

Colorado Revised Statutes

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 **TITLE 24 GOVERNMENT – STATE**
 **ADMINISTRATION**
 **ARTICLE 4 Rule-making and Licensing Procedures by State Agencies**

24-4-105. Hearings and determinations.

(1) In order to assure that all parties to any agency adjudicatory proceeding are accorded due process of law, the provisions of this section shall be applicable.

(2) (a) In any such proceeding in which an opportunity for agency adjudicatory hearing is required under the state constitution or by this or any other statute, the parties are entitled to a hearing and decision in conformity with this section. Any person entitled to notice of a hearing shall be given timely notice of the time, place, and nature thereof, the legal authority and jurisdiction under which it is to be held, and the matters of fact and law asserted. Unless otherwise provided by law, such notice shall be served personally or by mailing by first-class mail to the last address furnished the agency by the person to be notified at least thirty days prior to the hearing. In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the parties and their representatives.

(b) Any person given such notice shall file a written answer thirty days after the service or mailing of such notice. If such person fails to answer, any agency, administrative law judge, or hearing officer, upon motion, may enter a default. For good cause shown, the entry of default may be set aside within ten days after the date of such entry.

(c) A person who may be affected or aggrieved by agency action shall be admitted as a party to the proceeding upon his filing with the agency a written request therefor, setting forth a brief and plain statement of the facts which entitle him to be admitted and the matters which he claims should be decided. Nothing in this subsection (2) shall prevent an agency from admitting any person or agency as a party to any agency proceeding for limited purposes.

(3) At a hearing only one of the following may preside: The agency, an administrative law judge from the office of administrative courts, or, if otherwise authorized by law, a hearing officer who if authorized by law may be a member of the body which comprises the agency. Upon the filing in good faith by a party of a timely and sufficient affidavit of personal bias of an administrative law judge or a hearing officer or a member of the agency or the agency, the administrative law judge, hearing officer, or agency shall forthwith rule upon the allegations in such affidavit as part of the record in the case. An administrative law judge or a hearing officer may at any time withdraw if he or she deems himself or herself disqualified or for any other good reason in which case another administrative law judge or hearing officer may be assigned to continue the case, and he or she shall do so in such manner that no substantial prejudice to any party results therefrom. An agency or a member of an agency may withdraw for any like reason and in like manner, unless his or her withdrawal makes it impossible

for the agency to render a decision.

(4) Any agency conducting a hearing, any administrative law judge, and any hearing officer shall have authority to: Administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof and receive evidence; dispose of motions relating to the discovery and production of relevant documents and things for inspection, copying, or photographing; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for the filing of briefs and other documents; direct the parties to appear and confer to consider the simplification of the issues, admissions of fact or of documents to avoid unnecessary proof, and limitation of the number of expert witnesses; issue appropriate orders which shall control the subsequent course of the proceedings; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to dismiss without prejudice applications and other pleadings; dispose of motions to intervene, procedural requests, or similar matters; reprimand or exclude from the hearing any person for any improper or indecorous conduct in his presence; award attorney fees for abuses of discovery procedures or as otherwise provided under the Colorado rules of civil procedure; and take any other action authorized by agency rule consistent with this article or in accordance, to the extent practicable, with the procedure in the district courts. All parties to the proceeding shall also have the right to cross-examine witnesses who testify at the proceeding. In the event more than one person engages in the conduct of a hearing, such persons shall designate one of their number to perform such of the above functions as can best be performed by one person only, and thereafter such person only shall perform those functions which are assigned to him by the several persons conducting such hearing.

(5) Subpoenas shall be issued without discrimination between public and private parties by any agency or any member, the secretary, or chief administrative officer thereof or, with respect to any hearing for which an administrative law judge or a hearing officer has been appointed, the administrative law judge or the hearing officer. A subpoena shall be served in the same manner as a subpoena issued by a district court. Upon failure of any witness to comply with such subpoena, the agency may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena; in which event, the district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence, under penalty of punishment for contempt in case of contumacious failure to comply with the order of the court and may award attorney fees under the Colorado rules of civil procedure. A witness shall be entitled to the fees and mileage provided for a witness in a court of record.

(6) No person engaged in conducting a hearing or participating in a decision or an initial decision shall be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigatory or prosecuting functions for the agency.

(7) Except as otherwise provided by statute, the proponent of an order shall have the burden of proof, and every party to the proceeding shall have the right to present his case or defense by oral and documentary

evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Subject to these rights and requirements, where a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, a person conducting a hearing may receive all or part of the evidence in written form. The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil nonjury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of the parties to the proceeding, the person so conducting the hearing may receive and consider evidence not admissible under such rules if such evidence possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The person conducting a hearing shall give effect to the rules of privilege recognized by law. He may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available; but, upon request, the party shall be given an opportunity to compare the copy with the original. An agency may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

(8) An agency may take notice of general, technical, or scientific facts within its knowledge, but only if the fact so noticed is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.

(9)(a) Any party, or the agent, servant, or employee of any party, permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of his or her own choosing and at his or her own expense, but a person may appear on their own behalf. An attorney who is a witness may not act as counsel for the party calling the attorney as a witness. Any party, upon payment of a reasonable charge therefor, shall be entitled to procure a copy of the transcript of the record or any part thereof. Any person permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of such person's own choosing and, upon payment of a reasonable charge therefor, to procure a copy of the transcript of such person's testimony if it is recorded.

(b) (I) Except as provided in subparagraph (III) of this paragraph (b), no attorney shall submit a document concerning an adjudicatory proceeding after January 1, 1994, unless such document is submitted on recycled paper. The provisions of this section shall apply to all papers appended to each such document.

(II) (A) Any state agency that adopts policies, procedures, rules, or regulations for the purpose of implementing the provisions of this section shall ensure that the conduct of state business is not impeded and that no person is denied access to the services or programs of a state agency as a result of such implementation.

(B) No document shall be refused by a state agency solely because it was not submitted on recycled paper.

(III) Nothing in this section shall be construed to apply to:

(A) Photographs;

(B) An original document that was prepared or printed prior to January 1, 1994;

(C) A document that was not created at the direction or under the control of the submitting attorney;

(D) Facsimile copies concerning an adjudicatory proceeding otherwise permitted to be filed in lieu of the original document; however, if the original is also required to be filed, such original shall be submitted in compliance with this section;

(E) Existing stocks of nonrecycled paper and preprinted forms acquired or printed prior to January 1, 1994.

(IV) The provisions of this section shall not be applicable if recycled paper is not readily available.

(V) For purposes of this paragraph (b), unless the context otherwise requires:

(A) "Attorney" means an attorney-at-law admitted to practice law before any court of record in this state.

(B) "Document" means any pleading or any other paper submitted as an appendix to such pleading by an attorney, which document is required or permitted to be filed with a state agency concerning any action to be commenced or which is pending before such agency.

(C) "Recycled paper" means paper with not less than fifty percent of its total weight consisting of secondary and postconsumer waste and with not less than ten percent of such total weight consisting of postconsumer waste.

(10) Every agency shall proceed with reasonable dispatch to conclude any matter presented to it with due regard for the convenience of the parties or their representatives, giving precedence to rehearing proceedings after remand by court order. Prompt notice shall be given of the refusal to accept for filing or the denial in whole or in part of any written application or other request made in connection with any agency proceeding or action, with a statement of the grounds therefor. Upon application made to any court of competent jurisdiction by a party to any agency proceeding or by a person adversely affected by agency action and a showing to the court that there has been undue delay in connection with such proceeding or action, the court may direct the agency to decide the matter promptly.

(11) Every agency shall provide by rule for the entertaining, in its sound discretion, and prompt disposition of petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or of any rule or order of the agency. The order disposing of the petition shall constitute agency action subject to judicial review.

(12) Nothing in this article shall affect statutory powers of an agency to issue an emergency order where the agency finds and states of record the reasons for so finding that immediate issuance of the order is imperatively necessary for the preservation of public health, safety, or welfare and observance of the requirements of this section would be contrary to the public interest. Any person against whom an emergency order is issued, who would otherwise be entitled to a hearing pursuant to this section, shall be entitled upon request to an immediate hearing in accordance with this article, in which proceeding the agency shall be deemed the proponent of the order.

(13) The administrative law judge or the hearing officer shall cause the proceedings to be recorded by a reporter or by an electronic recording device. When required, the administrative law judge or the hearing officer shall cause the proceedings, or any portion thereof, to be transcribed, the cost thereof to be paid by the agency when it orders the transcription or by any party seeking to reverse or modify an initial decision of the administrative law judge or the hearing officer. If the agency acquires a copy of the transcription of the proceedings, its copy of the transcription shall be made available to any party at reasonable times for inspection and study.

(14) (a) For the purpose of a decision by an agency which conducts a hearing or an initial decision by an administrative law judge or a hearing officer, the record shall include: All pleadings, applications, evidence, exhibits, and other papers presented or considered, matters officially noticed, rulings upon exceptions, any findings of fact and conclusions of law proposed by any party, and any written brief filed. The agency, administrative law judge, or hearing officer may permit oral argument. No ex parte material or representation of any kind offered without notice shall be received or considered by the agency, the administrative law judge, or by the hearing officer. The agency, an administrative law judge, or hearing officer, with the consent of all parties, may eliminate or summarize any part of the record where this may be done without affecting the decision. In any case in which the agency has conducted the hearing, the agency shall prepare, file, and serve upon each party its decision. In any case in which an administrative law judge or a hearing officer has conducted the hearing, the administrative law judge or the hearing officer shall prepare and file an initial decision which the agency shall serve upon each party, except where all parties with the consent of the agency have expressly waived their right to have an initial decision rendered by such administrative law judge or hearing officer. Each decision and initial decision shall include a statement of findings and conclusions upon all the material issues of fact, law, or discretion presented by the record and the appropriate order, sanction, relief, or denial thereof. An appeal to the agency shall be made as follows:

(I) With regard to initial decisions regarding agency action by the department of health care policy and financing, the state department of human services, or county department of social services, or any contractor acting for any such department, under section [26-1-106](#)(1)(a) or [25.5-1-107](#)(1)(a), C.R.S., by filing exceptions within fifteen days after service of the initial decision upon the parties, unless extended by the department of health care policy and financing, or the state department of human services, as applicable, or unless a review has been initiated in accordance with this subparagraph (I) upon motion of the

applicable department within fifteen days after service of the initial decision. In the event a party fails to file an exception within fifteen days, the applicable department may allow, upon a showing of good cause by the party, for an extension of up to an additional fifteen days to reconsider the final agency action.

(II) With regard to initial decisions regarding agency action of any other agency, by filing exceptions within thirty days after service of the initial decision upon the parties, unless extended by the agency or unless review has been initiated upon motion of the agency within thirty days after service of the initial decision.

(b) (I) In the absence of an exception filed pursuant to subparagraph (I) of paragraph (a) of this subsection (14), the executive director of the department of health care policy and financing shall review the initial decision regarding agency action by such department in accordance with a procedure adopted by the medical services board pursuant to section [25.5-1-107](#)(1), C.R.S.

(II) In the absence of an exception filed pursuant to subparagraph (I) of paragraph (a) of this subsection (14), the executive director of the state department of human services shall review the initial decision regarding agency action by such department in accordance with a procedure adopted by the state board of human services pursuant to section [26-1-106](#)(1), C.R.S.

(III) In the absence of an exception filed pursuant to subparagraph (II) of paragraph (a) of this subsection (14), the initial decision of any other agency shall become the decision of the agency, and, in such case, the evidence taken by the administrative law judge or the hearing officer need not be transcribed.

(c) Failure to file the exceptions prescribed in this subsection (14) shall result in a waiver of the right to judicial review of the final order of such agency, unless that portion of such order subject to exception is different from the content of the initial decision.

(15) (a) Any party who seeks to reverse or modify the initial decision of the administrative law judge or the hearing officer shall file with the agency, within twenty days following such decision, a designation of the relevant parts of the record described in subsection (14) of this section and of the parts of the transcript of the proceedings which shall be prepared and advance the cost therefor. A copy of this designation shall be served on all parties. Within ten days thereafter, any other party or the agency may also file a designation of additional parts of the transcript of the proceedings which is to be included and advance the cost therefor. The transcript or the parts thereof which may be designated by the parties or the agency shall be prepared by the reporter or, in the case of an electronic recording device, the agency and shall thereafter be filed with the agency. No transcription is required if the agency's review is limited to a pure question of law. The agency may permit oral argument. The grounds of the decision shall be within the scope of the issues presented on the record. The record shall include all matters constituting the record upon which the decision of the administrative law judge or the hearing officer was based, the rulings upon the proposed findings and conclusions, the initial decision of the administrative law judge or the hearing officer, and any other exceptions

and briefs filed.

(b) The findings of evidentiary fact, as distinguished from ultimate conclusions of fact, made by the administrative law judge or the hearing officer shall not be set aside by the agency on review of the initial decision unless such findings of evidentiary fact are contrary to the weight of the evidence. The agency may remand the case to the administrative law judge or the hearing officer for such further proceedings as it may direct, or it may affirm, set aside, or modify the order or any sanction or relief entered therein, in conformity with the facts and the law.

(16) (a) Each decision and initial decision shall be served on each party by personal service or by mailing by first-class mail to the last address furnished the agency by such party and, except as provided in paragraph (b) of this subsection (16), shall be effective as to such party on the date mailed or such later date as is stated in the decision.

(b) Upon application by a party, and prior to the expiration of the time allowed for commencing an action for judicial review, the agency may change the effective date of a decision or initial decision.

Source: L. 59: p. 162, § 4. CRS 53: § 3-16-4. L. 61: p. 138, § 1. C.R.S. 1963: § 3-16-4. L. 69: p. 85, § 5. L. 76: (13) and (14) amended and (15) R&RE, pp. 583, 584, §§ 16, 17, effective May 24. L. 77: (14) amended, pp. 1137, 1145, §§ 2, 2, effective June 19. L. 81: (4) amended, p. 1134, § 3, effective June 6. L. 87: (3), (4), (5), (13), (14), and (15) amended, p. 961, § 66, effective March 13. L. 93: (14) amended, p. 426, § 3, effective April 19; (2), (4), (5), (14), (15) (a), and (16) amended, p. 1327, § 4, effective June 6; (9) amended, p. 624, § 3, effective July 1; (9) (b) (V) (B) amended, p. 1798, § 107, effective July 1. L. 94: (14) (a) (I) and (14) (b) amended, p. 2692, § 228, effective July 1. L. 95: (14) (a) (I) and (14) (b) amended, p. 902, § 1, effective May 25. L. 2005: (3) amended, p. 857, § 21, effective June 1.