

## 498.60 Conduct of hearing.

---

(a) Participants in the hearing. The hearing is open to the parties and their representatives and technical advisors, and to any other persons whose presence the ALJ considers necessary or proper.

(b) Hearing procedures. (1) The ALJ inquires fully into all of the matters at issue, and receives in evidence the testimony of witnesses and any documents that are relevant and material.

(2) If the ALJ believes that there is relevant and material evidence available which has not been presented at the hearing, he may, at any time before mailing of notice of the decision, reopen the hearing to receive that evidence.

(3) The ALJ decides the order in which the evidence and the arguments of the parties are presented and the conduct of the hearing.

(c) Scope of review: Civil money penalty. In civil money penalty cases -

(1) The scope of review is as specified in §§ 488.438(e) and 488.845(h) of this chapter; and

(2) CMS' determination as to the level of noncompliance of a SNF, NF, or HHA must be upheld unless it is clearly erroneous.