

Title 18: Mississippi Department of Child Protection Services

Part 301: Authority and Administration

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Title 18: Mississippi Department of Child Protection Services

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Chapter 1 ADMINISTRATION AND MANAGEMENT

- Rule 1.1. *Authority* – The Mississippi Department of Child Protection Services (MDCPS) is authorized by state statute to promulgate regulations, policies and procedures necessary to implement the state’s child welfare system and to ensure the safety, permanency, and well-being for Mississippi’s families and children.

MDCPS is responsible for the Title IV-B Subpart 1 (Child Welfare Services), IV-B Subpart 2 (Promoting Safe and Stable Families), Title IV-E (Foster Care and Adoption Assistance), Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 67 §§5101-5116i) as amended several times, the last being Trafficking Victims Prevention and Protection Reauthorization Act of 2022 (PL 117-348), Chafee Foster Care Independence Program (CFCIP), Educational Training Voucher (ETV) and other federal and state programs.

Source: Miss. Code Ann. §§ 43-26-1 et seq.; §§ 43-15-1 et seq.

- Rule 1.2. *Commissioner* – The Chief Administrative Officer of the MDCPS shall be the Commissioner of Child Protection Services who shall be appointed by the Governor with the advice and consent of the Senate. The Commissioner shall possess those qualifications as may be required by statute.

The MDCPS Commissioner shall develop and establish the basic mission and goals of MDCPS and create an organizational culture and structure uniquely adapted to and capable of fulfilling the mission and accomplishing the goals of MDCPS.

Source: Miss. Code Ann. § 43-26-1

- Rule 1.3. *Organization* – Organizational charts show the official “chain of command” of MDCPS and are subject to modification as needs change. Therefore, official organizational charts shall be updated at least annually or as requested by the MDCPS Commissioner and will remain on file. Regional and county overview organizational charts may be developed to illustrate the organizational chain of command as assigned in local, regional, or state offices.

Source: Miss. Code Ann. § 43-26-1

Chapter 2 PUBLIC PARTICIPATION IN RULE MAKING

Rule 2.1. *Application of Chapter* – This chapter applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations or written input on proposed new rules, amendments to rules, and proposed repeal of existing rules before MDCPS pursuant to the Administrative Procedures Act.

Source: Miss. Code Ann. § 25-43-2.105

Rule 2.2. *Request for Oral Proceeding* – When a political subdivision, an agency, or a citizen requests an oral proceeding regarding a proposed rule adoption, the requestor must submit a printed, typewritten, or legibly handwritten request.

1. Each request must be submitted on 8-1/2" x 11" white paper.
2. The request may be in the form of a letter addressed to MDCPS or in the form of a pleading as if filed with a court.
3. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
4. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: Miss. Code Ann. § 25-43-2.105

Rule 2.3. *Notice of Oral Proceeding* – Notice of the date, time, and place of all oral proceedings shall be filed with the Secretary of State's Office for publication in the Administrative Bulletin and will be provided to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of the notice with the Secretary of State. The MDCPS Commissioner, or designee who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Source: Miss. Code Ann. § 25-43-2.105

Rule 2.4. *Public Participation Guidelines* – Public participation shall be permitted at oral proceedings in accordance with the following:

1. At an oral proceeding on a proposed rule, persons may make statements and present documentary and physical submissions concerning the proposed rule.
2. Persons wishing to make oral presentations at such a proceeding shall notify MDCPS at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her

discretion may allow individuals to participate that have not contacted MDCPS prior to the proceeding.

3. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
4. The presiding officer may place time limitations on individual presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
5. Persons making presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.
6. Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding. No participant shall be required to answer any question.

Source: Miss. Code Ann. § 25-43-2.105

Rule 2.5. *Submissions and Records* – Physical and Documentary Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of MDCPS, part of the rulemaking record, and are subject to MDCPS’ public records request procedure. MDCPS may record oral proceedings by stenographic or electronic means.

Source: Miss. Code Ann. § 25-43-2.105

Chapter 3 DECLARATORY OPINIONS

Rule 3.1. *Application of Chapter* – This chapter sets forth MDCPS’ rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and MDCPS’ procedures regarding the disposition of requests as required by Mississippi Code § 25-43-2.103.

Source: Miss. Code Ann. § 25-43-2.105

Rule 3.2. *Scope of Declaratory Opinions* – MDCPS will issue declaratory opinions regarding the applicability to specified facts of:

1. a statute administered or enforceable by MDCPS,
2. a rule promulgated by MDCPS, or
3. an order issued by MDCPS.

Source: Miss. Code Ann. § 25-43-2.105

Rule 3.3. *Scope of Declaratory Opinion Request* – A request must be limited to a single transaction or occurrence.

Source: Miss. Code Ann. § 25-43-2.105

Rule 3.4. *How to Submit Requests* – When a person with substantial interest, as required by Section 25-43-2.103 of the Administrative Procedures Act, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

1. Each request must be submitted on 8-1/2” x 11” white paper.
2. The request may be in the form of a letter addressed to MDCPS or in the form of a pleading as if filed with a court.
3. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).
4. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
5. Each request must clearly state that it is a request for a declaratory opinion.

Source: Miss. Code Ann. § 25-43-2.105

Rule 3.5. *Signature Attestation* – Any party who signs the request shall attest that the request complies with the requirements set forth in these rules, including but not limited to

a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

Source: Miss. Code Ann. § 25-43-2.105

Rule 3.6. *Request Content Requirement* – Each request must contain the following:

1. A clear identification of the statute, rule, or order at issue;
2. The question for the declaratory opinion;
3. A clear and concise statement of all facts relevant to the question presented;
4. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number; and
5. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request.

Source: Miss. Code Ann. § 25-43-2.105

Rule 3.7. *Reasons for Refusal of Declaratory Opinion Request* – MDCPS may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

1. The matter is outside the primary jurisdiction of MDCPS;
2. Lack of clarity concerning the question presented;
3. There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
4. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
5. The facts presented in the request are not sufficient to answer the question presented;
6. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
7. The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;

8. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;
9. The question presented by the request concerns the legal validity of a statute, rule, or order;
10. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
11. No clear answer is determinable;
12. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
13. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
14. The question is currently the subject of an Attorney General's opinion request;
15. The question has been answered by an Attorney General's opinion;
16. One or more requestors have standing to seek an Attorney General's opinion on the proffered question;
17. A similar request is pending before this agency, or any other agency, or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law; or
18. The question involves eligibility for a license, permit, certificate or other approval by MDCPS or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: Miss. Code Ann. § 25-43-2.105

Rule 3.8. *Agency Response* – Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, MDCPS shall, in writing:

1. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances;
2. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or

3. Decline to issue a declaratory opinion, stating the reasons for its action.

The forty-five (45) day period shall begin on the first business day after which the request is received by MDCPS.

Source: Miss. Code Ann. § 25-43-2.105

Rule 3.9. *Availability of Declaratory Opinions and Requests for Opinions* – Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name, subject, and date of issue. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: Miss. Code Ann. § 25-43-2.105