

CHAPTER 5
DECLARATORY ORDERS

[Ch 5, 1973 IDR, renumbered as [770] Ch 79]
[Prior to 7/1/83, Social Services[770] Ch 5]
[Prior to 2/11/87, Human Services[498]]

441—5.1(17A) Petition for declaratory order. Any person may file a petition with the department for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department at the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, or at appeals@dhs.state.ia.us. The date of receipt of a petition is the day it reaches the department’s rules administrator. The department shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

BEFORE THE DEPARTMENT OF HUMAN SERVICES

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER
--	---	-----------------------------------

The petition shall provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested. For public assistance policy rulings, the request should state facts such as the amount of income and resources of a person who may be affected by the policy.
2. A citation and the relevant language of the specific statutes, rules, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers. A request which seeks to change rather than to declare or determine policy will be denied.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by the petitioner for a meeting provided for by rule 441—5.7(17A).
9. The petitioner’s state identification number, if applicable.

The petition shall be dated and signed by the petitioner or the petitioner’s representative. It shall also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

[ARC 6439C, IAB 8/10/22, effective 10/1/22]

441—5.2(17A) Notice of petition. Within five working days of receipt of a petition for a declaratory order, the department shall give notice of the petition to all persons not served by the petitioner pursuant to rule 441—5.6(17A) to whom notice is required by any provision of law.

441—5.3(17A) Intervention.

5.3(1) Nondiscretionary intervention. Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 working days of the filing of a petition

for declaratory order and before the 30-day time for department action under rule 441—5.8(17A) shall be allowed to intervene in a proceeding for a declaratory order.

5.3(2) *Discretionary intervention.* Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department.

5.3(3) *Filing and form of petition for intervention.* A petition for intervention shall be filed at the bureau of policy coordination. The date of receipt of a petition is the day it reaches the department's rules administrator. The department shall provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention shall be typewritten or legibly handwritten in ink and shall substantially conform to the following form:

BEFORE THE DEPARTMENT OF HUMAN SERVICES

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION
---	---	------------------------------

The petition for intervention shall provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented by the declaratory order proceeding.

The petition shall be dated and signed by the intervenor or the intervenor's representative. It shall also include the name, mailing address, and telephone number of the intervenor and the intervenor's representative, and a statement indicating the person to whom communications should be directed.

[ARC 6439C, IAB 8/10/22, effective 10/1/22]

441—5.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

441—5.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Rules Administrator, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, or at appeals@dhs.state.ia.us.

[ARC 6439C, IAB 8/10/22, effective 10/1/22]

441—5.6(17A) Service and filing of petitions and other papers.

5.6(1) *Service.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served by mail, email, or personal delivery upon each of the parties of record to the proceeding, and on all other persons identified as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons. All documents filed shall indicate all parties or other persons served and the date and method of service.

5.6(2) Filing. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, or at appeals@dhs.state.ia.us. All documents are considered filed upon receipt by the department's rules administrator.

[ARC 6439C, IAB 8/10/22, effective 10/1/22]

441—5.7(17A) Consideration. Upon request by the petitioner, the department shall schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the staff of the department, to discuss the questions raised. The department may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

441—5.8(17A) Action on petition.

5.8(1) Time frames for action. Within 30 days after receipt of a petition for a declaratory order, the director or the director's designee shall take action on the petition as required by Iowa Code section 17A.9(5).

5.8(2) Date of issuance of order. The date of issuance of an order or of a refusal to issue an order is the date of mailing of the order or refusal or date of delivery if service is by other means unless another date is specified in the order.

441—5.9(17A) Refusal to issue order.

5.9(1) Reasons for refusal to issue order. The department shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department to issue an order.
3. The department does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the department to determine whether a statute is unconstitutional on its face.

5.9(2) Action on refusal. A refusal to issue a declaratory order shall indicate the specific grounds for the refusal and constitutes final department action on the petition.

5.9(3) Filing of new petition. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the department's refusal to issue a ruling.

[ARC 6439C, IAB 8/10/22, effective 10/1/22]

441—5.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order shall contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.
[ARC 6439C, IAB 8/10/22, effective 10/1/22]

441—5.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors. An email response may be sent to the petitioner and other parties upon agreement of the petitioner and each party as applicable.
[ARC 6439C, IAB 8/10/22, effective 10/1/22]

441—5.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 17A.9.

[Filed 9/19/75, Notice 8/11/75—published 10/6/75, effective 11/10/75]

[Filed without Notice 5/8/78—published 5/31/78, effective 7/5/78]

[Filed without Notice 3/14/79—published 4/4/79, effective 5/9/79]

[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]

[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]

[Filed 3/3/87, Notice 12/31/86—published 3/25/87, effective 5/1/87]

[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]

[Filed 3/10/99, Notice 1/13/99—published 4/7/99, effective 7/1/99]

[Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 5/1/02]

[Filed ARC 6439C (Notice ARC 6328C, IAB 5/18/22), IAB 8/10/22, effective 10/1/22]