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## 42 C.F.R. § 405.1010

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### When CMS or its contractors may participate in the proceedings on a request for an ALJ hearing.

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(a) *When CMS or a contractor can participate.* (1) CMS or its contractors may elect to participate in the proceedings on a request for an ALJ hearing upon filing a notice of intent to participate in accordance with paragraph (b) of this section.

(2) An ALJ may request, but may not require, CMS and/or one or more of its contractors to participate in any proceedings before the ALJ, including the oral hearing, if any. The ALJ cannot draw any adverse inferences if CMS or the contractor decides not to participate in any proceedings before the ALJ, including the hearing.

(b) *How an election is made—* (1) *No notice of hearing.* If CMS or a contractor elects to participate before receipt of a notice of hearing, or when a notice of hearing is not required, it must send written notice of its intent to participate to—

(i) The assigned ALJ or attorney adjudicator, or a designee of the Chief ALJ if the request for hearing is not yet assigned to an ALJ or attorney adjudicator; and

(ii) The parties who were sent a copy of the notice of reconsideration or, for escalated requests for reconsideration, any party that filed a request for reconsideration or was found liable for the services at issue subsequent to the initial determination.

(2) *Notice of hearing.* If CMS or a contractor elects to participate after receipt of a notice of hearing, it must send written notice of its intent to participate to the ALJ and the parties who were sent a copy of the notice of hearing.

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