

DEPARTMENT OF COMMUNITY HEALTH

LEGISLATION AND POLICY

CERTIFICATE OF NEED

(By authority conferred on the department of public health by sections 2226, 2233, 22106, 22123, and 22135 of Act No. 368 of the Public Acts of 1978, as amended, and section 9 of Act No. 380 of the Public Acts of 1965, as amended, being SS333.2226, 333.2233, 333.22106, 333.22123, 333.22135, and 16.109 of the Michigan Compiled Laws)

PART 5. ADMINISTRATIVE APPEALS

R 325.9501 Hearing request; eligibility; effect.

Rule 501. (1) An applicant that receives either a proposed decision of the bureau which disapproves 1 or more certificates of need or a notice of reversal by the director of a proposed decision that is an approval may request a hearing, as authorized by the code, to demonstrate that the completed application filed by the applicant meets the requirements for approval under part 222 of the code.

(2) The filing of a request for hearing shall stay issuance of a final decision during the pendency of the hearing before the department.

History: 1986 AACCS; 1996 AACCS.

R 325.9503 Hearing procedure.

Rule 503. (1) A request for a hearing is commenced by filing a request for hearing with the director of the department, 3423 North Martin L. King Jr. Blvd., P.O. Box 30195, Lansing, Michigan 48909.

(2) A request for a hearing shall be filed within 15 days of the applicant's receipt of the bureau's proposed decision or receipt of notice of reversal by the director of a proposed decision that is an approval.

(3) A request for a hearing shall be made in writing and shall include a statement of the grounds for a hearing and a clear and concise statement of the facts and law relied on and the relief sought.

(4) A copy of the request for a hearing shall be served upon the appropriate regional certificate of need review agency. In addition, if the request for a hearing is filed by an applicant in a comparative review, a copy of the request for a hearing shall be served by the applicant upon all other applicants in the comparative group.

(5) The hearing shall commence within 90 days from the date that the department received the request for a hearing, unless waived in writing by the parties. Not less than 10 days before the date set in the notice, the department shall serve notice of the hearing, by placing a copy of the notice in the mail to each, upon the person who filed the request for a hearing, the assistant attorney general assigned to represent the department, and all other persons on whom the request for a hearing was required to be served. The first hearing day shall be utilized as a prehearing conference and may be used for hearing preliminary motions.

(6) If more than 1 request for a hearing is filed with respect to the same bureau decision, the hearings so commenced shall be consolidated and shall be heard and decided as a single hearing. A party shall not be severed from a hearing on a comparative review.

(7) In all hearings by aggrieved applicants, the necessary parties are the department and any aggrieved applicant that perfected its request for a hearing in a timely manner. The bureau shall not be required to file a response to a request for a hearing. In comparative reviews, approved applicants are necessary parties to any hearing.

History: 1986 AACCS; 1996 AACCS.

R 325.9505 Service of documents.

Rule 505. Unless otherwise specified, service of a document upon any party shall be made by personal delivery or by mailing, by registered, certified, or first-class mail, to the last known address of the party or the authorized representative of a party as indicated on the records of the department. Proof of service shall be filed with the department.

History: 1986 AACCS.

R 325.9507 Pleadings.

Rule 507. All pleadings, including a request for a hearing, shall be on 8 1/2-inch by 11-inch paper and shall contain the certificate of need application number as part of the caption and the case number, if assigned. All pleadings may also be submitted electronically in a mutually agreed upon media.

History: 1986 AACCS; 1996 AACCS.

R 325.9509 Form of hearing.

Rule 509. (1) A request for a hearing shall be titled "In the matter of (name of appellant or appellants)." The caption shall appear at the upper left side of the first page of each filed pleading or document other than an exhibit.

(2) The first page of a pleading or document, other than an exhibit, shall show the case number, if assigned, at its upper right side opposite the caption.

History: 1986 AACCS; 1996 AACCS.

R 325.9511 Authorization and assignment of hearing officers.

Rule 511. The department may designate and authorize hearing officers to be the hearing officers in the hearings.

History: 1986 AACCS; 1996 AACCS.

R 325.9513 Adjournment.

Rule 513. A party may request an adjournment of a scheduled hearing by motion to the hearing officer assigned to conduct the hearing. The hearing officer shall not rule on the request until all other parties have had an opportunity to be heard on the request. However, if all parties agree to the adjournment, then the hearing officer may be advised of the agreement by telephone and may rule on the request immediately.

History: 1986 AACCS; 1996 AACCS.

R 325.9515 Hearing officer; conduct of hearing.

Rule 515. (1) The hearing officer shall govern the conduct of a hearing and the order of presentation of arguments and evidence.

(2) Upon his or her own motion or that of a party, the hearing officer, for good cause, may order that issues be severed and briefed or argued separately.

(3) Sections 71 to 87 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.271 to 24.287 of the Michigan Compiled Laws, shall govern the hearings.

(4) Upon written request by a party, the hearing officer may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(5) Unless the bureau determined that the applicant demonstrated a need for the proposed project pursuant to section 22225(1) of the code, the scope of the hearing shall be limited to demonstrating compliance with section 22225(1) of the code. If the applicant has demonstrated compliance with section 22225(1) of the code.

the code, then the scope of the hearing may involve demonstrating compliance with section 22225(2) of the code.

History: 1986 AACS; 1996 AACS.

R 325.9517 Withdrawal of request for hearing; agreement.

Rule 517. At any time before a final decision is issued by the director of the department, a party may withdraw its application or request for a hearing or the party or parties to a hearing may negotiate an agreement disposing of the whole case or a part of the case.

History: 1986 AACS; 1996 AACS.

R 325.9519 Preliminary motions; prehearing conference.

Rule 519. (1) Not less than 5 days before the date set for the first hearing in the notice, all preliminary motions shall be filed, unless the hearing officer, for good cause shown, permits the filing of such motions at a later date.

(2) On the date set for the hearing in the notice, the hearing officer shall first hear all pending preliminary motions. Thereafter all motions are to be made and heard at the discretion of the hearing officer. Motions of a procedural nature shall be decided by the hearing officer as they are made. Motions of a substantive or dispositive nature shall be taken under advisement and decided as part of the hearing officer's proposal for decision.

(3) On the date set for the hearing in the notice, after hearing all pending preliminary motions, if any, the hearing officer shall hold a prehearing conference as provided for in these rules.

History: 1986 AACS; 1996 AACS.

R 325.9521 Interrogatories; depositions.

Rule 521. (1) Upon stipulation of all of the parties to a case, written interrogatories or requests for admissions may be served on a party in the same manner as in a nonjury civil case in circuit court.

(2) Depositions shall only be taken for the purposes of obtaining testimony at a hearing. Before taking a deposition, the hearing officer shall find that it is impractical or impossible to have a witness testify at the hearing. When depositions are permitted, they shall be taken in the same manner as in a nonjury civil case in circuit court.

History: 1986 AACS; 1996 AACS.

R 325.9523 Testimony.

Rule 523. Upon the request of a party and for good cause shown, the hearing officer may allow the direct testimony of a witness being presented on behalf of the requesting party to be submitted in written form, together with any exhibits to be sponsored by the witness, before hearing. Such direct testimony shall be sworn and notarized, be submitted in typewritten form on 8 1/2-inch by 11-inch paper, and be in question and answer form. The direct testimony of each witness so submitted shall be made a separate exhibit, and the name and address of the witness, together with the caption of the case, shall appear on the cover sheet. The exhibit shall be served on all parties on a date set by the hearing officer, but not less than 5 days before its introduction at the hearing. Each witness is required to be present at the hearing to introduce his or her written testimony as an exhibit and for cross-examination at such date, time, and place as directed by the hearing officer. In any case, and upon request therefor, a party shall have the right, notwithstanding any provision of this rule, to have any witness on the party's behalf present the party's direct testimony orally before the hearing officer.

History: 1986 AACS; 1996 AACS.

R 325.9525 Issuance of final decision by the department director.

Rule 525. (1) After the conclusion of a hearing, the hearing officer, if other than the director of the department, shall deliver, to the director of the department, the official case file and the hearing officer's proposal for decision. The hearing officer shall serve the proposal for decision upon the parties by first-class or certified mail or by personal service. Each party shall have 20 days from the date of service of the proposal for decision to file exceptions or present written arguments to the director. Exceptions and written arguments shall be served on all parties, who shall have 10 days to file their replies to the exceptions with the director of the department and serve the replies on the parties.

(2) After review of the record or the proposal for decision, exceptions thereto, and replies, if any, the director of the department shall issue a final decision stating the findings of fact, conclusions of law, and the final decision or an order for further proceedings. The director of the department shall serve copies of the final decision upon all parties.

(3) All applications that are part of a comparative review shall be decided in 1 final decision.

(4) The final decision of the director of the department may be appealed only by the applicant and only on the record directly to the circuit court for the county where the applicant has its principal place of business in this state or the circuit court for Ingham county. Judicial review shall be governed by sections 101 to 106 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.301 to 24.306 of the Michigan Compiled Laws.

History: 1986 AACCS; 1996 AACCS.