

CHAPTER 18
DECLARATORY ORDERS

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 10]
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 18]

17—18.1(17A) Petition for declaratory order. Any person may file a petition with the department on aging for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department on aging at the Iowa Department on Aging, Attn: Director, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. A petition is deemed filed when it is received by that office. The department on aging 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 must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

| BEFORE THE DEPARTMENT ON AGING | |
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| Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved). | } PETITION FOR DECLARATORY ORDER |

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, 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.
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 petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 17—18.7(17A).
9. The petitioner’s state identification number, if applicable.

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must 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.

Application requests for an informal review of department policy, law or rules in relation to specific facts shall be in writing and may be submitted electronically or by mail. The request must recite all pertinent facts and questions. The department response to a request for informal review shall not be considered a declaratory order as specified in Iowa Code chapter 17A. The department may, at its discretion, choose to issue a declaratory order in response to a request for informal review.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department on aging shall give notice of the petition to all persons not served by the petitioner pursuant to 17—18.6(17A) to whom notice is required by any provision of law. The department on aging may also give notice to any other persons.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.3(17A) Intervention.

18.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for notice under 17—18.2(17A) and before 30-day time for department action under 17—18.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

18.3(2) 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 on aging.

18.3(3) A petition for intervention shall be filed at the department on aging. Such a petition is deemed filed when it is received by that office. The department on aging will 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 must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

| | |
|--|---|
| BEFORE THE DEPARTMENT ON AGING | |
| Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition). | } |
| PETITION FOR INTERVENTION | |

The petition for intervention must 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 in the declaratory order proceeding.

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

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department on aging may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.6(17A) Service and filing of petitions and other papers.

18.6(1) *When service required.* 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 upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention 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.

18.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director, Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department on aging.

18.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule 17—13.12(17A).
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.7(17A) Consideration. Upon request by petitioner, the department on aging must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department on aging, a member of the department on aging, or a member of the staff of the department on aging, to discuss the questions raised. The department on aging may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department on aging by any person.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.8(17A) Action on petition.

18.8(1) Within the time allowed by Iowa Code section 17A.9(3) after receipt of a petition for a declaratory order, the department on aging or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

18.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 17—13.2(17A).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.9(17A) Refusal to issue order.

18.9(1) The department on aging shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 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 on aging to issue an order.
3. The department on aging 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 on aging to determine whether a statute is unconstitutional on its face.

18.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

18.9(3) 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 refusal to issue an order.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, 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 8489B, IAB 1/27/10, effective 1/7/10]

17—18.11(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.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.12(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 on aging, 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 on aging. The issuance of a declaratory order constitutes final department action on the petition.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 17 and 231.

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[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

¹ Effective date of Chapter 18 delayed 70 days by the Administrative Rules Review Committee.