

PURPOSE

The Michigan Department of Health and Human Services (MDHHS) will consider issuing a declaratory ruling, upon receipt of a request, to an interested person or agency concerning a statute administered by the department or a rule or order issued by the department and its applicability to an actual state of fact.

The Michigan Administrative Procedures Act requires the department to have a rule instructing the public as to how to request a declaratory ruling. It is important to follow this rule since the department is obligated to stand by any decision made as a declaratory ruling and the requesting person may appeal this decision to a court.

Definition

A declaratory ruling means a decision, ruling, or determination concerning the applicability to an actual statement of facts of a statute administered by the department or of an order of the department.

POLICY

Impact of a Declaratory Ruling

A declaratory ruling is **binding** (but not retroactively) on the department and the person requesting it unless altered prospectively by the department or set aside by any court.

Denial of a Request

The request may be denied in any of the following situations:

- The subject matter of a request is frivolous on its face.
- The statement of actual facts or issues contained in a request is indefinite, incomplete, or lacks specificity.
- The same, or substantially the same, actual state of facts is under investigation or is, or has been, the subject of a current action, order, judgment, or decree initiated or obtained by the department, the attorney general, or a prosecuting attorney.

- When the department considers a declaratory ruling to be inadvisable.

If a decision is made not to issue a declaratory ruling, notification will be provided to the requestor, in writing within 45 working days of receipt of request.

The draft written denial for department director signature shall be prepared by the appropriate program office and forwarded to Bureau of Legal Affairs (BLA) by the 30th day after the request has been received by the department.

The response shall contain:

- The facts upon which the department refuses to issue a declaratory ruling.
- The reason for denial.

Processing a Positive Response to a Request for a Declaratory Ruling

A response to a request for a declaratory ruling shall be prepared for department director signature by the appropriate program office which is responsible for the administration of the program concerned in the request for a declaratory ruling.

The response shall contain:

- A statement of the facts.
- Conclusions of law supported by legal authority or reasoned opinion.
- The ruling or determination made.

The proposed response to a request for a declaratory ruling will be forwarded to BLA by the 30th day after the request has been received by the department.

BLA shall review either the positive response and forward it to the attorney general for review and then to the department director for signature.

The response must be signed by the director and mailed within 60 working days after the request is received.

**Appeal of a
Declaratory Ruling**

A declaratory ruling is subject to judicial review in the same manner as a department final order or decision in a contested case.

PROCEDURE***Bureau of Legal Affairs***

The Bureau of Legal Affairs shall advise the requestor with 30 days of receipt of the declaratory ruling request whether a declaratory ruling will be issued.

The Bureau of Legal Affairs, along with the director will draft a response to the declaratory ruling request.

The Bureau of Legal Affairs staff may consult with the Office of Attorney General for advice and consultation.

Director

If the director agrees with the proposed declaratory ruling and the advice of the attorney general and the legal affairs staff, the director will sign the order for adopting the declaratory ruling.

Bureau of Legal Affairs

The Bureau of Legal Affairs staff will process all documents to the requesting party, and all other interested parties.

REFERENCES

Michigan Administrative Procedures Act, MCL 24.207 and 24.263.

Administrative Rule R 400.951.

CONTACT

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