended NOH within 2 calendar days of receipt of the amended NOH email from OMHA. CMS contractor participation roles, as determined via the prioritization process in the response to the original NOH and submitted to OMHA via a Notice of Intent (NOI), shall remain intact following issuance of an amended NOH by OMHA--absent explicit contractor request.	X	X	X	X					
10641.14	Contractors shall be aware that certain ALJ related activities occur outside of the AdQIC	X	X	X	X					

Number	Requirement	Responsibility								
		A/B MAC			DME MAC	Shared-System Maintainers				Other
		A	B	HHH		FISS	MCS	VMS	CWF	
	<p>portal, to include:</p> <ul style="list-style-type: none"> <li>• Elections prior to receipt of a formal NOH;</li> <li>• Notifying other parties to an appeal of a contractor's intent to participate;</li> <li>• Distributing copies of all submitted position papers, written testimony, and/or evidence to the ALJ and other appropriate parties (including in response to amended NOHs); and</li> <li>• Requests for leave.</li> </ul> <p>For such actions, the contractor shall ensure their actions coincide with regulatory instruction.</p>									
10641.15	Contractors wishing to object to the time and/or place of a hearing should do so through written notification to the ALJ, as soon as possible but no later than 5 calendar days prior to the hearing.	X	X	X	X					

### III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility				
		A/B MAC			DME MAC	CEDI
		A	B	HHH		
	None					

### IV. SUPPORTING INFORMATION

**Section A: Recommendations and supporting information associated with listed requirements: N/A**

*"Should" denotes a recommendation.*

<b>X-Ref Requirement Number</b>	<b>Recommendations or other supporting information:</b>
---------------------------------	---

**Section B: All other recommendations and supporting information:** N/A

## V. CONTACTS

**Pre-Implementation Contact(s):** Jennifer Phillips, 410-786-1023 or Jennifer.Phillips@cms.hhs.gov

**Post-Implementation Contact(s):** Contact your Contracting Officer's Representative (COR).

## VI. FUNDING

### **Section A: For Medicare Administrative Contractors (MACs):**

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

**ATTACHMENTS: 0**



### **3.9 - Defending Medical Review Decisions at Administrative Law Judge (ALJ) Hearings**

*(Rev.:853, Issued: 01-04-19; Effective: 02-05-19; Implementation: 02-05-19)*

This section in its entirety applies to MACs. This section applies to Recovery Auditors, CERT, UPICs, and the SMRC, as indicated in their SOWs.

#### **Overview:**

Effective March 20, 2017 several changes were made to the regulations that outline the activities related to contractor participation in ALJ hearings. Under the new regulations, CMS contractors are limited to 3 roles in an ALJ hearing: a Participant, a Party, or a Witness (defined in detail below). These changes are outlined in 42 CFR §405.1010 and 42 CFR §405.1012.

A physician overseeing participation shall be a current Contractor Medical Director (CMD), a contractor employed physician or any combination thereof. Nurses and other staff may assist the physician with the tasks described in this section. While the physician is generally the primary individual overseeing and/or taking party or participant status, a contractor may elect to have an attorney or clinician take party or participant status, or another experienced qualified individual if approved by their COR. In either situation, the contractor must be prepared to discuss details related to the facts of each claim under appeal, the relevant coverage policies and payment requirements, including any clarification required on decisions made earlier in the appeals process. For post-pay audit/overpayment cases, the contractor must be prepared to discuss the background on how the provider/supplier was selected for review, results of the sample case adjudications, as well as matters related to the extrapolation methodology and/or processes.

This section establishes expectations related to the contractor's participation and associated coordination activities, although CMS may provide additional guidance and direction as needed. Further rules and procedures related to the ALJ hearing process are contained in 42 CFR §405.1000.

The MAC shall capture and report the ALJ participation and party data in their monthly status report to CMS. Contractors shall record the frequency of their support as a witness in the narrative field of the monthly status reports. Contractors shall ensure that JOAs are sufficient to support the ALJ hearing process and related coordination activities.

#### **Role of the Participant:**

In accordance with the revised regulation under 42 CFR Part §405.1010(c) and (d), all contractors' participation as a participant (i.e., non-party) shall be limited to submitting written testimony and/or position papers (except in those instances when non-party participants are able to provide testimony to clarify factual or policy issues in the case—as noted in the scenario below).

The regulations do not prohibit multiple CMS contractors and/or related entities from participating in the ALJ hearing as a participant. However, if no contractor or CMS invokes party status, then the first entity to submit their election to participate as a non-party participant to the ALJ may participate in the oral hearing (limited to clarification of factual or policy issues, as requested by the ALJ). All other entities may participate, but are precluded from the hearing and may only submit written testimony and/or position papers as indicated in 42 CFR §405.1010(d)(1) and (2). If the contractor is able to participate in the hearing, they shall be adequately prepared to respond to questioning by the ALJ regarding all issues related to the claims under appeal. Because participation status does not include the same rights as full party status, the contractor may not call witnesses or cross-examine witnesses of another party, as indicated in 42 CFR §405.1010(c)(1).

(Note: At this time, CMS would not expect contractors to be responsible for clarifying factual or policy issues for cases/claims outside of their jurisdiction.)

## Role of the Party:

Contractors shall invoke party status in ALJ hearings in accordance with the regulatory provisions in 42 CFR § 405.1012 and the CMS-prescribed prioritization process, described below, for cases or items/services of interest to CMS. Under 42 CFR §405.1012(d)(1), the first contractor to invoke party status with the ALJ is made the party to the hearing. All other contractors who invoke party status for that particular hearing are made participants and are precluded from the hearing (See Role of the Participant section above).

Note: At this time, CMS would not expect contractors to be responsible for representing cases/claims outside of their jurisdiction.

If the contractor is interested in a particular case, but is precluded from invoking party status based on the CMS-prescribed prioritization of cases or otherwise, the contractor may request 'leave' from the ALJ in accordance with 42 CFR §405.1012(d)(2). *The request for 'leave' process occurs outside of the Administrative Qualified Independent Contractor (AdQIC) portal, described below.* In submitting a request for 'leave' to the ALJ, the contractor is formally requesting that the ALJ grant the contractor the right to be a secondary party to the hearing. Requests for 'leave' to the ALJ shall also include the reason(s) why the contractor believes that their presence as a secondary party in the ALJ Hearing is necessary. The ALJ shall make the determination as to whether the contractor is granted 'leave.' If this is approved, the contractor shall become a secondary party to the hearing. Alternatively, *if denied*, the contractor may participate as a *participant or as a* witness, based on the circumstance. (See Role of Witness section for additional information).

As a party, the contractor is able to orally participate in the hearing and may file position papers, call witnesses, and/or cross-examine witnesses of other parties. The contractor shall submit any position paper or additional evidence requested by the ALJ in accordance with 42 CFR §405.1012(c)(2)(i) and (ii). The contractor shall be adequately prepared to respond to questioning by the ALJ or other parties regarding all issues related to the claims under appeal. As a party to the hearing, contractors are subject to discovery by the other party to the hearing in accordance with 42 CFR §405.1037.

For Notice of Hearings (NOHs) received that include issues deemed significant by CMS or the contractor, the contractor shall, at a minimum:

- Invoke party status in ALJ cases per volume of ALJ cases funded for this activity;
- Participate in any pre-ALJ hearing conference calls, as needed, with other contractors (as facilitated by the appropriate *Qualified Independent Contractor (QIC)*);
- Coordinate with Medical Director(s) or related personnel from other contractors intending to participate as consultants/expert witnesses, as necessary, in accordance with 42 CFR §405.1010(d)(3). In addition, the MAC shall coordinate with other contractors for those hearings in which they do not invoke party status, but decide to participate as a consultant/expert witness; and/or,
- Participate in the hearings as a party via telephone, video teleconferencing, or in-person.

## Role of the Witness:

If the ALJ declines the request for contractor 'leave' on a particular hearing, the contractor may be called as a 'witness' by CMS or another CMS contractor that is a party to the hearing. A determination regarding the need for a 'witness' by the participating party shall be determined by the party and communicated to the contractor prior to the hearing. Contractors should, at their discretion, participate as a 'witness' in any case in which another CMS contractor and/or CMS has requested their support in a hearing. Contractors shall notify the requesting party no later than 10 days prior to the scheduled hearing in those instances in which contractors are unable to support the hearing as a 'witness.' As a 'witness,' contractors shall be tasked with

supporting the party to the hearing in responding to policy or factual issues related to a particular case through direct examination and is subject to cross examination by the opposing party.

*Note: Contractors who are interested in acting as a witness may indicate their interest via the AdQIC Portal. CMS contractors may indicate interest in participating as a witness without first making a request for 'leave' with an ALJ. Additionally, in accordance with 42 CFR §405.1020, witness designations/elections shall be made during the coordination of interest/role selection process, as described below, and shall be included in the response to a given NOH.*

### **3.9.1 - Election of Status**

*(Rev.:853, Issued: 01-04-19; Effective: 02-05-19; Implementation: 02-05-19)*

The contractor shall establish a process for assessing the *NOHs* received to determine which cases should be selected for participation, as well as the type of participation (participant, party, or witness) to be employed. Factors to be examined should include, but not be limited to: originator of initial denial, policy implications, dollars at issue, program integrity matters, and the extent to which a particular issue is, or has been, a recurring issue at the ALJ level of appeal.

Contractors shall, for those cases in which they were the medical reviewer issuing the denial subject to appeal, have a prioritized ability to invoke party status (in lieu of other appeals support contractors). This process is further described below.

#### **A. Election of Participation Status Prior to Receipt of a Formal NOH**

The election to participate as a participant shall be made consistent with 42 CFR §405.1010 and can be done either prior to receipt of a formal NOH or after the receipt of a formal NOH.

The regulations allow CMS contractors to elect to participate as a participant before issuance and/or receipt of the formal NOH. See section of 42 CFR §405.1010(b)(1) for additional information. If the contractor elects to participate before the receipt of the NOH, it shall send written notice of its intent to the assigned ALJ or attorney adjudicator, or the designee of the Chief ALJ, if no contact assigned yet, and to all parties on the reconsideration (per the prescribed OMHA process) within 30 calendar days after notification that a request for hearing had been filed. In accordance with the regulations, a position paper or written testimony must either be submitted within 14 calendar days of an election to participate, if no hearing has been scheduled, or no later than 5 calendar days prior to the hearing, if a hearing is scheduled, unless the ALJ grants additional time to submit the position paper or written testimony. *Contractors should note that there is a risk that the case may be later resolved by the ALJ, or an Attorney Adjudicator within the OMHA, without a hearing.*

#### **B. Election of Participation or Party Status Following Receipt of the Formal NOH**

The election to be a participant or a party to a hearing after receipt of the formal NOH shall be made consistent with 42 CFR §405.1010(b) or 42 CFR §405.1012, respectively, and the CMS-prescribed prioritization process, described below. If through the CMS-prescribed *p*rioritization process it is determined that the contractor may act as either the party or a participant to a hearing, elections of participation must be sent by the Contractor within 10 calendar days of receipt of the NOH at the *AdQIC* to all parties listed on the NOH. Submission of a position paper, written testimony, and/or evidence must be submitted no later than five calendar days before the date of the scheduled hearing. Copies of these items must also be sent to those parties listed on the NOH in accordance with 42 CFR §405.1010(c)(3)(ii) and 42 CFR §405.1012(c)(2)(ii).

#### **C. CMS-prescribed Prioritization *Process and AdQIC Portal for* Providing a Response to the Formal NOH**

*As the AdQIC is tasked with coordinating contractor interest in participation among the related CMS contractors and/or CMS, all NOHs will be sent directly to the AdQIC from the OMHA. The AdQIC, within two (2) calendar days of receipt of the formal NOH from OMHA, will create a record in the AdQIC portal*

*that will generate an email notification to all applicable CMS contractors (e.g., DME MAC, A/B MAC, UPIC, SMRC, and/or RAC) notifying them that a hearing has been scheduled.*

*Upon receipt of the formal NOH e-mail alert, all applicable CMS contractors shall log onto the AdQIC website, <https://participation.q2a.com>, to access the NOH information. All applicable CMS contractors shall make their elections, via the AdQIC website, within five (5) calendar days of the formal NOH e-mail sent date. To make an election, contractors must sign-in on the website (see above), and a dashboard will be available listing all appeals for the respective contractor that they may choose to participate in. Users can also search for appeals based on the information provided in the notification email. Next, the contractors shall select the applicable NOH identifier and complete/submit the CMS Contractor Participation Form indicating for each appeal whether they would like to participate as a party, participant, or witness, and/or if they would like to call a witness if made a party to the hearing. CMS contractors that fail to sign-in to the AdQIC system and make their respective participation role selections, in the required timeframe, may be precluded from the prioritization process.*

*Note: Users will not be able to view the actual NOH document on the site. The web-site/dashboard will allow contractors to view all scheduled hearings for which they received an NOH.*

*For all NOH communications (e.g., NOHs received from OMHA, NOH email alerts) received after standard business hours (e.g., 4:00 p.m., ET) and/or during weekends or business Holidays, as defined by the respective entity, the AdQIC portal is programmed to calculate the response time beginning with the next applicable business day [e.g., if the AdQIC receives the formal NOH on a Friday at 4:00 pm, the five (5) calendar day timeframe begins on Monday (with Monday being day zero (0))].*

The AdQIC *portal* will *evaluate* all *submissions* received and determine which entity shall have the primary opportunity to participate as a ‘party,’ and which entities can participate as ‘participants’ or ‘witnesses’ *based on CMS’ prioritization logic.*

The anticipated prioritization for the role of party status is as follows:

- 1) Primary opportunity for the ‘party’ role in an ALJ hearing will be granted to the entity that conducted the initial claim denial (e.g., ZPIC/UPIC, RAC, SMRC or medical review unit within the MAC).
- 2) If the entity that issued the initial claim denial does not have interest in participating as a party (due to workload considerations or otherwise) the QIC will have the primary opportunity to participate as a party.
- 3) If no CMS contractors and/or CMS wish to invoke ‘party’ status in a hearing and multiple entities wish to be a participant, the primary participant shall be the entity that conducted the initial claim denial (e.g., ZPIC/UPIC, RAC, SMRC, or medical review unit within the MAC).
- 4) If the entity that identified/conducted the initial claim denial does not wish to be the ‘primary’ participant on the case, the QIC will have the next opportunity to assume this role.

The *AdQIC portal* will review *and prioritize contractor* roles in a respective ALJ hearing (i.e., which contractor shall be the ‘party’, ‘participants,’ etc.), within 2 calendar days of receipt of the *completed Contractor Participation forms. The website will automatically calculate the contractor’s Participation Form response due date and each contractor’s role determination, and prioritize participation elections on the next calendar day after the contractor response timeframe expires. Participation/role designations will be sent via a system-generated email notification to any contractors who expressed interest in participation. The status of elections for a given NOH will be available on the AdQIC’s website once determinations have been made and notifications have been sent to the applicable CMS contractors.*

On rare occasion, the QIC may need to facilitate a call with the CMS and the related contractors to determine the roles and/or responsibilities on a particular hearing.

*Within 10 calendar days from the initial NOH receipt date, the AdQIC will reply on behalf of all applicable CMS contractors to the NOH and OMHA with a consolidated response. The consolidated response shall include a Notice of Election form for each applicable CMS contractor for a given NOH.*

*In the event that OMHA issues an amended NOH, the amended NOH email will be sent from OMHA directly to the AdQIC. The AdQIC will alert all applicable CMS contractors of the amended NOH within 2 calendar days of receipt of the amended NOH email from OMHA. CMS contractor participation roles, as determined via the prioritization process in the response to the original NOH and submitted to OMHA via a Notice of Intent (NOI), shall remain intact following issuance of an amended NOH by OMHA. However, if a CMS contractor wishes to change their method of participation following the receipt of an amended NOH, then the CMS contractor shall notify/work with the AdQIC and OMHA, as applicable (e.g., if another CMS contractor was designated as the Party and the QIC was made a non-party Participant, but now the QIC wishes to serve as a Party following the receipt of an amended NOH, then the QIC must request 'leave' with the ALJ and notify the AdQIC if the request for 'leave' is approved).*

#### **D. Communications Outside of the Portal/AdQIC Process**

*While the AdQIC and its prioritization portal provide useful vehicles for assessing information transcribed from the notices of hearing received from OMHA and providing formal response, contractors are reminded of regulatory communications that occur outside of this process.*

*Contractors are reminded that the AdQIC portal and prioritization process is initiated by receipt of an NOH from OMHA. Therefore, Contractors electing status prior to receipt of an NOH shall follow the regulatory process (outlined in 42 CFR §405.1010) to alert OMHA and other parties that were sent a copy of the notice of reconsideration of their intent to participate, which occurs outside of the portal.*

*In accordance with section of 42 CFR §405.1010(b)(2) and (3), if a contractor elects to participate in an ALJ hearing, the contractor (not the AdQIC) shall provide written notice of its intent to participate to the parties who were sent a copy of an NOH. Failure to notify the other parties to the appeal, of the intent to participate, may result in the ALJ determining the contractor's election for a given NOH invalid. This requirement remains applicable in the event of an amended NOH, and contractors shall ensure compliance. All pertinent information (e.g. party names, mailing address) will be available in the portal for a given NOH.*

*Additionally, CMS contractors participating or taking party status shall provide copies of all submitted position papers, written testimony, and/or evidence to the ALJ and other appropriate parties within the time frames as set forth in 42 C.F.R. sections 405.1010, 405.1012, or 423.2010, as applicable. Failure to provide copies of submitted position papers, written testimony, and/or evidence within the required timeframe will result in the submissions not being considered by the respective ALJ. Providing copies of all submitted position papers, written testimony, and/or evidence to the appropriate parties remains applicable in the event an amended NOH is issued and contractors shall ensure compliance.*

*If a contractor requests 'leave' to the ALJ, or formally requests the ALJ to grant the contractor the right to be a secondary party to the hearing, this process occurs outside of the portal.*

The ALJ sets the hearing date, time, and method by video teleconferencing (VTC), telephone, or in-person if VTC is not available or special circumstances exist. A party may object in writing to the time and place of the hearing, as soon as possible before the originally scheduled time *but no later than 5 calendar days prior to the hearing*, and include the reason for the objection along with a proposed alternative date and time. In addition, a party may request an in-person hearing by notifying the ALJ in writing and following the same procedures noted above for an objection to the time/place of the hearing. The ALJ may reschedule if good cause is established per 42 CFR §405.1020(f) or (g).