

**Standing Practice Order
Pursuant to §20.1 of Act 2002-142**

**Establishing Rules Governing Practice and Procedure in
Medical Assistance Provider Appeals**

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Part I--Preliminary Provisions

Subpart A. General Provisions

Rule 1. Scope of rules.

(a) This order is issued pursuant to Act 2002-142, § 20.1, 67 Pa.C.S. § 1102(g) (Act) (relating to hearings before the bureau). This order is effective July 1, 2003 and applies to provider appeals commenced on or after December 3, 2002.

(b) Except as set forth in subsections (c), (d) and (e), the rules adopted by this order govern practice and procedure in provider appeals. In those matters in which this order is inapplicable, the General Rules of Administrative Practice and Procedure set forth in Title 1 of the **Pennsylvania Code** (GRAPP) and applicable Departmental regulations apply.

(c) This order does not apply to appeals governed by 55 Pa. Code Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings).

(d) This order does not apply to provider appeals commenced before December 3, 2002.

(e) The rules adopted by the order apply in cases filed on or after December 3, 2002 but before July 1, 2003, except as follows:

(1) Nonconformity of a pleading or legal document with this order shall not in itself be a basis for objection.

(2) Except for the time limits, schedules and periods specified in Rule 19 (relating to timeliness and perfection of requests for hearing), the time limits, schedules and periods specified in this order do not apply. When a rule sets forth a time limit, schedule or period, the parties may agree to an alternative time limit, schedule or period or the Bureau may issue an order specifying such alternative time limit or period as the Bureau deems appropriate.

(3) Rules 35 and 37 (relating to disclosures and supplementing disclosures and responses) do not apply.

Rule 2. Construction and application of rules.

(a) The rules adopted by this order shall be liberally construed to secure the just, speedy and inexpensive determination of provider appeals.

(b) Except to the extent that Appendix A to these rules provides to the contrary, these rules replace and supersede the General Rules of Administrative Practice and Procedure (GRAAP) To the extent that GRAAP applies in provider appeals, when the term "agency" is used in 1 Pa. Code Part II, the term "Bureau" is to be understood; when the term "participant" is used in 1 Pa. Code Part II, the term "party" is to be understood; and when the term "presiding officer" is used in 1 Pa. Code Part II, the term "presiding officer" is to be understood.

Rule 3. Definitions.

The following words and terms, when used in these rules, have the following meanings, unless the context clearly indicates otherwise:

Agency Action--An adjudicative action of the Department or a program office that relates to the administration of the MA Program. The term includes the actions identified in 55 Pa. Code §§ 1101.84(a)--(c) (relating to provider right of appeal) and 1187.141(a) (relating to nursing facility's right to appeal and to a hearing) and other actions relating to a provider's enrollment in, participation in, claims for payment or damages under, or penalties imposed under the MA Program.

Bureau--The Bureau of Hearings and Appeals.

Department--The Department of Public Welfare.

Director--The Director of the Bureau.

Dispositive motion--A motion that seeks a final determination of one or more of the issues in a provider appeal without the need for hearing or further hearing. The term includes: a motion to quash the provider appeal, a motion to dismiss the provider appeal, a motion for summary judgment, and a motion for partial summary judgment, but does not include a motion in limine.

GRAPP--The General Rules of Administrative Practice and Procedure set forth at 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

Hearing--Any of the following:

(i) A provider appeal.

(ii) A proceeding before a presiding officer for the purpose of creating a factual evidentiary record relative to the merits of one or more issues raised in a request for hearing.

(iii) A proceeding conducted by a presiding officer for the purpose of resolving an interlocutory matter, including but not limited to a petition for supersedeas.

Legal document--A motion, answer, brief, petition to intervene, request for reconsideration of an interlocutory order, request for review by the Secretary, or other paper filed with the Bureau in a provider appeal, other than a pleading. The term does not include attachments or exhibits.

Pa.R.C.P.--Pennsylvania Rules of Civil Procedure.

Party--A provider, a program office, or an intervener.

Person--An individual, partnership, association, corporation, political subdivision, municipal authority or other entity.

Petition for relief--A document filed pursuant to §§ 35.17, 35.18 or 35.19 of the GRAPP.

Pleading--A request for hearing, including any amendments thereto.

Program office--An office within the Department which is managed and operated by a person who reports directly to the Secretary, including a Deputy Secretary, or a bureau or other administrative unit of an office within the Department which is managed and operated by person who reports directly to a deputy secretary. The term does not include the Bureau.

Provider--Either (i) a person currently enrolled in the MA Program as a provider of services; or (ii) a person who has applied for enrollment in the MA Program as a provider of services; or, (iii) a person whose enrollment in the MA Program as a provider of services has been suspended or terminated by the Department.

Provider appeal--A proceeding to obtain review of an agency action that is commenced by a provider by filing a request for hearing.

Request for hearing--The pleading filed by a provider in order to commence a provider appeal.

Secretary--The Secretary of Public Welfare.

Senior Department Official--the Comptroller, the Chief Counsel of the Department, a person who works in the Office of the Secretary or who reports directly to the Secretary, including a Deputy Secretary; or a director of a bureau within a program office.

Supersedeas--An order suspending the effect of an agency action pending the Bureau's determination in a provider appeal.

Waiver request--a request that the Secretary waive the application of a provision set forth in a Department regulation.

Rule 4. Amendments to rules.

(a) The Department retains continuing jurisdiction under 67 Pa.C.S. § 1106 (relating to regulations) to adopt regulations establishing rules of procedure as may be necessary to govern provider appeals.

(b) The Bureau will establish an advisory committee, including individuals experienced in proceedings before the Bureau and other administrative agencies, to provide assistance and guidance in the development and modification of regulations which may be promulgated under 67 Pa.C.S. § 1106.

(c) The Bureau may establish such forms as may be required to implement these Rules.

Rule 5. Jurisdiction of the Bureau.

(a) Except as provided in subsections (b), (c) and (d), the Bureau has exclusive original jurisdiction over all provider appeals.

(b) The Bureau has no jurisdiction to make a final determination on a waiver request included in a request for hearing. The Bureau will create a record and make a recommendation to the Secretary regarding the waiver request as specified in Rule 52(b) (relating to determinations and recommendations by the bureau).

(c) The Bureau has no jurisdiction to issue a final determination on the merits of an issue properly raised in a petition for relief.

(d) The Bureau's jurisdiction in provider appeals is subject to Rule 54 (relating to reconsideration of interlocutory orders) and Rule 55 (relating to review of bureau determinations).

(e) The Bureau has no jurisdiction in a provider appeal involving an agency action if Federal law or Federal regulations require the aggrieved provider to use Federal appeal procedures in order to contest the agency action.

Subpart B. Time

Rule 6. Timely filing required.

Pleadings and legal documents required or permitted to be filed under this part, the regulations of the Department or any other provision of law shall be received for filing at the Bureau within the time limits, if any, permitted for the filing. Except as provided in Rule 19(b) (relating to timeliness and perfection of requests for hearing), the filing date is the date of receipt by the Bureau, and not the date of mailing.

Rule 7. Extensions of time.

(a) Except when necessitated by the circumstances of the Bureau, no order or pre-hearing order shall continue a provider appeal or extend the time for doing any act required by these rules except upon written motion by a party filed in accordance with these rules.

(b) Where these rules establish a standard for an extension of time, a motion seeking such an extension shall be resolved by the application of that standard. In the event that these rules do not otherwise establish such a standard, the motion shall be resolved by application of the rules set forth in 1 Pa. Code § 31.15 (relating to extensions of time).

Part II--Documentary Filings

Subchapter A. General Requirements Rule 8. Title.

Filings Generally

- (a) All legal documents in a provider appeal commenced by a request for hearing, other than the initial pleading, shall display a caption at the top of the first page in the following form:

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF PUBLIC WELFARE

BUREAU OF HEARINGS AND APPEALS

[Name of Provider] v. [Name of Program Office]

BHA I.D. No.:

Docket No.:

[Descriptive Title of Document]

- (b) The descriptive title of a legal document shall identify the party on whose behalf the filing is made. (E.g., Appellant's Motion to Compel Discovery.)

Rule 9. Form.

- (a) Pleadings and legal documents shall conform to the requirements of 1 Pa. Code § 33.2 (relating to form) except that the font used must be at least 12 point.
- (b) An original hard copy of a pleading bearing an original signature must be filed with the Bureau by personal delivery or first-class mail.
- (c) A legal document may be filed with the Bureau in hard copy by first-class mail or personal delivery.
- (d) A legal document may be filed by facsimile if the document does not exceed 20 pages in length, including attachments and exhibits. An executed hard copy of a document filed by facsimile shall be maintained by the filing party and produced at the request of the Bureau or other party.

Rule 10. Incorporation by reference.

Any legal document on file with the Bureau in a provider appeal, and any exhibits or attachments thereto, may be incorporated by reference into another legal document that is subsequently filed in the same provider appeal. A document may be so incorporated by reference to the specific document and prior filing in which it was physically filed, but not by reference to another document that incorporates it by reference.

Execution and Verification

Rule 11. Verification.

- (a) Every pleading or legal document that contains an averment of fact not appearing of record or that contains a denial of fact shall be verified as specified in subsection (b).

(b) A verification of a pleading or legal document shall substantially conform to the following: I, (name of person signing verification), in my capacity as (title or statement describing relationship to the party submitting the document), hereby state that I am authorized to make this verification on behalf of (party submitting the document) and that the facts set forth in the (document being verified) filed in this matter are true and correct to the best of my knowledge, information, and belief, and that this verification is being made subject to 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Copies

Rule 12. Number of copies; copying of Bureau documents.

(a) Unless otherwise ordered by the Bureau, only the original of a pleading or a legal document shall be filed with the Bureau.

(b) One copy of any pleading or legal document filed with the Bureau will be served on each of the other parties to the provider appeal unless otherwise specified in these rules.

(c) Any document filed with the Bureau in a provider appeal is available for inspection and copying except that, if a document contains information protected by law against public disclosure, the document shall not be available unless and until the protected information has been redacted. When redaction is required, the person seeking access to or a copy of the document shall be required to pay the actual cost of redaction prior to the document being made available.

(d) Documents in the files of the Bureau shall not be removed from the Bureau's custody. A person provided with access to a document pursuant to (c) may make a photocopy of that document using a photocopier available at the Bureau at a charge of \$0.15 per page. Upon request the Bureau may, in its discretion, agree to make a photocopy and provide it to the person requesting access, in which case the charge shall be \$0.25 per page. In the event that a person wants a certified copy of a document, the copy shall be made by the Bureau at the rate of \$0.25 per page and, in addition, the fee for the certification shall be \$2.00 per document.

Subchapter B. Service of Documents

Rule 13. Notice of agency actions.

(a) In the absence of a Department regulation specifying the method in which notice of an agency action is given, the Department or a program office may give notice of an agency action by any of the following methods:

(1) Mailing a written notice of the action to a provider at the provider's most recent business address on file with the Department.

(2) Serving notice of the action in the manner provided in Pa.R.C.P. 400--441.

(3) By publication in the **Pennsylvania Bulletin** if the agency action applies to a class of providers or makes system-wide changes affecting more than a single provider.

(b) In the absence of a Department regulation specifying the content of a notice of an agency action, notice of an agency action must include the following:

(1) The effective date of the agency action.

(2) The basis for the agency action.

(3) The date the notice was deposited in the mail or otherwise served on the provider.

Rule 14. Service of pleadings and legal documents.

Service of pleadings and legal documents shall be made on the same day the pleading or legal document is filed with the Bureau as follows:

1. **Pleading.** The provider that files a pleading shall serve a copy on:

- (i) The program office that initiated the agency action in dispute; and,
- (ii) The Department's Office of General Counsel.

2. **Petition for supersedeas.** The provider that files a petition for supersedeas shall serve a copy of the petition on:

- (i) The program office that initiated the agency action in dispute; and,
- (ii) The Department's Office of General Counsel.

3. **Legal document.** The party that files a legal document in a provider appeal shall serve a copy of the document on all other parties to the appeal.

4. **Method of service.**

- (i) Service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy of the pleading or legal document.
- (ii) When a legal document is filed by facsimile, service shall be made by facsimile in addition to the method set forth in subparagraph (i).

Rule 15. Proof of Service.

A certificate of service in the form prescribed in Rule 16 (relating to certificate of service) shall accompany and be attached to a pleading or legal document filed with the Bureau.

Rule 16. Certificate of Service.

Each certificate of service shall substantially conform to the following: I hereby certify that I have this day served the foregoing document upon: (Identify name and address of each person served) by (Indicate method of service).

Subchapter C. Miscellaneous Provisions

Amendments and Withdrawals of Legal Documents

Rule 17. Amendment and withdrawal of legal documents.

(a) A party may amend a legal document, other than a position paper, by filing an amendment with the Bureau at any time unless the Bureau otherwise orders.

(1) An amendment to a legal document shall be deemed filed as of the date of receipt by the Bureau, unless the Bureau otherwise orders.

(2) A position paper may be amended as specified in Rule 35(c)(4) (relating to disclosures).

(b) A party may withdraw a legal document by filing a motion for leave to withdraw the document. The motion will be granted or denied by the Bureau as a matter of discretion.

Part III--Provider Appeals

Subchapter A. Requests for Hearing, Petitions for Relief and Other Preliminary Matters

Request for Hearings

Rule 18. Request for hearing.

(a) General.

(1) A provider that is aggrieved by an agency action may appeal and obtain review of that action by the Bureau by filing a request for hearing in accordance with these rules.

(2) A provider is aggrieved by an agency action if the action adversely affects the personal or property rights, privileges, immunities, duties, liabilities or obligations of the provider.

(3) When a provider files a request for hearing to contest an agency action, the program office that issued the notice of the agency action is a party to the provider appeal.

(b) Content. A request for hearing shall conform to the following:

(1) The request shall set forth the name, address and telephone number of the provider.

(2) The request shall state in detail the reasons why the provider believes the agency action is factually or legally erroneous, identify the specific issues that the provider will raise in its provider appeal, and specify the relief that the provider is seeking.

(i) If the provider is challenging the validity of a regulation or statement of policy in its provider appeal, the provider shall state such challenge expressly and with particularity, and shall identify the regulation or statement of policy involved.

(ii) If the provider is seeking relief from an agency action, in whole or in part, through waiver of the application of a regulation, the provider shall state its waiver request expressly and with particularity and shall identify the regulation involved.

(iii) A provider may not request a declaratory order or an order that the Department should be required to promulgate, amend or repeal a regulation as relief in a request for hearing. Any such request shall be set forth in a petition for relief in accordance with 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations).

(3) If the provider received written notice of the agency action by mail or by personal service, the provider shall attach to the request for hearing a copy of the transmittal letter forwarding the written notice and the first page of the written notice, or, if there is no transmittal letter, a copy of the entire written notice. If the provider received written notice of the agency action by publication in the **Pennsylvania Bulletin**, the provider shall identify the date, volume and page number of the **Pennsylvania Bulletin** in the request for hearing.

Rule 19. Timeliness and perfection of requests for hearing.

(a) Except as authorized in Rule 20 (relating to appeals nunc pro tunc), jurisdiction of the Bureau will not attach to a request for hearing unless the request for hearing is in writing and is filed with the Bureau in a timely manner, as follows:

(1) If the program office gives notice of an agency action by mailing the notice to the provider, the provider shall file its request for hearing with the Bureau within 33 days of the date of the written notice of the agency action.

(2) If written notice of an agency action is given in a manner other than by mailing the notice to the provider, a provider shall file its request for hearing with the Bureau within 30 days of the date of the written notice of the agency action.

(b) If a provider files a request for hearing by first-class mail, the United States postmark appearing upon the envelope in which the request for hearing was mailed shall be considered the filing date of that request for hearing. If the provider files a request for hearing in any other manner, or if the envelope in which the provider's request for hearing was mailed bears a postmark other than a United States postmark, the date the request for hearing is received in the Bureau will be considered the filing date.

(c) Except as permitted in Rule 20(b) (relating to appeals nunc pro tunc), a request for hearing may be amended only as follows:

(1) A provider may amend a request for hearing as a matter of right within 90 days of the filing date of the request for hearing.

(2) Upon motion of the provider or in response to a Rule or Order issued pursuant to subsection (f). The Bureau may permit a provider to amend a request for hearing more than 90 days after the filing of a request for hearing if the provider establishes either of the following:

(i) The amendment is necessary because of fraud or breakdown in the administrative process.

(ii) Both of the following conditions are met:

(A) The amendment is based upon additional information acquired after the expiration of the 90-day period that contradicts information previously disclosed by the Department or provides entirely new information not previously disclosed by the Department.

(B) The program office and other parties to the appeal will not be prejudiced if the amendment is allowed.

(d) Any legal or factual objection or issue not raised in either a request for hearing filed within the time prescribed in subsection (a) or in an amended request for hearing filed pursuant to subsection (c) shall be deemed waived. A general objection to an agency action shall be deemed a failure to object and shall constitute a waiver of all objections and issues relating to an action.

(e) The Bureau will dismiss a request for hearing, either on its own motion or on motion of a program office, if a provider fails to file its request in accordance with the time limits specified in subsection (a).

(f) The Bureau will dismiss a request for hearing on its own motion or a motion of the program office if the following conditions are met:

(i) The provider's request for a hearing fails to conform to the requirements of Rule 18(b) (relating to request for hearing).

(ii) The 90-day time period for amendments specified in paragraph (c)(1) has expired.

(iii) The provider fails to establish that an amendment should be permitted pursuant to paragraph (c)(2).

(g) If the dismissal is based upon motion of the Bureau, the Bureau will issue a rule or an order to show cause, with a date certain listed therein, and serve that rule or order to show cause upon all parties to the appeal.

Rule 20. Appeals nunc pro tunc.

(a) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file a request for hearing nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

(b) The Bureau, upon written motion and for good cause shown, may grant leave to a provider to file an amendment to a request for hearing nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

(c) The Secretary, upon written motion and for good cause shown, may grant leave to a party to file a request for review of a Bureau determination by the Secretary nunc pro tunc pursuant to the common law standard applicable in analogous cases in courts of original jurisdiction.

Petitions

Rule 21. Limitations on the use of Petitions for Relief.

(a) **Waiver requests.** A provider may include a waiver request in a petition for relief only if the regulation that is the subject of the waiver request is not a basis for an agency action involving the provider. If an agency action involving the provider depends, in whole or in part, upon the application of a regulation of the Department, a provider aggrieved by that agency action may only present a waiver request pertaining to that regulation in the context of a request for hearing filed in accordance with Rule 18 (relating to requests for hearing). To the extent that the waiver sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(b) **Request for declaratory relief.** A provider may include a request for declaratory relief in a petition for relief only if the relief sought by the provider would not modify or alter an agency action involving the provider. If the requested relief would modify an agency action involving the provider, the provider may only seek such relief in the context of a request for hearing filed in accordance with Rule 18 (relating to requests for hearing). To the extent that a request for declaratory relief is sought by a provider in a petition for relief has been or could have been included in a request for hearing, the Bureau will dismiss the petition for relief.

(c) **Request for issuance, amendment, or deletion of regulations.** The sole means by which a provider may formally petition the Department for the issuance, amendment, or deletion of a regulation or statement of policy is by filing a petition for relief.

(d) If a provider filed a petition for relief prior to the date of an agency action in which it has sought relief in connection with or relating to that agency action, the provider may file a motion to have the petition for relief transferred to the Bureau and deemed a request for hearing. Any such motion must be filed within the time allowed for the filing of a request for a hearing specified in Rule 19(a) (relating to timeliness and perfection of requests for hearing).

Supersedeas

Rule 22. General.

(a) The filing of a request for hearing does not act as an automatic supersedeas. However, a provider who has filed a request for hearing may petition the Bureau to grant a supersedeas of the agency action. The Bureau may, upon good cause shown, grant a provider's petition for supersedeas in accordance with Rule 24 (relating to circumstances affecting grant or denial).

(b) A petition for supersedeas must be set forth in writing and may be filed at any time during a provider appeal.

(c) The Bureau will not issue a supersedeas without first conducting a hearing, but a hearing may be limited pursuant to subsection (e). The Bureau, upon motion or sua sponte, may direct that a prehearing conference be held before scheduling or holding a hearing on a supersedeas.

(d) A hearing on a supersedeas, if necessary, shall be held expeditiously--if feasible within 2 weeks of the filing of the petition--taking into account the availability of the presiding officer and program office staff, and taking into account the urgency and seriousness of the problem to which the order or action of the Department applies. If good cause is shown, the hearing shall be held as soon as possible after the filing of the petition.

(e) If necessary to ensure prompt disposition, and at the discretion of the Bureau, a supersedeas hearing may be limited in time and format, with parties given a fixed amount of time to present their entire case, and with restricted rights of discovery or of cross-examination.

(f) The Bureau may impose costs or other appropriate sanctions on a party that files a petition for supersedeas in bad faith or on frivolous grounds.

Rule 23. Contents of petition for supersedeas.

(a) A petition for supersedeas shall plead facts with particularity and shall be supported by one of the following:

(1) Affidavits prepared as specified in Pa.R.C.P. 76 and 1035.4 (relating to definitions; and motion for summary judgment), setting forth facts upon which issuance of the supersedeas may depend.

(2) An explanation of why affidavits have not accompanied the petition if no supporting affidavit is submitted with the petition for supersedeas.

(b) A petition for supersedeas shall state with particularity the citations of legal authority the petitioner believes form the basis for the grant of supersedeas.

(c) A petition for supersedeas may be denied upon motion made before a supersedeas hearing or during the proceedings, or sua sponte, without hearing, for one of the following reasons:

(1) Lack of particularity of the facts pleaded.

(2) Lack of particularity or inapplicability of the legal authority cited as the basis for the grant of the supersedeas.

(3) An inadequately explained failure to support factual allegations by affidavit.

(4) A failure to state grounds sufficient for the granting of a supersedeas.

Rule 24. Circumstances affecting grant or denial.

(a) The Bureau, in granting or denying a supersedeas, will be guided by relevant judicial precedent. Among the factors to be considered:

(1) Irreparable harm to the provider.

(2) The likelihood of the provider prevailing on the merits.

(3) The likelihood of injury to the public or other parties.

(b) A supersedeas shall not be issued if injury to the public health, safety or welfare exists or is threatened during the period when the supersedeas would be in effect. If state law or federal law or regulation require that an action take effect prior to the final determination of an appeal, injury to the public health, safety or welfare shall be deemed to exist.

(c) In granting a supersedeas, the Bureau may impose conditions that are warranted by the circumstances, including the filing of a bond or the posting or provision of other security.

Intervention

Rule 25. Filing of petitions to intervene.

Petitions to intervene and notices of intervention in a provider appeal may be filed at any time following the filing of a request for hearing but in no event later than 60 days from the filing date on the provider's request for hearing, unless for extraordinary circumstances and for good cause shown, the Bureau authorizes a late filing.

Answers

Rule 26. Answers generally.

(a) No answer to a pleading is required.

(b) Answers to legal documents, if permitted or required by these Rules, shall be filed with the Bureau within 20 days after the date of service of the legal document, unless: (1) a different period is specifically required by these rules; or (2) for cause, the Bureau with or without motion shall prescribe a different time, but in no case may an answer be required in less than 10 days after the date of service.

(c) Answers shall be in writing and conform to the requirements of these Rules. Answers shall admit or deny specifically and in detail each material fact asserted in the legal document answered and shall state clearly and concisely the facts and law relied upon.

Rule 27. Answers to petitions to intervene.

(a) A party may file an answer to a petition to intervene, and in default thereof, may be deemed to have waived an objection to the granting of the petition.

(b) Answers shall be filed within 20 days after the date of service of the petition, unless for cause the Bureau with or without motion shall prescribe a different time.

Consolidation

Rule 28. Consolidation of provider appeals.

(a) **Individual provider appeals.** Each provider that wishes to appeal an agency action shall file an individual request for hearing in its own name, without joining any other provider.

(b) **Consolidation by Motion.** The Bureau, on timely motion, may order that a provider appeal be consolidated with one or more other provider appeals if the Bureau determines that the provider appeals in question involve substantially similar or materially related issues of law or fact and that consolidation is otherwise appropriate.

(c) **Appropriateness.** For purposes of this rule, consolidation is appropriate if it will not prejudice the ability of the non-moving party to perform adequate discovery or to adequately present its claim or defense, and if it will not unduly delay the adjudication of the earlier-filed matter.

(d) **Motions.** No provider appeal shall be consolidated except upon motion filed by one or more parties. In addition to the general requirements for motions set forth in Rule 39, any motion for consolidation shall: (1) identify the issues of law raised in each provider appeal and indicate the extent to which each is shared or distinct; (2) identify the material facts that serve as a basis for each appeal and indicate the extent to which each of these facts is shared or distinct; and (3) the justifications or advantages that support consolidation.

(e) **Answers.** In addition to the general requirements for answers to motions set forth in Rule 27 (relating to answers to petitions to intervene), any answer to a motion for consolidation shall explain how consolidation would, if allowed, adversely affect the non-moving party's ability to conduct and complete discovery, or its ability to present its claims or defenses.

(f) **Deadline for Motions to Consolidate.** A motion to consolidate shall be untimely as to a provider appeal if it is filed after the date set for the conclusion of discovery in that provider appeal. An untimely motion to consolidate shall only be granted with the consent of all non-moving parties.

(g) **Consent of Other Providers.** In the event that a provider seeks to consolidate its provider appeal with a provider appeal filed by a different provider, the motion for consolidation shall be deemed to be opposed by the other provider unless an affirmative statement to the contrary is set forth in the motion.

(h) **Service.** A motion for consolidation and any answer thereto shall be served on each person that is a party to any of the provider appeals for which consolidation is sought.

(i) **Effect of Consolidation Upon Discovery.** If the Bureau grants a provider's motion to consolidate, the discovery, if any, available to all providers in the consolidated appeals shall, in the aggregate, comply with the limitations specified in Rule 36(c) (relating to limitations).

Amendments and Withdrawals of Provider Appeals

Rule 29. Amendments of requests for hearing.

No amendments to a request for hearing shall be permitted except as specified in Rule 19(c) (relating to timeliness and perfection of appeal) and Rule 20(b) (relating to appeals nunc pro tunc).

Rule 30. Withdrawal of provider appeals.

(a) A provider may withdraw or end its provider appeal prior to adjudication by one of the following:

(1) The provider notifies the Bureau in writing that it is withdrawing its provider appeal.

(2) The parties to a provider appeal sign a written Stipulation of Settlement in which the provider agrees to withdraw the provider appeal.

(b) When a provider appeal is withdrawn prior to adjudication, the withdrawal shall be with prejudice as to all issues relating to the disputed agency action that were or could have been raised in the appeal.

(c) Unless the written notice or stipulation of settlement provides otherwise, a withdrawal of a provider appeal pursuant to this Rule shall be effective on the date the written notice or stipulation of settlement is received by the Bureau.

Subchapter B. Prehearings Procedures and Hearings

General

Rule 31. Waiver of hearings.

A hearing need not be held if any of the following occur:

(a) The provider waives its right to hearing.

(b) The parties stipulate the material facts or agree to submit direct and rebuttal testimony or documentary evidence in affidavit form (sworn or affirmed on personal knowledge) or by deposition.

(c) The Bureau determines that there are no material facts in dispute.

Rule 32. Expedited disposition procedure for certain appeals.

(a) This rule shall apply to all provider appeals involving the denial of claims for payment through the prior authorization process, the denial of requests for pre-certification, the recovery of overpayments or improper payments through the utilization review process, the denial of claims upon prepayment review, the denial of claims for payment pursuant to 55 Pa. Code § 1101.68 (relating to invoicing for services), the denial, termination or suspension of an exceptional DME grant (as defined in 55 Pa. Code § 1187.51 (relating to definitions)), and the denial of a program exception request filed pursuant to 55 Pa. Code § 1150.63 (relating to waivers).

(b) A request for hearing in a provider appeal subject to this rule shall: (1) be submitted in writing to the Bureau within the time limits specified in accordance with Rule 19(a) (relating to timeliness and perfection of appeal); (2) include the

information specified in Rule 18 (b) (relating to request for hearing); and, (3) must include all relevant supporting documentation. The provider shall send a copy of its request for hearing to the program office issuing the notice of the agency action at the same time it files its request with the Bureau.

(c) Unless the information has already been exchanged, each party shall give to the other parties any document that it will introduce as an exhibit and a list of any persons, including medical or other experts, that it will call as a witness at the hearing.

(d) The Bureau will promptly schedule a hearing taking into due consideration the availability of expert witnesses.

(e) The following rules do not apply to provider appeals subject to this rule:

(1) Rule 8 (relating to title).

(2) Rule 9 (relating to form).

(3) Rule 11 (relating to verification).

(4) Rule 14(1)(ii) (relating to service of pleadings and legal documents).

(5) Rule 15 (relating to proof of service).

(6) Rule 16 (relating to certificate of service).

(7) Rule 33 (relating to prehearing procedure in certain provider appeals).

(8) Rule 35 (relating to disclosures).

(9) Rule 36 (relating to methods to discover additional information).

(10) Rule 37 (relating to supplementing disclosures and responses).

(11) Rule 38 (relating to signing of disclosures, discovery requests, responses and objections)

(12) Rule 41 (relating to discovery motions).

(13) Rule 42 (relating to dispositive motions), except for a motion to dismiss based upon timeliness.

(14) Rule 44 (relating to voluntary mediation).

(15) Rule 45 (relating to initiation of hearings).

(16) Rule 51 (relating to posthearing briefs).

(f) Upon motion of a party, and for good cause shown, the Bureau may order that a provider appeal identified in subsection (a) be exempt from this rule or may order that one or more of the rules identified in subsection (e) apply in whole or in part to the appeal. In the case of a motion seeking an order to apply Rule 35 (relating to disclosures) and Rule 36 (relating to methods to discover additional information) to a provider appeal identified in subsection (a), in order to show good cause, the moving party must establish that the disclosures or discovery will not prevent the prompt and efficient adjudication of the appeal and are reasonable and necessary given the facts involved in the appeal.

(g) Upon joint motion of the parties to a provider appeal, the Bureau may order that this rule applies to a provider appeal not identified in subsection (a).

(h) A motion to exempt an appeal from this rule under subsection (f) and a joint motion to apply this rule to an appeal under subsection (g) may be filed with the request for hearing but shall be filed no later than 30 days from the filing date of the request for hearing in the provider appeal.

Prehearing Procedures and Prehearing Conferences

Rule 33. Prehearing procedure in certain provider appeals.

(a) Upon the filing of a request for hearing, the Bureau will issue a prehearing order specifying all of the following.

(1) The parties shall make disclosures in accordance with Rule 35 (relating to disclosures).

(2) All discovery requests shall be served within 90 days of the date of the prehearing order and that all discovery shall be concluded within 120 days of the date of the prehearing order.

(3) All motions to compel discovery shall be filed within 30 days of the close of discovery.

(4) Any other miscellaneous prehearing motions, including motions in limine, shall be filed within 60 days of the date of filing of the program office's position paper.

(5) Dispositive motions shall be filed within 60 days of the date of the filing of the program office's position paper.

(b) The parties may, within 30 days of the date of the prehearing order, submit a Joint Proposed Case Management Order to the Bureau that proposes alternative dates for completion of the matters specified in paragraphs (1)--(5) of subsection (a), or that agrees to discovery beyond the limitations set forth in Rule 36(c)(1)--(4) (relating to methods to discover additional information).

(c) The Bureau may issue subsequent prehearing orders incorporating the alternate dates and discovery limitations proposed by the parties or specifying other dates and discovery limitations that the Bureau deems appropriate, except that the Bureau will not establish dates or impose limitations that are more restrictive than the dates or limitations otherwise provided for in these rules without the agreement of all parties to the appeal.

Rule 34. Conferences.

(a) The Bureau, on its own motion or on motion of a party, may hold a conference either prior to or during a hearing for the purpose of facilitating settlement, adjustment of the proceeding or any issue therein, or other matters to expedite the orderly conduct and disposition of a hearing.

(b) A stipulation of the parties or order of the Bureau as a result of the conference shall be binding upon the parties.

Disclosures and Discovery

Rule 35. Disclosures.

(a) **Duty of Disclosure.** A party to a provider appeal commenced by a request for hearing must, without awaiting a discovery request, disclose information to each other party as specified in this section.

(b) **Mandatory Initial Disclosures:**

(1) The program office shall disclose:

(i) The name, title, business address and telephone number of each staff person directly involved in the agency action; and, if different, the name, title, business address and telephone number of any officials or staff designated to testify on its behalf regarding the agency action and the issues on which designated person will testify; in the case of an audit appeal,

the program office will at a minimum identify every auditor involved in the audit and every audit supervisor and audit manager who reviewed the audit report; and,

(ii) A copy of, or a description by category and location of, all documents, data compilations, and tangible things, not privileged or protected from disclosure, that were relied upon in issuing the agency action, or that formed the basis for the agency action.

(2) The provider shall disclose:

(i) The name, title, business address, and telephone number of every person who provided facts, opinions, or other information that were relied upon in drafting the request for hearing or petition for supersedeas, if any, or that support or form the basis for, the allegations contained therein; and, and, if different, the name, title, business address and telephone number of any officials or staff designated to testify on its behalf regarding the agency action and the issues on which designated person will testify; and,

(ii) A copy of, or a description by category and location of, all documents, data compilations, and tangible things, not privileged or protected from disclosure, that were relied upon in drafting the request for hearing or petition for supersedeas, if any, or that support or form the basis for, the allegations contained therein; and, in a case where a provider alleges in its request for hearing that its costs or its claim for payment is supported by documents, the provider shall disclose the supporting documents.

(3) The parties shall make their initial mandatory disclosures within 45 days of the date of the Bureau's initial prehearing order, unless a different time is set by stipulation of the parties or by the prehearing order of the Bureau.

(4) A party shall make its initial disclosures based on the information in its possession or otherwise then reasonably available to it. A party shall not be excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

(5) An opposing party has no obligation to respond to a discovery request made pursuant to Rule 36 (relating to methods to discover additional information) until the party that propounded the request has made its mandatory initial disclosures in compliance with this subsection. A provider whose initial mandatory disclosure identifies documents in the possession of the Department or program office but fails to provide copies of the provider's own records or documents in support of one or more of the issues raised in the provider's request for hearing shall not be in compliance with this subsection.

(c) Position papers.

(1) General requirements:

(i) The provider shall file its position paper and required documentation with the Bureau and serve it on the program office within 60 days of the close of discovery or such other date as may be specified in the Bureau's prehearing order. If the provider fails to meet the position paper due date or fails to supply the Bureau with the required documentation, the Bureau will dismiss the provider's appeal.

(ii) The program office shall file its position paper and required documentation with the Bureau and serve it on the provider within sixty (60) days of the date of service of provider's position paper or such other date as may be specified in the Bureau's prehearing order. If the program office fails to meet the position paper due date, the Bureau will schedule the case for hearing and will notify the Chief Counsel of the Department.

(2) Extensions. The Bureau disfavors requests for extensions of time to file position papers. The Bureau may grant an extension if: (i) a party submits a written request for extension; (ii) the request is received by the Bureau in time for it to review the matter prior to the due date; and, (iii) the party establishes that good cause exists to warrant an extension. Failure to complete discovery before the due date of the position paper will ordinarily not be considered sufficient cause to extend the deadline, unless the failure is due to the non-cooperation of the other side. A request for extension should be considered denied unless the Bureau affirmatively grants the extension in writing before the papers are due.

(3) Content of position papers.

(i) **Provider.** For each issue identified in its request for hearing or amended request for hearing, the provider's position paper shall state the relevant facts and present arguments setting forth the provider's position. Specifically, the provider shall include for each issue: a summary of the pertinent facts and circumstances, citations to the relevant statutory provisions, regulations, and other controlling authorities, the monetary amount in dispute, if any, and an explanation showing how the amount was computed and any other relief sought by the provider in connection with the issue. In addition, the provider shall provide for each issue the name and business address of every witness whose testimony the provider will present and a copy of every document that the provider will offer into evidence to support its position with respect to the issue.

(ii) **Program office.** For each issue identified in the provider's position paper, the program office's position paper shall state whether the program office accepts or disputes the provider's summary of the pertinent facts and circumstances, the provider's citations to the relevant statutory provisions, regulations, and other controlling authorities, and the provider's computation of the monetary amount in dispute. If the program office disputes the facts, citations or monetary amount, the program office shall provide a counterstatement of the items in dispute. The program office's position paper must also identify any additional issues not addressed by the provider that the program office believes should be determined by the Bureau. For each such issue, the program office shall include a summary of the pertinent facts and circumstances, and citations to the relevant statutory provisions, regulations, and other controlling authorities. In addition, the program office shall provide the name and business address of every witness whose testimony the program office will present and a copy of every document that the program will offer into evidence to support its position on each issue identified in its position paper.

(iii) **Statement regarding expert opinions.** For each issue, a party's position paper shall include a section that addresses the party's reliance upon an expert. The party shall state whether its position depends, in whole or in part, upon the judgment, opinion, or testimony of a person who, if called to testify, would be called as an expert. Where a party's position depends, at least in part, upon the judgment, opinion, or testimony of such a person, the party's position paper shall include a "statement of expert opinion." Consistent with the requirements of Pa.R.C.P. No. 4003.5 (relating to discovery of expert testimony, trial preparation material), and unless the Bureau orders to the contrary, each such statement shall: (A) identify the expert by name and address; (B) state the subject matter on which the expert is expected to testify; (C) identify the substance of the facts and opinions to which the expert is expected to testify; (D) summarize the grounds for each opinion to which the expert is expected to testify; and (E) be signed by the expert.

(4) **Amendments.** The Bureau may permit a party to amend a position paper upon motion of the party and for good cause shown except that no amendment to a position paper shall be permitted within 30 days of the commencement of the hearing in the provider appeal.

(5) **Penalties for Noncompliance.** A party shall not be permitted to offer the testimony of any witness at a hearing on a provider appeal unless either the party disclosed the identity of the witness in the party's position paper or the party establishes that there is good cause to permit the testimony of the witness. A party shall not be permitted to introduce a document into evidence at a hearing on a provider appeal unless the party identified the document as an exhibit and served the other parties to the provider appeal with a copy of the document at the time the party filed its position paper with the Bureau.

Rule 36. Methods to Discover Additional Information.

(a) **Authorized Forms of Discovery.** Once the time period for mandatory disclosures has elapsed, a party to a provider appeal commenced by a request for hearing may obtain discovery by one or more of the following methods: interrogatories, requests for the production of documents, expert reports, requests for admissions and depositions of witnesses and designees of parties.

(b) General Scope of Discovery.

(1) Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party in a provider appeal, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.

(2) Except to the extent inconsistent with or as otherwise provided in this Order, discovery shall be governed by the relevant Pa.R.C.P applicable to the form of discovery authorized by this Order. When the term "court" is used in the Pa.R.C.P., "Bureau" is to be understood; when the terms "prothonotary" or "clerk of court" are used in the Pa.R.C.P., "Formal Docketing Unit" is to be understood.

(c) **Limitations.** In addition to the general limitation on the scope of discovery and deposition set forth in Pa.R.C.P. 4011 (relating to limitation of scope of discovery and deposition), the limitations on discovery in paragraphs (1)--(4) apply in provider appeals.

(1) **Interrogatories.** Interrogatories to a party, as a matter of right, shall not exceed ten in number. Interrogatories inquiring as to the names and locations of witnesses, or the existence, location and custodian of documents or physical evidence each shall be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories. If counsel for a party believes that more than ten interrogatories are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional interrogatories. Counsel are expected to comply with this requirement in good faith. In the event the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to serve additional interrogatories if the party establishes to the Bureau's satisfaction that additional interrogatories are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(2) **Requests for Admissions.** Request for admissions to a party, as a matter of right, shall not exceed ten in number. All requests for admissions, including subdivisions of one numbered request, shall be construed as a separate request. If counsel for a party believes that more than ten requests for admission are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional requests. Counsel are expected to comply with this requirement in good faith. In the event the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to serve additional requests for admission if the party establishes to the Bureau's satisfaction that additional requests for admission are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(3) **Depositions by Oral or Written Examination.** Depositions, as a matter of right, shall not exceed three in number. A deposition of a person shall not be permitted if the person has already been deposed in the appeal. If counsel for a party believes that more than three depositions or that the deposition of a person who has already been deposed are necessary, counsel shall consult with opposing counsel promptly and attempt to reach a written stipulation as to a reasonable number of additional depositions. Counsel are expected to comply with this requirement in good faith. In the event the parties cannot agree on a written stipulation, the Bureau, upon motion of a party, may permit the party to take additional depositions if the party establishes to the Bureau's satisfaction that additional depositions are reasonable and necessary in light of the particular facts involved and that they will not prevent the prompt and efficient adjudication of the provider appeal.

(4) Deposition of the Secretary and Senior Department Officials.

(i) Unless the Secretary has been identified as a witness by the program office, a party may not depose the Secretary.

(ii) Unless a senior department official has been identified as a witness by the program office or agrees to submit to a deposition, a party may not depose a senior department official regardless of the number of depositions taken, except that the Bureau, upon motion of a party, may permit the party to depose a senior department official if the party establishes to the Bureau's satisfaction that the following apply:

(A) The senior department official was personally involved in the disputed agency action.

(B) The deposition of the senior department official is reasonable and necessary in light of the particular facts involved and will not prevent the prompt and efficient adjudication of the provider appeal.

(d) **Protective Orders.** The Bureau may issue protective orders limiting or precluding discovery in accordance with subsection (c) or as specified in Pa.R.C.P. 4012 (relating to protective orders).

(e) **Timing and Sequence of Discovery.** Unless the Bureau upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, does not operate to delay any other party's discovery.

Rule 37. Supplementing disclosures and responses.

(a) **Disclosures.** A party has a duty to supplement or correct a disclosure under Rule 35 (relating to disclosures) to include information thereafter acquired if ordered by the Bureau or if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) **Responses to Discovery Requests.** A party is under a duty to supplement responses made to discovery requests as set forth in Pa.R.C.P. 4007.4 (relating to supplementing responses).

Rule 38. Signing of disclosures, discovery requests, responses and objections.

(a) Every disclosure shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(b) Every discovery request, response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the signer's address.

(1) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the request, response, or objection is:

(i) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

(2) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the Bureau, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the disclosure, request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Motions

Rule 39. General.

(a) This Rule applies to all motions made in a provider appeal, except oral motions made during the course of a hearing.

(b) Motions and responses to motions shall be in writing, signed by a party or its attorney and shall be accompanied by a proposed order.

(c) Unless the time is extended by the Bureau, a response to a dispositive motion shall be filed within 30 days of service of the motion, and a response to any other motion shall be filed within 20 days of service of the motion.

(d) Except in the case of a dispositive motion, the Bureau will deem a party's failure to respond to a motion to be the party's lack of opposition to the motion.

(e) Except in the case of a dispositive motion, the moving party may not file a reply to a response to its motion, unless the Bureau orders otherwise.

(f) Action on motions.

(1) The Bureau will rule on dispositive motions within 60 days after the moving party's reply to the non-moving party's response, if a reply is filed. If the moving party does not file a reply, the Bureau will rule on a dispositive motion within 60 days after the date on which the non-moving party's response is due.

(2) The Bureau will rule on motions other than dispositive motions within 30 days after the date on which the non-moving party's response is due.

(3) Notwithstanding paragraphs (1) and (2) of subsection (f), the Bureau will rule on all outstanding pre-hearing motions no later than 20 days prior to the commencement of the hearing.

Rule 40. Procedural motions.

(a) This Rule applies to motions in a provider appeal that pertain to the procedural aspects of a case, including motions for continuance, for expedited consideration, for extensions of time in which to file documents and for stay of proceedings.

(b) Procedural motions shall contain a statement indicating the nonmoving party's position on the relief requested or a statement that the moving party, after a reasonable effort, has been unable to determine the nonmoving party's position.

(c) If all parties consent to the relief requested, the request may be embodied in a letter, provided the letter indicates the consent of the other parties.

(d) Requests for extensions or continuances, whether in letter or motion form, shall be accompanied by a proposed order.

(e) Procedural motions and responses may not be accompanied by supporting memoranda of law unless otherwise ordered by the Bureau.

Rule 41. Discovery motions.

(a) This Rule applies to motions filed to resolve disputes arising from the conduct of discovery under Rule 36 (relating to methods to discover additional information).

(b) A motion to compel discovery shall contain as exhibits the discovery requests and answers giving rise to the dispute.

(c) A party may file a memorandum of law in support of its discovery motion or its response to a discovery motion. The supporting memorandum of law shall be filed at the same time the motion or response is filed.

Rule 42. Dispositive motions.

(a) This Rule applies to dispositive motions in a provider appeal.

(b) Motions for summary judgment or partial summary judgment and responses to such motions shall conform to Pa.R.C.P. 1035.1--1035.5 (relating to motion for summary judgment).

(c) Dispositive motions shall be accompanied by a supporting memorandum of law. The Bureau may deny a dispositive motion if a party fails to file a supporting memorandum of law.

(d) An affidavit or other document relied upon in support of a dispositive motion, response or reply, that is not already a part of the record, shall be attached to the motion, response or reply or it will not be considered by the Bureau in ruling thereon.

Rule 43. Miscellaneous motions.

(a) This Rule applies to a motion in a provider appeal not otherwise addressed in Rules 40--42 (relating to procedural motions, discovery motions and dispositive motions), including a motion in limine, a motion to strike and a motion for recusal.

(b) A memorandum of law in support of a miscellaneous motion or response to a miscellaneous motion shall be filed with the miscellaneous motion or response.

Mediation

Rule 44. Voluntary mediation.

(a) Upon request by all the parties, the Bureau may stay a provider appeal commenced by a request for hearing for up to 120 days to allow the parties to utilize voluntary mediation services through the Office of General Counsel Mediation Program.

(b) The parties shall file their request for stay with the Bureau at least 14 days before initiation of hearings by the Bureau.

(c) At the end of the initial stay, the parties shall jointly file a statement which sets forth the status of mediation activities conducted. The parties may request an additional stay if necessary to complete the mediation process.

(d) The grant of an additional stay for mediation is in the Bureau's discretion and the Bureau may impose limitations the Bureau deems appropriate.

(e) A party's participation in voluntary mediation may not be used as evidence in a proceeding before the Bureau. Communications between the parties during the mediation period shall be regarded as offers of settlement and are neither discoverable nor admissible as evidence in a proceeding before the Bureau.

Hearings

Rule 45. Initiation of hearings.

(a) If, after the Bureau has ruled on any dispositive motions, a hearing is required to determine any remaining issues, the Bureau will, after consultation with the parties, schedule a formal evidentiary hearing and send a notice of hearing to all parties to the provider appeal.

(b) A hearing may, if permitted by the rules or by agreement of the parties, be conducted via telephone.

Rule 46. Continuance of hearings.

A hearing may not be continued except for compelling reasons. A motion for continuance of a hearing shall be submitted to the Bureau in writing with a copy served upon the other parties to the proceedings, except that during the course of a hearing in a proceeding, the requests may be made by oral motion in the hearing.

Rule 47. Burden of proof and production.

(a) The provider has the burden of proof to establish its case by a preponderance of the evidence, and is required to make a prima facie case by the close of its case-in-chief. The provider has the burden of production, unless otherwise directed by the presiding officer, upon a determination included in the record by the presiding officer that the evidence is peculiarly within the knowledge or control of another party or participant, in which case the order of presentation may be varied by the presiding officer.

(b) Each party shall have the right to an opening statement, presentation of evidence, cross-examination, objection, motion and argument, and closing argument.

(c) A pleading shall, without further action, be considered part of the record. In no event, however, shall a pleading be considered as evidence of any fact other than that of the filing thereof, unless offered and received into evidence under these rules.

Subchapter C. Evidence and Witnesses

General

Rule 48. Written testimony.

(a) Written testimony of a witness, including an expert witness, on numbered lines in question and answer form, may be admitted into evidence in a provider appeal provided the witness is present for cross-examination at the hearing or the parties agree that the witness' presence at the hearing is not required.

(b) Written testimony shall be filed concurrently with the proffering party's position paper unless a different time is prescribed by the Bureau. Objections to written testimony which can be reasonably anticipated prior to hearing shall be in writing and filed within the time prescribed for pre-hearing motions in limine, unless otherwise ordered by the Bureau.

(c) If a party desires to file written testimony prior to the close of the record, it may do so only upon motion approved by the Bureau for good cause. This approval shall include the scope of the written testimony and the time for filing the testimony and service upon opposing counsel.

Subpoenas

Rule 49. Subpoenas.

(a) Except as otherwise provided in this chapter or by order of the Bureau, requests for subpoenas and subpoenas shall be governed by Pa.R.C.P. 234.1--234.4 (relating to subpoena to attend and testify, subpoena, issuance, service, compliance fees, prisoners, notice to attend, notice to produce, subpoena, notice to attend, notice to produce, relief from compliance, motion to quash) and 234.6--234.9 (relating to form of subpoena, form of notice to attend, form of notice to produce, notice and acknowledgment of receipt of subpoena by mail). When the term "court" is used in Pa.R.C.P. "Bureau" is to be understood; when the terms "Prothonotary" or "clerk of court" are used in Pa.R.C.P. "Formal Docketing Unit" is to be understood.

(b) Proof of service of the subpoena need not be filed with the Bureau.

Subchapter E. Presiding Officers

Rule 50. Independence, Ex parte Communications.

(a) The presiding officers shall act independently of employees or public officials of the Department whose actions are subject to review before the Bureau.

(b) The presiding officers shall not engage in ex parte communications concerning a hearing with any party to the hearing.

Subchapter F. Posthearing Procedures

Briefs

Rule 51. Post hearing briefs.

- (a) The initial post hearing brief of each party shall be as concise as possible and may not exceed 50 pages. An initial post hearing brief shall contain proposed findings of fact, with references to the appropriate exhibit or page of the transcript, an argument with citation to supporting legal authority, and proposed conclusions of law.
- (b) The provider shall file its initial post hearing brief first and within the time specified by the presiding officer, which shall not be less than 30 days from the closing of the record unless the provider consents to a shorter period of time. The program office shall file its initial post hearing brief within 30 days of the date of service of the provider's brief.
- (c) The provider may file a reply brief within 20 days of service of the program office post hearing brief. A reply brief shall be as concise as possible and may not exceed 25 pages.
- (d) Longer briefs and surreply briefs may be permitted at the discretion of the presiding officer.
- (e) A party may waive the filing of a post-hearing brief.
- (f) If a party files a post hearing brief, any disputed issue or any legal theory that is not argued in the party's post hearing brief shall be deemed waived.

Subchapter G. Agency Action.

Decisions

Rule 52. Determinations and Recommendations by the Bureau.

- (a) The Bureau will conduct a de novo review of all factual and legal issues that are timely raised and properly preserved in a provider appeal. Except as provided in subsection (b), the Bureau will issue a determination adjudicating all contested issues of law and fact within its jurisdiction, and issue an appropriate order, decree or decision.
- (b) In the event that a request for hearing includes a waiver request, the Bureau will make a written recommendation for consideration by the Secretary proposing that the waiver be either granted or denied and stating the Bureau's reasoning in support of its position. If the request for hearing raises factual and legal issues in addition to the waiver request, the Bureau will issue its written recommendation together with its final determination adjudicating the remaining factual and legal issues, as specified in subsection (c). If the request for hearing does not raise any other issues, the Bureau's written recommendation on the waiver request will be issued within the time limits and served on the parties as specified in subsection (c).
- (c) The Bureau will issue a determination in a provider appeal within thirty days of the filing of all post hearing briefs, or, if the parties waive the filing of post hearing briefs, within thirty days of the close of the record or receipt of the transcript, whichever is later. The Bureau will serve a copy of its determination on all parties to the proceeding or their representatives.
- (d) A party aggrieved by a determination of the Bureau may request the Secretary to review the determination pursuant to Rule 55 (relating to review of bureau determinations). For purposes of this rule, a program office shall be deemed to be aggrieved if the Bureau determination sustains the provider's appeal in whole or in part; if the Bureau determination interprets a statute, regulation or other statement of policy or bulletin applied by the program office in a manner inconsistent with the interpretation of that office; or if the Bureau determination alters a policy of that office or purports to impose a new or different rule or policy on that office.
- (e) The Secretary will review written recommendations of the Bureau issued pursuant to subsections (b) or (c) pursuant to Rule 56 (review of bureau recommendations).

Subchapter H. Reopening of Record

Rule 53. Reopening of record prior to adjudication.

(a) After the conclusion of the hearing on the merits in a provider appeal and before the Bureau issues an adjudication, the Bureau, upon its own motion or upon a motion filed by a party, may reopen the record as provided in this section.

(b) The record may be reopened upon the basis of recently discovered evidence when all of the following circumstances are present:

(1) Evidence has been discovered which would conclusively establish a material fact of the case or would contradict a material fact which had been assumed or stipulated by the parties to be true.

(2) The evidence is discovered after the close of the record and could not have been discovered earlier with the exercise of due diligence.

(3) The evidence is not cumulative.

(c) The record may also be reopened to consider evidence that has become material as a result of a change in legal authority occurring after the close of the record. A motion to reopen the record on this basis shall specify the change in legal authority and demonstrate that it applies to the matter pending before the Bureau. Such motion need not meet the requirements of paragraphs (2) and (3) of subsection (d).

(d) A motion seeking to reopen the record shall:

(1) Identify the evidence that the moving party seeks to add to the record.

(2) Describe the efforts that the moving party had made to discover the evidence prior to the close of the record.

(3) Explain how the evidence was discovered after the close of the record.

(e) A motion filed under subsection (b) shall be verified and all motions to reopen shall contain a certification by counsel that the motion is being filed in good faith and not for the purpose of delay. The motion shall be served upon all parties to the proceedings.

Reconsideration and Review by the Secretary

Rule 54. Reconsideration of interlocutory orders.

(a) A motion for reconsideration by the Secretary of an interlocutory order or ruling of the Bureau shall be filed within 10 days of the order or ruling. The petition must demonstrate that extraordinary circumstances justify immediate consideration of the matter by the Secretary. A party may file a memorandum of law at the time the motion or response is filed.

(b) A copy of the motion shall be served upon the parties. A party wishing to file an answer may do so within 10 days of service or as ordered by the Bureau or the Secretary.

(c) The failure of a party to file a motion under this section will not result in a waiver of any issue.

Rule 55. Review of Bureau determinations.

(a) A determination of the Bureau will be deemed the final adjudication of the Department effective upon expiration of the 30-day time period specified in subsection (b) unless an aggrieved party requests review by the Secretary within that 30-day time period.

(b) A request for review must be filed within 30 days of the mailing date of the Bureau determination. An untimely request for review shall be dismissed as of course unless the filing party can satisfy the requirements of Rule 20 (relating to appeals nunc pro tunc).

(c) A request for review shall be in writing and shall state concisely the alleged errors in the Bureau determination and shall identify the particular relief sought. If the party requesting review is seeking relief by reason of matters that have arisen since the hearing and Bureau determination, or by reason of a matter that would arise from compliance with the Bureau determination, the party shall specifically identify those matters in its request.

(d) If an aggrieved party timely requests review of a Bureau determination, the Secretary may enter an order granting or denying the request for review within 30 days of receipt of the request. No party has a right to have a Bureau determination reviewed by the Secretary, but only a right to request such review. The decision to grant or deny such a request lies within the discretion of the Secretary.

(e) If the Secretary enters an order denying a request for review within 30 days of receipt of the request, the Bureau's determination shall be deemed the final adjudication of the Department effective on the date of the order denying the request for review.

(f) If the Secretary fails to act on a request for review within thirty days of receipt of the request, the request for review shall be deemed denied, and the Bureau's determination shall be deemed the final adjudication of the Department effective on the date on which the request for review is deemed denied.

(g) No answers to a request for review will be considered by the Secretary unless the Secretary has granted review. If, and to the extent the Secretary has granted review, a response in the nature of an answer may be filed by any party, other than the party requesting review. The response shall be confined to the issues upon which the Secretary has granted review.

(h) If the Secretary grants review, the Secretary will enter a final order within 180 days of the date of the order granting review. The final order may affirm, reverse or modify the findings of fact, conclusions of law or the relief set forth in the Bureau's determination, and may, in order to promote fairness and the proper administration of the Medical Assistance Program, waive compliance with program requirements.

(i) If the Secretary fails to act within 180 days of the order granting review, the determination of the Bureau shall be deemed approved by, and the final order of, the Secretary effective the date it is deemed approved.

Rule 56. Review of Bureau recommendations.

(a) The Secretary will review and issue a final order adopting, rejecting or modifying a recommendation of the Bureau issued pursuant to Rule 52(b) (relating to determinations and recommendations by the bureau).

(b) Any party to the provider appeal in which the Bureau's recommendation was issued may file a brief with the Secretary setting forth its position regarding the recommendation at the same time the party requests review of the Bureau's related determination under Rule 55 (relating to review of bureau determinations) or, if the party is not seeking review of the Bureau's determination, within 30 days of the date of the mailing date of the Bureau recommendation.

(c) A brief supporting or opposing the Bureau's recommendation shall state concisely the reasons for the party's position on the recommendation, shall set forth any proposed findings of fact and conclusions of law for consideration by the Secretary and shall specify what relief, if any, should be granted or denied by the Secretary. The brief shall not exceed 25 pages.

(d) The Secretary's final order regarding a recommendation issued pursuant to Rule 52(b) (relating to determinations and recommendations by the bureau) will be issued no later than:

(1) The date on which the Secretary issues a final order if review is granted under Rule 55 (relating to review of bureau determinations); or

(2) 180 days from the date of receipt of the written recommendation, if review is not granted under Rule 55 (relating to review of bureau determinations).

(e) If the Secretary does not issue a final order regarding a recommendation issued pursuant to Rule 52(b) (relating to determinations and recommendations by the bureau) within the time frames specified in subsection (d), the recommendation of the Bureau shall be deemed adopted by, and the final order of, the Secretary effective the date it is deemed adopted.

Rule 57. Appeals.

A provider aggrieved by a final adjudication of the Department issued pursuant to Rule 55 (a), (e) or (f) (relating to review of bureau determinations), or a final order of the Secretary issued pursuant to Rule 55 (e), (h) or (i) (relating to review of bureau determinations) or Rule 56(a) or (d) (relating to review of bureau recommendations) may petition for judicial review in accordance with 2 Pa.C.S. Ch.7 subch.11 (relating to judicial review of commonwealth agency action).

Appendix A Title of GRAPP Section

GRAPP Section

Chapter 31

Status of GRAPP

31.1 Scope of part	This section of the GRAPP is superseded.
31.2 Liberal construction	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 1 and 2.
31.3 Definitions	This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 3.
31.4 Information and special instructions	This section of the GRAPP remains applicable to provider appeals.
31.5 Communications and filing generally	This section of the GRAPP remains applicable only to the extent it is not inconsistent with a rule, including but not limited to Rules 8--29 and Rules 33--43
31.6 Amendments to rules	This section of the GRAPP is superseded.
31.11 Timely filing required	This section of the GRAPP is superseded.
31.12 Computation of time	This section of the GRAPP remains applicable to provider appeals.
31.13 Issuance of agency orders	This section of the GRAPP remains applicable to provider appeals.
31.14 Effective dates of agency orders	Subsection (a) of this section is superseded; subsection (b) of this section remains applicable to provider appeals.
31.15 Extensions of time	This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 7.
31.21 Appearance in person	This section of the GRAPP remains applicable to provider appeals.

31.22 Appearance by attorney	This section of the GRAPP remains applicable to provider appeals.
31.23 Other representation prohibited at hearings	This section of the GRAPP remains applicable to provider appeals.
31.24 Notice of appearance	This section of the GRAPP remains applicable to provider appeals.
31.25 Form of notice of appearance	This section of the GRAPP remains applicable to provider appeals.
31.26 Service on attorneys	This section of the GRAPP remains applicable to provider appeals.
31.27 Contemptuous conduct	This section of the GRAPP remains applicable to provider appeals.
31.28 Suspension and disbarment	This section of the GRAPP remains applicable to provider appeals.

Chapter 33

33.1 Title	This section of the GRAPP is superseded.
33.2 Form	This section of the GRAPP is superseded.
33.3 Incorporation by reference	This section of the GRAPP is superseded.
33.4 Single pleading or submittal covering more than one matter	This section of the GRAPP remains applicable to provider appeals.
33.11 Execution	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 9, 14 and 38.
33.12 Verification	This section of the GRAPP is superseded.
33. 15 Number of copies	This section of the GRAPP is superseded.
33.21 Filing fees	This section of the GRAPP is superseded.
33.22 Mode of payment of fees	This section of the GRAPP is superseded.
33.23 Copy fees	This section of the GRAPP remains applicable to provider appeals.
33.31 Service by the agency	This section of the GRAPP is superseded.
33.32 Service by a participant	This section of the GRAPP is superseded.
33.33 Effect of service upon an attorney	This section of the GRAPP remains applicable to provider appeals.
33.34 Date of service	This section of the GRAPP remains applicable to provider appeals but is supplemented by Rule 14.

33.35 Proof of service	This section of the GRAPP is superseded.
33.36 Form of certificate of service	This section of the GRAPP is superseded.
33.37 Number of copies	This section of the GRAPP is superseded.
33.41 Amendments	This section of the GRAPP is superseded.
33.42 Withdrawal or terminations	This section of the GRAPP is superseded.
33.51 Docket	This section of the GRAPP is superseded.
33.61 Application for waiver of formal requirements	This section of the GRAPP remains applicable to provider appeals.

Chapter 35

35-A PLEADINGS AND OTHER PRELIMINARY MATTERS

35.1 Applications generally	This section of the GRAPP is superseded.
35.2 Contents of applications	This section of the GRAPP is superseded.
35.5 Form and content of informal complaints	This section of the GRAPP is superseded.
35.6 Correspondence handling of informal complaints	This section of the GRAPP is superseded.
35.7 Discontinuance of informal complaints without prejudice	This section of the GRAPP is superseded.
35.9 Formal complaints generally	This section of the GRAPP is superseded.
35.10 Form and content of formal complaints	This section of the GRAPP is superseded.
35.11 Joinder of formal complaints	This section of the GRAPP is superseded.
35.14 Order to show cause	This section of the GRAPP remains applicable to provider appeals.
35.17 Petitions generally	To the extent that an appealable agency action is involved, this section of the GRAPP is superseded.
35.18 Petitions for issuance, amendment, waiver or repeal of regulations	To the extent that an appealable agency action is involved, this section of the GRAPP is superseded.
35.19 Petitions for declaratory orders	To the extent that an appealable agency action is involved, this section of the GRAPP is superseded.
35.20 Appeals from actions of the staff	This section of the GRAPP is superseded.
35.23 Protest generally	This section of the GRAPP is superseded.
35.24 Effect of protest	This section of the GRAPP is superseded.
35.27 Initiation of intervention	This section of the GRAPP remains applicable to provider

35.28 Eligibility to intervene	appeals. This section of the GRAPP remains applicable to provider appeals.
35.29 Form and content of petitions to intervene	This section of the GRAPP remains applicable to provider appeals.
35.30 Filing of petitions to intervene	This section of the GRAPP remains applicable to provider appeals.
35.31 Notice and action on petitions to intervene	This section of the GRAPP remains applicable to provider appeals.
35.32 Limitation of participation in hearings	This section of the GRAPP remains applicable to provider appeals.
35.35 Answers to complaints and petitions	This section of the GRAPP is superseded.
35.36 Answers to petitions to intervene	This section of the GRAPP is superseded.
35.37 Answers to orders to show cause	This section of the GRAPP remains applicable to provider appeals.
35.38 Respondents seeking affirmative relief	This section of the GRAPP remains applicable to provider appeals.
35.39 Replies to respondents seeking affirmative relief	This section of the GRAPP is superseded.
35.40 Answers to amendments of pleadings	This section of the GRAPP is superseded.
35.41 Satisfaction of complaints	This section of the GRAPP is superseded.
35.45 Consolidation	This section of the GRAPP is superseded.
35.48 Amendments of pleadings generally	This section of the GRAPP is superseded.
35.49 Amendments to conform to the evidence	This section of the GRAPP is superseded.
35.50 Directed amendments	This section of the GRAPP is superseded.
35.51 Withdrawal of pleadings	This section of the GRAPP is superseded.
35.54 Motions as to complaint	This section of the GRAPP is superseded.
35.55 Motions as to answer	This section of the GRAPP is superseded.

35-B HEARINGS AND CONFERENCES

35.101 Waiver of hearing	This section of the GRAPP is superseded.
35.102 Hearing calendar	This section of the GRAPP remains applicable to provider appeals.
35.103 Preliminary notice to Department of Justice	This section of the GRAPP is superseded.

35.104 Notice of rulemaking proceedings	This section of the GRAPP is superseded.
35.105 Notice of nonrulemaking proceedings	This section of the GRAPP is superseded.
35.106 Contents of notice of nonrulemaking proceedings	This section of the GRAPP is superseded.
35.111 Conferences to adjust, settle or expedite proceedings	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33, 34, and 44.
35.112 Conferences to expedite hearings	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
35.113 Initiation of conferences	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
35.114 Authority of presiding officer at conference	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
35.115 Offers of settlement	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33, 34, and 44.
35.116 Refusal to make admissions or stipulate	This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 33 and 34.
35.121 Initiation of hearings	This section of the GRAPP is superseded.
35.122 Consolidation of formal hearings	This section of the GRAPP is superseded.
35.123 Conduct of hearings	This section of the GRAPP remains applicable to provider appeals.
35.124 Appearances	This section of the GRAPP remains applicable to provider appeals.
35.125 Order of procedure	This section of the GRAPP is superseded.
35.126 Presentation by the parties	This section of the GRAPP is superseded.
35.127 Limiting number of witnesses	This section of the GRAPP remains applicable to provider appeals.
35.128 Additional evidence	This section of the GRAPP remains applicable to provider appeals.
35.131 Recording of proceedings	This section of the GRAPP remains applicable to provider appeals.
35.132 Transcript corrections	This section of the GRAPP remains applicable to provider appeals.
35.133 Copies of transcripts	This section of the GRAPP remains applicable to provider appeals.

35-C EVIDENCE AND WITNESSES

35.137 Oral examination	This section of the GRAPP remains applicable to provider
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appeals.

35.138 Expert witnesses	This section of the GRAPP is superseded.
35.139 Fees of witnesses	This section of the GRAPP is superseded.
35.142 Subpoenas	This section of the GRAPP is superseded.
35.145 Depositions	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.146 Notice and application	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.147 Authorization of taking deposition	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.148 Officer before whom deposition is taken	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.149 Oath and reduction to writing	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.150 Scope and conduct of examination	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.151 Status of deposition as part of record	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.152 Fees of officers and deponents	This section is inapplicable to discovery but is otherwise applicable to provider appeals.
35.155 Presentation and effect of stipulations	This section of the GRAPP remains applicable to provider appeals.
35.161 Form and admissibility of evidence	This section of the GRAPP remains applicable to provider appeals.
35.162 Reception and ruling on evidence	This section of the GRAPP remains applicable to provider appeals.
35.163 Designation of relevant portions of documentary evidence	This section of the GRAPP remains applicable to provider appeals.
35.164 Documents on file with agency	This section of the GRAPP remains applicable to provider appeals.
35.165 Public documents	This section of the GRAPP remains applicable to provider appeals.
35.166 Prepared expert testimony	This section of the GRAPP remains applicable to provider appeals.
35.167 Records in other proceedings	This section of the GRAPP remains applicable to provider appeals.
35.168 Form and size of documentary evidence	This section of the GRAPP remains applicable to provider

appeals.

35.169 Copies to parties and agency

This section of the GRAPP remains applicable to provider appeals.

35.173 Official notice of facts

This section of the GRAPP remains applicable to provider appeals.

35-D MOTIONS

35.177 Scope and contents of motions

This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 38, 39, 40, and 41.

35.178 Presentation of motions

This section of the GRAPP is applicable to provider appeals but is supplemented by Rule 38.

35.179 Objections to motions

This section of the GRAPP is superseded.

35.180 Action on motions

This section of the GRAPP is applicable to provider appeals but is supplemented by Rules 39--43.

35-E PRESIDING OFFICERS

35.185 Designation of presiding officers

This section of the GRAPP remains applicable to provider appeals.

35.186 Disqualification of a presiding officer

This section of the GRAPP remains applicable to provider appeals.

35.187 Authority delegated to presiding officers

This section of the GRAPP remains applicable to provider appeals.

35.188 Restrictions on duties and activities

This section of the GRAPP remains applicable to provider appeals.

35.189 Manner of conduct of hearings

This section of the GRAPP remains applicable to provider appeals.

35.190 Appeals to agency head from rulings of presiding officers

This section of the GRAPP remains applicable to provider appeals.

35-F BRIEFS

35.191 Proceedings in which briefs are to be filed

This section of the GRAPP is superseded.

35.192 Content and form of briefs

This section of the GRAPP is superseded.

35.193 Filing and service of briefs

This section of the GRAPP is superseded.

35-G PROPOSED REPORTS

35.201 Certification of record without proposed report

This section of the GRAPP is superseded.

35.202 Proceedings in which proposed reports are prepared	This section of the GRAPP is superseded.
35.203 Unavailability of presiding officer	This section of the GRAPP is superseded.
35.204 Oral argument before presiding officer	This section of the GRAPP is superseded.
35.205 Contents of proposed reports	This section of the GRAPP is superseded.
35.206 Proposed report a part of the record	This section of the GRAPP is superseded.
35.207 Service of proposed reports	This section of the GRAPP is superseded.
35.211 Procedure to except to proposed report	This section of the GRAPP is superseded.
35.212 Content and form of briefs on exceptions	This section of the GRAPP is superseded.
35.213 Effect of failure to except to proposed report	This section of the GRAPP is superseded.
35.214 Oral argument on exceptions	This section of the GRAPP is superseded.

35-H BRIEFS AND ARGUMENT IN ABSENCE OF PROPOSED REPORT

35.221 Briefs and oral argument in absence of proposed report	This section of the GRAPP is superseded.
35.225 Interlocutory orders	This section of the GRAPP remains applicable to provider appeals.
35.226 Final orders	This section of the GRAPP remains applicable to provider appeals.

35-I REOPENING AND REHEARING

35.231 Reopening on application of party	This section of the GRAPP is superseded.
35.232 Reopening by presiding officer	This section of the GRAPP is superseded.
35.233 Reopening by agency action	This section of the GRAPP remains applicable to provider appeals.
35.241 Application for rehearing or reconsideration	This section of the GRAPP is superseded.