

## Wyoming Administrative Rules

# Health, Department of

## Healthcare Licensing and Surveys

Chapter 21: Procedure for Informal Conference on Appeal of Agency Decision & Procedures for Formal Administrative Hearings on Appeal of Agency Decision

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## CHAPTER 21

### Rules and Regulations for the Procedures for Informal Conference on Appeal of Agency Decision and Procedures for Formal Administrative Hearings on Appeal of Agency Decision

Section 1. Authority. These rules are promulgated by the Department of Health, Office of Healthcare Licensing and Surveys, pursuant to W.S. 35-2-901, *et seq.*, W.S. 35-9-121.1, and the Wyoming Administrative Procedure Act at W.S. 16-3-101, *et seq.*

#### Section 2. Purpose and Applicability.

(a) These rules are being promulgated to establish a procedure for Healthcare Facilities to appeal adverse actions taken by the Department of Health, hereinafter referred to as the “Department,” pursuant to its authority under Chapter 3, Construction Rules and Regulations for Healthcare Facilities.

(b) The Department may issue policies, bulletins, or both, to interpret the provisions of these rules and regulations. Such policies and bulletins shall be consistent with and reflect the intent of these rules and regulations. The provisions contained in policies or bulletins shall be subordinate to the provisions of these rules and regulations.

(c) The incorporation by reference of any external standard is intended to be the incorporation of that standard as it is in effect on the effective date of these rules and regulations.

Section 3. Definitions. The following definitions, as well as the definitions found in Chapter 3, Construction Rules and Regulations for Healthcare Facilities, shall apply in the interpretation and enforcement of these rules. Where the context in which words are used in these rules indicates that such is the intent, words in the singular number shall include the plural and vice versa. Throughout these rules, gender pronouns are used interchangeably, except where the context dictates otherwise. The drafters have attempted to utilize each gender pronoun in equal numbers, in random distribution. Words in each gender shall include individuals of the other gender.

(a) “Adverse action” means any remedy or sanction defined by statute, rule, or regulation that may be imposed or recommended by the Department against a licensed and/or federally certified Healthcare Facility that has failed to achieve or maintain compliance with local, state or federal laws, statutes, rules, or regulations. Federal remedies or adverse actions are defined in the State Operations Manual published by the Centers for Medicare and Medicaid Services (CMS). An adverse action may be imposed in addition to or instead of termination from the federal Medicare certification program or may be imposed in addition to or instead of actions against the facility’s license.

(b) “Applicable code authority” means the particular jurisdictional entity or authority ultimately responsible for interpretation of a published Code. For example: the International Code Council is the jurisdictional authority that issues interpretations and provides technical support for the International Building Code.

(c) “Informal conference” means, as agreed to by the parties, either a teleconference meeting, electronically enhanced meeting, or an in-person meeting between the parties, and any other relevant parties, to discuss the issues and to determine if a resolution may be reached without the necessity of further action.

(d) “Formal administrative hearing” means the process outlined below where a hearing is held pursuant to the Wyoming Administrative Procedure Act at W.S. 16-3-101, *et seq.*

Section 4. Informal Conferences. Facilities may request an informal conference to reconsider any decision made by the Department related to state construction requirements and/or federal regulatory requirements (when applicable). The informal conference will be conducted by the regulatory agency of the Department in accordance with written policies and procedures. Any decision made by the Department may be appealed in accordance with these rules.

Section 5. Informal Conference Procedures.

(a) Procedure if action based on state requirements. If a Healthcare Facility receives one or more deficiencies as a result of an inspection, receives mark-ups or comments on a set of plans, or receives notice of a pending or actual adverse action from the Department, which action is based solely on state construction requirements, the following informal procedure may be instituted to resolve the issue(s) in as expedient a manner as possible:

Initial Meeting:

(i) The Healthcare Facility, in collaboration with the Department, shall meet either by telephone, electronically, or in person to discuss the issue(s) and to determine whether an informal resolution of the issue(s) is possible and acceptable.

(ii) This initial meeting shall be conducted as soon as possible on a date acceptable to all parties.

(iii) The parties may agree at this initial meeting to another informal meeting between themselves to resolve the matter between the Department and the Healthcare Facility.

(iv) If the Healthcare Facility agrees at this initial meeting to an informal resolution of the issue, but desires to have an outside entity review the question,

the parties each agree to outline the issue(s) and that party's position on the issue(s) in writing.

(v) A written statement of the issue(s) and positions of the parties shall be prepared to send to an outside entity within ten (10) working days of the meeting at which this decision was made.

Submit Statement of the Issues and Party Positions to Code Authority:

(vi) Once this statement of the issue(s) and the parties' positions are reduced to writing so that both parties can agree to what is contained in the document, it shall be submitted by the Department to the applicable Code authority, such as the International Code Council or the American Institute of Architects, as agreed upon by the parties.

Code Authority Decision:

(vii) Once the applicable Code authority renders its decision, and if the decision or interpretation is still unsatisfactory to the Healthcare Facility, it may request a formal administrative hearing.

(viii) The Healthcare Facility shall send a written request for a formal administrative hearing to the Department no later than ten (10) calendar days after receipt of the Code authority's decision.

(b) Procedure if action based on federal requirements. When a Healthcare Facility is seeking federal certification, federal requirements related to the physical environment, the Life Safety Code, and all other relevant federal codes will apply. If a Healthcare Facility receives deficiencies, mark-ups or comments on a set of plans, or notice of pending adverse action from the Department which action is based solely on federal construction and/or regulatory requirements, the following informal procedure may be instituted to resolve the issue(s) in as expedient a manner as possible:

Initial Meeting:

(i) The Healthcare Facility, in collaboration with the Department, shall meet either by telephone, electronically, or in-person to discuss the issue(s) and to determine whether an informal resolution of the issue is possible and acceptable.

(ii) This initial meeting shall be conducted as soon as possible on a date acceptable to all parties.

(iii) The parties may agree at this initial meeting to another informal meeting between themselves to resolve the matter between the Department and the Healthcare Facility.

(iv) If the Healthcare Facility agrees at this initial meeting to an informal resolution of the issue, but desires to have an outside entity review the question, the parties must each outline the issue(s) and that party's position on the issue(s) in writing.

(v) A written statement of the issue(s) and positions of the parties shall be prepared to send to an outside entity within ten (10) calendar days of the initial meeting.

Submission of Statement of the Issues and Party Positions to Code Authority:

(vi) Once this statement of the issue(s) and the parties' positions are reduced to writing so that both parties can agree to what is contained in the document, it will be submitted by the Department to the applicable Code authority.

Code Authority Decision:

(vii) Once the applicable Code authority renders its decision and if the decision or interpretation is still unsatisfactory to the Healthcare Facility, the parties may agree to submit the question to the Centers for Medicare and Medicaid Services (CMS) within ten (10) working days of the date of the decision or interpretation from the Department or the Code Authority.

(viii) Decisions rendered by CMS are considered final; however, there is a federal appeal process, pursuant to 42 CFR 498, *et seq.*

Section 6. Formal Administrative Hearing Procedure.

(a) Procedure if action based on state construction requirements.

(i) If a Healthcare Facility receives a notice of one or more deficiencies, mark-ups, or comments with which it disagrees on a set of building plans, or a notice of a pending adverse action from the Department which action is based solely on state construction requirements, the following procedure may be instituted to resolve the issue through an administrative hearing process. The Department prefers to resolve all disputes through the informal review process. However, the formal hearing process may be initiated after the informal process has been exhausted, or may be requested immediately upon notice of a pending adverse action.

(ii) If a Healthcare Facility requests a formal administrative hearing, it shall provide written request for a formal administrative hearing to the Department within ten (10) working days of receiving notice of the adverse action.

(iii) The request shall provide the specific details about the issue and the position of the Healthcare Facility.

(iv) The Department shall refer the matter to the Office of Administrative Hearings (OAH) pursuant to its Contested Case Proceeding Rules, Chapter 2 (2008) and its Evidentiary Hearings and Decision rules, Chapter 3 (2002). Referral to the OAH shall be done within five (5) working days of receipt of the request from the Healthcare Facility.

(v) Healthcare Facilities are encouraged to request, and the Department will agree if appropriate, to the Expedited Contested Case procedures at Section 11 of Chapter 2 in order to obtain a ruling as quickly and efficiently as possible to prevent any unnecessary delay in the process.

(b) Procedure if action based on federal requirements.

(i) If the responses from the appropriate federal Code authorities (including CMS) are not satisfactory to the Healthcare Facility, it may still request a formal administrative hearing to review the decision.

(ii) If the Healthcare Facility desires a formal administrative hearing, it shall send a written request for a formal administrative hearing to the Department no later than ten (10) working days after receipt of the Code authority's decision.

(iii) The request shall provide the specific details about the issue and the position of the Healthcare Facility.

(iv) The Department shall refer the matter to CMS within five (5) working days of receipt of the request from the Healthcare Facility.

(v) All formal administrative hearings shall be conducted by CMS according to 42 C.F.R.498, *et seq.*

Section 7. Severability. If any portion of this Chapter is found to be invalid or unenforceable, the remainder shall continue in full force and effect.