

WAC 388-96-904 Administrative review—Adjudicative proceeding.

(1) (a) A contractor seeking an administrative review of an adverse action or determination of the department taken under authority of this chapter or chapter 74.46 RCW and eligible for administrative review under WAC 388-96-901, shall file a written request for an administrative review conference with the office of rates management within twenty-eight calendar days after receiving notice of the department's action or determination.

(b) When the department has sent written notice by United States mail, it shall deem the contractor to have received the department's notice five calendar days after the date of the notification letter, unless proof of the date of receipt of the department's notification letter exists, in which case the actual date of receipt shall be used to determine timeliness of the contractor's request for an administrative review conference. When the department has electronically mailed (email) written notice, the date of the department's notification email will be the date of receipt by the contractor irrespective of when the contractor reads the email.

(c) The contractor's request for administrative review shall:

(i) Be signed by the contractor or by a partner, officer, or authorized employee of the contractor;

(ii) State the particular issues raised; and

(iii) Include all necessary supporting documentation or other information.

(2) After receiving a request for administrative review conference that meets the criteria in subsection (1) of this section, the department shall schedule an administrative review conference. The conference may be conducted by telephone.

(3) At least fourteen calendar days prior to the scheduled date of the administrative review conference, the contractor must supply any additional or supporting documentation or information upon which the contractor intends to rely in presenting its case. In addition, the department may request at any time prior to issuing a determination any documentation or information needed to decide the issues raised, and the contractor must comply with such a request within fourteen calendar days after it is received. The department may extend this period up to fourteen additional calendar days for good cause shown if the contractor requests an extension in writing received by the department before expiration of the initial fourteen-day period. The department shall dismiss issues that cannot be decided or resolved due to a contractor's failure to provide requested documentation or information within the required period.

(4) The department shall, within sixty calendar days after conclusion of the conference, render a determination in writing addressing the issues raised. If the department is waiting for additional documentation or information promised by or requested from the contractor pursuant to subsection (3) of this section, the sixty-day period shall not commence until the department's receipt of such documentation or information or until expiration of the time allowed to provide it. The determination letter shall include a notice of dismissal of all issues which cannot be decided due to a contractor's failure to provide documentation or information promised or requested.

(5) (a) A contractor seeking further review of a determination issued pursuant to subsection (4) of this section shall within twenty-eight calendar days after receiving the department's administrative review conference (ARC) determination letter file a written applica-

tion for an adjudicative proceeding signed by one of the individuals authorized by subsection (1) of this section with the department's board of appeals.

(b) When the department has sent the ARC determination letter by United States mail, the department shall deem the contractor to have received the department's determination five calendar days after the date of the administrative review determination letter, unless proof of the date of receipt of the letter exists, in which case the actual date of receipt shall be used to determine timeliness of the contractor's application for an adjudicative proceeding. When the department has electronically mailed (email) the ARC determination letter, the date of the department's email containing the ARC determination letter or to which the ARC determination letter is attached will be the date of receipt by the contractor irrespective of when the contractor reads the email.

(c) The contractor shall attach to its application for an adjudicative proceeding the department's administrative review conference determination letter. When the department delivered the ARC determination letter by email either in the body of the email or as an attachment to the email, the contractor must include a copy of the email with the contractor's application for an adjudicative proceeding. A contractor's application for an adjudicative proceeding shall be addressed to the department's board of appeals. The board of appeals date stamp on the application for an administrative proceeding shall be used to determine whether the application is timely. When the application for adjudicative proceeding is filed by fax, the date stamped on the application received by fax will only be used to determine timeliness when the application is postmarked the same date as the faxed application.

(6) A review judge or other presiding officer employed by the department's board of appeals shall conduct the adjudicative proceeding. Except as authorized by subsection (7) of this section, the scope of an adjudicative proceeding shall be limited to the issues specifically raised by the contractor at the administrative review conference and addressed on the merits in the department's administrative review conference determination letter. The contractor shall be deemed to have waived all issues or claims that could have been raised by the contractor relating to the challenged determination or action, but which were not pursued at the conference and not addressed in the department's administrative review conference determination letter. In its request for an adjudicative proceeding or as soon as practicable, the contractor must specify its issues.

(7) If the contractor wishes to have further review of any issue not addressed on its merits, but instead dismissed in the department's administrative review conference determination letter, for failure to supply needed, promised, or requested additional information or documentation, or because the department has concluded the request was untimely or otherwise procedurally defective, the issue shall be considered by the presiding officer for the purpose of upholding the department's dismissal, reinstating the issue and remanding for further agency staff action, or reinstating the issue and rendering a decision on the merits.

(8) An adjudicative proceeding shall be conducted in accordance with this chapter, chapter 388-02 WAC and chapter 34.05 RCW. In the event of a conflict between hearing requirements in chapter 74.46 RCW and chapter 388-96 WAC specific to the nursing facility medicaid payment system and general hearing requirements in chapter 34.05 RCW and

chapter 388-02 WAC, the specific requirements of chapter 74.46 RCW and chapter 388-96 WAC shall prevail. The presiding officer assigned by the department's board of appeals to conduct an adjudicative proceeding and who conducts the proceeding shall render the final agency decision.

(9) At the time an adjudicative proceeding is being scheduled for a future time and date certain, or at any appropriate stage of the prehearing process, the presiding officer shall have authority, upon the motion of either party or the presiding officer's own motion, to compel either party to identify specific issues remaining to be litigated.

(10) If the presiding officer determines there is no material issue(s) of fact to be resolved in a case, the presiding officer shall have authority, upon the motion of either party or the presiding officer's own motion, to decide the issue(s) presented without convening or conducting an in-person evidentiary hearing. In such a case, the decision may be reached on documentation admitted to the record, party admissions, written or oral stipulation(s) of facts, and written or oral argument.

(11) The board of appeals shall issue an order dismissing an adjudicative proceeding requested under subsection (5) of this section, unless within two hundred seventy calendar days after the board of appeals receives the application for an adjudicative proceeding:

(a) All issues have been resolved by a written settlement agreement between the contractor and the department signed by both and filed with the board of appeals; or

(b) An adjudicative proceeding has been held for all issues not resolved and the evidentiary record, including all rebuttal evidence and post-hearing or other briefing, is closed.

This time limit may be extended one time thirty additional calendar days for good cause shown upon the motion of either party made prior to the expiration of the initial two hundred seventy day period. It shall be the responsibility of the contractor to request that hearings be scheduled and ensure that settlement agreements are signed and filed with the board of appeals in order to comply with the time limit set forth in this subsection.

(12) Any party dissatisfied with a decision or an order of dismissal of the board of appeals may file a petition for reconsideration within ten calendar days after the decision or order of dismissal is served on such party. The petition shall state the specific grounds upon which relief is sought. The time for seeking reconsideration may be extended by the presiding officer for good cause upon motion of either party. The presiding officer shall rule on a petition for reconsideration and may seek additional argument, briefing, testimony, or other evidence if deemed necessary. Filing a petition for reconsideration shall not be a requisite for seeking judicial review; however, if a petition is filed by either party, the agency decision shall not be deemed final until a ruling is made by the presiding officer.

(13) A contractor dissatisfied with a decision or an order of dismissal of the board of appeals may file a petition for judicial review pursuant to RCW 34.05.570(3) or other applicable authority.

[Statutory Authority: Chapter 74.46 RCW, 2010 1st sp.s. c 34, and 2010 1st sp.s. c 37 § 958. WSR 11-05-068, § 388-96-904, filed 2/14/11, effective 2/26/11. Statutory Authority: RCW 74.46.431 (11) and (12), 74.46.800, chapter 74.46 RCW, 2004 c 276 § 913, 2001 1st sp.s. c 8. WSR 04-21-027, § 388-96-904, filed 10/13/04, effective 11/13/04. Stat-

utory Authority: RCW 74.46.780 as amended by 1998 c 322 § 41. WSR 98-20-023, § 388-96-904, filed 9/25/98, effective 10/1/98. Statutory Authority: RCW 74.46.800. WSR 96-15-056, § 388-96-904, filed 7/16/96, effective 8/16/96. Statutory Authority: RCW 74.46.800 and 1995 1st sp.s. c 18. WSR 95-19-037 (Order 3896), § 388-96-904, filed 9/12/95, effective 10/13/95. Statutory Authority: RCW 74.46.800. WSR 94-12-043 (Order 3737), § 388-96-904, filed 5/26/94, effective 6/26/94. Statutory Authority: RCW 74.46.800 and 74.09.120. WSR 91-12-026 (Order 3185), § 388-96-904, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 34.05.220 (1)(a) and 74.09.120. WSR 90-04-071 (Order 3003), § 388-96-904, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 74.09.180 and 74.46.800. WSR 89-01-095 (Order 2742), § 388-96-904, filed 12/21/88. Statutory Authority: 1987 c 476. WSR 88-01-126 (Order 2573), § 388-96-904, filed 12/23/87. Statutory Authority: RCW 34.04.020. WSR 84-05-040 (Order 2076), § 388-96-904, filed 2/17/84. Statutory Authority: RCW 74.09.120. WSR 82-21-025 (Order 1892), § 388-96-904, filed 10/13/82; Order 1262, § 388-96-904, filed 12/30/77.]