

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES**  
**Division 15—Division of Senior and Disability Services**  
**Chapter 4—Older Americans Act**

**PROPOSED AMENDMENT**

**19 CSR 15-~~6.025~~4.440 Division Formal Hearings.** The department is amending the purpose statement, chapter number, and sections (1) – (9) and (10), and deleting section (8).

*PURPOSE: This amendment updates the hearing procedure and statutory authority; and moving the rule from Chapter 6 to Chapter 4.*

*PURPOSE: This rule requires the division to provide opportunity for a formal hearing, describes when a formal hearing may be requested and the procedures to be followed.*

(1) The division shall provide the opportunity for a formal hearing, under the following circumstances:

(A) To an area agency when the division finds that any provision of the area plan or plan amendment is not approvable and the division proposes to disapprove the area plan or plan amendment;

(B) To an area agency **on aging** when the division proposes to withdraw its designation *[for]* **in accordance with 19 CSR 15-4.080**; *[the following reasons:*

1. *The area agency does not meet the requirements of federal and state regulations;*

2. *The area plan or plan amendment is not approved; or*

3. *There is substantial failure in the provisions or administration of an approved area plan to comply with federal and state regulations;]*

(C) To any applicant for designation as a planning and service area whose application is denied by the division;

(D) To any nutrition project that was receiving funds under the former Title VII of the Act on September 30, 1978 that an area agency proposes to defund except as provided in 45 CFR Part *[74, Subpart M]*75 and has appealed the determination through the area agency grievance procedure*[and the division mediation procedure]*; and

(E) To any other service provider whose application to provide services is denied or whose subgrant or contract is terminated or not renewed except as provided in 45 CFR Part *[74, Subpart M]*75 and has appealed the determination through the area agency grievance procedure *[and the division mediation procedure]*.

(2) A written request for a formal hearing shall be filed with the director within thirty (30) calendar days following receipt of notice of the adverse action to be appealed. The written request shall state clearly the actions to be reviewed and enumerate the issues to be resolved.

(A) The director shall designate a *[hearing panel of three (3)]* **hearing officer that is an** impartial decision-maker*[s]* to hear all appeals. *[One (1) member]* **The designated hearing officer** shall be the director or **director's** designee *[who shall serve as presiding officer of the hearing panel]*.

(B) The *[director or designee]* **designated hearing officer** is responsible for arranging the formal hearing and, within fifteen (15) calendar days of receipt of a request for hearing, shall send written notification to all parties *[concerned]* **advising** of the date, time, and location of the hearing.

(C) The hearing shall be completed one hundred twenty (120) calendar days of the date the request for hearing was received by the division.

(D) The purpose of the hearing shall be to receive factual information, both verbal and written, related to the identified issues.

(E) Letters and other written material regarding matters at issue shall be considered correspondence and shall not be considered as part of the information or the record unless formally introduced by the parties involved and admitted by the *[presiding officer]* **designated hearing officer**.

(3) The *[presiding officer]* **designated hearing officer** shall assure that the aggrieved party received timely written notice of the determination that is being appealed which included the following:

(A) Explanation of the reasons for the determination and the evidence on which the determination was based;

(B) Provision for the opportunity to review any pertinent evidence upon which the determination was based; and

(C) Notification of the right to appeal the determination.

(4) The *[presiding officer]* **designated hearing officer** shall assure that in the conduct of the hearing the aggrieved party shall have an opportunity to—

(A) Appear in person to refute the basis for the decision;

(B) Be represented by counsel or other representative;

(C) Present witnesses and documentary evidence; and

(D) Cross-examine witnesses.

(5) The *[presiding officer]* **designated hearing officer** shall conduct a fair hearing, avoid delays and maintain order. The *[presiding officer]* **designated hearing officer** shall have the authority to—

(A) Regulate the course of the hearing;

(B) Regulate the participation and conduct of the parties and others at the hearing;

(C) Rule on procedural matters;

(D) Question all persons presenting information;

(E) Receive or exclude information; and

(F) Rule on or limit information.

(6) The *[presiding officer]* **designated hearing officer** shall designate a reporter for the hearing who shall maintain a record of the proceedings. The record shall consist of the verbatim (tape-recorded) information, exhibits, rulings, decisions and all other pertinent papers and requests, except for correspondence.

(7) The *[hearing panel]* **designated hearing officer** shall issue a final written decision, within sixty (60) calendar days of the date of the hearing, which sets forth the reasons for the *[hearing panel's]* **division's** decision and the evidence on which the decision is based.

*[(8) Final actions of the hearing panel may include:*

*(A) Withdrawal of designation as appropriate;*

*(B) Withholding of funds as appropriate;*

*(C) Reallocation of funds as appropriate; and/or*

*(D) Other remedies as deemed appropriate.]*

**(8)**~~(9)~~ The division may terminate the formal hearing procedures at any point if the division and/or aggrieved parties negotiate a written agreement, signed by both parties, that resolves the issue(s) which led to the hearing.

**(9)**~~(10)~~ The division shall notify an applicant for designation as a planning and service area who receives an adverse decision from the division's formal hearing of the right to appeal to the ~~commissioner~~ **Assistant Secretary**.

**(10)**~~(11)~~ The division shall retain the complete record for a period of at least three (3) years following the date of the hearing.

*AUTHORITY: sections 251.070, [and] 536.023, and 192.2000, RSMo [1986]2016;\* Executive Order of the Governor filed Jan. 31, 1979, effective Oct. 1, 1979 and in compliance with 45 CFR 1321.15(b)(2). This rule previously filed as 13 CSR 15-6.025 and 19 CSR 15-6.025. Original rule filed Feb. 10, 1982, effective May 11, 1982. Moved to 19 CSR 15-6.025, effective Aug. 28, 2001. Amended and moved to 19 CSR 15-4.440: Filed \_\_\_\_\_.*

*\*Original authority: 251.070, RSMo 1967 and 536.023, RSMo 1975 amended 1976.*

*PUBLIC COST: This proposed rescission will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: This proposed rescission will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Missouri Department of Health and Senior Services, Division of Senior and Disability Services, Melanie Highland, Division Director, PO Box 570, Jefferson City, MO 65102-0570. Telephone: (573) 526-3626. Email: DSDSDirectorsOffice@health.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*