**R497. Health and Human Services, Administration, Administrative Hearings.**

**R497-100. Adjudicative Proceedings.**

**R497-100-1. Authority and Purpose.**

(1) Subsections 26B-1-202(1) and 26B-1-204(1) authorize this rule.

(2) This rule establishes requirements for initiating and holding adjudicative proceedings under the department and describes the administrative hearing process and the process for agency and judicial reviews.

**R497-100-2. Definitions.**

Terms used in this rule are defined in Section 63G-4-103. Additionally:

(1) "Adjudicative proceedings " of the department include:

(a) a denial, termination, suspension, or reduction of a license or card issued pursuant to Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis or the imposition of a penalty or fine, authorized under Title 26B, Chapter 4, Part 2;

(b) any action by an agency owned and operated institution or facility related to discipline or treatment of a resident of that institution or facility;

(c) any action by Juvenile Justice and Youth Services and the Youth Parole Authority related to:

(i) discipline;

(ii) the grant or revocation of parole;

(iii) the resolution of grievances; or

(iv) the confinement, supervision, or treatment of a resident of any Juvenile Justice and Youth Services facility or institution;

(d) any agency records amendment hearing held pursuant to Section 63G-2-603;

(e) any finding of abuse, neglect, or exploitation of a vulnerable adult pursuant to Section 26B-6-211;

(f) any finding of child abuse, neglect, or dependency pursuant to Section 80-2-707;

(g) any protective payee hearing;

(h) due process given to foster parents regarding the removal of a foster child from the foster child's home pursuant to Section 80-2a-304;

(i) placement and transfer decisions affecting an involuntarily committed resident of the Utah State Developmental Center pursuant to Section 26B-6-609;

(j) the denial, revocation, modification, or suspension of a license issued by the Division of Licensing and Background Checks pursuant to Title 26B, Chapter 2, Licensing and Certifications; and

(k) the resolution of any client grievance with respect to delivery of services by a contracted private, nongovernmental provider within the agency's service delivery system.

(2)(a) "Agency" means the Department of Health and Human Services or a division, office, or operational unit within the department of Health and Human Services, including:

(i) the Center for Medical Cannabis;

(ii) Division of Aging and Adult Services;

(iii) the Division of Child and Family Services;

(iv) the Division of Juvenile Justice and Youth Services;

(v) the Division of Licensing and Background Checks;

(vi) the Division of Services for People with Disabilities;

(vii) the Utah State Developmental Center; and

(viii) any board, commission, officer, council, committee, bureau, or other administrative unit, including the executive director and director of each division, office, or operational unit.

(b) "Agency" does not include:

(i) the Compassionate Use Board within the Center for Medical Cannabis;

(ii) the Division of Integrated Healthcare, except the Office of Substance Use and Mental Health; and

(iii) the Office of Recovery Services.

(3) "Aggrieved person" includes any applicant, person, or recipient who is dissatisfied with an agency action.

(4) "Claimant" means the party that initiates an adjudicative proceeding whether by an agency action or a request for agency action.

(5) "Declaratory order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(6) "Department" means the Utah Department of Health and Human Services.

(7) "Ex parte communication" means direct or indirect communication in connection with an issue of fact or law, between the presiding officer and only one party.

(8) "Mail" means to send through mail services, email, fax, or hand-delivery.

(9) "Office" means the Office of Administrative Hearings within the department.

(10)(a) "Party" includes:

(i) a claimant;

(ii) an aggrieved person; or

(iii) the agency or an individual designated by the agency head to represent the agency in an adjudicative proceeding.

(b) "Party" does not include:

(i) a witness testifying at an adjudicative proceeding;

(ii) an artificial intelligence (AI) bot, computer, or program; or

(iii) the general public.

(11) "Presiding officer" means an agency head, or individual designated by an agency head, by rule, or by statute to conduct an adjudicative proceeding and may include:

(a) a division or office director;

(b) a hearing officer;

(c) a statutorily created board or committee;

(d) an administrative law judge; and

(e) the superintendent of an agency institution.

**R497-100-3. Exceptions.**

This rule does not govern:

(1) any adjudicative proceeding brought by or against:

(i) the Compassionate Use Board within the Center for Medical Cannabis, which is governed by Rule R383-15;

(ii) the Division of Integrated Healthcare, which is governed by Rule R410-14;

(iii) the Office of Recovery Services, which is governed by Rule R527-200;

(2) department action related to contracts for the purchase or sale of goods or services by and for the state or agency, including any termination of contracts by the department; or

(3) procedures for the promulgation of agency rules, or the judicial review of those procedures, pursuant to Subsection 63G-4-102(2)(a).

**R497-100-4. Form.**

(1) Any adjudicative proceeding commenced by the department or other persons affected by department action pursuant to this rule shall be designated an informal adjudicative proceeding, except:

(a) as designated by rule or statute;

(b) as provided in this rule; or

(c) when converted to a formal adjudicative proceeding pursuant to Subsection 63G-4-202(3).

(2) Before the office issues a final order in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding does not unfairly prejudice the rights of any party; and

(b) conversion of the proceeding is in the public interest.

(3)(a) If the presiding officer converts an adjudicative proceeding from informal to formal, the procedures for a formal adjudicative proceeding in Sections 63G-4-204 through 63G-4-208 shall apply.

(b) In other cases, procedures for an informal adjudicative proceeding in Section 63G-4-203, Section R497-100-7, and other applicable department rules shall apply.

**R497-100-5. Commencement.**

(1) An adjudicative proceeding shall commence by either:

(a) a notice of agency action, if the adjudicative proceeding is commenced by the agency; or

(b) a request for agency action, if other persons commence the adjudicative proceeding.

(2) When an adjudicative proceeding is commenced by the agency, the notice of agency action shall conform to Subsection 63G-4-201(2) and include a statement that:

(a) the adjudicative proceeding is to be conducted informally; and

(b) describes the aggrieved person's right to request a hearing and the applicable time limits within which the aggrieved person shall request a hearing.

(3) When an adjudicative proceeding is commenced by a person other than the agency, the request for agency action shall conform to Subsections 63G-4-201(3)(a) through 63G-4-201(3)(b) and include the name of the adjudicative proceeding, if known.

(4) In the case of an adjudicative proceeding commenced under Subsection (3), the presiding officer shall, within 20 calendar days, give written notice by mail to each party. The notice shall:

(a) designate that the presiding officer shall conduct the hearing informally;

(b) give the name, title, mailing address, and telephone number of the presiding officer;

(c) give the agency's file number or other reference number;

(d) give the name of the proceeding;

(e) if a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party within the time prescribed by rule, state each party's right to request a hearing and the time within which a hearing may be requested under agency rule; and

(f) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default.

**R497-100-6. Availability of Hearing.**

(1) When an agency commences an informal adjudicative proceeding, if statute or agency rule does not provide otherwise, a party may request a hearing within 15 calendar days of receipt of the notice of agency action.

(2) An agency shall promptly forward hearing requests to the office, unless statute or rule designates another presiding officer.

(3) In the case of a hearing commenced under Subsection (1), a party who fails to request a hearing within 15 calendar days of receipt of the notice of agency action may not have the right to an administrative hearing or judicial review of the agency action, unless the party can demonstrate, by a preponderance of the evidence, that it was virtually impossible or unreasonably burdensome to file the request within 15 calendar days.

(4)(a) If an aggrieved person requests a hearing and if there is a disputed issue or fact, the presiding officer may hold an informal hearing in connection with an agency action.

(b)(i) If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and issue a decision without a hearing, based on the record.

(ii) In the decision, the presiding officer shall specifically set out any material and relevant facts that are not in dispute.

(iii) If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for agency review pursuant to Section 63G-4-301 and Section R497-100-12.

(5)(a) There is no disputed issue of fact if every material fact the agency relied upon in taking the adverse action or in obtaining the relief sought in the adjudicative proceeding is established by:

(i) the aggrieved person's own acknowledgment or admission;

(ii) an adjudication from a court of competent jurisdiction; or

(iii) a record submitted by either party if the aggrieved person does not challenge the record's accuracy.

(b) When the reasonableness of the agency's action is the primary issue under consideration, rather than whether there is a factual basis for the agency's action, the issue of reasonableness remains in dispute even if there is no dispute as to any underlying material fact that resulted in the agency's action.

**R497-100-7. Settlement Agreements.**

Parties of an adjudicative proceeding may enter into a settlement agreement before the issuance of a final decision and order resolving any part of the adjudicative proceeding if there is no rule or statute that prohibits a settlement.

**R497-100-8. Stays.**

(1) The presiding officer may stay an adjudicative proceeding during an investigation or court case that is pending due to the same facts that led to the agency action.

(2) If the stay is based on an adjudicative proceeding in a state court of public record, the presiding officer may monitor the public records of that proceeding to determine if the stay should be continued or lifted or if other action shall be taken.

**R497-100-9. Procedures for Informal Adjudicative Proceedings.**

In compliance with Section 63G-4-203, the procedure for an informal adjudicative proceeding is:

(1)(a) Unless otherwise specified in rule, the respondent to a notice of agency action or request for agency action may file an answer or responsive pleading to any allegation contained in the notice of agency action or the request for agency action within 15 calendar days following receipt of the notice of agency action or request for agency action.

(b)(i) An attorney or non-attorney may represent a party.

(ii) The office or agency may not pay for the attorney or non-attorney.

(c) Discovery is prohibited, but the office may issue a subpoena or other order to compel the production of necessary evidence.

(d)(i) An attorney may issue a subpoena for necessary evidence.

(ii) A party who is not represented by an attorney may request a subpoena from the office.

(iii) When the presiding officer issues a subpoena to a party, the party shall serve that subpoena on the witness.

(e)(i) A party shall request a subpoena as soon as possible after a hearing date is set.

(ii) The office may not issue a subpoena fewer than 16 calendar days before the hearing.

(f) Each party shall have access to information contained in the agency's files and to materials and information gathered in any investigation to the extent permitted by law.

(g) The office may require that each party exchange documents before the hearing to expedite the hearing process.

(h) Intervention is prohibited, except as permitted by federal statute or rule requiring a state to permit intervention.

(i)(i) The office shall hold a hearing for any requesting party entitled to request a hearing as a matter of law.

(ii) In the hearing, the presiding officer shall take testimony under oath or affirmation.

(iii) In the hearing, each party shall be permitted to comment on any issue, present evidence, and testify.

(l) Each party may offer any relevant evidence, including hearsay evidence.

(i) A claimant may not base a case exclusively on inadmissible hearsay.

(ii) A claimant shall present a residuum of evidence that would be admissible under the rules of procedure with the applicable court of competent jurisdiction.

(m) The presiding officer may exclude immaterial, irrelevant, and unduly repetitious evidence.

(n) The presiding officer may question any party or witness.

(o) The presiding officer shall maintain order and may recess the hearing to regain order if a person engages in disorderly, disrespectful, or disruptive conduct.

(i) The presiding officer may remove any person, including a party, from the hearing to maintain order.

(ii) If a person shows persistent disregard for order and procedure, the presiding officer may:

(A) restrict the person's participation in the hearing;

(B) strike pleadings or evidence; or

(C) issue an order of default.

(p) When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.

(q) The presiding officer may issue an order of default against any party that fails to appear, participate, or obey an order entered by the presiding officer.

(r) The office shall hold hearings only after a timely notice has been mailed to each party.

(s) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that conforms to Subsection 63G-4-203(1)(i).

(t)(i) Hearings shall be open to the parties.

(ii) Hearings may not be open to the public.

(u) The presiding officer shall base an order on the facts appearing in the agency's files that were available to the other party and on the facts presented in evidence at the hearings.

(v) The office shall promptly mail a copy of the presiding officer's order to each party.

(w) An AI bot, computer, or program may not appear, dictate, listen to, record, or summarize any adjudicative proceeding or hearing under this rule.

(x) If a party sends an AI bot, computer, or program to appear at a hearing instead of the party, the presiding officer:

(i) shall consider this a failure to appear on the part of the party; and

(ii) may issue an order of default against the party under the relevant default provisions of Title 63G, Chapter 4, Administrative Procedures Act.

(2) A transcript of the record may be prepared pursuant to Subsection 63G-4-203(2)(b).

(i) The presiding officer may record any adjudicative proceeding other than a hearing at the presiding officer's own discretion.

(ii) If a party desires to employ a court reporter to make a record of the hearing, the party must file an original transcript of the hearing with the presiding officer at no cost to the agency.

(3) When the agency commences an informal adjudicative proceeding and is to be heard by the office, unless statute or agency rule specify otherwise, the agency shall have the burden of proving, by a preponderance of the evidence, that the agency's decision was reasonable. The agency may demonstrate this by showing that the agency's decision was not arbitrary or capricious.

(4) A party shall mail a copy of any motion or pleading that the party files with the office to each of the other parties named in the action.

(a) The non-moving party shall:

(i) unless the office dictates otherwise, file any response to a motion or pleading filed with the office within ten calendar days; and

(ii) mail a copy of that response to each of the other parties named in the action.

(b) Any motion or pleading received by the office after the regular business hours of Monday through Friday, 8 a.m. to 5 p.m., excluding state holidays, is considered received the following business day.

(5) Ex parte communication with the presiding officer is prohibited unless every other party to the case has been given notice and the opportunity to be present.

(i) This prohibition against ex parte communication does not apply to communication on the status of the hearing and uncontested procedural matters.

(ii) The presiding officer shall report any improper ex parte communication at the time of the hearing, and the presiding officer's report shall be made part of the record.

(6) Each party shall keep the office informed of the party's current address, email address, and telephone number.

**R497-100-10. Platform and Venue.**

(1) When possible, the office shall hold a hearing by telephone or video conference.

(2) The office may hold a hearing in person if the office finds good cause to hold the hearing in person.

(i) Good cause to hold a hearing in person includes a determination by the presiding officer that a party does not have the equipment necessary to participate in a telephone or video conference hearing.

(ii) The office shall hold a hearing in person in an agency office located in the county closest to where the aggrieved person resides or maintains a principal place of business, unless the office finds good cause to hold the hearing elsewhere.

**R497-100-11. Amending Administrative Orders.**

(1) The presiding officer may amend an order if the presiding officer determines that the order contains a clerical error.

(2) The presiding officer shall mail a copy of the amended final decision and order to each party.

**R497-100-12. Availability of Agency Review.**

A party may obtain agency review of a final order by filing a request with the executive director of the department, pursuant to Section 63G-4-301.

**R497-100-13. Availability of Judicial Review.**

A party to an adjudicative proceeding may obtain judicial review pursuant to Section 63G-4-102 and Sections 63G-4-401 through 63G-4-405.

**R497-100-14. Scope and Applicability.**

This rule supersedes any other department rule that may conflict with this rule.

**KEY: administrative procedures, social services**

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**Authorizing, and Implemented or Interpreted Law: 26B-1-202(1); 26B-1-204(1)**