



## Office of Administrative Hearings

### Written Testimony of the Office of Administrative Hearings Position - Oppose

Re: Senate Bill 297 - Administrative Procedure Act - Dispositions and Summary Suspensions  
- Time Periods

Before: Education, Health and Environmental Affairs

Date: February 5, 2020

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The Office of Administrative Hearings (OAH) opposes SB 297 as it has the potential to undermine the due process rights of parties to contested case hearings governed by the Administrative Procedure Act (APA). The bill, as written, also conflicts with various statutes governing notice and the right to an exceptions process set forth in the APA.

Based upon its experience with adjudicating contested cases, OAH believes that proposed subsection (b) is unnecessary. Section 10-205 of the State Government Article currently provides:

#### **Requirements for action by Office of Administrative Hearings**

(e)(1) The Office shall:

(i) conduct the hearing; and

(ii) except as provided in paragraph (2) of this subsection or as otherwise required by law, within 90 days after the completion of the hearing, complete the procedure authorized in the agency's delegation to the Office.

(2) The time limit specified in paragraph (1)(ii) of this subsection may be extended with the written approval of the Chief Administrative Law Judge.

The Office of Administrative Hearings (OAH) has been delegated authority to conduct hearings with varied decision issuing deadlines, from three to 90 days. In FY 19, OAH issued 99.8% of its decisions in a timely fashion, and this Managing for Results metric has been above 99% for the past five years.

Proposed subsection (B) is problematic because it does not address the categories of cases where the State agency delegates proposed decision making authority to OAH. The agency either establishes an exceptions process or defers to the process outlined in section 10-216 of the APA. The final decision maker must consider the exceptions and issue a final decision within 60 days (APA, § 10-220).

OAH does not oppose proposed subsection (C)(1). The 90-day decision deadline requirement that has been in the APA for the entirety of OAH's 30-year history and OAH's near-perfect record of compliance will continue. In the rare instance where a party would have the factual and legal basis to file a notice that a final decision is "past due," that notice is similar to a motion and would be handled as such by OAH. OAH notes that if it issues a proposed decision close to the 90-day deadline, the 60-day time period in APA § 10-220 for an agency to receive exceptions and issue a final decision may be truncated by this subsection.

OAH opposes proposed subsection (C)(2), which provides for an automatic decision in favor of a "named party." The term "named party" is not defined in the APA. Most commonly, in an OAH contested case, the "named" parties are a Maryland citizen or business and a state agency. But there are many cases where there are multiple parties to a proceeding. For example, in a Home Improvement Commission (HIC) Guaranty Fund hearing, the parties include the Claimant homeowner, the Respondent contractor, and the HIC Guaranty Fund.

Similarly, in a case from the Maryland Insurance Administration (MIA), the parties may include the insured, the insurance company, and the MIA. Contested case hearings may be consolidated for efficiency and could include dozens of parties to a single case. This bill appears to create a legal coup for the party who first notices that a contested case decision is "past due." OAH believes that such a law will disadvantage the many Maryland citizens who present their cases at OAH without the assistance of an attorney. It seems undeniable that the government attorneys who regularly try contested cases before OAH will be more likely to invoke this subsection than will an unrepresented citizen.

OAH takes no position on proposed subsection (D) but offers this analysis of its ramifications. Proposed subsection (D) would require many licensing agencies to change their rules to meet the 30-day requirement for a final decision on a summary suspension. OAH conducts summary suspensions hearings for many state agencies including, but not limited to:

- Motor Vehicle Administration (drunk and drugged driving)
- Office of Child Care (daycare facilities)
- Department of Natural Resources (summary suspension of license)
- Behavioral Health Administration (summary suspension of a certificate of approval)
- Various Maryland professional boards

- Office of Health Care Quality (summary suspension of alternative living unit regulated by the Developmental Disabilities Administration)
- Real Estate Commission (summary suspension of broker's license)
- Maryland Institute for Emergency Medical Services Systems (summary suspensions of Ambulance and EMS licenses)

For each summary suspension, there is a timeline that allows the person or entity that is the subject of that suspension to request a hearing. One of the shortest timelines is found in the Office of Child Care (OCC) caseload. Example: When the OCC determines that a family daycare must be closed on an emergency basis because the health or safety of the children in care is jeopardized, it issues an order to summarily suspend the license, and the family daycare closes. The provider has 30 days from receipt of that notice to request a hearing. Upon receipt of that hearing request – whether it comes on the 1<sup>st</sup> or 30<sup>th</sup> day - OAH schedules and conducts a hearing within seven days. An OAH ALJ issues a final decision on the suspension within seven days of the hearing. Proposed subsection (D) would require the agency to significantly compress the time the daycare provider has to request a hearing in order to comply with the timeline.

For hearing types where the agency retains final decision-making authority, proposed subsection (D) would compress the time for a party to file exceptions and challenge an OAH proposed decision.

Finally, proposed subsection (D) impacts drunk driving license suspension cases. COMAR 11.11.03 states that § 16-205.1 hearings involving drunk/drugged drivers for per se (blood alcohol level tested 0.08 or higher) and test refusal cases are summary suspension hearings. A police officer typically delivers the notice of action in these summary license suspensions at the time of a drunk driving arrest. The licensee has 30 days to request a hearing. Upon receipt of that hearing request, whether it is on the 1<sup>st</sup> or the 30<sup>th</sup> day after the arrest, OAH schedules the hearing. An OAH ALJ issues a final decision at the hearing. Proposed subsection (D) would require the MVA to significantly shorten the time to request a hearing so that OAH could provide notice and schedule the hearing within 30 days of the drunk driving arrest. This has the potential to limit the ability of a licensee to pay the filing fee, request a hearing, and engage an attorney.

For these reasons, OAH requests an unfavorable report.

Jana Corn Burch, Acting Chief Administrative Law Judge

Denise Oakes Shaffer, Director, Quality Assurance