

Maryland Health Benefit Exchange Appeals Process

Interim Procedures for Licensee Appeals

Authority: Section 7, Chapter 159, 2013 Laws of Maryland; Insurance Article, Title 31, Annotated Code of Maryland; State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

.01 Scope.

- A. In General. This chapter applies to contested case hearings:
 - (1) Conducted by or on behalf of the Maryland Health Benefit Exchange; or
 - (2) Delegated by the Board in accordance with State Government Article, §10-205(a)(1)(ii), Annotated Code of Maryland.
- B. Except as explicitly stated in this chapter, COMAR 28.02.01 governs the conduct of a hearing before the Office of Administrative Hearings.
- C. Exclusions. This chapter does not apply to the appeals of any Maryland Health Benefit Exchange determination of:
 - (1) Qualified individual eligibility;
 - (2) Qualified employer eligibility;
 - (3) Qualified employee eligibility;
 - (4) Modified adjusted gross income;
 - (5) Advanced premium tax credits eligibility;
 - (6) Cost sharing reductions eligibility;
 - (7) Denial of Individual Exchange enrollment permits for Consolidated Services Center employees
 - (8) Denial of SHOP Exchange enrollment permits for Consolidated Services Center employees;
 - (9) Denial of Application Counselor entity designation; and
 - (10) Denial of Application Counselor certification.

.02 Definitions

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative law judge" has the meaning set forth under COMAR 28.02.01.02(B)(1).

(2) "Board" means the Maryland Health Benefit Exchange Board of Trustees

(3) Contested Case.

(a) "Contested case" has the meaning stated in State Government Article, §10-202(d), Annotated Code of Maryland.

(b) "Contested case" includes a proceeding:

(i) Arising out of a determination made by the Board;

(ii) Regarding an authorization, license, certificate, registration, or special permit issued by the Exchange; or

(iii) Arising out of any act of or failure to act by the Board that aggrieves a person.

(4) "Contested case" does not include any other quasi-legislative hearing.

(5) Determination.

(a) "Determination" means a decision by the Board that requires the Board to provide the opportunity for a hearing to a person aggrieved by the decision.

(b) "Determination" includes:

(i) A decision as to whether a person against whom an administrative complaint has been received violated a law, regulation, or order; and

(ii) An order issued pursuant to the Board's authority.

(6) "Exchange" means the Maryland Health Benefit Exchange.

(7) "Executive Director" means the Executive Director of the Maryland Health Benefit Exchange, appointed pursuant to the Insurance Article §31-105, Annotated Code of Maryland.

- (8) "Hearing officer" means the Executive Director or the Executive Director's authorized designee.
- (9) "Maryland Health Benefit Exchange" has the meaning set forth under Insurance Article §31-101(e), Annotated Code of Maryland.
- (10) "Licensee" means a person holding an authorization, certification, license, registration, or special permit issued by the Maryland Health Benefit Exchange or who has other similar authority to operate under the regulatory authority of the Maryland Health Benefit Exchange.
- (11) "Office" means the Office of Administrative Hearings.
- (12) "Person" has the meaning set forth under COMAR 28.02.01.02(12).

.03 Request for Hearing – In General.

A. Scope. This regulation applies to all requests for a hearing except for those exempted pursuant to §.01(C) of these interim procedures.

B. A person may request a hearing by submitting a written statement to the Board, signed by the requesting person, and containing the following information:

- (1) The action or non-action of the Board causing the person requesting the hearing to be aggrieved;
- (2) The facts related to the incident or incidents about which the person requests the Board to act or not to act; and
- (3) The ultimate relief requested.

C. Request to be Received Within 30 Days.

- (1) The request shall be received by the Board within 30 days of the date of the letter notifying the party of the Board's action, intention to act, or failure to act.
- (2) In calculating the 30-day period, the date of the letter notifying the party of the Board's action, intention to act, or failure to act is not included.
- (3) The end of a day is considered to be 11:59 p.m. Eastern Time.
- (4) The last day of the 30-day period is included unless it is a Saturday, Sunday, legal holiday, or a day that the Maryland Health Benefit Exchange is closed for a part of the day.

- (5) If the last day of the 30-day period is a Saturday, Sunday, legal holiday, or a day that the Maryland Health Benefit Exchange is closed for a part of the day, the 30-day period runs until the end of the next day which is not a Saturday, Sunday, legal holiday, or a day that the Maryland Health Benefit Exchange is closed for a part of the day.
- (6) Intermediate Saturdays, Sundays, legal holidays, and days that the Maryland Health Benefit Exchange is closed for a part of the day shall be counted toward the 30-day period.

D. Upon receipt of a proper request, the Board shall grant a hearing unless, in viewing the facts set forth by the person making the request, in the light most favorable to that person, the Board determines that:

- (1) The Board has no authority to take action;
- (2) The request is frivolous or made in bad faith;
- (3) The request does not contain the information required by these regulations;
- (4) The request is untimely; or
- (5) The request is moot.

.04 Delegation of Authority.

A. The Board may delegate to the Executive Director the authority to conduct a hearing or to, on a case-by-case basis and in accordance with §10-205(a)(1)(ii) of the State Government Article, delegate the authority to:

- (1) Conduct a contested case hearing; and
- (2) Issue:
 - (a) Proposed or final findings of fact;
 - (b) Proposed or final conclusions of law;
 - (c) Proposed or final findings of fact and conclusions of law; or
 - (d) A proposed or final order.

B. The Board may revoke all or part of a delegation of authority to preside over a hearing if:

- (1) The case:
 - (a) Involves novel or unanticipated factual or legal issues;
 - (b) Has significant social, fiscal, or legal issues;
 - (c) Involves policy issues of general applicability; or
 - (d) Requires further investigation.
- (2) The Board determines that revocation of all or part of the delegation of authority is otherwise in the public interest.

C. Procedure for Revocation.

- (1) The Board shall provide written notice of a revocation of hearing authority to all parties and the entity conducting the contested case hearing under §10-205(a)(1)(ii) of the State Government Article.
- (2) The written notice shall contain a brief statement of the reason for the revocation.
- (3) Delegation of authority to hear a contested case may be revoked at any time before the earlier of the:
 - (a) Issuance of a ruling by the entity delegated authority to conduct a contested case hearing under subsection A of this regulation on a substantive issue; or
 - (b) Taking of oral testimony from the first witness.
- (4) The Board shall specify whether all or part of the delegation to hear a contested case has been revoked.
- (5) If only part of the delegation has been revoked, the Board shall specify in the written notice of revocation the portions of the contested case for which the delegation has been revoked.
- (6) On revocation of the delegation, the Board shall:
 - (a) Cause further investigation;
 - (b) Set the contested case for a hearing with the Board or the Board's designee acting as the hearing officer; or
 - (c) Dismiss the contested case.

.05 Service of Notices, Decisions, Orders, and Other Documents.

A. With respect to hearings conducted by or on behalf of the Exchange, the Maryland Health Benefit Exchange shall provide notice of a hearing pursuant to State Government Article, §10-209, Annotated Code of Maryland.

B. Notices, decisions, orders, and other documents issued by the Exchange may be served on a person by:

(1) Personal delivery to the person;

(2) Mailing a copy of the document, first class, postage prepaid, to the person's address of record on file with the Maryland Health Benefit Exchange;

(3) Mailing a copy of the document, first class, postage prepaid, to the person's last known address if different from the person's address of record on file with the Maryland Health Benefit Exchange;

(4) Mailing a copy of the document by certified mail to the person's address of record on file with the Maryland Health Benefit Exchange or last known address; or

(5) Delivering or mailing a copy of the document, first class, postage prepaid, to the person's attorney, if the person is represented by counsel.

C. Notice of a hearing is sufficient:

(1) If the initial notice of a hearing is sent by regular mail to a party at the party's business and resident addresses, as applicable, on file with the Board; and

(2) Upon a satisfactory showing that the notice was sent not less than 30 calendar days before the hearing, unless a different time period is required by law, or, upon agreement of all parties, the hearing is rescheduled.

D. The Exchange shall maintain a record stating:

(1) To whom the initial notice was sent;

(2) The address to which the initial notice was sent;

(3) The date the initial notice was sent;

(4) The manner of service; and

(5) The name of the person who sent the initial notice.

.06 Discovery.

A. With respect to hearings conducted by or on behalf of the Exchange, by written request served on other parties and filed with the hearing officer not later than 30 days before the scheduled hearing, a party may require any other party to produce, within 15 days, for inspection or copying, any file, memorandum, correspondence, document, object, or tangible item:

- (1) Relevant to the subject matter of the case; and
- (2) Not privileged.

B. Unless provided by agreement of the parties, no other discovery procedure is allowed.

C. Copies.

(1) Copies of requested documents and records shall be made at the expense of the party making the request.

(2) The charge for copies of requested documents and records may be waived by the custodian of the documents in accordance with State Government Article, §10-621(e), Annotated Code of Maryland, or other applicable law.

D. Objection to Production.

(1) A party may object to the production of a file, memorandum, correspondence, document, object, or tangible item by filing a motion to quash discovery or for other relief.

(2) The hearing officer, for cause shown, may issue any order that justice requires to protect the party from annoyance, embarrassment, oppression, or undue burden or expense.

E. A party who has responded to a request for production and who obtains or discovers, before the hearing, additional files, memoranda, correspondence, documents, objects, or tangible things that are relevant to the request for production shall supplement the response to the request promptly.

F. As sanction against a party that fails to comply with a request for production, the hearing officer, either on the hearing officer's own motion or by motion of the party requesting the production, may issue an order:

- (1) Refusing to allow the party to support or oppose designated claims or defenses;
- (2) Prohibiting the party from introducing designated matters into evidence;
- (3) Striking any allegations or charges made by the party failing to produce;
- (4) Staying further proceedings until the discovery is provided; or
- (5) Dismissing the action or any part of it.

.07 Subpoenas.

A. With respect to hearings conducted by or on behalf of the Exchange, on request of a party, the Maryland Health Benefit Exchange may issue subpoenas requiring the attendance and testimony of witnesses and the production, at the hearing, of any tangible items in the possession or under the control of a witness.

B. Subpoena Requests.

(1) A request for a subpoena shall:

(a) Be made, in writing, to the Maryland Health Benefit Exchange; and

(b) Specify the:

(i) Name and full address of the person to be subpoenaed, and

(ii) Name, full address, and telephone number of the party requesting the subpoena.

(2) A subpoena that requests the production of tangible items, books, papers, or other documents shall describe those items with particularity.

(3) A subpoena request need not be served on all parties.

C. Service of Subpoenas.

(1) Except as provided in §C(2) of this regulation, subpoenas shall be served by hand delivery by an individual 18 years old or older who is not a party to the proceeding. For subpoenas requested 15 calendar days or fewer before the scheduled hearing, the requester shall provide service.

(2) In a case where the licensee to be served resides out of Maryland, the subpoena may be served by certified mail.

D. Return of service shall be made by:

(1) Affidavit, if hand delivered; or

(2) Return receipt, if mailed.

E. A person may object to a subpoena by filing a motion to quash or for other relief.

F. If a request for a subpoena was filed less than 15 days before the hearing date, the hearing officer may refuse to postpone the hearing based on the party's inability to serve the subpoena.

.08 Conduct of Hearing – In General.

A. Scope. This regulation applies to all hearings conducted by or on behalf of the Exchange.

B. A hearing conducted under this chapter shall be open to the public, unless otherwise required by law.

C. Parties to Contested Case Proceeding.

(1) The necessary parties to a contested case proceeding are:

(a) The Maryland Health Benefit Exchange;

(b) A person who requests a hearing due to being aggrieved by:

(i) A determination made by the Board; or

(ii) Any other act of, or failure to act by the Board.

(2) Not later than 15 days before the earlier of the prehearing conference or the hearing date, a person who is not a necessary party under §C(1) of this regulation may seek to become a party by intervention by filing a motion to intervene, which shall state :

(a) The basis for considering intervention to be timely; and

(b) How the financial interests of the person will be directly and immediately affected by an order of the Board resulting from the hearing.

(3) Election by Maryland Health Benefit Exchange Not to Participate.

(a) The Maryland Health Benefit Exchange may elect not to participate in all or part of a contested case proceeding by filing a notice with the hearing officer or final decision maker at any time.

(b) The Maryland Health Benefit Exchange may revoke an election not to participate in all or part of a contested case proceeding by filing a notice with the hearing officer or final decision maker at any time.

D. The hearing officer shall conduct the hearing and may allow the case to proceed in a manner necessary to ensure the fair resolution of the issues including, but not limited to, placing reasonable limitations on the number of witnesses a party may call and the exclusion of evidence which is repetitive, irrelevant, immaterial, or otherwise not probative. The Maryland Rules of

Civil Procedure may be used as a guide for resolving procedural issues regarding the conduct of the hearing.

E. The hearing officer shall rule on all procedural matters, including motions, objections, and offers of proof.

F. The Board may designate an attorney to represent the Maryland Health Benefit Exchange. Once the hearing is closed by the hearing officer, the individual presenting the case on behalf of the Maryland Health Benefit Exchange may not have a further role in the decision process of the Maryland Health Benefit Exchange.

G. Motion for Summary Decision.

(1) A party may move for summary decision at any time on any appropriate issue in the case.

(2) A hearing officer may grant a proposed or final summary decision if the hearing officer finds that:

(a) There is no genuine issue of material fact; and

(b) A party is entitled to prevail as a matter of law.

H. Motion to Dismiss. Upon motion, the hearing officer may issue a proposed or final decision dismissing an initial pleading which fails to state a claim for which relief may be granted.

I. Motion for Judgment.

(1) A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party. The moving party shall state all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of any opposing party's case.

(2) When a party moves for judgment at the close of the evidence offered by an opposing party, the hearing officer may:

(a) Proceed to determine the facts and to render judgment against an opposing party;
or

(b) Decline to render judgment until the close of all evidence.

(3) A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence if the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the party withdraws the motion.

.09 Postponements.

A. With respect to hearings conducted by or on behalf of the Exchange, at the discretion of the hearing officer, a hearing may be postponed if a written request for postponement is filed with the Maryland Health Benefit Exchange not later than 15 days before the date of the hearing.

B. A hearing may not be postponed, except for good cause, when the request for postponement is filed within 15 days of the date of the hearing.

.10 Default Orders.

A. With respect to hearings conducted by or on behalf of the Exchange, a hearing officer may issue a default order against a party other than the Maryland Health Benefit Exchange that, after receiving proper notice, fails to appear at a hearing if:

(1) Notice issued by the Board, the party failing to appear is the person against whom the notice was issued; or

(2) In any other contested case hearing, the party failing to appear is the person that requested the hearing.

B. In a hearing arising out of a charging document, order, or notice issued by the Maryland Health Benefit Exchange, the default order shall:

(1) State the facts supporting the finding of proper notice to the person against whom the charging document, order, or notice was issued;

(2) Adopt the facts and violations of law as alleged by the Maryland Health Benefit Exchange in its charging document, order, or notice as if by admission of the person against whom the charging document, order or notice was issued; and

(3) Adopt the sanction requested by the Maryland Health Benefit Exchange at the hearing.

C. The hearing officer shall serve the default order directly on the parties by certified mail.

D. Within 15 days after service of a default order, the party in default may submit to the hearing officer a written motion:

(1) Requesting that the default order be vacated or modified; and

(2) Stating the grounds for the request.

E. If the hearing officer finds that there is:

(1) Good cause to excuse the default, the hearing officer may:

- (a) Vacate or modify the default order, and
 - (b) Schedule the case for further appropriate proceedings; or
- (2) Not good cause to excuse the default, the Board shall:
- (a) Deny the motion, and
 - (b) Affirm the default order as the final order.

.11 Administrative Decisions.

A. Scope. This regulation applies to a contested case where an entity has been delegated authority to conduct a contested case hearing under Regulation.04 of this chapter.

B. Contents. The entity who hears a case shall submit to the Board a decision that contains whichever of the following were authorized in the Board's delegation of authority to the entity for the case:

- (1) Proposed or final findings of fact;
- (2) Proposed or final conclusions of law;
- (3) Proposed or final findings of fact and conclusions of law; or
- (4) A proposed or final order.

C. Effect of Regulations, Bulletins, Final Orders, and Preexisting Policies. Except as provided in Regulation .14(H) of this chapter, in making a decision, the entity is bound by any regulation, bulletin, final order, or settled and preexisting policy of the Board to the same extent that the Board is or would have been bound if the Board were hearing the case.

D. Distribution of Decision. The entity shall send its decision directly to the parties and the Board.

.12 Exceptions.

A. Scope. This regulation applies to a contested case where the entity has been delegated authority under Regulation .04 of this chapter to issue proposed findings of fact, proposed conclusions of law, or a proposed order.

B. On receipt of a decision that contains proposed findings of fact, proposed conclusions of law, or a proposed order, the parties affected have:

(1) 20 days after receipt to file exceptions to the proposed findings of fact, proposed conclusions of law, or proposed order with the Board; or

(2) 10 days to:

(a) File a written request for a transcript, at the party's own expense, with the Board in order to file exceptions; or

(b) File with the Board a copy of that party's written request to its stenographer, at the party's own expense, for the party's preparation of a transcript based on its own record of the testimony in order to file exceptions.

C. Receipt under §B of this regulation is presumed to occur 3 days after the mailing of the proposed findings of fact, proposed conclusions of law, or a proposed order.

D. Filing Exceptions After Receipt of Transcript.

(1) If a party requests a transcript under §B(2) of this regulation, the party shall have 30 days after the filing of the transcript to file exceptions with the Board.

(2) Unless extended by order of the Board, the party requesting the transcript shall file the transcript with the Board within 60 days after the date on which the transcript was requested.

E. Exceptions shall be in writing unless specified otherwise by the final decision maker.

F. If a party elects not to file exceptions, another party may not raise the defense of failure to exhaust this administrative remedy on appeal to circuit court.

G. The record before the Board for the exceptions shall consist of:

(1) The entity's findings and conclusions, including the findings of fact, conclusions of law, and proposed order;

(2) Any exceptions filed by a party;

(3) Any response to exceptions filed by a party;

(4) Any evidence submitted by a party;

(5) Notice to the parties of the hearing;

(6) Any documentary evidence admitted into evidence by the entity; and

(7) The transcript of the hearing before the entity, if requested and filed by one of the parties or the Board.

H. Transcripts.

(1) A party who desires to have the transcript made part of the record shall, at the party's own expense, file three copies of the transcript, or its relevant portions, with the Board on receipt of the transcript.

(2) If a transcript has already been prepared, the Board shall make the transcript part of the record in the contested case.

(3) If a transcript is prepared based on the entity's record of the testimony and a transcript is prepared based on a party's own record of the testimony, the transcript based on the entity's record of the testimony is:

(a) The official transcript; and

(b) Controlling in the event of any conflict between the two transcripts.

(4) If the transcript is not filed or otherwise made part of the record in the contested case, parties may not refer in their exceptions to any testimony before the entity not incorporated into the entity's findings and conclusions.

(5) If all parties agree that the questions presented for review to the final decision maker can be determined without an examination of the entire transcript, the parties may file a statement showing how the questions arose and setting forth the facts or allegations that are essential to a determination of those issues.

.13 Final Order Following Proposed Decision.

A. Scope. This regulation applies to a contested case where the entity has been delegated authority under Regulation .04 of this chapter to issue proposed findings of fact, proposed conclusions of law, or a proposed order.

B. Issuance. After consideration of the entity's proposed findings of fact, proposed conclusions of law, or proposed order, and any exceptions filed by the parties, the Board shall issue a final order or a remand order.

C. Effect of Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order. In reviewing the entity's proposed findings of fact, proposed conclusions of law, or proposed order, the Board is:

(1) Bound by the findings of fact that are supported by competent, material, and substantial evidence; and

(2) Not bound by any legal analysis, proposed conclusions of law, or proposed order.

D. Types of Action by the Board. The Board may affirm, reverse, or modify the proposed findings of fact, proposed conclusions of law, or proposed order, or remand the case to the Office for further proceedings by setting forth, with particularity, the basis for the Board's reversal, modification, or remand.

E. Procedure When Case Remanded. If the Board remands the case for further proceedings, the Board may:

(1) Refer the case back to the entity; or

(2) Retain the case to be heard by the Board.

F. Rehearing. The Board may, on the Board's own motion, hold a rehearing.

G. Service of Order. The Board shall serve a copy of the final order or remand order on the parties, the parties' attorneys of record, and the entity by first-class mail.

H. Effect of Summary Affirmance.

(1) If the Board issues a final order that summarily affirms the proposed order of an entity without discussing the facts and legal issues and without expressly adopting the entity's legal analysis and proposed conclusions of law, neither the final order nor the proposed order is precedent within the rule of stare decisis.

(2) Notwithstanding §H(1) of this regulation, a final order of the Board that summarily affirms the proposed order of an entity without discussing the facts and legal issues and without

expressly adopting the entity's legal analysis and proposed conclusions of law may be cited and relied on in a proceeding before the Board, the entity, or a court:

(a) When relevant under the doctrine of the law of the case, res judicata, or collateral estoppel; or

(b) In any subsequent disciplinary proceeding involving a party to the final order.

(3) If a party appeals from a final order of the Board that summarily affirms the proposed order of an entity, in addition to filing the final order of the Board with the court in which the appeal is pending, the Board also shall file a copy of the proposed order of the entity.

.14 Decisions.

The hearing officer shall sign the final order following a hearing. The final order is effective when issued, unless a different date is specified in the decision. A copy of the final order shall be filed with the Maryland Health Benefit Exchange and served on all parties to the hearing.

.15 Rehearings.

A. A request for a rehearing shall be made in writing to:

(1) The Board in a contested case heard by the Maryland Health Benefit Exchange;

(2) The Board in a contested case where the entity has been delegated authority to hear the contested case under Regulation .04 of this chapter but the Board has retained authority to issue the final order; or

(3) The entity in a contested case where the entity has been delegated authority under Regulation .04 of this chapter to issue a final order.

B. If the request is made:

(1) Within 10 days after the issuance of the final order, the request may be granted by the Board or entity for any reason;

(2) More than 10 days after the issuance of the final order, the request may be granted only on a determination by the Board or entity that the final order was a result of fraud, mistake, or inadvertence; or

(3) More than 30 days after the issuance of the final order, the request may not be granted.

.16 Mistake or Error in the Final Order.

The Maryland Health Benefit Exchange or the entity delegated authority to conduct contested case hearing under Regulation .04 of this chapter may correct an order if, upon review, the final order was issued as a result of fraud, mistake, or inadvertence or contains a clerical error.