

CODE OF MASSACHUSETTS REGULATIONS  
TITLE 801: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE  
CHAPTER 1.00: STANDARD ADJUDICATORY RULES OF PRACTICE AND PROCEDURE  
Current with amendments received through Register Number 810

GENERAL NOTES

801 CMR 1.00 is promulgated pursuant to St. 1978, c. 60, which amended M.G.L. c. 30A. Issues not addressed in 801 CMR 1.00 or for which a party seeks clarity are to be considered in light of the entire M.G.L. c. 30A. 801 CMR 1.00 is applicable to those state administrative agencies bound by the mandate of M.G.L. c. 30A and shall become effective 90 days after publication by the State Secretary and will govern only adjudicatory proceedings commenced after the effective date. Existing agency rules will thus remain in effect for an indefinite period in the future, applicable to preexisting matters.

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1.01: Formal Rules

(1) Preamble. > 801 CMR 1.01 of the Standard Adjudicatory Rules of Practice and Procedure is a self-contained segregable body of regulations of general applicability for proceedings in which formal rules are desired. An Agency must determine for any class of hearing whether or not to hold hearings under > 801 CMR 1.01 or > 801 CMR 1.02 Informal/ Fair Hearing Rules.

All notices sent by an Agency shall state whether > 801 CMR 1.01 or > 801 CMR 1.02 shall be applicable. > 801 CMR 1.03 is applicable to all hearings held pursuant to 801 CMR 1.00.

(2) Scope, Construction and Definitions.

(a) Scope

1. General. 801 CMR 1.00 govern the conduct of Adjudicatory Proceedings of all Commonwealth agencies within the executive offices except as otherwise provided hereafter.

2. Applicability. 801 CMR 1.00 is not applicable to those agencies and/or proceedings which are not governed by M.G.L. c. 30A including: the legislative and judicial departments, the governor and council; military or naval boards; commissions or officials; the Department of Corrections; the Department of Youth Services; the Parole Board; the Division of Industrial Accidents of the Department of Labor and Industries; the Division of Personnel Administration; the Civil Service Commission; the Appellate Tax Board; the Labor Relations Commission; the Board of Arbitration Conciliation; and the Office of Employee Relations.

(b) Construction. 801 CMR 1.00 shall be construed to secure a just and speedy determination of every proceeding.

(c) Definitions. The following words when used in 801 CMR 1.00, except as otherwise required by the context shall have the following meaning:

1. **Adjudicatory Proceeding.** A proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right, by provision of M.G.L. c. 30A, or by any other provision of the General Laws to be determined, after opportunity for an agency hearing, but does not include: [a] proceedings solely to determine whether the agency shall institute or recommend institution of proceedings in a court; or [b] proceedings for the arbitration of labor disputes; or [c] proceedings for the disposition of grievances of employees of the Commonwealth; or [d] proceedings to classify or reclassify, or to allocate or reallocate, appointive offices and positions in the government of the Commonwealth; or [e] proceedings to determine the equalized valuations of the several cities and towns; or [f] proceedings for the determination of wages under M.G.L. c. 121, S 26T.

2. **Agency.** Any department, board, commission, division or authority within the executive branch of state government, the subdivision of any of the foregoing, or an official of the executive branch of state government.

3. **Authorized Representative.** An attorney, legal guardian or other person authorized by a Party to represent him in an Adjudicatory Proceeding.

4. **Papers.** All written communications filed in an Adjudicatory Proceeding, including motions, pleadings, and other documents.

5. **Party.** The specifically named Person(s) whose legal rights, duties or privileges are being determined in an Adjudicatory Proceeding; and other Person(s) who as a matter of constitutional right or by any provision of the General Laws is entitled to participate fully in the proceeding; or any Person allowed by an adjudicating Agency to intervene.

6. **Person.** An individual or legal entity(ies).

7. **Petitioner.** The Party who initiates an Adjudicatory Proceeding.

8. **Presiding Officer.** The individual(s) authorized by law or duly designated by the Agency to conduct Adjudicatory Proceedings.

9. **Respondent.** Party or the Agency who must make an answer in an Adjudicatory Proceeding.

### (3) Representation.

(a) **Appearance.** An individual may appear in his own behalf. A duly authorized officer or employee may represent a corporation, an authorized member may represent a partnership or joint venture, and an authorized trustee may represent a trust. Any Party in an Adjudicatory Proceeding shall have the right to be accompanied, represented and advised by an Authorized Representative.

(b) **Notice of Appearance.** An appearance shall be made in every Adjudicatory Proceeding by filing a written notice with the Agency or Presiding Officer. Such notice shall contain the name, address and telephone number of the Authorized Representative.

### (4) Time.

(a) **Timely Filing.** Papers required or permitted to be filed under 801 CMR 1.00, or any provision of the applicable law must be filed at the Agency office or such other place as the Agency shall designate within the time

limits for such filing as are set by Agency regulation or other provision of law.

Papers filed in the following manner shall be deemed to be filed as set forth herein:

1. Hand-delivery during business hours. By hand-delivery during regular business hours shall be deemed filed on the day delivered.

2. Hand-delivery during non-business hours. By hand-delivery at times other than during regular business hours shall be deemed filed on the next regular business day.

3. Mailing. By placing in U.S. mail shall be deemed filed on the date so postmarked.

All Papers shall show the date received by the Agency, and the Agency shall cooperate in giving date receipts to Persons filing Papers by hand-delivery.

(b) Notice of Agency Actions. Notice of actions and other communications from the adjudicating Agency shall be presumably deemed received upon the day of hand-delivery or if mailed three days after deposit in the U.S. mail.

(c) Computation of Time. Unless otherwise specifically provided by law or 801 CMR 1.00, computation of any time period referred to in 801 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the office of the Agency is closed, in which event the period shall run until the end of the next following business day. When the time period is less than seven days, intervening days when the Agency is closed shall be excluded in the computation.

(d) Extension of Time. It shall be within the discretion of the Agency or Presiding Officer, for good cause shown, to extend any time limit contained in 801 CMR 1.00. All requests for extensions of time shall be made by motion before the expiration of the original or previously extended time period. The filing of such motion shall toll the time period sought to be extended until the Agency or Presiding Officer acts on the motion. This division shall not apply to any limitation of time prescribed by the Massachusetts General Laws.

#### (5) Filings Generally.

(a) Title. Papers filed with an Agency shall state the docket number, if any, the title of the proceeding, the name of the Person in whose behalf the filing is made and the name of the Agency or Person whose action is complained of.

(b) Signatures. Papers filed with an Agency shall be signed and dated by the Party on whose behalf the filing is made or by Party's Authorized Representative and shall state the address and telephone number of such Party or Authorized Representative. This signature constitutes a certification by the signer that he has read the document, knows the content thereof, and that such statements are true, that it is not interposed for delay and that if the document has been signed by an Authorized Representative that he has full power and authority to do so.

(c) Designation of Agency. An Agency designated as a Party to Adjudicatory Proceedings shall be designated by its name and not by the name(s) of particular individual(s) holding office, and if while the Adjudicatory Proceeding is pending, a change occurs in an individual(s) holding office, the Adjudicatory Proceeding shall not abate, and no substitution of Parties shall be necessary.

(d) Form.

1. Size and Printing Requirements. All Papers, except those submittals and documents which are kept in a larger format during the ordinary course of a Party's business, shall be hand-printed or typewritten on paper 8 to 8 1/2 inches wide, by 10 to 11 inches long, with left-hand margins not less than 1 1/2 inches

wide and other margins not less than 1 inch. The impression shall be on only one side of the page, unless there are more than four pages, and shall be doubled spaced except that quotations in excess of three lines shall be single-spaced and indented. Mimeographed, multigraphed, photoduplicated Papers will be accepted as hand-printed or typewritten. All Papers shall be clear and legible.

2. Agency Format. An Agency may provide forms to be used by the Parties.

(e) Copies. The original of all Papers shall be filed together with such number of additional copies as the Agency or statute may require.

(f) Service. Simultaneously with the filing of any and all Papers with the Agency, the Party filing such Papers shall send a copy thereof to all other Parties to the proceedings, by delivery in hand, or by United States mail, postage prepaid, properly addressed. All Papers filed with the Agency shall be accompanied by a statement signed under the pains and penalty of perjury that copies have been sent, specifying the mode of service, date, the Party to whom sent, the Party's address, and address of service. Failure to comply with this rule shall be grounds for refusal by the Agency to accept Papers for filing.

(6) Initiation of Formal Adjudicatory Proceedings.

(a) Claim for Adjudicatory Hearing. Any Person having a right to initiate an Adjudicatory Proceeding shall commence such action by filing in writing a Notice of Claim for an Adjudicatory Proceeding. Such Notice shall be filed with the Agency within the time prescribed by any applicable provision of law or regulation, or in the absence of a prescribed time period within 21 days from the date that Agency Notice of Action is sent to a Party.

(b) Form and Content. The Notice of Claim for Adjudicatory Proceeding shall state clearly and concisely the facts which are grounds for the proceeding, the relief sought, and any additional information required by applicable statutes and regulations. The Agency may provide forms to be used for Notice of Claim for Adjudicatory Proceeding which forms shall contain requirements as set forth in 801 CMR 1.00.

(c) Agency Notice of Action. Whenever a proceeding may be initiated as a result of the action taken or intended to be taken by an Agency, a Notice of Action must be sent which shall specify any facts, relied upon as the basis for the action, cite the statute(s) and/or regulation(s) which enables the Agency to take the designated action, and inform the Person of his right, if any, to request an Adjudicatory Proceeding.

(d) Orders to Show Cause. Whenever an Agency desires to initiate an Adjudicatory Proceeding against any Person, the Agency may commence such action by an order to show cause setting forth the grounds for such action. An order to show cause contains a statement of the basis for the Agency commencing the Adjudicatory Proceeding, the nature of the relief sought, and the legal basis thought to authorize the Agency to conduct the proceeding and grant the relief requested.

(e) Answer. Except as law or regulation prescribe, within 21 days of filing the Notice of Claim of Adjudicatory Hearing or An Order to Show Cause, the Respondent shall file an answer to it. The Answer shall contain full, direct and specific answers to each claim set forth in the Notice or Order admitting, denying, or explaining material facts. If there is insufficient knowledge to answer with specificity, it shall so be stated and, thus, shall be treated as a general denial. The Answer shall contain all affirmative defenses which are relied upon and may cite the statute(s) and/or regulation(s) which form the basis of each defense. All allegations contained in the Notice or Order which are not specifically admitted in the Answer shall be deemed denied. All new matters contained in the Answer shall be treated as if denied.

(f) Agency Answer. An Agency shall not be required to file an Answer if, at the time the Agency took the action being appealed, the Agency disclosed to the Petitioner the material facts on which the Agency relied in taking such action, and the statutes and/or regulations which authorized or required the Agency to take such action.

(g) Amendments and Withdrawal of Pleadings. The Agency or Presiding Officer upon his own initiative or upon the motion of any Party may, in his discretion, order any Party to file an Answer or other pleading, or to reply to any pleading and further permit either Party to amend its pleadings upon condition just to all Parties.

#### (7) Motions.

##### (a) General Requirements.

1. Presentation/Objection to Motion. A Party may request of the Agency or Presiding Officer any order or action not inconsistent with law or 801 CMR 1.00. Such a request shall be called a motion. Motions may be made in writing at any time after the commencement of an Adjudicatory Proceeding, or they may be made orally during a hearing. Each motion shall set forth the grounds for the desired order or action and state whether a hearing is desired. Any time within seven days after a written motion is filed with the Agency or Presiding Officer, any Party may file written objections to the allowance of the motion and shall, if desired, request a hearing.

2. Action on Motions. The Agency or Presiding Officer shall, if it determines a hearing on the motion is warranted, give at least three days' notice of the time and place for hearing. The Agency or Presiding Officer may grant requests for continuances for good cause shown or may in the event of unexcused absence of a Party permit the hearing to proceed, and the unexcused Party's motion or objections will be regarded as submitted. The Agency or Presiding Officer may rule on a motion without holding a hearing if delay would seriously injure a Party, or if the motion involves a matter as to which the presentation or testimony or oral argument would not advance the Agency's or Presiding Officer's understanding of the issues involved or if disposition without a hearing would best serve the public interest. The Agency or Presiding Officer may act on a motion when all Parties have responded thereto, or the deadline for response has passed, whichever comes first. If the Agency or Presiding Officer acts on the motion before then, such ruling may be subject to modification or rescission should there be timely filed objections to the motion.

3. Factual Basis. The Parties may offer at a hearing on the motions only such evidence as is relevant to the particular motion. This evidence may consist of facts which are presented orally by sworn testimony, supported by affidavit, or which appear in records, files, depositions, or answers to interrogatories.

(b) Motion for More Definite Statement. If a pleading to which a responsive pleading is required is so vague or ambiguous that a Party cannot reasonably frame a responsive pleading, the responding Party may within the time permitted for such responsive pleading, move for a more definite statement before filing its responsive pleading. The motion shall set forth the defects complained of and the details desired. If the motion is granted, the more definite statement shall be filed within ten days of the notice of the order being sent or within such other time as may be ordered. If the more definite statement is not filed within the prescribed deadline, the Agency or Presiding Officer may either dismiss the Adjudicatory Proceeding, grant the relief sought, or make such other just orders as may be deemed appropriate.

(c) Motion to Strike. A Party may move to strike, or the Agency or the Presiding Officer on its own motion may strike from any pleading any insufficient allegation or defense or any redundant, immaterial, impertinent or scandalous matter.

(d) Motion to Dismiss.

1. General Grounds. Any Party may move to dismiss for failure of the other Party to prosecute or to comply with 801 CMR 1.00 or with any order of the Agency or Presiding Officer. Upon completion by the initiating Party of the presentation of evidence, the responding Party may move to dismiss on the grounds that, upon the facts and/or the law, the initiating Party has not sustained its case. The Presiding Officer or Agency may act upon the motion then, or may wait until the close of all the evidence. The granting of such motion shall be considered a Decision and a written Decision shall be made as provided in > 801 CMR 1.01(10)(m)2. (Final Decisions).

2. Failure to Prosecute. When the record discloses the failure of the Petitioner to file documents required by 801 CMR 1.00, respond to notices or correspondence, comply with orders, or otherwise indicates an intention not to continue with the prosecution of an appeal, the Agency, or Presiding Officer, may issue an order requiring that the Petitioner show cause why the appeal should not be dismissed for lack of prosecution. If the Petitioner shall fail to show such cause, the appeal may be dismissed with prejudice.

(e) Motion for Decision on the Pleadings. After the pleadings are closed, and within such time as not to delay the proceedings, any Party may move for judgment on the pleadings. If matters outside the pleadings are presented, the motion shall be treated as one for summary decision.

(f) Motion for Summary Decision. Any Party may with or without supporting affidavits move for summary decision in his favor, as to all or part of a matter. If the motion is granted as to part of the matter and further proceedings are necessary to decide the remaining issues, a hearing shall so be held.

(g) Substitution of Parties. The Agency or Presiding Officer may, on motion, at any time in the course of an Adjudicatory Proceeding, permit such substitution of Parties as justice or convenience may require.

(h) Consolidation of Proceedings. In such cases as there are multiple Adjudicatory Proceedings and where these Adjudicatory Proceedings involve common issues, a Party shall notify the Agency of this fact, stating with particularity the common issues, and the Presiding Officer or Agency may in its discretion consolidate the Proceedings.

(8) Discovery.

(a) Requests for Documents. Any Party to an Adjudicatory Proceeding may request any other Party to produce or make available for inspection, copying or photocopying any documents or tangible things, not privileged, not previously supplied, and which are in the possession, custody, or control of the Party upon whom the request is made.

1. Procedure. The request may be served upon the Party after commencement of the action and shall set forth the items to be inspected by individual item or category with reasonable particularity. Such inspection shall be made at the office of the Agency or such other place as the Agency shall designate. The Party upon whom the request is served shall respond within a period of 30 days unless the Agency or Presiding Officer has established a shorter time period.

2. Agency Costs. An Agency upon whom the request for production is served shall be entitled to the fee per page for copies as determined from time to time by the Executive Office for Administration and Finance.

(b) Depositions. The testimony of any witness may be taken by deposition, upon motion made by a Party, upon approval by the Agency or Presiding Officer.

1. Form and Content. There shall be at least ten days' notice to the Parties of the motion to take a deposition. A motion requesting a deposition shall state the name and address of the witness to be deposed, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and address of the person before whom the deposition is desired, and the reason why such deposition should be taken.

2. Authorization to Take. The Agency or Presiding Officer shall allow the motion only upon a showing that the Parties have agreed to submit the deposition in lieu of testimony by the witness or the witness to be deposed cannot appear before the Agency or Presiding Officer without substantial hardship, and that testimony being sought is significant, not privileged and not discoverable by an alternative means. If the motion is allowed, the

Agency or Presiding Officer shall give at least five days' notice of the taking of the deposition to all Parties.

3. Officer Before Whom Deposition is Taken. Depositions shall be taken orally before a Person having power to administer oaths.

4. Scope and Conduct of Deposition. Every witness testifying upon deposition shall be duly sworn, and the adverse Party(ies) shall have the right to cross-examine. Objections to questions shall be in short form, stating the ground of objection relied upon. The testimony shall be reduced to writing and shall unless waived be signed by the witness, and certified by the officer before whom the deposition is taken. After the deposition has been subscribed and certified, it shall be forwarded to the Agency or Presiding Officer. Subject to appropriate rulings on objections, and the Parties' agreement regarding its use, the deposition shall be received in evidence as if the testimony contained therein had been given by the witness in the proceeding.

5. Recording by Other Than Stenographic Means. The Agency or Presiding Officer may order that the testimony at a deposition be recorded by other

than stenographic means, in which event the order shall designate the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy.

(c) Interrogatories. A Party to the Adjudicatory Proceeding may move for leave to serve written interrogatories upon any other Party for the purpose of discovering relevant, not privileged, information not previously supplied through voluntary discovery.

Interrogatories may be served after commencement of the proceeding. No Party, without approval of the Agency or Presiding Officer, shall serve more than 30 interrogatories including subsidiary or incidental questions.

1. Answers to Interrogatories. Each interrogatory shall be separately and fully answered under the penalties of perjury unless it is objected to, in which event, the reasons for the objection should be stated in lieu of an answer. Such answers shall be filed within 30 days or such other time as the Adjudicating Agency or Presiding Officer specifies.

2. Stipulations. In the discretion of the Agency or Presiding Officer, the Parties may, by written stipulation filed with the Agency or Presiding Officer at any stage of the proceeding, or by oral stipulation made at the hearing, agree upon any pertinent facts in the proceeding. In making its findings, the Agency or Presiding Officer need not be bound by any stipulation which is found to be in contravention of law or erroneous on its face.

(d) Objection/Protective Orders. The Party upon whom the request for discovery is served may within ten days of service of the request, file with the Agency or Presiding Officer objections to the request or move for protective order. A prompt hearing shall be scheduled upon the motion. Protective orders may be issued to protect a Party from annoyance, embarrassment, oppression or undue burden or expense.

Orders of the Agency or Presiding Officer may include limitations on the scope, method, time and place for discovery or provisions for protecting confidential information or documents.

(e) Motion for Order Compelling Discovery. Upon reasonable notice to other Parties, a Party may file with the Agency or Presiding Officer a motion to compel discovery in the event that a request is not honored, or only partially honored, or interrogatories or questions at depositions are not completed/answered.

(9) Intervention and Participation.

(a) Initiation. Any Person not initially a Party, who with good cause wishes to intervene in, or participate in, an Adjudicatory Proceeding shall file a written request (petition) for leave to intervene or participate in the proceeding. Except as otherwise provided in 801 CMR 1.00, the petition shall be subject to > 801 CMR 1.01(7)(a), (General Requirements--Motions) and the Agency or Presiding Officer shall act pursuant thereto.

(b) Form and Content. The petition shall state the name and address of the Person making the petition. It shall describe the manner in which the Person making the motion is affected by the proceeding. It shall state the contention of the Person making the petition as to why intervention or participation should be allowed, the relief sought and the statutory or other law in support thereof.

(c) Filing the Petition. Unless an applicable statute requires otherwise, the petition may be filed at any time following the commencement of the Adjudicatory Proceeding, but in no event, later than the date fixed by the Agency. Petitions filed may be allowed at the discretion of the Agency or the Presiding Officer, provided that the Parties are given notice and opportunity to object.

(d) Rights of Intervenors. Intervenors shall be Persons substantially and specifically affected by the proceeding. Any Person permitted to intervene shall have all the rights of, and be subject to, all limitations imposed upon a Party, however, the Agency or Presiding Officer may exclude repetitive or irrelevant material. Every petition to intervene shall be treated as a petition in the alternative to participate.

(e) Rights of Participants. Any Person specifically affected by a proceeding shall be permitted to participate. Permission to participate shall be limited to the right to argue orally at the close of hearing and shall have the right to file a brief. Permission to participate, unless otherwise stated, shall not be deemed to constitute an expression that the Person allowed to participate is a Party in interest who may be aggrieved by any final decision. A Person who petitioned to intervene and who was allowed only to participate, may participate without waiving its rights to administrative or judicial review of the denial of said motion to intervene.

(f) Intervention to Protect the Environment. Pursuant to > M.G.L. c. 30A, S 10A, any group of ten or more Persons may intervene collectively as a Party in any Adjudicatory Proceeding in which damage to the environment as defined in M.G.L. c. 214, S 2A, is or might be at issue; provided, however, that such intervention shall be limited to the issue of damage to the environment and the elimination or reduction thereof in order that any decision in such Adjudicatory Proceeding shall include the deposition of such issue. Such intervention shall be by motion filed in accordance with > 801 CMR 1.01(7)(a). The motion shall state the name and address of each of the ten or more Persons in the group. The motion shall also separately state the name and address of that member of the group, or the group's attorney, or the group's other agent, who will be the group's representative before the Agency. Said representative shall have the sole authority to sign Papers for the group and to accept service for the group. Any Paper served on the representative of the group shall be deemed served on the entire group. If no representative is specifically stated in the motion, the first Person mentioned in the motion as a member of the group shall be deemed the representative of the group. A group that intervenes as a Party shall be collectively deemed a Party as



defined in 801 CMR 1.00, and shall have all of the rights, privileges, duties and responsibilities of a Party as set forth in 801 CMR 1.00, except as limited by 801 CMR 1.00.

(10) Hearings and Conferences.

(a) Pre-hearing Conference. The Agency or Presiding Officer may upon his own initiative or upon the application of any Party, call upon the Parties to appear for a conference to consider:

1. the simplification or clarification of the issues;
2. the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreement which will avoid unnecessary proof;
3. the limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
4. the possibility of agreement disposing of all or any of the issues in dispute; and
5. such other matters as may aid in the disposition of the Adjudicatory Proceeding.

Those matters agreed upon by the Parties shall be electronically recorded in the presence of the Parties and/or reduced to writing and shall be signed by the Parties, and shall thereafter constitute part of the record.

The scheduling of a Pre-hearing Conference shall be solely within the discretion of the Agency or Presiding Officer.

(b) Submission Without a Hearing. Any Party may elect to waive a hearing and to submit its case upon the record. Submission of a case without a hearing does not relieve the Parties from the necessity of proving the facts supporting their allegations or defenses.

(c) Hearings, When and Where Held. Hearings will be held at a location designated by the Agency. Any Party may, by motion, request that a hearing be held at some place other than that designated, due to disability or infirmity of any Party or witness, or where justice and equity would best be served.

Upon motion of any Party and upon good cause shown, the Agency or Presiding Officer may in its discretion advance a case for hearing.

(d) Conduct of Hearings.

1. General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances.

2. Decorum. All Parties, Authorized Representatives, witnesses and other Persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any court. Where such decorum is not observed, the Agency or Presiding Officer may take appropriate action.

3. Duties of Presiding Officer. The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and administer an oath or affirmation to all witnesses.

(e) Order of Proceedings.

1. Opening. Except as otherwise required by law, it shall be the usual practice that in proceedings initiated by the Notice of Claim of Adjudicatory Proceedings, the Petitioner shall open. In hearings resulting from investigations or Orders to Show Cause, the Party or Agency conducting the investigation or the Agency issuing the Order to Show Cause shall open.

2. Discretion of Agency/Presiding Officer. Where evidence is peculiarly within the knowledge of one Party, or in cases in which Adjudicatory Proceedings have been consolidated, or where there are multiple Parties, the Presiding Officer or Agency may direct who shall open and shall designate the order of presentation.

(f) Presentation.

1. Rights of Parties. All Parties shall have the right to present evidence, cross-examine, make objections, bring motions and make oral arguments. Cross-examination shall occur immediately after any witness' testimony has been received. Whenever appropriate, the Presiding Officer or Agency shall permit redirect and recross.

2. First Presentation. The Party opening the hearing shall have the right to present his position through evidence and testimony first.

3. Second Presentation. The Party taking the position contrary to that of the Party opening shall have the right to present his position upon completion of the opening Party's case.

(g) Witnesses and Evidence.

1. Oath. A witness' testimony shall be under oath or affirmation.

2. Evidence. Unless otherwise provided by any law, Agencies need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Weight to be given evidence presented will be within the discretion of the Agency or Presiding Officer.

3. Offer of Proof. An offer of proof made in connection with an objection taken to a ruling of the Presiding Officer rejecting or excluding proffered testimony shall consist of a statement of the substance of the evidence which the Party contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(h) Evidence Included. All evidence, including any records, investigative reports, documents, and stipulations which is to be relied upon in making a Decision must be offered and made a part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

(i) Administrative Notice. An Agency or Presiding Officer may take notice of any fact which may be judicially noticed by the courts of this Commonwealth or of general technical or scientific facts within the Agency's or Presiding Officer's specialized knowledge only if the Parties are notified of the material so noticed and are given an opportunity to contest the facts so noticed.

(j) Subpoenas. In conducting Adjudicatory Proceedings, the Agency or Presiding Officers may issue, vacate, modify and enforce subpoenas requiring the attendance and testimony of witnesses and/or the production of documents or other evidence in accordance with the following provisions:

1. Issuance. A Party may have a subpoena issued by a Notary Public or Justice of the Peace in the name of the Agency; or he may make written application to the Agency or Presiding Officer, which may issue the subpoena requested in the name of the Agency. However issued, every subpoena shall show on its face the name and address of the requesting Party. Notice shall not be required for issuance of a subpoena. Each Agency may prescribe the form of subpoena but, insofar as practicable, such form shall adhere to the form used in civil cases before the courts.

2. Motion to Vacate or Modify. Any Person to whom a subpoena is directed may, within a reasonable period, file in writing a motion that the subpoena be vacated or modified. The Agency or Presiding Officer shall give prompt notice to the Party who requested issuance of the subpoena. The Agency or Presiding Officer may grant such petition in whole, or in part, upon a finding that the testimony, or the evidence, whose production is requested, does not relate with reasonable directness to any matter in question or upon a finding that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested.

3. Costs. Witnesses summoned by the Agency or Presiding Officer shall be paid the same fees for attendance and travel as in civil cases before the courts. The requesting Party shall pay all costs involved with the subpoena, including fees for attendance and travel.

(k) Transcript of Proceedings.

1. Recording and Transcripts. Testimony and argument at the hearing shall be either recorded electronically or stenographically. Transcripts of the proceedings shall be supplied to any Party, upon request, at his own expense. Any Party, upon motion, may order a stenographer to transcribe the proceedings, at his own expense. In such event, a stenographic record shall be provided to the Agency or Presiding Officer at no expense to the Agency, and upon such other terms as the Agency or Presiding Officer shall order.

2. Correction of Transcript. Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections, agreed to by opposing Parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of evidence, but not more than ten days or such other time as shall be allowed by the Presiding Officer from the date of receipt of the transcript. The Agency or Presiding Officer may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of the proceeding.

(l) Briefs. At the close of the taking of testimony, the Agency or Presiding Officer shall fix the terms for the filing of briefs.

(m) Settling the Record.

1. Contents of Record. The record of the proceeding may consist of the following items: pleadings, pre-hearing conference memoranda, magnetic tapes, orders, briefs, and memoranda, answers to interrogatories and depositions, transcripts, exhibits, and other papers or documents which the Agency or Presiding Officer has specifically designated be made a part of the record. The record shall at all reasonable times be available for inspection by the Parties.

2. Evidence After Completion. No evidence shall be admitted after completion of a hearing or after a case submitted on the record, unless otherwise ordered by the Presiding Officer.

3. Weight of Evidence. The weight to be attached to any evidence in the record will rest within the sound discretion of the Agency or Presiding Officer. The Agency or Presiding Officer may in any case

require either Party, with appropriate notice to the other Party, to submit additional evidence on any matter relevant to the Adjudicatory Proceeding.

4. Exceptions. Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a Party, at the time that a ruling is made or sought, makes known his objection to such action and his grounds, therefor, provided that, if a Party has no opportunity to object to a ruling at the time it is made, or to request a particular ruling at an appropriate time, such Party, within three days of notification of action taken or refused, shall state his objection and his grounds therefor.

(n) Decisions.

1. Tentative Decisions. If a majority of the officials of the Agency who are to render the final Decision have neither heard nor read the evidence, such Decision if adverse to any Party other than the Agency, shall be made only after a tentative or proposed Decision is mailed to the Parties. Every tentative Decision shall be in writing and shall contain a statement of the reasons therefor, including a determination of every issue of fact or law necessary to the Decision. Whenever a tentative Decision is rendered, the Parties shall have the opportunity to file objections to the Decision and may argue in support thereof, orally or in writing, as the Agency or Presiding Officer may order. The Parties shall have seven days from receipt of the tentative Decision to make such filing. The Presiding Officer or Agency shall have the discretion to allow or order the Parties to argue orally. Unless a Party makes a written request in advance for a tentative or proposed Decision, the Agency need not comply with the provisions of this division.

2. Final Decisions. Every final Decision shall be in writing and shall be signed by the Presiding Officer or by those officials of the Agency who are required by law to sign such Decisions. Every final Decision shall contain a statement of the reasons therefor, including a determination of every issue of fact or law necessary to the Decision, provided that if a final Decision was preceded by a tentative Decision, the final decision may incorporate by reference those determinations set forth in the tentative Decision, subject to such modifications and discussion as the Presiding Officer or Agency may deem appropriate to respond to timely filed opposing and concurring views with the tentative Decision.

3. Presiding Officer Unavailable. When a Presiding Officer becomes incapacitated or unavailable to render a Decision, a tentative Decision shall be rendered by a substitute Presiding Officer upon the record as herein defined.

(o) Reopening of Hearings. On its own motion or on motion of any Party, the Agency or Presiding Officer may at any time before a tentative or final Decision is issued request that the hearing be reopened for the purpose of receiving new evidence.

(p) Motion for Reconsideration. Any Party may file a Motion for Reconsideration, setting forth specifically the grounds or statutory provision relied upon to sustain the Motion, within ten days from the date a copy of the Decision is mailed to the Parties by the Agency or Presiding Officer.

(q) Further Appeal. After the issuance of a final Decision, any Party who has the right to seek administrative or judicial review of the Decision may file with the appropriate administrative agency or court.

(r) Withdrawal of Exhibits. After a Decision has become final and all appeal periods have lapsed the Agency or Presiding Officer may in its discretion, upon motion, permit the withdrawal of original exhibits or any part thereof by the Party or Person entitled thereto.

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CODE OF MASSACHUSETTS REGULATIONS  
TITLE 801: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE  
CHAPTER 1.00: STANDARD ADJUDICATORY RULES OF PRACTICE AND PROCEDURE  
Current with amendments received through Register Number 810

1.02: Informal/Fair Hearing Rules

(1) Preamble. > 801 CMR 1.02 of the Adjudicatory Rules of Practice and Procedure is a self-contained segregable body of regulations of general applicability for proceedings in which formal rules cannot be utilized or federal fair hearing procedures are applicable. An agency must determine for any class of hearings whether or not to hold hearings under > 801 CMR 1.01, Formal Hearings, or > 801 CMR 1.02. This decision shall be based on such factors as: the volume of cases held; whether claimants are unrepresented; the complexity of the issues; or the applicability of Federal fair hearing procedures. All notices from which an Adjudicatory Proceeding can be claimed shall state whether the hearing is to be held under formal or informal/fair hearing sections. > 801 CMR 1.03 is applicable to all hearings held pursuant to 801 CMR 1.00.

(2) Scope, Construction and Definitions.

(a) Scope and Construction. The following sections of > 801 CMR 1.02 set forth the procedures that govern the conduct of Adjudicatory Proceedings by dissatisfied persons who seek review of the action(s) or inaction of an Agency or of a veterans' agent with respect to their claim for benefits or services. Without intending to limit its applicability, > 801 CMR 1.02 shall apply to all hearings held pursuant to the fair hearing requirements of > 45 CFR 205.10 or as made applicable to Title XX programs by 45 CFR 228.14, 7 CFR 273, > 42 USC S 503(a)(3), > M.G.L. c. 18, S 16, > M.G.L. c. 151A, SS 39 and > 41, > M.G.L. c. 118E, SS 8 and > 22, to the hearing procedures of any other agency which is, in whole or in part, governed by the requirements of similar law and to classes of hearings of any Agency for which 801 CMR 1.00 is determined by the Agency to be applicable. > 801 CMR 1.02 establishes minimum procedural protections for applicants or recipients in such proceedings, and shall in no way be construed to limit the protections afforded such Persons by state or federal law.

(b) Definitions. The following words as used hereinafter, except as otherwise required by the content shall have the following meaning:

1. Adjudicatory Proceedings. A proceeding before an Agency in which the legal rights, duties or privileges of specifically named Persons are required by constitutional right, by provision of the General Laws or by Federal laws or regulations to be determined after opportunity for an Agency hearing. Without enlarging the scope of this definition, Adjudicatory Proceeding does not include [1] proceedings solely to determine whether the Agency shall institute or recommend institution of proceedings in a court; or [2] proceedings for the arbitration of labor disputes; or [3] proceedings for the disposition of grievances of employees of the Commonwealth; or [4] proceedings to classify or reclassify, or to allocate or reallocate, appointive offices and positions in the government of the Commonwealth; or [5] proceedings to determine the equalized valuations of the several cities and towns; or [6] proceedings for the determination of wages under M.G.L. c. 121, S 26T.

2. Agency. Any department, board, commission, division or authority of the state government or subdivision of any of the foregoing or official of the state government, authorized by law to conduct

Adjudicatory Proceedings, but

does not include the following: the legislative and judicial departments; the governor and council; military or naval boards, commissions or officials; the Department of Youth Services; the Parole Board; the Division of Industrial Accidents of the Department of Labor and Industries; the Department of Personnel Administration; the Civil Service Commission and the Appellate Tax Board.

3. Applicant. An individual who has applied or been denied the opportunity to apply for benefits available under any program administered by an Agency, H.C.C. or veterans' agent appointed pursuant to > M.G.L. c. 115, S 3.

4. Authorized Representative. Any Person authorized by a Party to represent him in these matters.

5. Benefits. Any benefit to an individual or service administered or rendered by an Agency.

6. Case Manager. The Person who performs case management services.

7. DEA. The Department of Elder Affairs.

8. Decision. The final decision rendered independently by the Presiding Officer or Agency including any necessary orders indicating what action must be taken to implement the decision.

9. Division of Hearings (DPW). The Division of Hearings for the Department of Public Welfare.

10. DHO. The Division of Hearings Officers.

11. HCC. A Home Care Corporation organized to provide home care services pursuant to a contract with DEA.

12. Institution. Any licensed hospital, nursing home or public medical institution.

13. Home Care Services. Those services as defined in the "Regulations Governing the Home Care Program of the Department of Elder Affairs".

14. Party. The specifically named Person whose legal rights, duties or privileges are being determined in any Adjudicatory Proceeding, any other Person who as a matter of constitutional right or by any provision of the General Laws is entitled to participate fully in the proceeding; or any Person permitted by an Agency or Presiding Officer to intervene.

15. Person. An individual or legal entity.

16. Petitioner. The Person who claims an Adjudicatory Proceeding.

17. Presiding Officer. The individual(s) authorized by law or duly designated by the Agency or the DHO to conduct the Adjudicatory Proceeding.

18. Recipient. The Person who, or family which is, or has been receiving Benefits under a program administered by the Agency, HCC, or veterans' Agent pursuant to > M.G.L. c. 115, S 3.

19. Respondent. A Person, Agency, or HCC or veterans' Agent responding to an Adjudicatory Proceeding.

20. Subpoena. A document which commands a witness to appear at a given time and give testimony before a court or an administrative proceeding such as a hearing; and may require

the witness to produce before the court or administrative proceeding any documents, Papers, or records in his possession or control.

(3) Representation.

(a) Appearance. An individual may appear in his own behalf or has the right to be accompanied, represented, and advised by an Authorized Representative.

(b) Notice. Authorized Representatives shall give a written appearance to the Agency, or its designee in the DHO, which shall contain his name, address, and telephone number.

(c) Powers. An Authorized Representative may exercise on the Party's behalf any of the rights and powers vested in that Party by 801 CMR 1.00.

(4) Time.

(a) Timely Filing. Papers required or permitted to be filed under 801 CMR 1.00, or any provision of the law must be filed at the Agency office or such other place as the Agency shall designate within the time limits for such filing as are set by Agency regulation or other provision of law.

Papers filed in the following manner shall be deemed to be filed as set forth herein:

1. Hand-delivery During Business Hours. By hand-delivery during regular business hours shall be treated as filed on the day delivered.

2. Hand-delivery During Nonbusiness Hours. By hand-delivery at times other than during regular business hours shall be treated as filed on the next regular business day.

3. Mailing. By placing in the U.S. mail shall be treated as filed on the date so postmarked.

All Papers shall show the date and time received and the Agency shall cooperate in giving date/time receipts to Persons filing Papers by hand-delivery.

(b) Notice of Agency or HCC Actions. Notice of actions and other communication from the HCC, veterans' Agent, Agency, or its designated Agent or the DHO shall be deemed received on the day of hand-delivery, or if mailed three days after deposit in the U.S. mail, except as otherwise provided in Agency regulations pursuant to Federal regulations.

(c) Computation of Time. Unless otherwise specifically provided by law or 801 CMR 1.00, computation of any time period referred to in 801 CMR 1.00 shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday or legal holiday or other day on which the office of the Agency is closed, in which event the last day of the period shall be deemed to be the next following business day. When the time period is less than seven days, intermediate days when the Agency is closed shall be excluded in the computation.

(d) Extension of Time. Whenever, pursuant to 801 CMR 1.00, an Agency, a Presiding Officer or the DHO is given the power or authority to extend or otherwise vary the time limits for scheduling a hearing, rendering or implementing a Decision or any other Agency action, such power or authorization shall be exercised only in a manner which is consistent with

applicable state or federal law or regulation. Subject to the foregoing, it shall be within the discretion of the Agency or Presiding Officer, for good cause, to extend any time limit contained in 801 CMR 1.00. All requests for extensions of time shall be made in writing before the expiration of the original or previously extended time period. The filing of such a request shall cause the time period sought to be extended until the Agency or Presiding Officer acts on the written request.

(e) Extension for the Division of Employment Security (DES). A request for a hearing filed with or mailed to the DES after ten days but not more than 30 days after the notice of determination or redetermination is mailed or delivered in hand by the director's Authorized Representative shall be deemed to be timely filed if the Party filing such late request establishes "good cause" for the late filing. The "good cause" exception to timely filing shall not be available for late requests filed after 30 days from the mailing or delivery of the notice of determination or redetermination.

(5) Filings. Required Information on Notices. All Papers filed with the Agency, its designee, or the DHO should contain the name, address, telephone number, and signature of the sender or his Authorized Representative. Papers which do not contain all of this information shall be accepted for filing if they contain sufficient identifying information so they can be placed in the appropriate file.

(6) Initiation of Adjudicatory Proceedings.

(a) Notice of Agency, HCC, or Veterans' Agents Action.

1. Requirements. Notice of action by an Agency, HCC, or Veterans Agent to deny or terminate, reduce, or suspend Home Care Services or Benefits to a Recipient or to deny Benefits, or Home Care Services to an Applicant, shall include but not be limited to:

- the mailing address, telephone number and office hours of the office responsible for receiving and/or hearing the Agency's appeals;

- an explanation of the action to be taken;

- the date on which the action shall become effective;

- an explanation of the reasons for the action taken;

- the specific regulation on which such action is based;

- the telephone number and place where further information may be obtained;

- an explanation of the Applicant's or Recipient's right to request a hearing (including the time limits and manner for request);

- a copy of the form used to request a hearing;

- an explanation of the circumstances, if any, under which the Agency Benefits or Home Care Services will be continued pending an Adjudicatory Proceedings; and

- an explanation of the right to be represented, including if applicable, the availability of such assistance.

2. Exceptions for HCC.

a. If a Recipient voluntarily assents in writing to a termination, reduction or suspension of Home Care Services, no notice of action shall be forwarded to the Recipient and the change in service shall be implemented by the HCC in accordance with the terms of that assent. HCC shall use a written assent format provided by DEA.



b. If a Recipient is hospitalized or otherwise institutionalized, no notice of action shall be provided to the Recipient and the Recipient's Home Care Services shall be suspended by the HCC as soon as it is feasible. Upon discharge, the Recipient's service needs shall be reassessed by the HCC.

c. If an HCC has actual knowledge that a Recipient is temporarily absent from the HCC service area and is therefore unavailable to receive Home Care Services, the HCC may suspend the provision of Home Care Services to that Recipient for the period of his absence without forwarding a notice of action to the Recipient.

(b) Grounds for Appeal. A right to request an Adjudicatory Proceeding shall occur when controversy exists which by law or Agency regulation requires an Adjudicatory Proceeding or when a Person is aggrieved by an Agency, HCC, or Veterans' Agent action or failure to act.

(c) Adjudicatory Proceedings--How Taken. A request for a hearing must be in writing in the form prescribed or on the form provided by the Agency or by DHO and must be signed and dated by the Person entitled to an Adjudicatory Proceeding or by his Authorized Representative. The request must be filed with the Agency, its designee, or DHO within the time prescribed by law or established by Agency regulation or in the absence of any such provision, within 60 days after receipt of the notice of action or for the failure to act within 120 days from application.

(d) Continuation of Benefits Pending Appeal. Where applicable Agency regulation or law so requires and when the Applicant, Recipient or Institution has met the standard set forth by applicable law or Agency regulation, prior Benefits shall continue consistent with that law.

(e) Termination of Continued Benefits. Benefits continued as set out in > 801 CMR 1.02(7)(d) shall be terminated if:

1. a determination is made at the hearing that the sole issue is a challenge to the validity of a particular law or regulation.

2. a change affecting the Recipient's Benefits occurs subsequent to the Adjudicatory Proceeding request and such change makes the previously filed Adjudicatory Proceeding request moot and the Recipient fails within the applicable time period to request a hearing on the subsequent matter.

#### (7) Special Requests.

(a) Withdrawals. A Petitioner at any time may withdraw his request for an Adjudicatory Proceeding but the withdrawal must be in writing signed by the Petitioner or his Authorized Representative.

(b) Emergency Scheduling. The Agency, its designee, or the DHO on its own or by request of a Party may for good cause order an accelerated hearing.

(c) Other Requests. A request may be made in writing at any time or orally during a hearing for rulings or relief, and shall after notice to the other Parties be ruled upon by the Agency, its designee, or Presiding Officer with or without a hearing.

#### (8) Discovery.

(a) General. Parties to an Adjudicatory Proceeding are encouraged to engage in voluntary discovery.

(b) Examination of File. The Petitioner and/or his Authorized Representative shall at any time after an Adjudicatory Proceeding has been requested, have adequate access to and an opportunity to examine and

copy or photocopy the entire content of his case file and all other documents to be used by the Agency, HCC, or Veterans' Agent at the hearing. The cost of photocopying shall be determined from time to time by the Executive Office for Administration and Finance.

(c) Time For Filing. Request for discovery may be made any time after a request for a hearing has been filed and shall be allowed at the discretion of the Agency, its designee, or the Presiding Officer.

(9) Group Hearings.

(a) Purpose. For the purpose of consolidation, a group hearing may be held if it appears from the requests for a hearing or other written information submitted by the Parties that the matters involve questions of fact which are identical or the sole issue involved is one of federal or state law or policy or changes in federal or state law. For these purposes, a change in federal or state law shall mean any change in standards governing eligibility, or limitation in the amount or time for which Benefits or Home Care Services are provided, affecting a class of Recipients or Applicants and promulgated by state or federal law or regulation.

If, at any stage of such group hearing, the Presiding Officer finds that any individual appeal involves questions of fact unique to the individual Petitioner, such as the applicability of the law change to such Petitioner, such appeal shall be severed and shall be heard individually.

(10) Hearings.

(a) Adjustment of Matters Related to Hearing. The fact that a request for a hearing has been filed does not prohibit an adjustment in the matters at issue prior to the fair hearing. If, as a result of an adjustment, the Petitioner is satisfied and wishes to withdraw all or part of his appeal, there shall be filed a withdrawal in writing, signed by the Petitioner. Said withdrawal shall be forwarded to the Agency, or its designee, or DHO.

A hearing shall not be delayed or cancelled because of a proposed adjustment under consideration unless the Petitioner requests a delay or cancellation.

(b) Submission Without a Hearing. The Petitioner may be permitted to elect to waive a hearing and to submit any documents without appearing at the time and place designated for said hearing. Submission of a case without a hearing does not relieve the Parties from supplying any and all documents supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may be employed to supplement other documentary evidence in the record.

(c) Notice of Hearings. The notice of the hearing must include the date, time and place of the hearing, an explanation of the hearing procedure and an explanation of the Petitioner's right to have an Authorized Representative present. The notice shall provide sufficient notice of the issues involved so that the Parties may have a reasonable opportunity to prepare and present evidence and argument.

If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all Parties reasonable opportunity to prepare and present evidence and argument respecting the issues.

(d) Dismissals for DPW Matters Only. If either Party to a proceeding fails to appear at the hearing, the Presiding Officer shall notify the nonappearing Party in writing that a default will be entered against him unless within ten days from the date of said notice he files a motion for a rescheduled hearing, and the motion is granted.

In the event an Appellant is granted a rescheduled hearing at his request and fails to appear at the time and place of said rescheduled hearing, the appeal shall be dismissed for failure to prosecute. Notice of dismissal shall promptly be mailed to the Appellant and shall include an explanation of the manner in

which dismissals may be vacated. Any motions to vacate a dismissal must be in writing, signed by the Petitioner or his Authorized Representative and directed to the Presiding Officer. Dismissals shall be vacated only for good cause shown.

(e) Dismissal for Failure to Prosecute. When the record discloses the failure of the Petitioner to file documents required by 801 CMR 1.00, respond to notices of correspondence, comply with orders or otherwise indicates intention not to continue with the prosecution of an Adjudicatory Proceeding, the Agency or DHO may issue an order requiring the Petitioner to show cause why the matter should not be dismissed for lack of prosecution. If the Petitioner shall fail to show such cause, the Adjudicatory Proceeding may be dismissed with or without prejudice.

(f) Conduct of Hearings.

1. General. Hearings shall be as informal as may be reasonable and appropriate under the circumstances.

2. Conduct. Presiding Officer shall ensure that the conduct of the Parties will at all times be orderly.

(g) Presiding Officer's Duties and Powers at Hearings. The Presiding Officer shall have the duty to conduct a fair hearing to ensure that the rights of all Parties are protected; define issues; to receive and consider all

relevant and reliable evidence and exclude irrelevant evidence; to ensure an orderly presentation of the evidence and issues; to ensure a record is made of the proceedings; and to reach a fair, independent and impartial Decision based upon the issues and evidence presented at the hearing and in accordance with the law. In addition, he shall have the following specific duties:

1. administer the oath or affirmation to anyone who will testify at the hearing;
2. assist all those present in making a full and free statement of the facts in order to bring out all the information necessary to decide the issues involved and to ascertain the rights of the Petitioner;
3. ensure that all Parties have a full opportunity to present their claims orally, or in writing, and to secure witnesses and evidence to establish their claims;
4. receive, rule on, exclude, or limit evidence;
5. introduce into the record any regulations, statutes, memoranda, or other materials he believes relevant to the issues at the hearing;
6. change the date, time or place of the hearing on his own motion, or on request of any Party, upon due notice to the Parties;
7. request a statement of the issue(s) and define the issue(s);
8. regulate the presentation of the evidence and the participation of the Parties for the purpose of ensuring an adequate and comprehensible record of the proceedings;
9. issue subpoenas on his own motion or upon request of any Party to secure the presentation of evidence or testimony;
10. examine witnesses and ensure that relevant evidence is secured and introduced;
11. continue the hearing to a subsequent date to permit either Party to produce additional evidence,

witnesses, and other materials;

12. authorize, when appropriate, the Agency or HCC to pay for the costs of an independent medical examination;

13. rule on any requests that may be made during the Adjudicatory Proceeding;

14. at any time prior to a Decision being rendered, the Presiding Officer within his discretion may reconvene the hearing for any purpose upon ten days' written notice to all Parties, stating therein the purposes for reconvening, and the date, time and place of the reconvened hearing; and

15. in his discretion, order written briefs be submitted by the Parties, provided, however, that all Parties shall be notified of the submission of the brief and have opportunity to answer.

(h) Rights and Duties of Parties.

1. Petitioner's Rights. The Petitioner at his option may present his own case, or may be assisted by an Authorized Representative. The Petitioner is fully responsible for paying for the cost of representation, if any. The

Petitioner, or his Authorized Representative, shall have a right to:

- a. present witnesses;
- b. present and establish all relevant facts and circumstances by oral testimony and documentary evidence;
- c. advance any pertinent arguments without any undue interference;
- d. question or refute any testimony including an opportunity to confront and cross-examine adverse witnesses; and
- e. examine and introduce evidence from his case record, and examine and introduce any other pertinent documents.

2. Respondent's Rights and Responsibilities. The Respondent may present its own case, or may be assisted by an Authorized Representative and:

- a. is responsible for submitting at the hearing all documented information on which any Determination at issue is based;
- b. shall introduce into the hearing from the case record only the material which pertains to the issues;
- c. may designate and may send a staff person to the hearing to testify as to action or inaction of the Respondent. In cases involving the judgment of the Case Manager relative to reduction, suspension, or termination of Home Care Services, the Case Manager, or a person authorized to represent the Case Manager, shall be present at the hearing;
- d. must ensure that the case record is present at the hearing and that the Petitioner has adequate opportunity to examine it prior to, and at the hearing;
- e. may present witnesses;

f. may present and establish all relevant facts and circumstances by oral testimony and documentary evidence;

g. may advance any pertinent arguments without any undue interference; and

h. may question or refute testimony and shall have an opportunity to confront and cross-examine adverse witnesses.

(i) Evidence.

1. General. Unless otherwise provided by any law, the Agency, its designee, or the Presiding Officer need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Unduly repetitious or clearly irrelevant evidence may be excluded.

2. Presented at Hearing. Except as the Agency, its designee, or Presiding Officer may otherwise order within his discretion, any evidence, on which a Decision is based must be presented either at the hearing or, in cases submitted on the record, before notification that the case is ready for Decision. Copies of any evidence shall be provided to all other Parties.

3. Oral Testimony. Oral testimony shall be given under oath or affirmation. Witnesses shall be available for examination and cross- examination.

4. Regulations, Statutes, Memoranda. Regulations and statutes may be put into evidence by reference to the citation or by submitting a copy of the regulations. Memoranda and other materials may be put into evidence by submission of the original or copy thereof.

5. Stipulations. Stipulations of fact or stipulations as to the testimony that would have been given by an absent witness, if agreed upon by the Parties, may be used as evidence at the hearing. The Agency, its designee, or the Presiding Officer may in any case require evidence in addition to that offered by the Parties.

6. Additional Evidence. The Agency, its designee, or the Presiding Officer may in any case require either Party, with appropriate notice to the other Party, to submit additional evidence on any relevant matter.

(j) Subpoenas.

1. Any Party to a Proceeding shall have the right to:

a. a Subpoena requiring the attendance and testimony of witnesses and/or the production of any evidence including books, records, correspondence or documents relating to any matter in question at the hearing; and

b. subpoena witnesses and/or order the production of any evidence. Such a Subpoena may be issued by:

(i) a Notary Public or Justice of the Peace in the name of the DHO or the Agency designated by law or regulation to hold said hearings; or

(ii) the Agency designated to hold hearings or DHO upon receipt of a written request for the issuance of such Subpoena. Such issuance shall occur within two days following receipt of such request.

2. Petition to Vacate Subpoena. In the event that a Subpoena has been issued, any Party or the Person subpoenaed may file a written request to the Agency, its designee, or the Presiding Officer to vacate or modify a

Subpoena.

a. The Presiding Officer shall give notice of a request to vacate or modify to all Parties orally or in writing. The notice shall recite the contents of the petition. If time does not permit a Party to respond to the request to vacate or modify the Subpoena, the hearing on the merits shall be postponed long enough to permit the Party to do so. A determination on such petition shall not require a hearing or Adjudicatory Proceeding.

b. In order to grant the petition in whole, or in part, the Presiding Officer must find that:

(i) the testimony or evidence whose production is required does not relate with reasonable directness to any matter in questions, is unreasonable or oppressive; or

(ii) the Subpoena has not been issued a reasonable period in advance of the time when the evidence is requested.

3. Failure to Comply with a Subpoena. If any Person fails to comply with a properly issued Subpoena, the Agency, its designee, or the DHO may, or the Party requesting the issuance of the Subpoena (if such is the case) may, petition the Superior Court for an order requiring compliance with the terms of the Subpoena.

(k) Scheduling.

1. Public Welfare Appeals. Within five days after the Division of Hearings (DPW) receives a request for a fair hearing, the Division will register the appeal, set a date for a hearing, and so notify the Petitioner and the relevant office of that department. It shall further designate a site for the hearing convenient to the Petitioner. If the Petitioner has a handicap or other situation which prevents his appearance at the designated site, he may request that the hearing be held at his home or another convenient location.

2. HCC Adjudicatory Proceedings. The DHO shall register the Adjudicatory Proceeding, set a date for a hearing, and so notify the Parties within 30 days after the DHO receives a request for a hearing. The DHO shall designate a site for the hearing, convenient to the Petitioner. If the Petitioner is unable to appear at the designated site, he may request that the hearing be held at his home or at another convenient location. The granting of such request shall be within the discretion of the DHO.

3. Other Adjudicatory Proceedings. For Adjudicatory Proceedings in all other Agencies, the Agency, its designee, or DHO shall register the proceeding, set a date for a hearing, and notify the Petitioner.

(l) The Hearing.

1. The Record. All documents and other evidence offered or taken shall become part of the record. The record shall further contain tape recordings, or transcripts, of the proceeding, and all exhibits and documents introduced at the hearing and wherever applicable, medical documents obtained to resolve disputed medical issues. The record shall be the exclusive source of the Decision and shall at all times be open for inspection by any Party or his Authorized Representative to the Adjudicatory Proceeding during reasonable business hours.

2. Stenographic or Taped Record. All evidence and testimony at the hearing, at Agency or DHO discretion, shall be recorded either electronically or stenographically. Transcripts or duplicate tapes of the proceedings shall be supplied to either Party, upon application, at his own expense. At the discretion of the Agency or DHO, any Party may be permitted to maintain his own record.

3. Hearings Involving Medical Issues. When the hearing involves disputed medical issues, the Presiding Officer may upon request of the Petitioner, or upon his own motion, order that a medical examination and assessment be obtained from a medical practitioner of Petitioner's choice and made part of the record. Such examination and assessment shall be at the expense of the Agency. The medical practitioner shall not be a person who was previously involved in the matter.

(m) Continuances. A hearing may be continued at the discretion of the Agency, its designee, or the Presiding Officer. All Parties and/or their Authorized Representatives shall be notified as to the time, date, and place of the continued hearing.

(n) Decisions.

1. General. The Agency, its designee, or DHO, shall upon completion of the hearing, render a written Decision as promptly as administratively feasible and shall send it to all Parties and such other Persons, as law or Agency regulation shall so indicate.

2. According to Law. The Presiding Officer's Decision must be rendered in accordance with the law. The law includes the state and federal constitution, statutes, and duly promulgated regulations, as well as decisions of the state and federal courts.

3. Preponderance of Evidence. The Decision shall be based upon a substantial evidence.

4. Form of Decision. The Decision shall summarize the issues considered, the reasons for the Decision on each issue and the specific statute(s) and/or regulation(s) supporting the Decision. Findings of fact shall be set forth clearly and concisely and the Decision shall further include the conclusions made by the Presiding Officer based upon either his findings or rulings of law. The Decision shall also order the appropriate action to be taken based upon the conclusions, including, where appropriate, retroactive as well as prospective relief.

5. Time of Rendering. All Decisions shall be rendered in or within 90 days from the date upon which the appeal was filed, or within such further time as may be administratively feasible.

6. Appeal Rights. Each Decision shall include or be accompanied by a notice specifying the rights of the Parties to any further administrative or judicial review stating the place and manner of filing an appeal and the appeal period.

(o) Post-Decision Process.

1. HCC Appeals. If the Decision rendered by the DHO is adverse to the Petitioner, DHO shall transmit to the Petitioner, with a copy of the Decision, a notice informing the Petitioner of his right to appeal the Decision to the Division of Hearings (DPW). The Petitioner must make a written request, addressed to the Director, Division of Hearings (DPW) within 15 days of the date on which DHO mailed such notice. The Petitioner

must specify, in such request, whether he wishes a de novo hearing before the Division of Hearings (DPW). Unless the Petitioner specifically requests such a de novo hearing, the appeal shall be limited to a review of the record of the hearing before the DHO to determine whether the Decision by the DHO was supported by substantial evidence in the record. A Party aggrieved by a Decision of the Division of

Hearings (DPW) may seek judicial review thereof in accordance with M.G.L. c. 30A.

2. Others. Within ten days after the issuance of a Decision, or such other time as may be set by law, any Party who has the right to seek judicial or further administrative review of the Decision may so file with the appropriate court or reviewing Agency. Upon receipt of motion(s) for administrative review notice shall be given to the other Parties and a hearing if required by law or regulation or within the discretion of the Agency, its designee, or DHO.

(p) Special Provision for Medical Assistance Program Appeals. In the case of appeals involving the Medical Assistance Program administered by the Department of Public Welfare, the Commissioner may for good cause shown direct the Director of the Division of Hearings (DPW) to conduct a rehearing of the appeal. In such event, the Director shall send seven days' written notice to all Parties, including the date, time, and place of such rehearing which shall be held at a location convenient to the person appealing and after such rehearing, the Director may, no later than 30 days after the issuance of the Presiding Officer's Decision, issue a superceding Decision.

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CODE OF MASSACHUSETTS REGULATIONS  
TITLE 801: EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE  
CHAPTER 1.00: STANDARD ADJUDICATORY RULES OF PRACTICE AND PROCEDURE  
Current with amendments received through Register Number 810

1.03: Miscellaneous Provisions Applicable To All Adjudicatory Proceedings

(1) Preamble. > 801 CMR 1.03 of the Adjudicatory Rules of Practice and Procedure is applicable to all proceedings held under > 801 CMR 1.01 and > 1.02.

(2) Effective Date. These rules shall take effect 90 days from the date of publication thereof by the Secretary of the Commonwealth and shall govern Adjudicatory Proceedings commenced after said 90 days for all Agencies within the jurisdiction of 801 CMR 1.00.

(3) Citation. Rules of Practice and Procedure will be cited as "Standard Rules of Practice and Procedure" followed by the particular rule and section numbers.

(4) Availability of Rules. Copies of all rules shall be available upon request to any person from the Office of the Secretary of the Commonwealth and the Agency. Fees for copies shall be the cost of public records as determined by the Executive Office for Administration and Finance.

(5) Amendments to Rules.

(a) Commissioner of Administration. The Commissioner of Administration and Finance may adopt in accordance with M.G.L. c. 30A any amendments and additions to 801 CMR 1.00 as may be appropriate.

(b) Agency Request. Any Agency may make application for amendments and additions in 801 CMR 1.00.

(c) Amendment Effective Date. All amendments shall be effective as of the date of publication thereof unless otherwise specifically provided.



(6) Severability. If any rule contained herein is found to be unconstitutional or invalid by a Court of competent jurisdiction, the validity of the remaining rules will not be so affected.

(7) Exemptions. 801 CMR 1.00 shall not apply to any Agency within the executive offices for which M.G.L. c. 30A is not applicable. Any other Agency within each of the executive offices shall submit in whole or in part its rules for the conduct of Adjudicatory Proceedings to the Commissioner of Administration who shall approve or disapprove the filing of these proposed substitute rules. Such substitute rules shall be promulgated pursuant to the rule-making procedures of M.G.L. c. 30A and shall be filed with the Secretary of the Commonwealth within 60 days of the publication of these rules and shall take effect at the same time as the standard rules. Thereafter, substitute rules shall be filed subject to the approval of the Commissioner of Administration and in accordance with section six.

Any substitute rules shall follow the headings and to the extent possible the sub-headings as set forth in 801 CMR 1.00.

(8) Non-English Speaking Parties.

(a) Communications. All communications which may result in the commencement of an Adjudicatory Proceeding shall contain a notice printed in English, Spanish, Portuguese, Italian, Greek, French and Chinese that informs the

reader that the document is important and should be translated immediately.

(b) Interpreters. If any Party to a proceeding cannot communicate effectively in English, the Agency, or Presiding Officer shall stay the proceeding until someone can be found who can communicate effectively in both English and the language of the non-English speaking Party.

(9) Conflicts. No Presiding Officer who has a direct or indirect interest, personal involvement or bias, in an Adjudicatory Proceeding, shall conduct a hearing in said matter, nor shall he participate in the Decision-making process of such matter.

(10) Ex Parte Communications. No Party or other Person directly or indirectly involved in an Adjudicatory Proceeding shall submit to the Presiding Officer or any Agency employee involved in the Decision-making process, any evidence, argument, analysis or advice, whether written or oral, regarding any matter at issue in an Adjudicatory Proceeding, unless such submission is part of the record or made in the presence of all Parties. This provision does not apply to consultation among Agency members concerning the Agency's internal administrative functions or procedures.

(11) Docket/Decision Index.

(a) Docket. Unless otherwise proscribed by law, each Agency shall maintain on a current basis, a docket of all proceedings which shall list separately in chronological order all Papers filed and actions taken in each Adjudicatory Proceeding.

(b) Decision Index. Unless otherwise proscribed by law, each Agency shall maintain on a current basis, a decision index and compilation of decisions. Said index shall contain an alphabetical listing by name and subject matter of all adjudicatory decisions rendered and shall contain a further cross-reference as to the page number in the compilation where the subject Decision may be found. All names and addresses of Parties shall when appropriate be deleted from the Decisions in the compilation in order to protect confidentiality.

(c) Public Inspection. Unless proscribed by law, the docket, Decision index, and compilation of Decisions shall be available for inspection and copying by the public during the office hours of the Agency. The rate for copying shall

be rates as set by the Executive Office for Administration and Finance.

(12) Special Provisions. The following special rules are to be applied in appeals under > M.G.L. c. 6A, S 36, pertaining to adjudicatory appeals resulting from the action or failure to act on the part of the Rate Setting Commission:

(a) In such case as there is a conflict between a special rule and a standard rule elsewhere contained herein, the standard rules shall govern.

(b) All references to the "Division" shall mean the Division of Hearings Officers as established pursuant to > M.G.L. c. 7, S 4H, as amended.

(c) In addition to the requirements of > 801 CMR 1.01(6)(b), the Notice of Claim for Adjudicatory Proceeding shall certify that the proceeding is not interposed for delay, and shall further state the date on which the rate appealed was filed with the Secretary of the Commonwealth and the date written notice thereof was received by the Petitioner.

(d) In such case as there is an Adjudicatory Proceeding from an interim rate and prior to a hearing being held thereon, a final rate is established which is appealed, the Petitioner shall so notify the Division, and the Division shall dismiss the Adjudicatory Proceeding on the interim rate as moot.

(e) No case shall be assigned for hearing unless and until the Division receives from either Party a Notice of Adjudicatory Proceeding Ready for Trial. Upon the receipt of such Notice, the Division shall place the appeal on the trial list and schedule the appeal for hearing in the regular order of business. If the nonnoticing Party is not ready for trial, he shall within seven days after the Notice is filed with the Division, file an Objection to Placing Appeal on Trial List, stating the grounds thereof. In such case as an Objection is so received by the Division, the Division shall treat the matter as a motion as provided for in > 801 CMR 1.01(7)(a).

(f) Upon motion of either Party, and upon good cause shown, the Division may, in its discretion, advance a case on the trial list.

(g) If at any time the Petitioner has formally requested the Respondent to settle any issues in dispute through administrative proceedings before the Respondent, the Petitioner shall request that its Adjudicatory Proceeding before the Division be stayed pending the results of the administrative proceedings before the Respondent. However, no stay will be granted for a period of more than six months upon motion duly made and for good cause shown.

(h) In any Adjudicatory Proceeding where a Notice of Adjudicatory Proceeding Ready for Hearing is received from a Petitioner, and the Adjudicatory Proceeding is assigned for a hearing, and the Petitioner is not prepared to go forward, the Division may, in its discretion, dismiss the proceeding with prejudice.

(i) In such case as a Notice of Adjudicatory Proceeding Ready for Hearing has not been filed by the Petitioner within one year, or such further time as the Division may allow from the date of filing of its complaint, the Division may, in its discretion, dismiss the Adjudicatory Proceeding with prejudice.

(13) Lists of Exempted Agencies. The Commissioner of Administration shall file from time to time with the Secretary of the Commonwealth, a list of those Agencies which are excluded from 801 CMR 1.00 or have in accordance with 801 CMR 1.00 been granted an exemption from their applicability.