

### **Procedures for Administrative Review of Cost Report Findings and of Findings on Applications for Rate Adjustments**

This issuance is intended to describe the steps necessary to appeal actions of the Division taken after review or audit of providers' cost reports or decisions on applications for rate adjustments, pursuant to V.D.R.S.R. §§15.1-15.3. Each step of this review procedure must be completed before further review is available. **No appeal of cost report findings may be taken pursuant to 33 V.S.A. §909(a) unless the Division's administrative review procedures have first been exhausted.**

Detailed instructions for specific forms are contained in Practices and Procedures Issuances (P&PI) Nos. 92-5 (*Request for Work Papers*), 92-6 (*Request for Informal Conference*), 92-7 (*Notice of Request for Reconsideration*), 92-8 (*Request for Reconsideration - Supporting Information*).

**Procedural Reminders:** (See V.D.R.S.R. §§1.10 and 1.11)

The word *filed* as used in the rules and these practices and procedures means that the material to be filed must be received and date stamped at the Division on or before the due date. (V.D.R.S.R. §1.10(d).) **A submission that is post marked on the due date is not sufficient.** Filings may be made by FAX, but must be received at the Division and stamped in during office hours (7:45 a.m. to 4:30 p.m.) on the due date in order for the FAX filing to be timely. FAXs received after 4:30 p.m. will be stamped as received on the following day. **Providers using the FAX should bear in mind that they bear the risk of a malfunction of the FAX machine or the telephone lines from whatever cause, including oversight or neglect.** Providers are advised to contact the Division if they have any doubts about the receipt of their filings.

If a provider wishes to appoint a *special representative*, such as an accountant or a lawyer, at any point in these proceedings, it must do so by filing the form *Notice of Representation (Special)* (Form 92-2.4F), otherwise all correspondence will be sent to the provider's general representative. (V.D.R.S.R. §1.11.)

Time is calculated according to V.D.R.S.R. §1.10(a) and (b). Extensions of time may be available, if a *Request for Extension of Time* (Form 92-3.3F) is timely filed. (V.D.R.S.R. §1.10(c).)

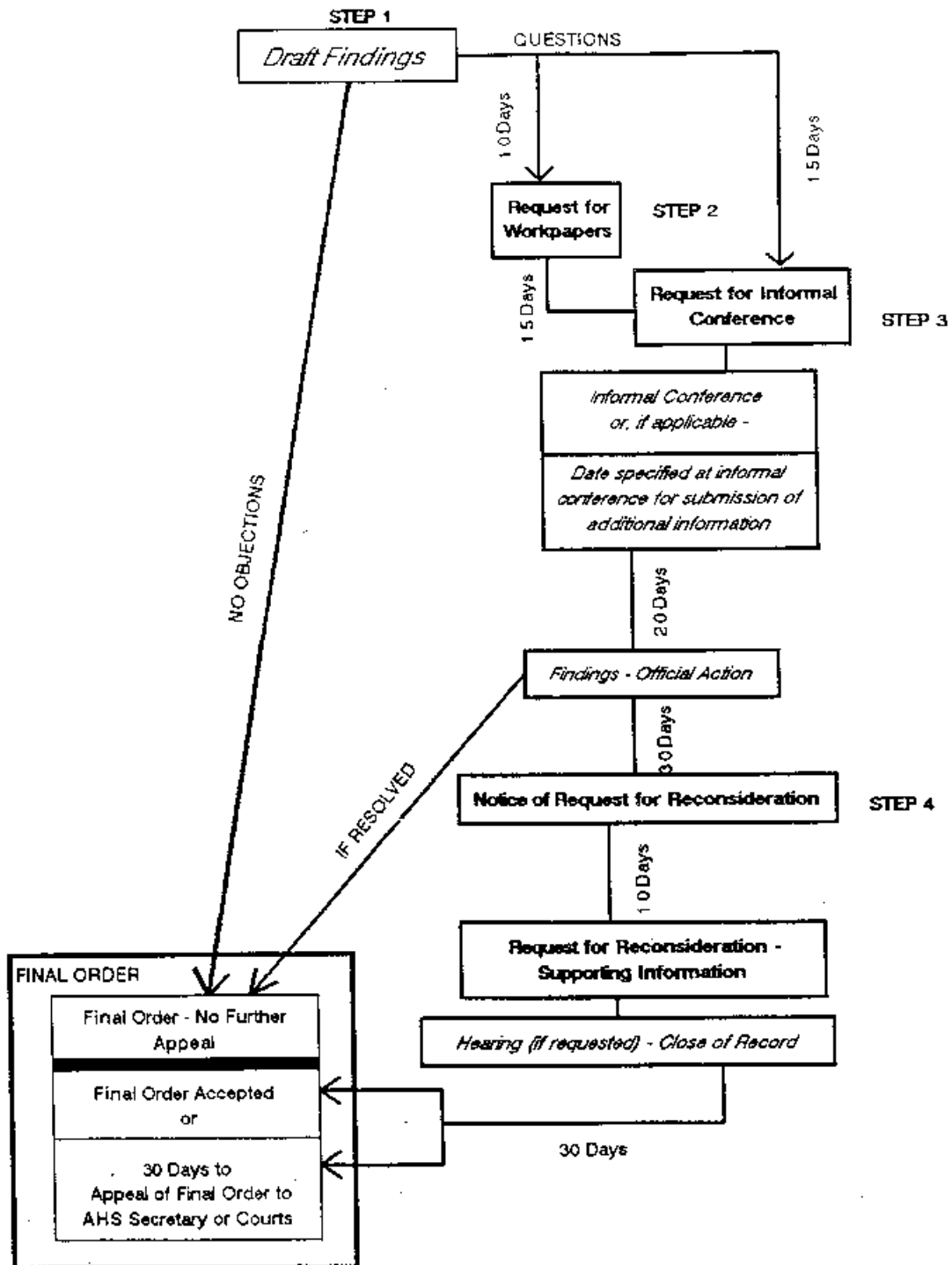
### **Procedural Milestones:**

On the next page is a flow chart showing the milestones in the administrative review of the Division's cost report findings, followed by a written description of the steps that must be taken by the provider during the review process.

**Procedures for Administrative Review of Cost Report Findings  
 and of Findings on Applications for Rate Adjustments (cont.)**

**Flow Chart**

Action to be taken by provider in bold type.



**Procedures for Administrative Review of Cost Report Findings  
and of Findings on Applications for Rate Adjustments (cont.)**

**Action Required - Steps to Be Taken By Provider**

**Step 1. PROVIDER'S REVIEW OF FINDINGS** After a review or audit of a provider's cost report or an application for a rate adjustment, the Division will send out *draft findings*. (V.D.R.S.R. §15.1(a)) The provider should review these findings immediately upon receipt. If the provider does not need copies of the Division's work papers to review the draft findings, it should proceed to step 3.

**Step 2. REQUEST FOR THE DIVISION'S WORK PAPERS** (See P&PI No. 92-5.) If the provider needs copies of the Division's work papers to understand the adjustments, these must be requested within 10 days of the provider's receipt of the findings. (V.D.R.S.R. §15.1(b).) The provider should use the form *Request for Work Papers*.

**DEFINING THE ISSUES** The appeal process for cost reports is structured to resolve disputed matters in an efficient and timely manner. The purpose of the multiple steps in the cost report appeal process is to resolve misunderstandings and simplify matters at the earlier levels of review, so that only the most significant issues are considered at the more formal levels. Throughout the appeal process the provider should bear in mind that each step is the gateway to the next level of review and that **each issue that the provider wishes to appeal must be raised at the first level of review (the Request for Informal Conference) and at each subsequent level, otherwise the provider will not be permitted to carry that issue to further levels of review.**

**Step 3. REQUEST FOR INFORMAL CONFERENCE** (See P&PI No. 92-6.) If after reviewing the Division's draft findings, the provider is dissatisfied and wishes to appeal, the provider must file a *Request for an Informal Conference* on the prescribed form within 15 days of the date of receipt of the findings, or if work papers were requested, within 15 days of the date of receipt of the work papers. (V.D.R.S.R. §15.2(a).) If no timely Request for an Informal Conference is filed, the draft findings will become final and no further appeals of these findings may be filed. (V.D.R.S.R. §15.2(d).) **Any provider wishing to appeal the Division's adjustments, disallowances or decision must first file a Request for Informal Conference. Otherwise, the provider will lose its further appeal rights. Any issue that is not raised in the Request for an Informal Conference may not be raised later in a Request for Reconsideration proceeding or in any subsequent proceeding arising out of the findings in question.**

After the Request for Informal Conference is received, the Division will contact the provider to arrange a mutually convenient time for the conference. The conference may be held by telephone. At the conference the provider will have an opportunity to discuss the alleged errors with the Division's staff members who were involved in the desk review or audit of the relevant cost report. Providers should be prepared to proceed with the Informal Conference within 30 days of the filing of its Request for Informal Conference.

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After the conference the Division will issue new findings as an *Official Action*. The next quarterly rate set after the issuance of the Official Action will reflect the findings therein. (V.D.R.S.R. §15.2(b).) These findings (which may or may not have been revised as the result of the informal conference discussions) are not final, but **if no timely Request for Reconsideration is filed, they will become final within 30 days of the provider's receipt and no further appeals will be available.** (V.D.R.S.R. §15.3(b).) The date of the official action will be used as the date for the subsequent final order whether or not it is issued with or without further proceedings. (V.D.R.S.R. §15.3(h).)

**Step 4. REQUEST FOR RECONSIDERATION** (See P&PI No. 92-7.) If a provider is still dissatisfied with the findings (Official Action) issued after the Informal Conference, it may file a *Notice of Request for Reconsideration* on the form prescribed by the Division. (V.D.R.S.R. §15.3(c).) This Request must be received at the Division within 30 days of the provider's receipt of the Official Action findings and set forth all the issues that are still in dispute.

- a. **An issue which was not raised in the Request for Informal Conference cannot be the subject of a Request for Reconsideration.**
- b. **An issue which is not included on this form may not be raised later in this Request for Reconsideration proceeding or in any subsequent proceeding arising out of the findings in question.**

After filing the *Notice of Request for Reconsideration* form, the provider has 10 days to file the supporting materials required by V.D.R.S.R. §15.3(d) on the form *Request for Reconsideration - Supporting Information* (see P&PI No. 92-8), with the required supporting schedules, as prescribed by the Division. **If the provider does not make this filing in a timely manner, the Request for Reconsideration will be dismissed, the cost report findings will become final, and no more appeals will be available.**

If the provider has requested a hearing, the Division will contact the provider to arrange a mutually convenient time for a hearing. The hearing will be conducted as follows:

**Guidelines for Hearings pursuant to V.D.R.S.R. §15.3(g)**

- a. Introduction
  - i. The hearing will be conducted by the Director of the Division of Rate Setting or a designee. Other members of the Division's staff may be present.
  - ii. Testimony will be under oath and recorded by stenographer or on tape.

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- iii. The burden of proof is on the provider to establish that the decision of the Division should be changed. The provider has a right to offer such relevant testimony or other evidence as it deems appropriate.
  - iv. If the provider so requests, the Division's staff members involved in the Official Action will appear and testify.
- b. The sequence of the hearing
- i. The Director, or her or his designee, will open the hearing and introduce the Division's staff and the issues on appeal.
  - ii. The provider will introduce the witnesses and allow them to be sworn.
  - iii. The provider will make an introductory statement outlining the evidence to be presented.
  - iv. The provider will then introduce any exhibits to be included in the record. (The exhibits should already have been marked by the stenographer, if one is present, or by the provider.)
  - v. The witnesses for the provider will give their testimony.
  - vi. The Director and the staff will then ask any questions which will assist the Division in its decision making.
  - vii. The staff of the Division may give additional testimony, if a request for testimony has been made by the provider on the *Request for Reconsideration - Supporting Information* (Form) 92-8.3F).
  - viii. The provider will have an opportunity to make a final statement.
  - ix. At the sole discretion of the Director or her or his designee, the record may be left open to a specific date in order to receive additional evidence.

After consideration of the evidence in the record, a Final Order will be issued in writing within 30 days of the closing of the record. The order will include a statement of the procedural history of the case, a statement of the issues, findings of fact and conclusions, and will be effective from the date of issuance of the Official Action. (V.D.R.S.R. §15.3(h).)

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**REVIEW OF FINAL ORDER** Appeals from a Final Order on a Request for Reconsideration may be made pursuant to 33 V.S.A. §909 and V.D.R.S.R. §§15.5, 15.6 and 15.7. **No issue may be appealed that was not included in the Request for Reconsideration.** The filing of an appeal does not automatically stay the operation of the final order. The following avenues of appeal are available:

- a. A Request for Administrative Review to the Secretary of the Agency of Human Services (see P&PI No. 98-2) must be filed at the Division within 30 days of the date on the Final Order by filing a written *Request for Administrative Review* on Form 98-2.2F. (V.D.R.S.R. §15.5.)
- b. Appeals to the Vermont Supreme Court and Superior Court must be filed within 30 days from the date on the order, as required by 12 V.S.A. §2383. **No extensions of time are available pursuant to V.D.R.S.R. §1.10(c)**, since appeals to these courts are governed by the Vermont Rules of Appellate Procedure and the Vermont Rules of Civil Procedure respectively.

Effective: December 21, 1998

s/Gary Bergeron for Veronica Celani  
Veronica Celani  
Director