Rules and Regulations of the State of Georgia

Department 350 DEPARTMENT OF MEDICAL ASSISTANCE

Current through Rules and Regulations filed through April 4, 2023

Table of Contents

ADMINISTRATIVE HISTORY

Chapter 350-1. ADMINISTRATION.

Rule 350-1-.01. Definitions.

Rule 350-1-.02. Department of Medical Assistance.

Rule 350-1-.03. Commissioner of Medical Assistance.

Rule 350-1-.04. Board of Medical Assistance.

Rule 350-1-.05. Practice of Non-Discrimination.

Chapter 350-2. PROCEDURES FOR ADOPTION, AMENDMENT, AND REPEAL OF RULES AND FOR PUBLIC NOTICE OF CHANGES IN METHODS AND STANDARDS FOR SETTING PAYMENT RATES.

Rule 350-2-.01. Adoption, Amendment, and Repeal of Rules.

Rule 350-2-.02. Petitions for Adoption, Amendment, or Repeal.

Rule 350-2-.03. Legislative Overview.

Rule 350-2-.04. Emergency Rules.

Rule 350-2-.05. Effective Dates of Rules.

Rule 350-2-.06. Promulgation of Rules.

Rule 350-2-.07. Incorporation of Existing State Rules and Regulations.

Rule 350-2-.08. Procedure for Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates.

Chapter 350-3. SANCTIONS FOR NURSING FACILITIES.

Rule 350-3-.01. Definitions.

Rule 350-3-.02. Remedies.

Rule 350-3-.03. Imposition of Remedies.
Rule 350-3-.04. Civil Monetary Penalties.
Rule 350-3-.05. Temporary Management.
Rule 350-3-.06. Monitoring.
Rule 350-3-.07. Notice.
Rule 350-3-.08. Administrative Review.
Rule 350-3-.09. Administrative Hearing.
Chapter 350-4. ADMINISTRATIVE REVIEW, HEARINGS AND APPEALS.
Rule 350-4-.01. Hearings Conducted by the Department of Medical Assistance.
Rule 350-4-.02. Hearings Conducted by the Department of Human Resources.
Rule 350-4-.03. Right to Representation.
Rule 350-4-.04. Administrative Review.
Rule 350-4-.05. Hearing Requests.
Rule 350-4-.06. Dismissal of Hearing Requests.
Rule 350-4-.07. Informal Disposition; Settlement.
Rule 350-4-.08. The Administrative Law Judge.
Rule 350-4-.09. Disqualification of the Administrative Law Judge.
Rule 350-4-.10. Ex Parte Communications.
Rule 350-4-.11. Notice of Hearing.
Rule 350-4-.12. Pre-Hearing Conferences.
Rule 350-4-.13. Time and Place of Hearing.
Rule 350-4-.14. Continued and Reopened Hearings.
Rule 350-4-.15. Default; Abandonment.
Rule 350-4-.16. Discovery.
Rule 350-4-.17. Subpoenas.
Rule 350-4-.18. Depositions.
Rule 350-4-.19. Pleadings and Amendments; Automatic Filings.
Rule 350-4-.20. Rules of Evidence; Official Notice.
Rule 350-4-.21. Substitution of Parties; Intervention.
Rule 350-4-.22. Consolidation and Severance.
Rule 350-4-.23. Service.
Rule 350-4-.24. The Hearing.
Rule 350-4-.25. Motions.
Rule 350-4-.26. Summary Determination.
Rule 350-4-.27. The Hearing Record.
Rule 350-4-.28. Decision of the Administrative Law Judge.
Rule 350-4-.29. Appeal of Administrative Law Judge's Decision.
Rule 350-4-.30. Appeal of the Commissioner's Decision.

Chapter 350-5. DISCLOSURE OF INFORMATION ON MEDICAID APPLICANTS, RECIPIENTS AND PROVIDERS.
Rule 350-5-.01. Types of Applicant and Recipient Information to be Safeguarded.
Rule 350-5-.02. Use of Applicant and Recipient Information.
Rule 350-5-.03. Access to Applicant and Recipient Information.
Rule 350-5-.04. Disclosure of Provider Information.
Chapter 350-6. REPEALED.
Rule 350-6-.01. Repealed.
Rule 350-6-.02. Repealed.
Rule 350-6-.03. Repealed.
Rule 350-6-.04. Repealed.
Rule 350-6-.05. Repealed.
Chapter 350-7. INDIGENT CARE TRUST FUND - NURSING HOME PROVIDER FEE.
Rule 350-7-.01. Definitions.
Rule 350-7-.02. Payments to the Segregated Account.
Rule 350-7-.03. Use of Provider Fees.
Rule 350-7-.04. Open Records.
Rule 350-7-.05. Applicability of Medical Assistance Generally.

ADMINISTRATIVE HISTORY

The **Administrative History** following each Rule gives the date on which the Rule was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date. Principal abbreviations used in the Administrative History are as follows:

f. - filed

eff. - effective

R. - Rule (Abbreviated only at the beginning of the control number)

Ch. - Chapter (Abbreviated only at the beginning of the control number)

ER. - Emergency Rule

Rev. - Revised

Chapter 350-1 entitled "Administration" has been adopted. Filed April 11, 1978; effective May 1, 1978.

Chapter 350-2 entitled "Medical Assistance: Claims, Liability; Assignment" has been adopted. Filed April 11, 1978; effective May 1, 1978.

Chapter 350-3 entitled "Practice and Procedure" has been adopted. Filed April 11, 1978; effective May 1, 1978.

Chapter 350-4 entitled "Hearings" has been adopted. Filed April 11, 1978; effective May 1, 1978.

Chapter 350-5 entitled "Disclosure of Information on Medicaid Providers" has been adopted. Filed April 11, 1978; effective May 1, 1978.

Rules 350-2-.01 and 350-3-.04 have been amended. Filed June 18, 1979; effective July 8, 1979.

Rule 350-3-.01 has been amended. Filed January 8, 1981; effective January 28, 1981.

Rule 350-2-.01 has been amended. Filed June 23, 1981; effective July 13, 1981.

Rule 350-2-.01 has been amended. Rule 350-2-.05 has been adopted. Filed July 14, 1981; effective August 3, 1981.

Rule 350-2-.01 has been amended. Filed January 29, 1982; effective February 18, 1982.

Rule 350-3-.04 has been amended. Rule 350-3-.09 has been adopted. Filed April 29, 1982; effective May 19, 1982.

Emergency Rules 350-1-0.1, 350-2-0.2, 350-3-0.3, 350-4-0.4, 350-5-0.5 have been adopted. Filed on October 5, 1989, having become effective September 29, 1989, the date of adoption, to remain in effect for 120 days or until the effective date of a permanent Rule covering the same subject matter superseding these Emergency Rules are adopted, as specified by the Agency. Said Emergency Rules were adopted in order to meet federal statutory requirements by October 1, 1989. (These Emergency Rules will not be published; copies may be obtained from the Agency.)

Chapter 350-1 has been adopted superseding Emergency Rule 350-1-0.1. Filed October 4, 1989; effective November 1, 1989, as specified by the Agency.

Chapter 350-2 entitled "Procedure For Adoption, Amendment, and Repeal of Rules and For Public Notice of Changes in Methods and Standards for Setting Payment Rates" has been adopted superseding Emergency Rule 350-2-0.2. Filed October 4, 1989; effective November 1, 1989, as specified by the Agency.

Chapter 350-3 entitled "Sanctions for Nursing Facilities" has been adopted superseding Emergency Rule 350-3-0.3. Filed October 4, 1989; effective November 1, 1989, as specified by

the Agency. Chapter 350-4 entitled "Administrative Review, Hearings and Appeals" has been adopted superseding Emergency Rule 350-4-0.4. Filed October 4, 1989; effective November 1, 1989, as specified by the Agency.

Chapter 350-5 entitled "Disclosure of Information on Medicaid Applicants, Recipients and Providers" has been adopted superseding Emergency Rule 350-5-0.5. Filed October 4, 1989; effective November 1, 1989, as specified by the Agency.

Emergency Rule Chapter 350-6-0.6 has been adopted. Filed June 18, 1990; effective June 13, 1990, the date of adoption, to remain in effect for 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this Emergency Rule is adopted as specified by the Agency. Said Emergency Rule was adopted to comply with O.C.G.A. Sec. 31-8-155. (This Emergency Rule will not be published; copies may be obtained from the Agency.)

Chapter 350-6 entitled "Indigent Care Trust Fund", has been adopted. Filed August 15, 1990; effective September 14, 1990, as specified by the Agency.

Chapter 350-6 has been repealed and a new Chapter adopted. Filed September 7, 1993; effective October 1, 1993, as specified by the Agency.

Chapter 350-6 has been repealed and a new Chapter adopted. Filed August 14, 2000; effective September 3, 2000.

Chapter 350-7 entitled "Indigent Care Trust Fund Nursing Home Provider Fee" has been adopted. Filed July 2, 2003; effective July 22, 2003.

Chapter 350-6 has been repealed. Filed May 31, 2006; effective June 20, 2006.

Chapter 350-1. ADMINISTRATION.

Rule 350-1-.01. Definitions.

(1) "Act" means the Georgia Medical Assistance Act of 1977; O.C.G.A. Title 49, Article 7.

(2) "Administrative Review" means the formal reconsideration, as a result of the proper and timely submission of a provider's request therefor, by any Departmental Division, Office, or Unit which has proposed an adverse action which will aggrieve a party if it is carried out.

(3) "Adverse Action" means an instance in which the Department:

(a) denies or reduces the amount of reimbursement claimed by a provider;

(b) recovers funds previously paid to a provider, other than through lawsuit;

(c) sets or changes a provider's reimbursement rate;

(d) withholds reimbursement from a provider;

(e) denies payment for future admissions to a nursing facility, except as provided in Chapter 350-3 of these Rules;

(f) suspends, terminates, or refuses to enroll, re-enroll, or reinstate a provider or prospective provider; or

(g) performs any other act which aggrieves a provider.

(4) "Aggrieved" means to have received notice of a loss or injury in fact to an interest within the zone of interests protected by a law or regulation governing Medical Assistance.

(5) "Applicant for medical assistance" means a person who has made application for certification as being eligible, generally, to have medical assistance paid in his/her behalf pursuant to the terms of the State Plan and whose application has not been acted upon favorably.

(6) "Board" means the Board of Medical Assistance.

(7) "Business day" means day on which the Department is officially open to conduct its affairs.

(8) "Commissioner" means the Commissioner of Medical Assistance.

(9) "Department" means the Department of Medical Assistance.

(10) "Hearing" means a formal proceeding before an Administrative Law Judge in which parties affected by an action or an intended action of the Department shall be allowed to present testimony, documentary evidence, and argument as to why such action should or should not be taken.

(11) "Administrative Law Judge (ALJ)" means a member of the State Bar of Georgia authorized by the Commissioner to administer the hearing provisions of the medical assistance program as set out in O.C.G.A. § 49-4-153.

(12) "Medical Assistance" means payment to a provider of a part of or all of the cost of certain items of medical or remedial care or services rendered by a provider to a recipient of medical assistance, provided such items are rendered and received in accordance with such provisions of Title XIX of the federal Social Security Act of 1935, as amended, regulations promulgated pursuant thereto by the Secretary of Health and

Human Services, all applicable laws of the State of Georgia, the State Plan, and regulations of the Department which are in effect on the date on which the care or services are rendered.

(13) "Notice of hearing" means

(a) for the purpose of rule-making, a written statement of the substance of a proposed rule which will afford notice to all interested persons, such notice being given by mail or by publication at least thirty (30) days prior to the date of hearing; provided, however, that when the Board finds it necessary under Rule 350-2-.04, such notice may be shortened or eliminated; and

(b) for the purpose of contested cases, a written statement issued pursuant to Chapter 350-4 of these Rules by an Administrative Law Judge appointed to preside over a hearing.

(14) "Party" means any person against whom the Department has taken an adverse action and who has been approved to participate in a hearing by the Department or by the presiding Administrative Law Judge.

(15) "Person" means any individual, partnership, corporation, or other entity recognized under Georgia law.

(16) "Pleadings" consist of the notice of adverse action issued by the Department which aggrieves the provider, the provider's Request for hearing requesting review of the adverse action, and any amendments to such documents.

(17) "Program" means all of the functions of the Georgia Department of Medical Assistance.

(18) "Provider of medical assistance" means a person or institution, public or private, which possesses all licenses, permits, certificates, approvals, registrations, charters, and other forms of permission issued by entities other than the Department, which forms of permission are required by law either to render care or to receive medical assistance in which federal financial participation is available, which meets the further requirements for participation prescribed by the Department, and which is enrolled, in the manner and according to the terms prescribed by the Department, to participate in the State Plan.

(19) "Reasonable time" means such time as is appropriate to do what is required to be done, as soon as circumstances will permit; any time which is not manifestly unreasonable may be fixed by agreement of the parties, and what is reasonable depends on the nature, purpose, and circumstances of each case.

(20) "Recipient of medical assistance" means a person who has been certified eligible, pursuant to the terms of the State Plan, to have medical assistance paid in his/her behalf.

(21) "Request for Hearing" is a written document submitted to the Department seeking formal redress of an action by the Department which aggrieves the person making the

request. To be effective, a request for Hearing must comply with the provisions of Rule 350-4-.05.

(22) "Rule" means each Department regulation or written statement of general or particular applicability which implements law governing the Department's organization or its administration of the State Plan pursuant to the authority granted under O.C.G.A., § 49-4-142, *et seq.*, as amended; provided, however, that the amount, duration, scope, and terms and conditions of eligibility for and receipt of medical assistance, statements of general or specific policy and interpretations thereof, informational notices, contracts, and policy and procedure manuals and amendments thereto, are specifically excluded.

(23) "State Plan" means all documentation submitted by the Commissioner, on behalf of the Department, to and for approval by the Secretary of Health and Human Services pursuant to Title XIX of the federal Social Security Act of 1935, as amended.

(24) Time Computed. The computation of any period of time referred to in these Rules shall begin with the first day following that on which the act initiating such period of time occurs. When the last day of the period so computed is a day on which the Department is closed, the period shall run until the end of the next business day.

(25) All petitions, requests, notices, and decisions referred to in these Rules must be in writing.

Cite as Ga. Comp. R. & Regs. R. 350-1-.01
Authority: Ga. L. 1977, pp. 384, 387, 388; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-1-0.1-.01 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for a period of 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Definitions" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-1-.02. Department of Medical Assistance.

(1) The Department of Medical Assistance was created by the General Assembly in 1977. The Department is authorized to:

(a) adopt and administer a State Plan for medical assistance as defined in paragraph (23) of Rule 350-1-.01, provided such State Plan is administered within the appropriations made available to the Department;

(b) establish the amount, duration, scope, and terms and conditions of eligibility for and receipt of such medical assistance as it may elect to authorize pursuant to Article 7, Title 49 of the Official Code of Georgia Annotated;

(c) establish such rules and regulations as may be necessary or desirable to execute the State Plan and to receive the maximum amount of federal financial participation available in expenditures made pursuant to the State Plan;

(d) enter into such reciprocal and cooperative arrangements with other states, persons, and institutions, public and private, as it may deem necessary or desirable in order to execute the State Plan.

(2) The Department shall administer the State Plan for Medical Assistance in accordance with these Rules.

(3) The Department shall publish the terms and conditions for receipt of medical assistance in Policies and Procedures Manuals for each of the categories of service authorized under the State Plan. A copy of the Manual for each category of service shall be disseminated to each provider enrolled for that category and to each prospective provider seeking to enroll for that category. Such manuals shall be amended from time to time when the Department finds it necessary or appropriate to do so. All such amendments shall be disseminated to affected providers at the addresses at which they are then registered with the Department. Amended provisions shall be effective as specified by the Department at the time of dissemination. Each Manual shall specify, at a minimum, the following:

(a) conditions of participation;

(b) recordkeeping, claims submission, and payment requirements;

(c) requirements for prior approval of services;

(d) scope of services;

(e) reimbursement methodology;

(f) adverse actions the Department may take against a provider and the circumstances under which such actions may be taken; and

(g) administrative review and hearing rights available to a provider.

Cite as Ga. Comp. R. & Regs. R. 350-1-.02
Authority: Ga. L. 1977, pp. 384, 387; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-1-0.1-.02 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Department of Medical Assistance" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-1-.03. Commissioner of Medical Assistance.

The Commissioner of Medical Assistance shall be the chief administrative officer of the Department and, subject to the general policy established by the Board, shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the Department.

Cite as Ga. Comp. R. & Regs. R. 350-1-.03
Authority: Ga. L. 1977, pp. 384, 388; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-1-0.1-.03 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Commissioner of Medical Assistance" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the agency.

Rule 350-1-.04. Board of Medical Assistance.

The Board of Medical Assistance is empowered to establish the general policy to be followed by the Department.

(a) The Board is composed of five (5) persons appointed by the Governor and confirmed by the Senate.

(b) The presiding officer of the Board shall be its Chairperson, who shall be selected by the board and serve as such at the pleasure of the Board.

(c) A quorum shall consist of a majority of its members.

(d) The Governor shall appoint Board members to four-year terms of office.

(e) Vacancies in office shall be filled by the appointment of the Governor and said appointments shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment to fill a vacancy, other than a vacancy created by the expiration of a term of office, shall be for the balance of the unexpired term of the Board member succeeded.

(f) Board members, if eligible therefor, shall receive per diem and expenses commensurate with the amounts established by O.C.G.A. § 45-7-21.

Cite as Ga. Comp. R. & Regs. R. 350-1-.04
Authority: Ga. L. 1977, pp. 384, 388; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-1-0.1-.04 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Board of Medical Assistance" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-1-.05. Practice of Non-Discrimination.

In accordance with Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, no individual shall be excluded from participation, or be denied benefits, or be subjected to any other form of discrimination by the Department or providers of medical assistance, by reason of handicap, race, color, sex, age, religion, or national origin.

Cite as Ga. Comp. R. & Regs. R. 350-1-.05
Authority: O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Practice of Non-Discrimination" adopted as ER. 350-1-0.1-.05. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Chapter 350-2. PROCEDURES FOR ADOPTION, AMENDMENT, AND REPEAL OF RULES AND FOR PUBLIC NOTICE OF CHANGES IN METHODS AND STANDARDS FOR SETTING PAYMENT RATES.

Rule 350-2-.01. Adoption, Amendment, and Repeal of Rules.

(1) When in the judgment of the Department it is appropriate to adopt, amend, or repeal one or more rules to secure satisfactory compliance with the provisions of any Georgia statute or federal law or regulation, or otherwise to assure effective administration of the Department, the Commissioner shall prepare a draft whic h shall include a proposed text of the rule(s), a statement of the legal authority empowering the Department to adopt and promulgate the rule(s), and the proposed effective date(s).

(2) The Board shall review the draft and make additions, deletions, or amendments thereto as are agreed to by a majority vote of the members present.

(3) Upon the Board's approval of the proposed draft, but prior to the adoption, amendment, or repeal of any such rule, the Department shall:

(a) give at least thirty (30) days notice of its intended action by mail to:

1. interested persons, except that whenever the Commissioner determines that such persons are so numerous as to make individual notices impractical, notice ma y be given by publication, and

2. all persons who have requested in writing that they be placed upon a mailing list, which list shall be maintained by the Department for advance notice of its rule-making proceedings, and who have tendered the actual cost of such mailing as from time to time estimated by the Department; and

3. legislative counsel;

(b) afford to all interested persons reasonable opportunity to submit testimony, documentary evidence, and arguments orally or in writing; in the case of substantive rules, opportunity for oral hearing must be granted if requested by twenty-five (25) persons who will be directly affected by the proposed rule, by a governmental subdivision, or by an association having not less than twenty-five (25) members; and

(c) issue a concise statement of the principa l reasons for and against the adoption of the rule if requested in writing by an interested person affected by the action, either prior to the adoption of the rule or within thirty (30) days thereafter, and incorporate therein its reasons for overruling the consideration urged against its adoption.

Cite as Ga. Comp. R. & Regs. R. 350-2-.01
Authority: Ga. L. 1977, pp. 384, 388, 389; Ga. L. 1981, Act No . 818, effective April 22, 1981; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Time Limitations on Claims" was filed on April 11, 1978; effective May 1, 1978.
Amended: Filed June 18, 1979; effective July 8, 1979.
Amended: Filed June 23, 1981; effective July 13, 1981.
Amended: Filed January 29, 1982; effective February 18, 1982.
Repealed: ER. 350-2-0.2-.01 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect fo r 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Adoption, Amendment, and Repeal of Rules" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-2-.02. Petitions for Adoption, Amendment, or Repeal.

(1) Any interested person may petition the Department requesting the adoption, amendment, or repeal of any rule.

(2) when the petition requests promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all the reasons for the requested rule together with briefs containing any applicable law. Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of the rule in question must be set out as well as the suggested amended form, if any. The petition must include all reasons for the requested amendment or repeal of the rule.

(3) All petitions shall be considered by the Department. The Department may, at its discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal, or modification of any rule.

(4) Within thirty (30) days after the submission of a petition, the Department shall formally consider the petition and shall within thirty (30) days thereafter either deny the petition in writing, stating the reasons for the denial, or initiate rule-making proceedings in accordance with Section .01 of this Chapter.

Cite as Ga. Comp. R. & Regs. R. 350-2-.02
Authority: Ga. L. 1977, pp. 384, 389, 390; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Claims Against Medical Assistance Funds" was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-2-0.2-.02 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Petitions for Adoption, Amendment, or Repeal" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-2-.03. Legislative Overview.

In the event the chairperson of any standing committee of either House of the Georgia General Assembly to which a proposed rule relative to the Department of Medical Assistance is assigned notifies the agency that the committee objects to the adoption of such rule or has questions concerning the purpose, nature, or necessity of such rule, the Department will consult with the committee prior to the adoption of such rule.

Cite as Ga. Comp. R. & Regs. R. 350-2-.03
Authority: Ga. L. 1977, pp. 384, 389, 390; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Third Party Liability for Medical Assistance" was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-2-0.2-.03 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Legislative Overview" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-2-.04. Emergency Rules.

If the Board finds that an imminent threat to the public health, safety, or welfare requires adoption of a rule upon fewer than thirty (30) days notice and states in writing the reasons therefor, the Commissioner, with the approval of the Chairperson, will proceed without prior notice of hearing or upon any abbreviated notice and hearing that the Board finds practicable. Such emergency rule shall be effective for a period of not longer than 120 days, but the adoption of an identical rule under Section .01 is not precluded.

Cite as Ga. Comp. R. & Regs. R. 350-2-.04
Authority: Ga. L. 1977, pp. 384, 387 *et seq.*; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Assignment of Rights of Payment" was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-2-0.2-.04 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Emergency Rules" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by

the Agency.

Rule 350-2-.05. Effective Dates of Rules.

(1) Each rule shall not become effective until the expiration of twenty (20) days after the original and two copies of the rule are filed in the office of the Secretary of State. Each rule so filed shall contain a citation of authority pursuant to which it was adopted and, if an amendment, shall clearly identify the original rule.

(2) The 20-day filing period is subject to the following exceptions:

(a) where a statute or the terms of the rule require a date which is later than the 20-day period, then the later date is the effective date; and

(b) an emergency rule may become effective immediately upon adoption or within a period of less than twenty (20) days. The emergency rule shall be filed with the office of the Secretary of State within four (4) business days after its adoption.

Cite as Ga. Comp. R. & Regs. R. 350-2-.05
Authority: Ga. L. 1981, Act. No . 616, effective April 9, 1981; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Estate Recovery" was filed on July 14, 1981; effective August 3, 1981.
Repealed: ER. 350-2-0.2-.05 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Effective Dates of Rules" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-2-.06. Promulgation of Rules.

(1) Immediately following the adoption of any rule the Department shall forward a copy to all persons who have requested in writing that they be placed upon a mailing list, which shall be maintained by the Department for this purpose, and who have tendered the actual cost of such mailing as from time to time estimated by the Department.

(2) The Department shall maintain a book containing a copy of each rule, orderly arranged and properly indexed. This book shall be available for review by any person during regular business hours of the Department.

Cite as Ga. Comp. R. & Regs. R. 350-2-.06
Authority: O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Promulgation of Rules" adopted as ER. 350-2-0.2-.06. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-2-.07. Incorporation of Existing State Rules and Regulations.

Adoption of the Rules of the Department of Medical Assistance is not intended to be exclusive of any presently existing rules and regulations of the State of Georgia pertaining to the Act, and adoption is made without prejudice to any rules and regulations of the Department of Human Resources which may have applicability to the administration of the State Plan. All such rules and regulations are incorporated herein, to the extent that they do not conflict with these Rules. All Rules of the Department of Medical Assistance heretofore adopted are hereby repealed.

Cite as Ga. Comp. R. & Regs. R. 350-2-.07
Authority: O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Incorporation of Existing State Rules and Regulations" adopted as ER. 350-2-0.2-.07. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-2-.08. Procedure for Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates.

(1) Except as specified in paragraph (2) of this section, the agency shall provide public notice of any proposed change in its methods and standards for setting payment rates for services whenever such change is expected, based on the most recent report of Department data obtained prior to the decision to make such proposed change, to:

  (a) increase or decrease gross Department expenditures, for the category of service for which the change is proposed, during the 12 months following the effective date of the change by more than two percent (2.0%), or

  (b) affect more than two percent (2.0%) of the providers enrolled at the time of the decision to make such change for the category of service for which the change is proposed.

(2) Notice is not required if:

  (a) the change is required by court order; or

  (b) the change is based on changes in wholesalers' or manufacturers' prices of drugs or materials, if the agency's reimbursement system is based on material cost plus a professional fee.

(3) The notice must:

  (a) describe the proposed change in methods and standards;

  (b) give an estimate of any expected increase or decrease in annual aggregate expenditures;

(c) explain why the agency is changing its methods and standards;

(d) identify a local agency in each county where copies of the proposed changes are available for public review;

(e) give an address where written comments may be sent and reviewed by the public; and

(f) give the location, date, and time for a public hearing on the proposed change or tell how this information may be obtained.

(4) The notice shall appear at least 30 days before the proposed effective date of the change in the newspaper of widest circulation in each city with a population of 50,000 or more.

(5) A copy of the notice and of the proposed changes shall be transmitted to the legislative counsel at least 30 days prior to the proposed effective date.

Cite as Ga. Comp. R. & Regs. R. 350-2-.08
Authority: O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Procedure for Public Notice of Changes in Statewide Methods and Standards for Setting Payment Rates" adopted as ER. 350-2-0.1-.08. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Chapter 350-3. SANCTIONS FOR NURSING FACILITIES.

Rule 350-3-.01. Definitions.

(1) "Complaint Investigation" means a survey or visit to determine the validity of allegations of resident abuse, neglect or misappropriation of resident property, or of other noncompliance with applicable federal and state requirements.

(2) "Deficiency" means a failure of compliance with a Program Requirement. The fact that a deficiency no longer exists at the time of the Survey or complaint investigation which identifies it shall not negate its status as a deficiency for the purpose of imposing a civil monetary penalty or requesting a Plan of Correction.

(3) "Finding" means a determination, as the result of a survey or complaint investigation of the facility, that noncompliance with a Program Requirement could or should have been prevented or has not yet been identified by the facility, is not being corrected by proper action by the facility, or cannot be justified by special circumstances unique to the facility or the resident.

(4) "Initial finding" means the first time that a deficiency or deficiencies is recorded by a surveyor as the result of a survey or complaint investigation. Initial findings may be records of deficiencies that occurred prior to the date of the survey visit even if the deficiencies no longer exist at the time of the current survey.

(5) "Monitor" means a person or organization placed in a facility by the Department or the State Survey Agency for the purpose of overseeing a facility's correction of deficiencies or to ensure orderly closure of a facility. A monitor shall have practical long-term care experience related to the aspect(s) for which the facility is being monitored.

(6) "Nursing Facility" means an institution (or a distinct part of an institution) which

(a) is primarily engaged in providing to residents

1. skilled nursing care and related services for residents who require medical or nursing care,

2. rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

3. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and

(b) is not primarily for the care and treatment of mental diseases; and

(c) is enrolled as a provider in the Georgia Medical Assistance program.

(7) "Program Requirement" means any requirement contained in Subsection 1919(b), (c), or (d) of the Social Security Act of 1935, as amended, including but not limited to the provisions implemented by the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203.

(8) "Repeat deficiency" is a deficiency related to resident care which recurs within eighteen (18) months of its citing in an Initial Finding, and which is found at a follow-up visit, complaint investigation, subsequent survey, or otherwise.

(9) "Repeated noncompliance" means a finding of substandard quality of care on three (3) consecutive annual surveys.

(10) "Resurvey" means a follow-up visit to determine whether the deficiencies found in a survey or complaint investigation have been corrected.

(11) "Scope" means the frequency, incidence, or extent of the occurrence of a deficiency in a facility.

(12) "Severity" is the seriousness of a deficiency, which means the degree of actual or potential negative impact on a resident (as measured by negative outcomes or rights violations) or the degree to which his/her highest practicable physical, mental, or psychosocial well-being has been compromised.

(13) "State Survey Agency" means the Georgia Department of Human Resources.

(14) "Subsequent finding" means a violation or deficiency found on a resurvey. The deficiency must exist at the time of the resurvey or revisit. If a deficiency cited in an Initial Finding is found upon resurvey or revisit, a rebuttable presumption arises that the deficiency continued throughout the period of time between the initial survey or visit and the resurvey or revisit.

(15) "Substandard quality of care" means a finding by the Department or the State Survey Agency of one or more deficiencies, the existence of which limit(s) the facility's ability to deliver adequate care or services.

(16) "Survey" means a review of a case-mix stratified sample of nursing facility residents to determine the quality of care furnished as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities, and social participation, and sanitation, infection control, and physical environment. Such survey shall include an exit interview in which the surveyor and the facility shall attempt to resolve any conflicts regarding findings by the surveyor(s).

(17) "Surveyor" means a professional authorized by the State Survey Agency to conduct surveys or complaint investigations to determine compliance with Program Requirements.

(18) "Termination of the facility's participation" means exclusion of a facility from participation as a provider under the Georgia State Plan for Medical Assistance as a result of one or more deficiencies.

Cite as Ga. Comp. R. & Regs. R. 350-3-.01
Authority: Ga. L. 1977, p. 384, *et seq.*, 394; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Definitions" was filed on April 11, 1978; effective May 1, 1978.
Amended: Filed January 8, 1981; effective January 28, 1981.
Repealed: ER. 350-3-0.3-.01 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-3-.02. Remedies.

If the Department finds that a facility does not or did not meet a Program Requirement governing nursing facilities, it may impose the following remedies, independently or in conjunction with others, subject to the provisions of this Chapter for notice and appeal.

(a) Termination of the facility's participation.

(b) Denial of Medicaid payments for services rendered by the facility to any recipient admitted to the facility after notice to the facility. This remedy shall remain in effect until the Department determines that the facility has achieved substantial compliance with all Program Requirements, or until another remedy is substituted for it. A facility subject to this remedy may request termination of the remedy on the ground that it has achieved substantial compliance with program requirements. The Department shall respond to the request by terminating the remedy, requesting additional information if documentation of substantial compliance is considered insufficient, or conducting a resurvey within twenty (20) days of receipt of the request. This remedy shall not be imposed with respect to temporarily hospitalized recipients previously residing in a facility placed on such notice who return to the facility after the date of notice, or with respect to residents who become Medicaid eligible after the date of notice and who resided in the facility prior to the date of notice.

(c) Civil monetary penalties, as specified in Section .04. When penalties are imposed on a facility, such penalties shall be assessed and collected for each day in which the facility is or was out of compliance with a Program Requirement. Interest on each penalty shall be assessed and paid as specified in Section .04. For individuals, such penalties shall be assessed for each infraction, as described in Section .04(g).

(d) Temporary management as specified in Section .05, to oversee operation of the facility and to assure the health and safety of the facility's residents while there is an orderly closure of facility or while improvements are made in order to bring the facility into compliance with all Program Requirements.

(e) Closure of the facility and/or transfer of recipients to another facility, in the case of an emergency as described in Section .03(e).

(f) Plan of Correction, to be drafted by the facility and submitted within a specified time to the Department. Each proposed Plan shall delineate the time and manner in which each deficiency is to be corrected. The Department shall review the proposed Plan and accept or reject the Plan by notice to the facility.

(g) Ban on admission of persons with certain diagnoses or requiring specialized care who are covered by or eligible for Medicare or Medicaid. Such bans may be imposed for all such prospective residents, and shall prevent the facility from admitting the kinds of residents it has shown an inability to care for adequately as documented by deficiencies.

(h) Ban on all Medicare and Medicaid admissions to the facility or to any part thereof. Such bans shall remain in effect until the Department determines that the facility has achieved substantial compliance with all Program Requirements, or until another remedy is substituted for it. A facility may request termination of this remedy in the manner described in (b) above. This remedy shall not be imposed with respect to temporarily hospitalized residents previously residing in a facility placed on such notice who return to

the facility after the date of notice, or with respect to residents who become Medicaid eligible and who resided in the facility prior to the date of notice.

Cite as Ga. Comp. R. & Regs. R. 350-3-.02
Authority: Ga. L. 1977, pp. 384, 387; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule, entitled "Policy of Non-Discrimination," was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-3-0.3-.02 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Remedies" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-3-.03. Imposition of Remedies.

In determining which remedy to impose, the Department shall consider the facility's compliance history, change of ownership, and the number, scope, and severity of the deficiencies. Subject to these considerations, the Department shall impose those remedies described in Section .02 most likely to achieve correction of the deficiencies.

(a) Immediate jeopardy. If the Department finds that the facility's deficiency or deficiencies immediately jeopardize(s) the health or safety of its residents, the Department shall:

1. appoint temporary management and impose one or more of the remaining remedies specified in Section .02; or

2. terminate the facility's Medicaid participation and, at its option, impose one or more of the remaining remedies specified in Section .02.

(b) Absence of immediate jeopardy. If the Department finds that the facility's deficiency or deficiencies do not immediately jeopardize resident health or safety, the Department may impose one or more of the remedies specified in Section .02.

(c) Repeated noncompliance. If the Department makes a determination of repeated noncompliance with respect to a facility, it shall deny payment for services to any individual admitted to the facility after notice to the facility. Additionally, the Department shall monitor the facility on-site on a regular, as-needed basis, (as provided in Section .06), until the facility has demonstrated to the Department's satisfaction that it is in compliance with all Program Requirements governing facilities and that it will remain in compliance.

(d) Delayed compliance. If a facility has not complied with any Program Requirement within three (3) months of the date the facility is found to have been out of compliance with such Requirement, the Department shall impose the remedy of denial of payments for services to all individuals admitted after notice to the facility.

(e) Emergencies. When the Department has determined that residents are subject to an imminent and substantial danger, it may order either closure of the facility or transfer of the recipients to another facility. The Department shall give notice of any such proposed remedy to the facility, the residents who will be affected or their representatives, the affected residents' next-of-kin or guardians, and all attending physicians. When either of these remedies is imposed, no Administrative Review shall be available and the provisions of Subsection .09(2) shall apply.

(f) Conflict of remedies. In the case of facilities participating in both Medicare and Medicaid which have been surveyed by both the State Survey Agency and the Health Care Financing Administration, or whose certification documents have been reviewed by both, and for whom the State Survey Agency and the Health Care Financing Administration disagree on the decision to impose a remedy or the choice of a remedy, the decision of the Health Care Financing Administration with regard to Medicare shall apply.

Cite as Ga. Comp. R. & Regs. R. 350-3-.03
Authority: Ga. L. 1977, pp. 384, 394; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Incorporation of Existing Rules and Regulations" was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-3-0.3-.03 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Imposition of Remedies" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-3-.04. Civil Monetary Penalties.

Civil monetary penalties shall be based upon one or more findings of noncompliance; actual harm to a resident or residents need not be shown. Nothing shall prevent the Department from imposing this remedy for deficiencies which existed prior to the survey or complaint investigation through which they are identified. A single act, omission, or incident shall not give rise to imposition of multiple penalties, even though such act, omission, or incident may violate more that one Program Requirement. In such cases, the single highest class of deficiency shall be the basis for penalty. Compliance by the facility at a later date shall not result in the reduction of the penalty amount. Civil monetary penalties and any attorneys' fees or other costs associated with contesting such penalties are not reimbursable Medicaid expenses except in the case where a facility prevails, in which case reasonable attorneys' fees and costs shall be allowable. Whenever such penalties are collected, the Department shall conduct a financial field audit to ensure that there has been, and will be, no Medicaid reimbursement associated with the penalties.

(a) Classification of deficiencies. The three classes of deficiencies upon which civil monetary penalties shall be based are as follows:

1. Class A: A deficiency or combination of deficiencies which places one or more residents at substantial risk of serious physical or mental harm.

2. Class B: A deficiency or combination of deficiencies, other than Class A deficiencies, which has a direct adverse affect on the health, safety, welfare, or rights of residents; or a failure to post notices issued by the Department of imposition of remedies;

3. Class C: A deficiency or combination of deficiencies, other than Class A or B deficiencies, which indirectly or over a period of more than thirty (30) days is likely to have an adverse affect on the health, safety, welfare, or rights of residents.

(b) Amounts. When Civil Monetary Penalties are imposed, such penalties shall be assessed for each day the facility is or was out of compliance. The amounts below shall be multiplied by the total number of beds certified for participation in the Medicare and Medicaid programs according to the records of the State Survey Agency at the time of the survey. Penalties shall be imposed for each class of deficiencies identified in a survey or complaint investigation

Class	Initial Finding	Subsequent Finding	Repeat Deficiency
A	$ 10.00	$ 15.00	$ 20.00
B	5.00	7.50	10.00
C	1.00	1.50	3.00

In any ninety (90) day period, the penalty amounts may not exceed the applicable ceiling as described immediately below. The ceiling (Initial, Subsequent, or Repeat) shall be determined by which category has the largest percentage of the deficiencies cited in the survey or complaint investigation.

Bed Size	Initial Finding	Subsequent Finding	Repeat Deficiency
0 - 50	$ 4,000	$ 6,000	$ 8,000
51 - 100	6,000	9,000	12,000
101 - 150	8,000	12,000	16,000
151 or more	10,000	15,000	20,000

(c) Procedure for imposing civil monetary penalties. Civil monetary penalties shall be imposed as follows:

1. Within ten (10) business days of its discovery of a deficiency, the State Survey Agency shall deliver to the Department its recommendation for assessment of a penalty as a result of such deficiency.

2. The decision to assess the penalty shall be made by a person in the Department who is not the surveyor(s) or complaint investigator(s) who reported the deficiency.

(d) Notice. The Department shall give written notice to the facility of its imposition of any such penalty within ten (10) business days of its receipt of a recommendation by the State

Survey Agency for the assessment of a penalty. The notice shall inform the facility of the amount of the penalty, the basis for its assessment, and the facility's appeal rights.

(e) Payment. Within fifteen (15) business days from the date the notice is received by the facility, the facility shall pay the full amount of the penalty or penalties unless the facility requests Administrative Review of the decision to assess the penalty or penalties. The amount of a civil monetary penalty determined through Administrative Review shall be paid within ten (10) business days of the facility's receipt of the Administrative Review decision unless the facility requests an Administrative Hearing. The amount of the civil monetary penalty determined through a hearing shall be paid within ten (10) business days of the facility's receipt of the hearing decision. Interest at the legal rate of interest established by Georgia law shall begin to run on the later of one (1) business day after:

1. the facility's receipt of notice of the penalty; or

2. the date of issuance of the Administrative Review or Hearing decision.

Failure of a facility to pay the entire penalty as specified in this paragraph shall result in an automatic final decision and no further administrative or judicial review or hearing shall be available to the facility.

(f) Collection of civil penalties. If a facility fails or refuses to pay a penalty within the time required, the Department may collect the penalty by subtracting all or part of the penalty amount plus interest from future medical assistance payments to the facility. Additionally, the Department may subtract a fee representing the actual administrative cost of collection. Nothing herein shall prohibit the Department from obtaining judicial enforcement of its right to collect penalties and interest thereon.

(g) Imposition against individuals. Each recipient resident's functional capacity shall be assessed by the facility using an instrument specified by the Department. A civil money penalty of $1,000 per assessment shall be imposed by the Department against any individual who willfully and knowingly certifies a material and false statement in such assessment instrument or other documents used to support the assessment. A civil money penalty of $5,000 per assessment shall be imposed by the Department against any individual who willfully and knowingly causes another individual to certify a material and false statement in such assessment instrument or other documents used to support the assessment. Any such penalty shall be imposed by written notice to the individual according to the same provisions as set forth in Paragraphs (c) through (e) of this Section regarding deficiencies.

(h) Use of civil monetary penalties. The Department may use collected civil monetary penalties for the following purposes:

1. protecting the health or property of residents;

2. paying costs of relocating residents;

3. maintaining the operation of a nursing facility while deficiencies are corrected or the facility is being closed; and

4. reimbursing residents for personal funds lost, which reimbursement shall not adversely affect a person's Medicaid eligibility.

Cite as Ga. Comp. R. & Regs. R. 350-3-.04
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Procedure for Adoption of Rules" was filed on April 11, 1978; effective May 1, 1978.
Amended: Filed June 18, 1979; effective July 8, 1979.
Amended: Filed April 29, 1982; effective May 19, 1982.
Repealed: ER. 350-3-0.3-.04 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Civil Monetary Penalties" adopted. F. Oct 4, 1989; eff. November 1, 1989, as specified by the Agency.

Rule 350-3-.05. Temporary Management.

The Department shall impose the remedy of temporary management in situations where it finds that there is a need to oversee operation of the facility and to assure the health and safety of the facility's residents while there is an orderly closure of the facility or while improvements are made in order to bring the facility into compliance with all Program Requirements. Temporary management shall not be imposed unless other less intrusive remedies will not result in compliance, have failed to cause the facility to achieve compliance, or the Department has found that the facility's deficiency or deficiencies immediately jeopardize the health or safety of its residents.

(a) Recommendation for appointment of temporary management. Within ten (10) business days of its completion of a survey or complaint investigation, the State Survey Agency shall deliver to the Department its written recommendation for appointment of temporary management it, in the Agency's judgment, such appointment is necessary. The recommendation shall specify the grounds upon which it is based, including an assessment of the capability of the facility's current management to achieve and maintain compliance with all Program Requirements.

(b) The decision to appoint temporary management shall be made by a person, appointed by the Commissioner, who is not the surveyor or complaint investigator who discovered the deficiencies or made the recommendation for appointment.

(c) The Department shall give written notice to the facility of its appointment of temporary management within ten (10) business days of its receipt of a recommendation for appointment from the State Survey Agency, unless the Department determines that temporary management is not necessary. When the Department has determined that the facility's deficiency or deficiencies immediately jeopardize the health or safety of its

residents, no Administrative Review shall be available and the provisions of Subsection .09(2) shall apply.

(d) Who may serve. The Commissioner may appoint any person or organization which meets the following qualifications:

1. The temporary manager shall not have any pecuniary interest in or pre-existing fiduciary duty to the facility to be managed.

2. The manager must not be related, within the first degree of kinship, to the facility's owner, manager, administrator, or other management principal.

3. The manager must possess sufficient training, expertise, and experience in the operation of a nursing facility as would be necessary to achieve the objectives of temporary management. The manager must possess a Georgia nursing home administrator's license.

4. The manager must not be an existing competitor of the facility who would gain an unfair competitive advantage by being appointed as temporary manager of the facility.

(e) Powers and duties of the temporary manager.

1. The temporary manager shall have the authority to direct and oversee the correction of Program Requirement deficiencies; to oversee and direct the management, hiring, and discharge of any consultant or employee, including the administrator of facility; to direct the expenditure of the revenues of the facility in a reasonable, prudent manner; to oversee the continuation of the business and the care of the residents; to oversee and direct those acts necessary to accomplish the goals of the Program Requirements; and to direct and oversee regular accountings and the making of periodic reports to the Department. The temporary manager shall provide reports to the Department no less frequently than monthly showing the facility's compliance status. Should the facility fail or refuse to carry out the directions of the temporary manager, the Department shall terminate the facility's participation and may, at its discretion, impose any other remedies described in Section .02.

2. The temporary manager shall observe the confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the facility, except that the temporary manager shall make reports to the Department as provided in this section.

3. The temporary manager shall be liable for gross, willful or wanton negligence, intentional acts or omissions, unexplained shortfalls in the facility's funds, and breaches of fiduciary duty. The temporary manager shall be bonded in an amount equal to the facility's revenues for the month preceding the appointment of the temporary manager.

4. The temporary manager shall not have authority to do the following:

   (i) To cause or direct the facility or its owner to incur debt or to enter into any contract with a duration beyond the term of the temporary management of the facility;

   (ii) To cause or direct the facility to encumber its assets or receivables, or the premises on which it is located, with any lien or other encumbrance;

   (iii) To cause or direct the sale of the facility, its assets, or the premises on which it is located;

   (iv) To cause or direct the facility to cancel or reduce its liability or casualty insurance coverage;

   (v) To cause or direct the facility to default upon any valid obligations previously undertaken by the owners or operators of the facility, including, but not limited to, leases, mortgages and security interests; and

   (vi) To incur capital expenditures in excess of $2,000.00 without the permission of the owner or the Commissioner.

(f) Costs. All compensation and per diem costs of the temporary manager shall be paid by the nursing facility. The Department shall bill the facility for the costs of the temporary manager after termination of temporary management. The costs of the temporary manager for any thirty (30) day period shall not exceed one-sixth of the maximum allowable administrator's annual salary for the largest nursing facility for Medicaid reimbursement purposes. Within fifteen (15) days of receipt of the bill, the facility shall pay the bill or request Administrative Review to contest the costs for which it was billed. Such costs shall be recoverable through recoupment from future medical assistance payments in the same fashion as a benefits overpayment. The costs of temporary management and the attorneys' fees associated with contesting such costs are not reimbursable Medicaid expenses except in the case where a facility prevails in a hearing, in which case reasonable attorneys' fees and costs shall be allowable.

(g) Termination of temporary management. The Commissioner may replace any temporary manager whose performance is, in the Commissioner's discretion, deemed unsatisfactory. No formal procedure is required for such removal or replacement but written notice of any action shall be given the facility, including the name of any replacement manager. A facility subject to temporary management may petition the Commissioner for replacement of a temporary manager whose performance it considers unsatisfactory. The Commissioner shall respond to a petition for replacement within three (3) business days after receipt of said petition. Otherwise, the Department shall not terminate temporary management until it has determined that the facility has management capability to ensure continued compliance with all Program Requirements or until the Department terminates the nursing facility's participation. A facility may petition the Department for termination

of temporary management. The Department shall respond to the petition within three (3) business days after receipt.

(h) Nothing contained in this section shall limit the right of any nursing facility owner to sell, lease, mortgage, or close any facility in accord with all applicable laws.

Cite as Ga. Comp. R. & Regs. R. 350-3-.05
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Adoption of Rules" was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-3-0.3-.05 adapted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Temporary Management" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-3-.06. Monitoring.

(1) The Department shall maintain procedures and adequate staff on-site, on a regular, as-needed basis, to monitor the facility's operations, advise the facility in its effort to come into or maintain compliance, to report to the licensing agency, and to investigate complaints of violations which are not easily verified on one visit.

(a) One or more monitor(s) shall be placed in the nursing facility:

1. when it has been found on three (3) standard surveys that the nursing facility has provided substandard quality of care;

2. when the facility has been under temporary management;

3. to ensure that Class A & B violations have been and continue to be corrected; or

4. when the Department has reason to question a nursing facility's compliance.

(2) The Department shall bill the facility for the expenses of monitoring at the end of the monitoring process. Within fifteen (15) days of receipt of the bill, the facility shall pay the bill or request Administrative Review to contest the costs for which it was billed. Such expenses shall be recoverable through recoupment from future medical assistance payments in the same fashion as a benefits overpayment.

(3) In the event a monitor is already in a facility pursuant to the provisions of O.C.G.A. § 31-7-2.2(b), the Department may not place a monitor in the facility.

Cite as Ga. Comp. R. & Regs. R. 350-3-.06
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Imminent Threat" was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-3-0.3-.06 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect

for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency. **Repealed:** Permanent Rule entitled "Monitoring" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-3-.07. Notice.

(1) The Department shall give notice of the imposition of any remedy described in this Chapter as follows:

(a) To the facility in writing, transmitted in a manner which will reasonably ensure timely receipt by the facility.

(b) To the public by transmitting printed Notices to the facility. Such Notices shall be at least 11 1/2 inches by 17 1/2 inches in size and of sufficient legibility that they may reasonably be expected to be readable by the facility's residents or their representatives. A printed notice shall not be transmitted or required to be posted for a Plan of Correction.

(c) To the State Long-Term Care Ombudsman by placing copies with the U. S. Postal Service of all notices to the facility.

(d) To the State Survey Agency in writing.

(2) The facility shall post a sufficient number of the Notices described in Paragraph (1)(b) in places readily accessible and visible to residents and their representatives, including but not limited to entrances, exits, and common areas, to effectively advise all present and prospective residents of the remedies which are being imposed. The Notices shall remain in place until all remedies are officially removed by the Department. Failure of a facility to comply with notice posting requirements shall constitute a Class B deficiency.

(3) A facility shall post a Notice of Administrative Hearing date, time, and location whenever the facility has requested and been granted a hearing on imposition of a remedy. The notice shall be at least 11 1/2 inches by 17 1/2 inches in size and of sufficient legibility that it may reasonably be expected to be readable by the facility's residents or their representatives. The notice shall be placed in an area readily accessible and visible to residents and their representatives.

(4) The Department shall notify the attending physician of each resident with respect to whom a finding of substandard quality of care has been made, as well as the Board of Nursing Home Administrators, by transmitting to them copies of the survey or complaint investigation reports and any notice to the facility that a remedy has been imposed. The Department also may notify any other professional licensing boards, as appropriate.

(5) Failure of the Department to effect notice as required in Subsections (1)(b), (c), (d), or (4) shall not be grounds for the facility to contest any action taken under this Chapter.

(6) All nursing facilities shall advise staff of the penalties for making false statements or causing another person to make false statements in a resident assessment. A facility must document the manner in which staff are advised of the provisions of Rule 350-3-.04(g).

(7) The Department shall compile a list of facilities against which remedies other than a Plan of Correction have been imposed. The list shall be prepared monthly and be available upon request. The list shall contain the names and addresses of only those facilities which did not contest imposition of remedies or against which imposition was upheld upon appeal, and shall describe the remedies imposed.

Cite as Ga. Comp. R. & Regs. R. 350-3-.07
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Effective Date of Rules" was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-3-0.3-.07 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Notice" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-3-.08. Administrative Review.

(1) Should the facility wish to contest imposition of a remedy, other than a Plan of Correction and except as provided in Sections .03(e) and .05(c), a written request for Administrative Review must be received by the Department within ten (10) days of the facility's receipt of notice of imposition of the remedy. The request shall state specifically each remedy disputed and, for each disputed remedy, the specific basis of the dispute. For imposition of civil monetary penalties, it shall not be a valid basis for dispute that a deficiency no longer exists. The timely filing of a request shall stay imposition of the remedy pending the Administrative Review decision, except where the Department has determined there is immediate jeopardy to the health or safety of the residents in a facility, in which case the Department may impose the remedies described in Subsections .02(b),(g)or(h), as determined appropriate by the Department. If the facility fails to file a timely request, the decision to impose a remedy or remedies shall become final and no further administrative or judicial review or hearing shall be available.

(2) The reviewing official shall be a Department employee appointed by the Commissioner and shall have authority only to affirm the decision, to revoke the decision, to affirm part and to revoke part, to order an immediate survey of the facility, to change the classification of the civil monetary penalty (for example, from A to B), or to request additional information from the State Survey Agency, the facility, or both, the Long-Term Care Ombudsman, or the family or resident council of the facility. Additional information that is requested must be supplied within ten (10) business days from the date of notice to the party of whom it is requested. Reviewing official shall be without authority to compromise the dollar amount of any civil monetary penalty within a deficiency class.

(3) The Department shall issue a written decision within ten (10) business days of its receipt of the request for Administrative Review. The Review shall be made solely on the basis

of the State Survey Agency recommendation, the survey report, the statement of deficiencies, any documentation the facility submits to the Department at the time of its Request, and information received as a result of a request made by the reviewing official. For the purposes of such Review, a hearing shall not be held and oral testimony shall not be taken. Correction of a deficiency or deficiencies shall not be a basis for favorable reconsideration of imposition of civil monetary penalties.

Cite as Ga. Comp. R. & Regs. R. 350-3-.08
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Promulgation of Rules" was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-3-0.3-.08 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Administrative Review" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-3-.09. Administrative Hearing.

(1) Should the facility wish to appeal the Administrative Review decision for remedies described in Subsections .02(a),(b),(c),(g),and(h), and for Subsection (d) where no determination of immediate jeopardy has been made, it may request an administrative hearing. Subsequent correction of a deficiency or deficiencies shall not constitute a defense to the imposition of a remedy or remedies. The hearing request shall state specifically which portion(s) of the Administrative Review decision the facility contests. A hearing shall be granted only if Administrative Review was timely requested, and a written request for a hearing has been received by the State Survey Agency within ten (10) business days of the facility's receipt of the Administrative Review decision. Failure to file a timely request shall result in the Administrative Review decision becoming final, and no further administrative or judicial review or hearing shall be available.

(2) If the Department has imposed temporary management pursuant to the provisions of Subsection .05(c), or imposed either of the remedies specified in Subsection .02(e), the facility shall be entitled to a hearing which shall commence not less than five (5) nor more than ten (10) days after the facility's receipt of notice of imposition of said remedy or remedies. No Administrative Review shall be conducted in such cases and no request for hearing shall be required. The date, time, and location of the hearing shall be included in the Notice of imposition of the remedy or remedies. A facility may waive its right to a hearing by written notice to the State Survey Agency.

(3) Except for appointment of a temporary manager (unless the Department has determined that immediate jeopardy to the health or safety of a facility's residents exists), termination of a facility's participation, closure of a facility, or payment of civil monetary penalties, the imposition of remedies shall not be stayed during the pendency of any hearing.

Cite as Ga. Comp. R. & Regs. R. 350-3-.09
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a).

History. Original Rule entitled "Public Notice" was filed on April 29, 1982; effective May 19, 1982.
Repealed: ER. 350-3-0.3-.09 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Administrative Hearing" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Chapter 350-4. ADMINISTRATIVE REVIEW, HEARINGS AND APPEALS.

Rule 350-4-.01. Hearings Conducted by the Department of Medical Assistance.

(1) An Administrative Law Judge appointed by the Department shall conduct provider hearings with respect to the following cases:

(a) when a provider is aggrieved by an action of the Department with respect to a denial of, or the determination of the amount of, medical assistance paid on a certain item of medical or remedial care or service rendered by such provider;

(b) when a provider of medical assistance is aggrieved by an action of the Department with respect to the Department's determination of the provider's billing rate or reimbursement rate for a particular fiscal year;

(c) when a person or institution either has been refused enrollment as a provider in the State Plan or has been suspended or terminated as a provider by the Department for any reason other than want of any license, permit, certificate, approval, registration, charter, or other form of permission issued by an entity other than the Department, which form of permission is required by law either to render care or to receive medical assistance in which federal financial participation is available;

(d) when a provider is aggrieved by any adverse action specified in these Rules, except as provided in Chapter 350-3, or a Policies and Procedures Manual published by the Department.

(2) All such hearings shall be conducted in accordance with the rules contained in this Chapter.

Cite as Ga. Comp. R. & Regs. R. 350-4-.01
Authority: Ga. L. 1977, pp. 384, 391, 392, 393; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.01 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Hearings Conducted by the Department of Medical Assistance" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.02. Hearings Conducted by the Department of Human Resources.

(1) Hearings shall be conducted by the Department of Human Resources in the following cases:

(a) when a recipient of medical assistance is aggrieved by the action or inaction of the Department as to any medical or remedial care or service which such recipient alleges should be reimbursed under the terms of the Georgia State Plan for Medical Assistance which was in effect on the date on which such care or service was rendered or is sought to be rendered;

(b) when an application for medical assistance is denied or is not acted upon with reasonable promptness;

(c) when a recipient or applicant has been aggrieved by an action or inaction of the Department or its agent with respect to a determination of the level of care status applicable to that person;

(d) when individuals are adversely affected by determinations made during the pre-admission screening or post-admission resident review required by Social Security Act °1919(e)(7), as amended, as implemented by Section 4211 of the Omnibus Budget Reconciliation Act of 1987;

(e) when an institution has received notice that it will be:

1. decertified to participate under the State Plan for Medical Assistance,

2. denied a license to operate a nursing facility, or

3. refused enrollment as a provider in the State Plan or terminated as a provider based on the want of any license, permit, certificate, approval, registration, charter or other form of permission issued by the Department of Human Resources;

(f) when a hearing is obtained pursuant to the provisions of Chapter 350-3 of these Rules; and

(g) when a recipient or applicant has been aggrieved by an action of the Department or its agent with respect to collection of funds paid in behalf of the recipient for medical services.

(2) All hearings pursuant to this section will be conducted under the Rules of the Department of Human Resources.

Cite as Ga. Comp. R. & Regs. R. 350-4-.02
Authority: Ga. L. 1977, pp. 384, 393; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.

Repealed: ER. 350-4-0.4-.02 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Hearings Conducted by the Department of Human Resources" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.03. Right to Representation.

(1) Providers may represent themselves, or may choose to be represented by legal counsel or any other spokesperson. However, providers may not be represented by employees or agents of the Department.

(2) An Administrative Law Judge may exclude from the hearing any person who:

   (a) engages in unethical, disruptive, or contemptuous conduct;

   (b) intentionally fails to comply with the proper instructions or orders of the Administrative Law Judge or the provisions of these Rules; and/or

   (c) represents more than one party, in violation of any applicable authority regarding conflicts of interest.

(3) When a provider is represented by another person, all notices issued in the course of the administrative appeals process which would otherwise go to the provider shall be sent to the provider's representative instead.

Cite as Ga. Comp. R. & Regs. R. 350-4-.03
Authority: Ga. L. 1977, pp. 384, 392; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.03 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Right to Representation" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.04. Administrative Review.

The Department shall offer the opportunity for Administrative Review to any provider against whom it proposes to take an adverse action unless the Department is otherwise authorized by law to take such action without opportunity for appeal by the provider prior to the action's implementation. The procedures and deadlines for obtaining such Administrative Review and the deadlines for decisions thereon shall be published in the Policies and Procedures Manual for each service category to which they apply. Administrative Review shall be completed, if not waived by the provider, prior to implementation of the proposed action. Whenever the opportunity for Administrative Review is available to the provider, such Administrative Review must be timely obtained and completed for the provider to be entitled to a hearing.

Cite as Ga. Comp. R. & Regs. R. 350-4-.04
Authority: Ga. L. 1977, pp. 384, 393; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.04 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Administrative Review" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989.

Rule 350-4-.05. Hearing Requests.

(1) A request for a hearing must be in writing and received by the Department:

(a) within ten (10) days after the date on which a notice of denial of a request for enrollment or notice of suspension or termination was transmitted to the provider; or

(b) concerning any other action or inaction by the Department which aggrieves the provider, within ten (10) days after the date of the later of:

1. the Department's action for which the hearing is sought, if no opportunity for Administrative Review was available, or

2. notice of the final decision of the entity to which request for Administrative Review has been addressed.

In determining the timeliness of a request, the Department will compute the number of days in accordance with Rule 350-1-.01(24), if the date of the provider's receipt of notice of the adverse action being appealed is known to the Department; if the date of receipt by the provider is not known, the Department shall add five (5) days from the date of transmission of the notice to allow for delivery. Nothing herein shall bar proof of actual date of receipt by the provider or its agent, subject to the provisions of subsection 19.

(2) The request for a hearing must include all of the following:

(a) a clear expression by the provider or an authorized representative that the provider wishes to present a case to an Administrative Law Judge;

(b) identification of the adverse administrative review decision or other Department action being appealed and, if only part of such decision or action aggrieves the provider, the specific part which the provider will address at the hearing;

(c) a specific statement of why the provider believes the administrative review decision or other Department action is wrong; and

(d) a statement of the relief sought.

(3) If any of the requirements listed in Paragraph (2) have not been met, the Department shall so notify the provider. Thereafter, the Department must receive a corrected request within ten (10) days of the provider's receipt of the deficiency notice or the request shall be deemed untimely.

(4) Requests for hearings shall be denied if the Department determines that:

(a) the request was not timely filed;

(b) the action or inaction appealed by the provider is solely the result of a change in state or federal law;

(c) the issues raised by the provider fall outside the jurisdiction of the administrative hearing process; or

(d) the requesting party has not been aggrieved.

If there is a *bona fide* question of fact concerning any of the items described in this Subsection 4, and the provider establishes such question of fact by sworn affidavit within a reasonable time set by the Office of Special Services and made known in writing to the provider, the Department shall grant a hearing and defer these questions for final determination by the Administrative Law Judge.

Cite as Ga. Comp. R. & Regs. R. 350-4-.05
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.05 adapted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.06. Dismissal of Hearing Requests.

The Administrative Law Judge may dismiss a request for a hearing for the following reasons:

(a) it has been withdrawn by the provider in writing;

(b) there is no genuine issue of law or fact which requires a hearing determination;

(c) the provider without good cause therefor fails to appear in person by an authorized representative at the scheduled hearing, or the Administrative Law Judge determines that the provider's failure to comply with his directives or orders constitutes an abandonment of the request;

(d) there is a lack of jurisdiction over the subject matter or the parties;

(e) the party requesting the hearing has not been aggrieved;

(f) the parties have settled the matter prior to issuance of the Administrative Law Judge's decision;

(g) at the request of any party or on his own motion, the Administrative Law Judge determines that the requesting party has not met the prerequisites for obtaining a hearing, the case is not ripe for an Administrative Law Judge's determination, or the case has been rendered moot.

Cite as Ga. Comp. R. & Regs. R. 350-4-.06
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.06 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.07. Informal Disposition; Settlement.

(1) Informal disposition may be made of any contested case by stipulation, written agreement, or consent order.

(2) The parties may agree to settle the matters in dispute at any time prior to the issuance of the Administrative Law Judge's decision, whereupon the Administrative Law Judge shall dismiss the matter forthwith.

Cite as Ga. Comp. R. & Regs. R. 350-4-.07
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.07 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Informal Disposition; Settlement" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.08. The Administrative Law Judge.

(1) Each request for hearing meeting the specifications of Section 350-4-.06 shall be transmitted to an Administrative Law Judge appointed under authority of the Commissioner to adjudicate the matter in dispute.

(2) The Administrative Law Judge shall be a competent, qualified, and impartial individual who has not been involved in the action which has given rise to the hearing request. The Administrative Law Judge shall be an attorney who has a working knowledge of the Georgia Medicaid program and/or administrative law and the ability to conduct hearings in a competent manner. All Administrative Law Judges shall serve at the discretion of the

Commissioner, who shall maintain uniform criteria for assessing each Administrative Law Judge's qualifications to serve.

(3) The Administrative Law Judge is vested with full authority in the conduct of the hearing process, and is responsible for conducting hearings in accordance with the Rules established by the Department.

(4) The Administrative Law Judge shall have the authority to do the following:

(a) administer oaths and affirmations;

(b) sign and issue subpoenas;

(c) rule upon offers of proof;

(d) regulate the course of the hearing and govern the conduct of the participants;

(e) rule on, admit, exclude, or limit evidence;

(f) examine witnesses;

(g) set the time and place for hearings and continuances thereof and fix the time for filing briefs and other documents;

(h) rule on all motions;

(i) provide for the taking of testimony by deposition or interrogatory;

(j) take official notice as prescribed in Rule 350-4-.19; and

(k) take any other action appropriate to dispose of the case in controversy.

Cite as Ga. Comp. R. & Regs. R. 350-4-.08
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.08 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "The Administrative Law Judge" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.09. Disqualification of the Administrative Law Judge.

(1) An Administrative Law Judge shall voluntarily withdraw from any proceedings in which he cannot render a fair and impartial decision for any reason.

(2) A party may request the disqualification of an Administrative Law Judge by filing a written request or motion therefor accompanied by an affidavit stating in detail the grounds upon which it is claimed that a fair and impartial hearing cannot be given or that the Administrative Law Judge has an interest in the proceeding. The Administrative Law Judge shall immediately present the affidavit to the Commissioner of the Department who shall:

(a) investigate the allegation, advise the complaining party in writing of the decision granting or denying the request to disqualify the Administrative Law Judge, and mail a copy of the decision to all other parties; or

(b) reassign the case to another Administrative Law Judge without investigation.

(3) Should the Commissioner determine to remove an Administrative Law Judge during the pendency of a case, any party shall have the right within five days of receiving notice of such removal to present its objections thereto in writing to the Commissioner as part of the Hearing Record. The Commissioner shall respond in writing to such objections within five (5) days of his receipt thereof, and a copy of his response shall also become part of the Hearing Record.

Cite as Ga. Comp. R. & Regs. R. 350-4-.09
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.09 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Disqualification of the Administrative Law Judge" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.10. Ex Parte Communications.

Commencing with the appointment of an Administrative Law Judge, no person shall communicate *ex parte* with such Administrative Law Judge relating to the merits of the proceeding until after the issuance of a final decision unless all parties involved in the proceedings are informed of the communication before or within a reasonable time after such communication occurs and no prejudice to any party results. If the Administrative Law Judge receives a communication prohibited by this Rule, (s)he shall forthwith notify all other parties of the receipt of such communication and disclose the substance of the communication for the parties' consideration in determining whether action is necessary in response.

Cite as Ga. Comp. R. & Regs. R. 350-4-.10
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.10 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Ex Parte Communications" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.11. Notice of Hearing.

As soon as practicable after being appointed to hear a case, the Administrative Law Judge shall issue a notice of hearing, stating the time and place of the hearing, the legal authority and jurisdiction pursuant to which the hearing was requested, the issues to be addressed, and the right of parties to subpoena witnesses and documentary evidence, to secure testimony by deposition or interrogatories when necessary, to be represented by legal counsel and to respond and present evidence on all issues involved. The notice may incorporate by reference information set forth in pleadings.

Cite as Ga. Comp. R. & Regs. R. 350-4-.11
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.11 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Notice of Hearing" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.12. Pre-Hearing Conferences.

(1) The Administrative Law Judge may, either *sua sponte* or at the request of any party, direct the parties or their authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing or to submit written proposals or correspondence for the purpose of considering any of the matter set forth in Paragraph (2) of this Rule. At the discretion of the Administrative Law Judge, pre-hearing conferences may be conducted in whole or in part via telephone.

(2) In conferences held or in proposals submitted pursuant to Subsection (1) of this Rule, the following matters may be considered:

(a) settlement of the matter;

(b) the contemplated use of a schedule for the completion of prehearing procedures and the submission and disposition of all prehearing motions;

(c) simplification, clarification, amplification, or limitation of the issues;

(d) admissions and stimulations of facts and of the genuineness and admissibility of documents;

(e) the identity of persons expected to be called as witnesses by any party and the substance of their anticipated testimony;

(f) the identification of expert witnesses expected to be called by any party to testify, the substance of the facts and opinions to which an expert witness is expected to testify, and a summary of the grounds of each opinion;

(g) matters of which official notice by the Administrative Law Judge is sought;

(h) objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by any party; provided that, at any time before the end of the hearing on the merits any party may make and the Administrative Law Judge shall consider and either rule upon, or reserve a ruling upon, motions to strike testimony or other evidence on the grounds of relevance, competency or materiality; and

(i) such other matters as may expedite adjudication of the matter.

(3) The Administrative Law Judge may issue an order which recites the action taken at the conference and any agreements made by the parties as to any of the matters considered, and which limits the issues for hearing to those not disposed of by admissions or agreement of the parties.

Cite as Ga. Comp. R. & Regs. R. 350-4-.12
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.12 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Pre-Hearing Conferences" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.13. Time and Place of Hearing.

(1) The hearing shall be conducted at the offices of the Department of Medical Assistance unless exigent circumstances necessitate a different venue, and at a reasonable time and date. Reasonable notice of the time and location shall be given to all parties prior to the scheduled hearing. In setting the hearing, the Administrative Law Judge shall consider those cases pending before other Administrative Law Judges, and shall accommodate the needs of the parties as far as practicable.

(2) The Administrative Law Judge may change the time and place of the hearing *sua sponte*, for good cause shown by any party, or per the mutual assent of all parties. Reasonable notice of such action shall be given to all parties.

Cite as Ga. Comp. R. & Regs. R. 350-4-.13
Authority: Ga. L. 1977, p. 384, 391; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.13 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Time and Place of Hearing" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.14. Continued and Reopened Hearings.

(1) The Administrative Law Judge may continue and/or reopen a hearing:

(a) on the Administrative Law Judge's own motion,

(b) at the request of any party, only upon a showing of good cause, or

(c) upon agreement by the parties.

(2) Notice of the time and place of a continued or reopened hearing:

(a) may be oral if the continuance or reopening is ordered during a conference or hearing session, or

(b) shall be in writing to all parties, if ordered outside a conference or hearing session.

Cite as Ga. Comp. R. & Regs. R. 350-4-.14
Authority: Ga. L. 1977, p. 384, 391; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.14 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Continued and Reopened Hearings" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.15. Default; Abandonment.

(1) If a party fails to appear at a hearing after receiving notice thereof, the Administrative Law Judge shall proceed with the hearing in the absence of the party or dismiss the action on motion of any party or *sua sponte.*

(2) If the party requesting a hearing fails to take action to advance his case for a continuous period of two years, the request for hearing shall be deemed abandoned and shall be dismissed with prejudice by the Administrative Law Judge.

Cite as Ga. Comp. R. & Regs. R. 350-4-.15
Authority: Ga. L. 1977, p. 384, *et seq.*; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed an April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.15 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Default; Abandonment" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.16. Discovery.

(1) Discovery is limited to the following.

(a) A party, upon written request made to another party within a reasonable time prior to the hearing, is entitled to:

1. obtain the names, addresses, and telephone numbers of the witnesses which the other party intends to call to testify at the hearing;

2. inspect and make a copy of all documents which the party proposes to offer into evidence.

(2) Any denial of discovery by a party shall be in writing and shall be accompanied by a written statement describing the specific reasons for denial as to each item of discovery denied. Such a denial shall be mailed within thirty (30) calendar days from the date of filing the request for discovery.

Cite as Ga. Comp. R. & Regs. R. 350-4-.16
Authority: Ga. L. 1977, pp. 384, 393; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4-0.4-.16 adopted F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Discovery" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.17. Subpoenas.

(1) The Administrative Law Judge shall have the authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of objects or documents at depositions or hearing.

(2) Every subpoena shall be prepared by the requesting party and issued by the Administrative Law Judge on behalf of the Commissioner, shall state the title of the action, and shall command each person to whom it is directed to attend and give testimony or produce objects or documents in his possession or control or to do both at a time and place therein specified. Requests for subpoenas shall be filed at least five (5) days prior to the hearing or deposition at which the attendance of the witness or the production of the documents or objects is sought, unless there is good cause shown for submitting a request less than five (5) days in advance. The party requesting the subpoena shall be responsible for serving the same sufficiently in advance of the hearing to secure the attendance of the witness or the availability of such objects or documents at the title of the hearing.

(3) Failure of appearance by a witness, whether required by subpoena or not, may constitute grounds for a continuance or for other action. In determining what action to take, the Administrative Law Judge shall consider the materiality of the testimony, documents, or

objects sought, potential prejudice and inconvenience to the parties, and the likelihood of obtaining compliance with a subpoena. The Administrative Law Judge may order whatever action he deems appropriate to the circumstances.

(4) When a subpoena is disobeyed, any party may apply to the superior court of the county where the case is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.

Cite as Ga. Comp. R. & Regs. R. 350-4-.17
Authority: Ga. L. 1977, pp. 384, 391; O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-4.0.4-.17 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Subpoenas" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.18. Depositions.

(1) At any time during the course of a proceeding, the Administrative Law Judge may, in his discretion, order that the testimony of a witness be taken by deposition. Application to take a deposition in lieu of personal appearance at the hearing shall be made by motion. Such motion shall state the name and address of the witness, the time when, the place where, and the subject matter about which the witness would be deposed, the relevance of such testimony, and the specific reason why the witness cannot or will not appear to testify at the hearing.

(2) In the exercise of his discretion in deciding whether to order testimony by deposition, the Administrative Law Judge shall consider, among other factors:

(a) whether requiring the appearance of a witness subject to subpoena would endanger that person's health or work an undue hardship; and

(b) whether ordering the taking of testimony by deposition will result in an undue cost or burden on any other party, an undue delay in the proceedings, or any injury to other parties from the delay.

(3) If the Administrative Law Judge orders testimony by deposition, be may specify whether the scope of examination upon deposition should be limited in any way, and if so, how.

(4) Subject to appropriate rulings on objections, a deposition shall be received in evidence without the need to be tendered as if the testimony contained therein had been given by the witness before the Administrative Law Judge.

(5) Nothing in this Rule shall be read to allow the use of depositions in discovery; provided, however, that if two parties voluntarily agree to discovery by deposition, they will not be

prevented from engaging in such deposition or using the testimony or evidence thereby elicited.

(6) The cost of a deposition shall be borne by the party requesting it, or according to voluntary agreement of the parties affected by the testimony elicited thereby.

Cite as Ga. Comp. R. & Regs. R. 350-4-.18
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Depositions" adopted as ER. 350-4-0.4-.18. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of some title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.19. Pleadings and Amendments; Automatic Filings.

(1) The notice of adverse action issued by the Department and the request for hearing submitted by the provider shall constitute the pleadings in each contested case and automatically shall be included in the Record. The pleadings shall be transmitted by the Department to the Administrative Law Judge at the time of the Administrative Law Judge's appointment to the case.

(2) Any party may amend any pleading without leave of the Administrative Law Judge until the tenth day prior to the date set for the hearing on the matter. Thereafter a party may amend its pleadings only by written consent of the adverse party or by leave of the Administrative Law Judge. Leave shall be freely given when justice so requires. If an amendment is made to any pleading to which a response or reply is necessitated, a response or reply to such amendment shall be filed within ten days after service of the amended request or as otherwise ordered by the Administrative Law Judge.

(3) Copies of the notice of proposed adverse action issued by the Department and the request for Administrative Review filed by the provider which preceded the Pleadings shall be filed automatically by the Department with the Administrative Law Judge upon his appointment. Such filings shall include all supporting documentation transmitted therewith. All documents so filed shall automatically become part of the Record.

Cite as Ga. Comp. R. & Regs. R. 350-4-.19
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Pleadings and Amendments; Automatic Filings" adopted as ER. 350-4-0.4-.19. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.20. Rules of Evidence; Official Notice.

(1) Relevant allegations of fact contained in the Pleadings and automatic filings shall be deemed admitted unless specifically contested.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in the trial of civil, nonjury cases in the superior courts of Georgia shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under such rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs or if it consists of a report or evaluation of a type routinely submitted to or relied upon by the Department in the normal course of its business. The rules of privilege recognized by law shall be given full effect. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available or for the convenience of the parties if no substantial prejudice results thereby. Upon request, parties shall be given an opportunity to compare the proffered copy with the original to verify its correctness.

(4) Summaries of voluminous documents may be admitted into evidence, provided that the parties agree or the author of the summary is available for cross-examination. The summarized documents themselves need not be admitted into evidence, provided that all parties are accorded a reasonable opportunity to inspect the documents so summarized and no substantial injustice would result from admission of the summary alone.

(5) Official notice may be taken of judicially cognizable facts. In addition, official notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, by reference in preliminary reports or otherwise, of the material requested to be noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Cite as Ga. Comp. R. & Regs. R. 350-4-.20
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Rules of Evidence; Official Notice" adopted as ER. 350-4-0.4-.20. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.21. Substitution of Parties; Intervention.

(1) The Administrative Law Judge may, upon motion and in the exercise of discretion, permit such substitution of parties as justice requires, provided that the original party and the

party to be substituted otherwise qualify individually as parties to the proceedings under all applicable requirements.

(2) Any person seeking to intervene shall file a motion stating therein the specific grounds upon which intervention is sought and a pleading setting forth the claim or defense for which intervention is sought. The person shall also establish the basis for qualification as a party to the proceedings. The Administrative Law Judge shall grant or deny such motion and may limit the factual or legal issues which may be raised by an intervenor in order to avoid undue delay or prejudice to the adjudication of the rights of the original parties.

Cite as Ga. Comp. R. & Regs. R. 350-4-.21
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Substitution of Parties; Intervention" adopted as ER. 350-4-0.4-.21. F. Oct 5, 1989; eff. September 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed; Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.22. Consolidation and Severance.

(1) When two or more providers appeal matters involving common issues of law or fact, the appeals may be consolidated by the Department or by the appointed Administrative Law Judge(s) and heard together if it appears that a joint hearing would serve to expedite or simplify consideration of those issues and that no party would be prejudiced thereby.

(2) In consolidated hearings, the Administrative Law Judge may limit direct examination and cross-examination to matters which have not been adequately covered by previous testimony or evidence.

(3) Whenever the Administrative Law Judge determines that it would be more conducive to an expeditious, full, and fair hearing for any party or issue to be heard in separate proceedings, he may in the exercise of his discretion, upon motion of any party or *sua sponte*, sever the party or issue for such separate hearing.

Cite as Ga. Comp. R. & Regs. R. 350-4-.22
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Consolidation and Severance" adopted as ER. 350-4-0.4-.22. F. Oct 5, 1989; eff. September 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.23. Service.

(1) The party filing any submission shall simultaneously serve a copy of each submission upon each party of record. Service shall be by mail or personal delivery. Service by mail shall be complete upon mailing by first class mail, with proper postage attached, to a party's address of record.

(2) Every submission shall be accompanied either by an acknowledgement of service from the person served or his representative, or by a document stating the date, place and manner of service and the name and address of the person served.

(3) The Administrative Law Judge shall return to the sender, without reviewing the contents thereof, any submission not accompanied by evidence of service as provided herein, along with an explanation for the return.

Cite as Ga. Comp. R. & Regs. R. 350-4-.23
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Service" adopted as ER. 350-4-0.4-.23. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.24. The Hearing.

(1) The hearing shall be opened with reasonable promptness as fixed in the "notice of hearing."

(2) All Department hearings shall be accessible to the public, subject to requirements for safeguarding confidential information.

(3) In all hearings, taking of testimony shall be under oath.

(4) The rules applied to civil cases in the superior courts of Georgia concerning the burdens of persuasion and going forward with the evidence shall be followed.

(5) Both the provider and the Department shall have the opportunity to do the following:

(a) bring witnesses;

(b) establish all pertinent facts and circumstances through competent evidence;

(c) advance any arguments relevant to the proceedings without undue interference; and

(d) question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.

(6) Documents, reports, data, and other information used by the parties in the course of the hearing which were obtained on a confidential basis or are subject to legal restrictions with respect to their disclosure, shall be classified and labeled by the Administrative Law Judge "Confidential and Privileged - Not for Release." All matter so classified shall be subject neither to public inspection nor to production or disclosure until and unless the Administrative Law Judge, the Department, or court of competent jurisdiction determines that such inspection, production, or disclosure is appropriate and authorized by law.

(7) If issues are raised at the hearing which are different from the issues for which the hearing was requested, the Administrative Law Judge may conduct the hearing on the newly-emerged issues only on a showing of good cause by the party raising the issue(s). In such instances the hearing shall be conducted in a manner which will afford adequate opportunity to all parties to respond to the newly-raised issues.

Cite as Ga. Comp. R. & Regs. R. 350-4-.24
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "The Hearing" adopted as ER. 350-4-0.4-.24. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.25. Motions.

(1) An application to the Administrative Law Judge for an order requiring any party to take any action or entering any interlocutory ruling shall be made by motion. Unless made during the hearing, motions shall be in writing, shall state specifically the grounds therefor, and shall describe the action or order sought. Motions that may be made in conformance with this Rule include, without being limited to, motions for more definite statement, for dismissal (*e.g.*, for lack of jurisdiction over the subject matter or parties, for failure to state a claim upon which relief may be granted or for any other ground), for summary determination, to amend, to intervene, to substitute parties, to consolidate or sever parties or issues, to take depositions or interrogatories, to secure testimony, or to re-open the Record to admit newly-discovered evidence. A copy of any written motion shall be served upon all parties in accordance with Section .23 of this Chapter.

(2) Within 20 days after service of any written motion, any party to the proceedings may file a response to the motion. The time for response may be shortened or extended by the Administrative Law Judge for good cause shown.

(3) The Administrative Law Judge may, either *sua sponte* or at the request of any party, determine in his discretion whether the nature and complexity of the motion justifies a hearing and notify the parties accordingly. A request for a hearing on a motion must be made in writing and filed by the date the response to the motion is to be filed. Notice of hearing on a motion shall be given by the Administrative Law Judge at least 5 days prior to the date set for hearing unless such notice is waived by all parties. At the discretion of

the Administrative Law Judge, such hearings may be conducted, in whole or in part, via telephone. If a hearing on a motion is not requested or deemed justified, the Administrative Law Judge shall rule upon the motion forthwith.

(4) Multiple motions may be consolidated for hearing or heard at a pre-hearing conference. The Administrative Law Judge may call for the submission of briefs, for oral argument, or both, either in support of or in opposition to any motion.

Cite as Ga. Comp. R. & Regs. R. 350-4-.25
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Motions" adopted as ER. 350-4-0.4-.25. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.26. Summary Determination.

(1) Any party may move, if supported by affidavits or other probative evidence, for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. Such a motion must be filed and served on all parties no later than 20 days after service of the Notice of Hearing; provided that, upon good cause shown, the motion may be filed at any time before the close of the hearing.

(2) When a motion for summary determination is made and supported as provided in this Rule, a party opposing the motion may file and serve a response or a countermotion. The respondent may not rest upon mere allegations or denials, but must show, by affidavit or other probative evidence, that there is a genuine issue of material fact for determination in the hearing.

(3) Affidavits shall be made upon personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Copies of all papers or parts thereof referred to in an affidavit conforming to these rules shall be attached thereto and served therewith.

(4) If all factual issues are decided by summary determination, no hearing will be held and the Administrative Law Judge shall prepare a decision. If summary determination is denied or if partial summary determination is granted, the Administrative Law Judge shall issue a memorandum opinion and order, interlocutory in nature, and the hearing will proceed on the remaining issues.

Cite as Ga. Comp. R. & Regs. R. 350-4-.26
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Summary Determination" adopted as ER. 350-4-0.4-.26. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.

Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989, eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.27. The Hearing Record.

(1) The Administrative Law Judge shall compile an official Record of the hearing, which shall include:

(a) all pleadings, automatic filings, motions, and intermediate rulings;

(b) a transcript of the oral testimony received in evidence;

(c) all documents received in evidence;

(d) all depositions and interrogatories or excerpts therefrom admitted into evidence;

(e) a statement of matters officially noticed;

(f) all offers of proof, objections thereto, and ruling thereon not otherwise reflected in the transcript;

(g) all physical evidence admitted in the course of the hearing; and

(h) all demonstrative evidence admitted during the course of the hearing.

(2) Oral testimony shall be recorded and transcribed therefrom for use by the Administrative Law Judge in rendering a decision. Copies of such transcripts may be purchased for a fee set periodically by the Department and available for disclosure upon a party's inquiry.

(3) The Record shall be closed upon receipt by the Administrative Law Judge of the official transcript and all evidence, pleadings, briefs, memoranda, and other documents authorized or required under these Rules.

(4) The hearing Record shall be available to the parties or their authorized representatives at any reasonable time.

Cite as Ga. Comp. R. & Regs. R. 350-4-.27
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "The Hearing Record" adopted as ER. 350-4-0.4-.27. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.28. Decision of the Administrative Law Judge.

(1) The decision of the Administrative Law Judge shall be based exclusively on competent evidence and other material introduced pursuant to this Chapter. It shall specify the reason for the decision and identify the supporting evidence and regulations, and include findings of fact and conclusions of law.

(2) The Administrative Law Judge's decision shall be issued to the Department within ninety (90) days from the Department's timely receipt of a hearing request conforming to the requirements of Rule 350-4-.05, and within thirty (30) days from the close of the Record. However, if, in the Administrative Law Judge's discretion, the complexities of the issues, the length of the case record, scheduling difficulties, agreement of the parties, or any other consideration justifies an extension of time, the Administrative Law Judge may extend the time in which an initial decision must be rendered; provided, however, that such extension shall not exceed ninety (90) days from the close of the Record.

(3) The Department shall, upon receipt of the Administrative Law Judge's decision, furnish a copy thereof to each party by Certified Mail, accompanied by a cover Notice informing each party of its appeal rights.

(4) The Administrative Law Judge's decision shall be accessible to the public, subject to requirements for safeguarding confidential information.

Cite as Ga. Comp. R. & Regs. R. 350-4-.28
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Decision of the Administrative Law Judge" adopted as ER. 350-4-0.4-.28. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.29. Appeal of Administrative Law Judge's Decision.

(1) Any provider may petition for review of the Administrative Law Judge's decision within five (5) days from the date of that party's receipt of the decision. Such request shall be in writing and addressed to the Commissioner and shall state the legal or factual errors upon which the appeal is based.

(2) If any party fails to request review within five (5) days of the date of receipt of the adverse decision, that party shall have waived its right to any further review or revision of that decision.

(3) If a party requests a transcript of the proceedings, after receipt of the initial decision, that party will have an additional five (5) days from the date of receipt of the transcript in which to submit a written statement of legal or factual errors. However, a request for a transcript shall not in any manner lengthen the time [five (5) days from receipt of the decision] in which a request for review must be submitted.

(4) The final decision by the Commissioner shall be made within thirty (30) days after receipt of the request for review and shall be accessible by the public, subject to requirements for safeguarding confidential information. The parties shall be notified in writing of the final decision and of the provider's right to judicial review. The final decision and notice to the provider shall state the effective date of the decision. Should the Commissioner fail to issue his decision within thirty (30) days from his receipt of a request for review, the Administrative Law Judge's Decision shall be deemed affirmed, and the provider may proceed to appeal pursuant to Rule 350-4-.30.

Cite as Ga. Comp. R. & Regs. R. 350-4-.29
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Appeal of Administrative Law Judge's Decision" adopted as ER. 350-4-0.4-.29. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-4-.30. Appeal of the Commissioner's Decision.

(1) Any provider adversely affected by a final decision of the Commissioner may have review thereof by appeal to the superior court in the county of residence of the provider or to the Superior Court of Fulton County. Such appeal shall be by petition which shall be filed in the clerk's office in such court within thirty (30) days after the final decision of the Commissioner. Such appeal shall be held in accordance with the "Administrative Procedure Act," Official Code of Georgia Annotated, Title 50, Chapter 13. A provider shall not appeal an adverse decision of the Commissioner to the superior court of the county of residence of the provider or the Superior Court of Fulton County unless the provider first exhausts the administrative remedies within the Department.

(2) The petition shall set forth the names of parties making the appeal, the decision being appealed, and the reason it is claimed to be erroneous.

(3) Enforcement of the decision being appealed shall not be stayed until and unless so ordered and directed by the reviewing court. Upon filing such petition, the petitioner shall serve on the Commissioner a copy thereof in the manner prescribed by law for service of process.

(4) Upon receipt of the appeal, the Commissioner shall transmit a certified copy of the hearing Record and a copy of any appeal therefrom to the superior court within thirty (30) days of receipt of the appeal.

Cite as Ga. Comp. R. & Regs. R. 350-4-.30
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Appeal of the Commissioner's Decision" adopted as ER. 350-4-0.4-.30. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.

Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Chapter 350-5. DISCLOSURE OF INFORMATION ON MEDICAID APPLICANTS, RECIPIENTS AND PROVIDERS.

Rule 350-5-.01. Types of Applicant and Recipient Information to be Safeguarded.

Any information which could be connected to an individual applicant or recipient in such a way as to disclose the individual's identity is confidential and shall be safeguarded. Such information includes:

(a) names, addresses, and all types of identification numbers;

(b) medical services proposed or provided to the individual;

(c) social and economic conditions or circumstances of the individual;

(d) agency evaluation of the individual's personal information; and

(e) medical data about the individual, including diagnosis and past history of disease or disability.

Cite as Ga. Comp. R. & Regs. R. 350-5-.01
Authority: Ga. L. 1977, pp. 384, 390; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-5-0.5-.01. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Types of Applicant and Recipient Information to be Safeguarded" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-5-.02. Use of Applicant and Recipient Information.

The types of information specified in Section .01 shall be used only for purposes directly connected with the administration of the State Plan. Such purposes include, but shall not be limited to:

(a) establishing eligibility;

(b) determining the amount of medical assistance;

(c) providing services for recipients; and

(d) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the Plan.

Cite as Ga. Comp. R. & Regs. R. 350-5-.02
Authority: Ga. L. 1977, pp. 384, 390; O.C.G.A. Sec. 49-4-142(a).
History. Original Rule was filed on April 11, 1978; effective May 1, 1978.
Repealed: ER. 350-5-0.5-.02 adopted. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule entitled "Use of Applicant and Recipient Information" adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-5-.03. Access to Applicant and Recipient Information.

(1) Access to the types of information specified in Section .01 shall be restricted to Department representatives or other persons, agencies, or organizations that are subject to standards of confidentiality comparable to those of the Department. Such persons, agencies, and organizations shall include providers of medical assistance and other entities contracting with the Department or otherwise authorized by law to perform one or more of the functions delineated in Section .02. Such access is available without the permission of the applicant or recipient, but shall be granted only where the entity seeking the information is performing one of the functions enumerated in Section .02, above.

(2) Before responding to a request for information from any person, agency, or organization that is not performing one or more of the functions delineated in Section .02, the Department must obtain written permission from the individual or the person legally responsible for the individual whenever possible. Confidential information about applicants or recipients shall be released without the individual's written permission only under the following conditions:

(a) An emergency situation exists in which:

1. prior attempts to contact the individual or legally responsible person for permission has been unsuccessful; or

2. a court of competent jurisdiction has ordered or subpoenaed information and the Department does not have sufficient time to notify the individual or legally responsible person before responding to the order or subpoena; or

3. release of such information is necessary to prevent loss of or risk to life or health; and

4. such release is not otherwise prohibited by law or regulation; and

5. written notification of the release is sent to the individual or the legally responsible person immediately after disclosure.

(b) An order has been issued by a court of competent jurisdiction in a case to which the Department is not a party. Before releasing the information in compliance with the court order, the Department shall:

1. attempt to obtain permission for such disclosure from the individual or the legally responsible person by means calculated to be the most effective to achieve meaningful contact with that person; and

2. notify the Law Department so that it may petition the court for appropriate relief such as a motion for reconsideration or *in camera* inspection of the confidential information if necessary, and notify the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.

(3) The Department shall not publish or otherwise release any names or list of names of applicants or recipients of medical assistance.

Cite as Ga. Comp. R. & Regs. R. 350-5-.03
Authority: O.C.G.A. Sec. 49-4-142(a), 153.
History. Original Rule entitled "Access to Applicant and Recipient Information" adopted as ER. 350-5-0.5-.03. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Rule 350-5-.04. Disclosure of Provider Information.

Information maintained by the Department regarding providers may be disclosed to anyone who submits a written request therefor in accordance with all applicable federal and state laws and regulations, including but not limited to those concerning open records and trade secrets.

Cite as Ga. Comp. R. & Regs. R. 350-5-.04
Authority: O.C.G.A. Sec. 49-4-142(a).
History. Original Rule entitled "Disclosure of Provider Information" adopted as ER. 350-5-0.5-.04. F. Oct. 5, 1989; eff. Sept. 29, 1989, the date of adoption, to remain in effect for 120 days or until adoption of a permanent Rule superseding said Emergency Rule, as specified by the Agency.
Repealed: Permanent Rule of same title adopted. F. Oct. 4, 1989; eff. Nov. 1, 1989, as specified by the Agency.

Chapter 350-6. REPEALED.

Rule 350-6-.01. Repealed.

Cite as Ga. Comp. R. & Regs. R. 350-6-.01
Authority: Authority O.C.G.A. Secs. 31-8-155, 49-4-142.
History. Original Rule entitled "Definitions" adopted as ER. 350-6-0.6-.01. F. June 18, 1990; eff. June 13, 1990, the date of adoption.

Amended: Permanent Rule of same title adopted. F. Aug. 15, 1990; eff. Sept. 14, 1990, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Sept. 7, 1993; eff. Oct. 1, 1993, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Aug. 14, 2000; eff. Sept. 3, 2000.
Repealed: F. May 31, 2006; eff. June 20, 2006.

Rule 350-6-.02. Repealed.

Cite as Ga. Comp. R. & Regs. R. 350-6-.02
Authority: Authority O.C.G.A. Secs. 31-8-155, 49-4-142.
History. Original Rule entitled "Contributions" adopted as ER. 350-6-0.6-.02. F. June 18, 1990; eff. June 13, 1990, the date of adoption.
Amended: Permanent Rule of same title adopted. F. Aug. 15, 1990; eff. Sept. 14, 1990, as specified by the Agency.
Repealed: New Rule entitled "Contributions and Deposited and Transferred Revenues" adopted. F. Sept. 7, 1993; eff. Oct. 1, 1993, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Aug. 14, 2000; eff. Sept. 3, 2000.
Repealed: F. May 31, 2006; eff. June 20, 2006.

Rule 350-6-.03. Repealed.

Cite as Ga. Comp. R. & Regs. R. 350-6-.03
Authority: Authority O.C.G.A. Secs. 31-8-155, 49-4-142.
History. Original Rule entitled "Use of Funds" adopted as ER. 350-6-0.6-.03. F. June 18, 1990; eff. June 13, 1990, the date of adoption.
Amended: Permanent Rule of same title adopted. F. Aug. 15, 1990; eff. Sept. 14, 1990, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Sept. 7, 1993; eff. Oct. 1, 1993, as specified by the Agency.
Repealed: New Rule of same title adopted. F. Aug. 14, 2000; eff. Sept. 3, 2000.
Repealed: F. May 31, 2006; eff. June 20, 2006.

Rule 350-6-.04. Repealed.

Cite as Ga. Comp. R. & Regs. R. 350-6-.04
Authority: Authority O.C.G.A. Sec. 31-6.
History. Original Rule entitled "Open Records" adopted. F. Aug. 14, 2000; eff. Sept. 3, 2000.
Repealed: F. May 31, 2006; eff. June 20, 2006.

Rule 350-6-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 350-6-.05
Authority: Authority O.C.G.A. Sec. 31-6.
History. Original Rule entitled "Applicability of Medical Assistance Generally" adopted. F. Aug. 14, 2000; eff. Sept. 3, 2000.
Repealed: F. May 31, 2006; eff. June 20, 2006.

Chapter 350-7. INDIGENT CARE TRUST FUND - NURSING HOME PROVIDER FEE.

Rule 350-7-.01. Definitions.

(1) "Medically indigent" means a person who meets the state-wide standards of indigency adopted by the Department which is a person with an income no greater than 200 percent of the federal poverty level guidelines as published by the United States Department Health and Human Services.

(2) "Nursing home" means a freestanding facility or distinct part or unit of a hospital required to be licensed or permitted as a nursing home under the provisions of O.C.G.A. Title 31, Chapter 8, Article 5, which is not owned or operated by the state or federal government.

(3) "Nursing Home that disproportionately serves the medically indigent" means a nursing home for which the patient days attributable to medically indigent residents account for more than 15 percent of the nursing home's total patient days during a 12-month period. For purposes of this computation, Medicare program patient days shall not be included in the nursing home's total patient days.

(4) "Patient day" means a day of care provided to an individual resident of a nursing home by the nursing home. A patient day includes the date of admission but does not include the date of discharge, unless the dates of admission and discharge occur on the same day.

(5) "Provider fee" means the fee imposed pursuant to these rules for the privilege of operating a nursing home.

(6) "Segregated account" means an account for the dedication and deposit of provider fees which is established within the Indigent Care Trust Fund.

(7) "State plan" means all documentation submitted by the Commissioner of the Department of Community Health to the United States Department of Health and Human Services, Center for Medicare and Medicaid Services, pursuant to Title XIX of the federal Social Security Act.

(8) "Trust fund" means the Indigent Care Trust Fund created pursuant to O.C.G.A. Title 31, Chapter 8, Article 6.

(9) "Waiver" means a waiver of the uniform tax requirement for permissible health care related taxes, as provided for in 42 C.F.R. § 433.68(e)(2)(i)(ii).

Cite as Ga. Comp. R. & Regs. R. 350-7-.01
Authority: O.C.G.A. Sec. 31-8-5.
History. Original Rule entitled "Definitions" adopted. F. July 2, 2003; eff. July 22, 2003.

Rule 350-7-.02. Payments to the Segregated Account.

(1) There is established within the Indigent Care Trust Fund a segregated account for revenues raised through imposition of the provider fee. All revenues raised through the nursing home provider fees shall be credited to the segregated account. All said revenues raised shall be dedicated and used for the sole purpose of obtaining federal financial participation for medical assistance payments to nursing homes that disproportionately serve the medically indigent. Payments to the segregated nursing home provider fee account shall be made by any nursing home required to do so pursuant to O.C.G.A. Section 31-8-164. Such payments to the segregated account shall be irrevocable and shall not include any limitation upon use of such contributions except as permitted in this article or by the Department. Payments shall only be used for the purposes contained in O.C.G.A. Section 31-8-165. Contributions and transfers to the Indigent Care Trust Fund pursuant to O.C.G.A. Section 31-8-153 and 31-8-153.1 shall not be deposited into the segregated account.

(2) Each nursing home shall be assessed a provider fee with respect to each patient day for the preceding quarter, excluding Medicare program patient days. The provider fee shall be assessed uniformly upon all nursing homes except with respect to the waiver to be applied for pursuant to O.C.G.A. Section 31-8-168. The aggregate provider fees imposed shall not exceed the maximum amount that may be assessed pursuant to the 6 percent indirect guarantee threshold set forth in 42 C.F.R. Section 433.68(f)(3)(i). Such provider fee payments may be deposited to the segregated account by means of electronic funds transfer, when pre-authorized by the Department.

(3) The provider fee shall be paid quarterly by each nursing home to the Department. A nursing home shall calculate and report the provider fee due upon a form prepared and distributed by the Department. The payments shall be submitted no later than the thirtieth day following the end of each calendar quarter. The initial provider fee report shall be filed and the initial provider fee payment shall be submitted no later than July 30, 2003. The initial provider fee payment for July 30, 2003 shall be calculated using the patient day information for the calendar quarter ending June 30, 2003.

(4) Each nursing home shall keep and preserve for a period of three years such books and records as may be necessary to determine the amount for which it is liable for a provider fee pursuant to these rules. The Department shall have the authority to inspect and copy the records of a nursing home for purposes of auditing the calculation of the provider fee. All information obtained by the Department for this purpose shall be confidential and shall not constitute a public record.

(5) In the event the Department determines that a nursing home has underpaid or overpaid the provider fee, the Department shall notify the nursing home of the balance of the provider fee or refund that is due. Such payment or refund shall be due within 30 days of the Department's notice to the nursing home.

(6) Any nursing home that fails to pay the provider fee pursuant to these rules within the time periods specified by these rules shall pay, in addition to the outstanding provider fee, a 6 percent penalty for each month or fraction thereof that the payment is overdue. If a provider fee has not been received by the Department by the last day of the month, the Department shall withhold an amount equal to the provider fee and penalty owed from any Medicaid payment due the nursing home in question. The provider fee levied by this article shall constitute a debt due the state and may be collected by civil action and the filing of tax liens in addition to such methods provided for by these rules. Any penalty that accrues as a result of late payments shall be credited to the segregated account.

Cite as Ga. Comp. R. & Regs. R. 350-7-.02
Authority: O.C.G.A. Sec. 31-8-5.
History. Original Rule entitled "Payments to the Segregated Account" adopted. F. July 2, 2003; eff. July 22, 2003.

Rule 350-7-.03. Use of Provider Fees.

(1) The General Assembly is authorized to appropriate as state funds to the Department for use in any fiscal year all revenues dedicated and credited to the segregated account. These appropriations shall be made for the sole purpose of obtaining federal financial participation in the provision of support to nursing homes that disproportionately serve the medically indigent. Any appropriation from the segregated account for any purpose other than Medicaid payments to nursing homes shall be null and void.

(2) Revenues appropriated to the Department pursuant to these rules shall be used to match federal funds that are available for the purpose for which such trust funds have been appropriated.

(3) Appropriations from the segregated account to the Department shall not lapse to the general fund at the end of the fiscal year.

(4) The Department shall annually report to the General Assembly on the use of revenues credited to the segregated account and appropriated to the Department for the purposes outlined in these rules. Such report shall be submitted to the Lieutenant Governor, Speaker, legislative counsel and legislative budget officer no later than January 31 of each calendar year. Such reports shall be made available to the public as a public record.

Cite as Ga. Comp. R. & Regs. R. 350-7-.03
Authority: O.C.G.A. Sec. 31-8-5.
History. Original Rule entitled "Use of Provider Fees" adopted. F. July 2, 2003; eff. July 22, 2003.

Rule 350-7-.04. Open Records.

All Department records related to the Indigent Care Trust Fund segregated account, except as provided for in Rule 350-7-.02(4) shall be open for public inspection in accordance with the Open Records Act, O.C.G.A. § 50-18-70*et seq.*

Cite as Ga. Comp. R. & Regs. R. 350-7-.04
Authority: O.C.G.A. Sec. 31-8-5.
History. Original Rule entitled "Open Records" adopted. F. July 2, 2003; eff. July 22, 2003.

Rule 350-7-.05. Applicability of Medical Assistance Generally.

Except where inconsistent with O.C.G.A., Title 31, Chapter 8, Article 6A, the provisions of O.C.G.A., Title 49, Chapter 4, Article 7 (Georgia Medical Assistance Act of 1977) shall apply to the Department in carrying out the purposes of the nursing home provider fee.

Cite as Ga. Comp. R. & Regs. R. 350-7-.05
Authority: O.C.G.A. Sec. 31-8-5.
History. Original Rule entitled "Applicability of Medical Assistance Generally" adopted. F. July 2, 2003; eff. July 22, 2003.