

SB09-044

Senator Boyd, Representative Hullinghorst
House Health and Human Services Committee
Monday, March 2, 2009

Concerning Administrative Procedures in Relation to the Department of Human Services

What this legislation does: Modifies three technical aspects of the Department of Human Services' (DHS) administrative processes involving the State Administrative Procedure Act (APA), and repeals two obsolete provisions. The bill was not amended in the Senate and passed unanimously.

- (1) Codifies current practice by permitting parties challenging an Administrative Law Judge's (ALJ) decision for whom it would be a hardship to cover the cost of providing a written transcript to file an audio recording. Page 3, lines 1-7 of the Engrossed bill
- (2) Repeals an obsolete and unneeded provision granting authority to request a waiver of federal requirements. Page 2, lines 9 & 10, and page 3, lines 21 through Page 4 line 3 of the Engrossed bill
- (3) Creates consistency in administrative appeals by authorizing the Department to enter the final agency action for APA appeals involving providers regulated by the Department. Page 4, lines 4-9 of the Engrossed bill
- (4) Repeals an obsolete provision for appeals under the Merit System for county employees. Page 4, lines 12-26 of the Engrossed bill
- (5) Updates and conforms statutes to the historical and current practice for determining whether Departmental rules are promulgated by the State Board of Human Services or the Executive Director. Pages 5-16 of the Engrossed bill

Background and Explanation:**I – Audio Transcripts:**

This section of the bill would permit individuals challenging an ALJ's decision to file an audio recording rather than a written transcript, when the cost of a transcript would be a financial barrier to participating in the administrative hearing process. It would codify DHS's practice to allow applicants and recipients for public assistance or other services of the Department to request permission to file an audio recording in lieu of a written transcript upon showing that he/she cannot afford a transcript. A written transcript could cost \$250.00 or more, whereas the cost of an audio recording is typically under \$10.00.

The APA delineates the appeal procedure for adverse actions (terminations, denials, reductions, sanctions, etc.) taken in program areas such as: public assistance, food stamps, child welfare, child care licensing, and child abuse and neglect report appeals. Under the APA, an ALJ enters an initial decision, which is sent to DHS for review. The parties are provided an opportunity to challenge the ALJ's decision. For a party to challenge an ALJ's legal findings of fact, under the APA they must file a transcript of the hearing. A recent Colorado Court of Appeals' decision stated that as utilized in the APA, the word "transcript" means a written transcript. Historically, because of the cost of written transcripts, DHS has permitted a party to file an audio recording in lieu of a written transcript. Requiring written transcripts limits many DHS applicants' and participants' ability to exercise their rights under the APA as they cannot afford the transcript to challenge the Administrative Law Judge's decision. This proposal would create an exception from the written transcript requirement for individuals who cannot afford the cost thereof.

II – Repeal Obsolete Provisions

These sections of the bill repeal obsolete language. The statute authorizes DHS to request a waiver of the single state agency requirement from the federal authorities; this provision was included for a program that is no longer with DHS. Similarly, when the statewide Merit System for the testing and qualification of employees of county departments of social/human services was abolished several years ago, a provision remained in statute concerning the handling of any appeals that may have been in process. The Merit System Council, which handled such appeals, was abolished effective January 1, 2001.

III – Final Agency Action

This section of the bill would create consistency for all APA appeals involving DHS's service providers. All DHS individual APA appeals and the vast majority of DHS APA provider appeals come to the Appeals Section of DHS for final agency action after an initial decision is entered by an ALJ in the Department of Personnel and Administration (DPA). Out of approximately 2000 APA appeals annually, about 10 per year do not come to the DHS for a final administrative review and decision. For that small number of appeals under the exception in current law, the decision of an ALJ in DPA is the final administrative decision for the State.

This change was recommended by the Office of the Attorney General, and would bring the Department into compliance with the requirement that the DHS have final agency action authority as the federally designated "single state agency" that is administratively accountable under state and federal law for the program. Under the current exception for some provider appeals, if DHS disagrees with the ALJ's decision, the only recourse is for DHS is to take another state agency to court. This changes also creates consistency in that all DHS APA provider appeals will utilize the same administrative hearing process. It is important to recognize that while this change amends the "administrative" portion of an appeal, the provider retains full due process rights through an appeal to the courts.

IV – State Board of Human Services and Executive Director Rule-Making Authority

This section of the bill would create consistency in the Department's rule-making processes by eliminating statutory discrepancies as to when the State Board of Human services or the Executive Director has rule-making authority.

The Department of Human Services (DHS) was created in 1994 through a restructuring of state agencies and programs, including the merger of the former Departments of Institutions and Social Services. Two rule-making paradigms were carried forward when those Departments were merged. The first paradigm allowed for rules to be promulgated by the State Board of Human Services, and the second paradigm allowed for rules to be promulgated by the Executive Director. This statutory clean-up will continue the Department's historic and current practice for the State Board to promulgate rules concerning program scope and content, including client rights, and the Executive Director to promulgate rules concerning Department administration, such as accounting and fiscal reporting.

COLORADO DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURE ACT
APPEALS PROCESS

