

**DEPARTMENT OF COMMUNITY HEALTH**

**MEDICAL SERVICES ADMINISTRATION**

**MSA PROVIDER HEARINGS**

(By authority conferred on the director of the department of social services by sections 6 and 9 of Act No. 280 of the Public Acts of 1939, as amended, being SS400.6 and 400.9 of the Michigan Compiled Laws)

**R 400.3401 Definitions.**

Rule 1. As used in these rules:

(a) "Adverse action" includes, but is not limited to:

(i) A suspension or termination of provider participation in the medical assistance program.

(ii) A denial of an applicant's request for participation in the medical assistance program.

(iii) A denial, revocation, or suspension of a license or certification issued by the department to allow a facility to operate.

(iv) The reduction, suspension, or adjustment of provider payments.

(v) Retroactive adjustments following the audit or review and determination of the daily reimbursement rates for institutional providers.

(b) "Applicant" means an individual, firm, corporation, association, agency, institution, or other legal entity that has made formal application to participate in the medical assistance program as a provider.

(c) "Bureau" means the bureau of medical assistance of the Michigan department of social services.

(d) "Bureau director" means the director of the bureau of medical assistance, Michigan department of social services.

(e) "Bureau representative" means a person, agency, or entity which is authorized to review the patient care rendered by a provider or applicant or which is authorized to make audits and reviews of the records, procedures, reports, accounting methods, and billing practices of the provider or applicant, as well as the propriety of same.

(f) "Delegate" means a person who is authorized to act on behalf of the bureau director.

(g) "Department" means the Michigan department of social services, its officials, or agents.

(h) "Director" means the director of the Michigan department of social services.

(i) "Final determination notice" means a notice of an adverse action which includes the action to be taken; the date of the proposed action; the reason for the action; the statute, rule, or guideline under which the action is taken; and the right to a hearing.

(j) "Hearing authority" means the person appointed by the director to decide appeals from decisions of an administrative law judge.

(k) "Medical assistance program" means the department's program to provide for medical assistance established by section 105 of Act No. 280 of the Public Acts of 1939, as amended, being S400.105 of the Michigan Compiled Laws, and title XIX of the federal social security act, 42 U.S.C. S1396 et seq.

(l) "Notice," when notification by the department is indicated or required, means notice which meets the requirements of section 71(2) of Act No. 306 of the Public Acts of 1969, being S24.271(2) of the Michigan Compiled Laws. Notification shall be by certified or registered mail, with return receipt requested, to the last address of the provider or other party on file with the department.

(m) "Provider" means an individual, firm, corporation, association, agency, institution, or other legal entity which is providing, or has been approved to provide, medical assistance to a recipient pursuant to the medical assistance program.

(n) "Recipient" means an individual receiving medical assistance through the department.

History: 1979 AC.

**R 400.3402 Preliminary conference; initial findings; request for bureau conference; final determination letter.**

Rule 2. (1) The bureau shall, prior to the taking of an adverse action, hold a preliminary conference with the provider or applicant, or with the representative thereof, to discuss the results of the investigation. The provider or applicant shall be advised of the preliminary conference in writing. The provider or applicant may submit any additional information which the provider or applicant wishes to be considered prior to the closing of the investigation.

(2) Within 10 calendar days of the completion of the preliminary conference, the bureau representative shall inform the provider or applicant, in written form, of his initial findings including copies of all written reports which influenced the findings. At the same time, the bureau representative shall inform the provider or applicant of the right to a conference with the bureau director or his delegate.

(3) Within 20 calendar days of receipt of the initial findings by the provider or applicant, the provider or applicant may request, in writing, a bureau conference. If the provider or applicant makes a timely request for a bureau conference, the provider or applicant shall, at the same time, submit a written response to the initial findings.

(4) If no timely request for a bureau conference is made by a provider or applicant, a final determination letter shall be mailed pursuant to R 400.3405.

History: 1979 AC.

**R 400.3403 Bureau conference.**

Rule 3. (1) The bureau director or his delegate shall hold a conference with a provider or applicant prior to the determination of an adverse action upon request of the provider or applicant. The bureau director or his delegate shall review the initial findings and the written statements or oral statements, or both, of the provider or applicant.

(2) If the bureau conference is held by a delegate, the delegate shall make a recommendation to the bureau director. The recommendation shall be prepared and shall address itself to the initial findings and the written or oral statements of the provider or applicant. A copy of that recommendation shall be forwarded to the provider or applicant within 10 calendar days after the end of the conference.

History: 1979 AC.

**R 400.3404 Decision to take an adverse action.**

Rule 4. (1) The bureau director shall, within 30 days after the completion of the bureau conference, decide whether to take an adverse action against an applicant or provider.

(2) The bureau director may, in his discretion, consult with independent professional personnel in the applicable field, as long as the recommendations of such professionals are in writing, are made available to all parties of the hearings, and are incorporated in the record.

History: 1979 AC.

**R 400.3405 Final determination notice.**

Rule 5. Prior to the taking of an adverse action, the provider shall receive a final determination notice.

History: 1979 AC.

**R 400.3406 Formal hearing.**

Rule 6. (1) A provider or applicant is entitled to a hearing pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being S24.271 et seq. of the Michigan Compiled Laws, in any case in which there has been a final determination of an adverse action as defined in R 400.3401, except where that action is predicated upon the situation described in subrule (2).

(2) A request for a formal hearing shall not be granted if the adverse action is the result of the revocation, suspension, or termination, by an authority other than the department, of the provider's license or certification to practice in the provider's profession or to operate a nursing home, hospital, or other such medical facility, and if the department is in receipt of a certified copy or formal notification of such revocation, suspension, or termination.

(3) A formal hearing shall be granted if the revocation, suspension, or termination of the provider's license, certification, or authorization is the result of a department action, unless the provider previously had an opportunity to have that action reviewed.

(4) Unless a written request for a formal hearing is received within 30 calendar days of notification of intent to terminate, the provider's participation shall automatically terminate as of the thirtieth calendar day after date of notification. Such termination shall then be a final and binding administrative determination.

(5) The request shall identify those aspects of the determination with which the provider or applicant is dissatisfied; shall explain why the provider or applicant

believes the determination on those matters is incorrect; shall set out the dollar amount involved, if any; and shall be submitted with any documentary evidence the provider or applicant considers necessary to support its position.

History: 1979 AC.

**R 400.3407 Suspension and adjustment of program payments.**

Rule 7. (1) Regardless of any request for a hearing, payments on pending and subsequently submitted bills may be immediately suspended, in whole or in part, if the bureau director determines that the practice set out in the final determination requires immediate action to protect the health, safety, or welfare of recipients or the general public. This subrule does not prejudice the provider's right to a hearing as provided in R 400.3406. Any hearing requested pursuant to this subrule shall be commenced forthwith if requested by the provider.

(2) The final determination notice shall constitute the basis for making retroactive adjustment of any program payments made to the provider during the period to which the determination applies, including the suspension of further payments to the provider, in order to recover, or to aid in the recovery of, an overpayment identified in the determination to have been made to the provider or applicant. If the provider or applicant requests a hearing, adjustments and recovery shall not be made, except as provided in subrule (1), until 10 days after the mailing of the hearing decision as provided in R 400.3424.

History: 1979 AC.

**R 400.3408 Filing final determination notice with bureau of administrative hearings.**

Rule 8. The bureau of medical assistance shall file with the bureau of administrative hearings, within 30 days after receipt by the department of the hearing request, a copy of the final determination notice and supporting documentation.

History: 1979 AC.

**R 400.3409 Notice of hearing.**

Rule 9. Notice of the time, date, place of hearing, and name of the administrative law judge shall be mailed to the parties, or their designated representative, not less than 10 days before the date of the hearing.

History: 1979 AC.

**R 400.3410 Appearance and representation.**

Rule 10. In any pending procedure.

(a) A natural person may appear and be heard on that person's own behalf, through an attorney at law, or through a designated representative.

(b) A corporation may appear and present evidence by any bona fide officer or employee, through an attorney at law, or through a designated representative. All persons appearing in proceedings before the department shall conform to the standards of conduct practiced by attorneys before the courts of this state. If a person does not conform to the standards, the administrative law judge may decline to permit the person to appear in the proceeding, or may exclude the person from the proceeding.

History: 1979 AC.

#### **R 400.3411 Notice of appearance.**

Rule 11. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider or applicant, identifying himself by name, address, and telephone number, and identifying the party represented, and shall have a written authorization to appear on behalf of the provider or applicant. The department shall notify the bureau of administrative hearings and the provider or applicant of the name and telephone number of its representative.

History: 1979 AC.

#### **R 400.3412 Papers filed in proceeding; formal requirements.**

Rule 12. (1) All papers filed in a proceeding shall be typewritten and double-spaced on standard legal sized white paper, using 1 side of the paper only. The papers shall have a cover sheet, with a caption clearly showing the title of the proceeding in connection with which such papers are filed, together with the register number, if any.

(2) All papers shall be signed by the party attorney, or a designated representative, and shall contain the signer's business address and telephone number. The original shall be filed with the bureau of administrative hearings.

History: 1979 AC.

#### **R 400.3413 Service and proof of service.**

Rule 13. (1) All papers, notices, and other documents shall be served by the party filing them upon all parties to the proceeding. Proof of that service upon all parties shall be filed with the bureau of administrative hearings.

(2) Service shall be made by delivering in person, or by depositing in the United States mail, properly addressed with postage prepaid, 1 copy to each party entitled thereto. When any party has appeared by attorney, service upon the attorney shall be deemed service upon the party.

(3) Proof of service of a paper shall be by affidavit or acknowledgement.

History: 1979 AC.

**R 400.3414 Computation of time periods.**

Rule 14. In computing any period of time prescribed or allowed, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until 5 p.m. of the next business day which is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is 7 days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

History: 1979 AC.

**R 400.3415 Certification of documents.**

Rule 15. The signature of a person signing a document constitutes a certification that he has read the document and that, to the best of his knowledge, information, and belief, every statement contained in the instrument is true.

History: 1979 AC.

**R 400.3416 Hearing extensions and postponements.**

Rule 16. Upon good cause shown, the administrative law judge may grant extensions of time or postponements of a hearing.

History: 1979 AC.

**R 400.3417 Prehearing conference.**

Rule 17. The administrative law judge, on his own motion or at the request of a party, may hold a prehearing conference, to be held in an office or place designated by the bureau of administrative hearings before an administrative law judge. The conference shall be convened for, but not limited to, the following purposes:

- (a) The simplification of factual and legal issues.
- (b) The necessity or desirability of amendments to the pleadings.
- (c) The making of admissions or stipulations of fact, including all material facts that are pertinent to the dispute.
- (d) The identification of witnesses and exchange of information regarding the subject matter of their testimony.
- (e) The identification and exchange of documentary evidence to be introduced at the hearing.
- (f) The consideration of the possibilities for settlement of the issues.
- (g) The discussion of such other matters as may aid in the simplification and disposition of the proceedings.

History: 1979 AC.

**R 400.3418 Administrative law judge; powers.**

Rule 18. In addition to the powers granted in chapter 4 of Act No. 306 of the Public Acts of 1969, an administrative law judge shall have the power to:

- (a) Administer oaths or affirmations.
- (b) Sign and issue subpoenas in the name of the agency, requiring attendance and the giving of testimony by witnesses.
- (c) Sign and issue subpoenas in the name of the agency for the production of books, papers, and other documentary evidence to the extent permitted by law.
- (d) Regulate the course of a hearing, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.
- (e) Provide for the taking of testimony by depositions.
- (f) Rule upon offers of proof and to receive evidence.
- (g) Hold conferences before or during the hearing for the purpose of simplification of issues and for such other purposes as the demands of justice require.
- (h) Rule on motions and to dispose of procedural requests or similar matters.
- (i) Prescribe general rules of hearing decision or conduct.
- (j) Determine any and all issues presented at the hearing, including the denial of an application or termination of a provider from the medical assistance program.

History: 1979 AC.

**R 400.3419 Rules of discovery.**

Rule 19. Insofar as is practical, the administrative law judge shall follow the rules of discovery as applied in a nonjury civil case, as contained in the Michigan general court rules.

History: 1979 AC.

**R 400.3420 Hearing procedure generally; evidence; filing of written statements.**

Rule 20. (1) Procedure shall be in accordance with chapter 4 of Act No. 306 of the Public Acts of 1969. The hearing shall be open to the parties, their designated representatives, and to such other persons as the administrative law judge deems proper. The administrative law judge shall receive in evidence the relevant testimony of witnesses and any documents which are relevant and material to the subject of the hearing, pursuant to section 75 of Act No. 306 of the Public Acts of 1969. The order in which evidence and allegations are presented, and the procedure at the hearing, shall be at the discretion of the administrative law judge, and shall be of such a nature as to afford the parties due process.

(2) The parties, upon their request, shall be allowed a reasonable time, not to exceed 15 days after the close of the hearing, for the filing of written statements in support of their positions.

History: 1979 AC.

**R 400.3421 Confidentiality.**

Rule 21. At all times during the procedures outlined in these rules, measures shall be taken to insure the confidentiality of all privileged medical information and to safeguard the disclosure and use of information regarding recipients of medical assistance.

History: 1979 AC.

**R 400.3422 Record of proceedings.**

Rule 22. A complete record of the proceedings at the hearings shall be made. The testimony shall be transcribed and copies of other documentary evidence shall be reproduced in any case when directed by the administrative law judge. The record shall also be transcribed and reproduced at the request of a party to the review, if that party bears the cost thereof.

History: 1979 AC.

**R 400.3423 Recommended decision of administrative law judge; exceptions.**

Rule 23. (1) As soon as practicable after the close of a hearing, the administrative law judge shall prepare a recommended decision in the case, which shall be based upon the evidence adduced at the hearing or otherwise included in the record. The recommended decision shall be made in writing and shall contain findings of fact and conclusions of law. A copy of the recommended decision shall be mailed to each party to the hearing at that party's last known address.

(2) Any party may, within 10 days of the administrative law judge's decision, file exceptions for the consideration of the director or hearing authority. The exceptions shall be mailed to all parties and shall be made a part of the record.

History: 1979 AC.

**R 400.3424 Final decision of director or hearing authority.**

Rule 24. The director or hearing authority shall render a final decision in each case based upon the evidence in the record not later than 45 days after the administrative law judge makes his recommendation. The decision shall be made in writing. A copy of the decision shall be mailed to each party at the party's last known address. Copies of all decisions of the director or hearing authority shall be accessible to the public at the state office of the department. Copies may be obtained at actual cost.

History: 1979 AC.



**R 400.3425 Nonapplicability of rules to alternate method of hospital reimbursement.**

Rule 25. R 400.3401 to R 400.3423 do not apply to the alternate method of hospital reimbursement. That method shall follow the procedures in the approved state medical assistance plan.

History: 1979 AC.