STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

A. R., A. S., Y. S., D. S., AND
Q. J.,

Petitioners,

vs. Case No. 15-3735RU

THE FLORIDA DEPARTMENT OF
HEALTH, STATE OF FLORIDA,

Respondent.
_____/

FINAL ORDER

This Order is entered pursuant to section 120.56(4), Florida Statutes (2015).[1/]

APPEARANCES

For Petitioners: Paolo G. Annino, Esquire
Justin Karpf, Certified Legal Intern
Steven Reardon, Qualified Representative
Megan Shoemaker, Qualified Representative
FSU College of Law
Public Interest Law Center
425 West Jefferson Street
Tallahassee, Florida 32306-1601

Matthew W. Dietz, Esquire
Law Offices of Matthew W. Dietz, P.L.
2990 Southwest 35th Avenue
Miami, Florida 33133

For Respondent: Jay Patrick Reynolds, Esquire
Florida Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399

Donna Elizabeth Blanton, Esquire
Angela D. Miles, Esquire
Radey Law Firm, P.A.
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether the Children's Medical Services Network ("CMSN") Clinical Eligibility Screening Guide (Version 12) constitutes an unadopted rule whose existence violates section 120.54(1)(a), because the statement has not been adopted through formal rulemaking procedures.

PRELIMINARY STATEMENT

On June 25, 2015, Petitioners A.R., L.R., A.S., and Y.S. filed with the Division of Administrative Hearings ("DOAH") their Petition for Administrative Determination of Invalidity of Agency Statements. The petition seeks a ruling that the document known as "CMSN Clinical Eligibility Screening Guide (Version 12)," is an unadopted rule. On June 30, 2015, the undersigned was assigned this case.

On July 1, 2015, a telephonic status conference was held with counsel for the parties. During the conference, good cause was established to allow for the setting of the final hearing date more than 30 days after the assignment of this matter to the undersigned. On July 2, 2015, the undersigned set this matter for final hearing in Tallahassee, Florida, on August 14, 2015.

On July 21, 2015, a Motion to Amend Petition was filed to add two Petitioners, D.S. and Q.J., to this proceeding. On July 29, 2015, the undersigned entered an Order Granting Motion to Amend Petition, and the Amended Petition for Administrative Determination of Invalidity of Agency Statements was deemed filed by Petitioners A.R., L.R., A.S., Y.S., D.S., and Q.J.

On August 11, 2015, Respondent Department of Health ("Department") filed its Unopposed Motion to Cancel Hearing and Order Parties to Submit Proposed Final Orders. In the motion, the Department represented that the parties agreed to stipulated facts and exhibits and that the issues to be resolved by the undersigned in this unpromulgated rule challenge case are solely legal in nature. The Department requested the undersigned to resolve their dispute without a factual evidentiary hearing and enter a final order. On August 12, 2015, the undersigned granted the Department's motion and directed the parties to file their stipulated facts, stipulated exhibits, and proposed final orders by no later than 5:00 p.m., on August 24, 2015.

On August 18, 2015, the parties filed their stipulated facts and joint exhibits. On August 24, 2015, the Department filed its proposed final order. On August 25, 2015, Petitioners filed their proposed final order. On August 26, 2015, Petitioners filed their Unopposed Motion to Accept Late Filing, which the undersigned granted on August 26, 2015. On September 18, 2015,

Petitioners filed Petitioners' Motion to Remove L.R. from Pending Case. On September 21, 2015, the undersigned entered an Order granting the motion.

The parties' proposed final orders have been considered in the preparation of this Final Order. The parties' stipulated facts and joint exhibits have been incorporated in this Final Order to the extent relevant.

FINDINGS OF FACT

Parties and Statutory Background

1. CMSN is a statewide managed care system for children with special health care needs. CMSN is part of the Children's Medical Services program established by the Department. §§ 391.021 and 391.025, Fla. Stat.

2. Pursuant to section 391.021(2), Florida Statutes:

> "Children with special health care needs" means those children younger than 21 years of age who have chronic and serious physical, developmental, behavioral, or emotional conditions and who require health care and related services of a type or amount beyond that which is generally required by children.

3. Pursuant to section 391.021(4):

> "Eligible individual" means a child with a special health care need or a female with a high-risk pregnancy, who meets the financial and medical eligibility standards established in s. 391.029.

4. Section 391.029 provides as follows:

391.029 Program eligibility.--

(1) Eligibility for the Children's Medical Services program is based on the diagnosis of one or more chronic and serious medical conditions and the family's need for specialized services.

(2) The following individuals are eligible to receive services through the program:

(a) A high-risk pregnant female who is enrolled in Medicaid.

(b) Children with serious special health care needs from birth to 21 years of age who are enrolled in Medicaid.

(c) Children with serious special health care needs from birth to 19 years of age who are enrolled in a program under Title XXI of the Social Security Act.

(3) Subject to the availability of funds, the following individuals may receive services through the program:

(a) Children with serious special health care needs from birth to 21 years of age who do not qualify for Medicaid or Title XXI of the Social Security Act but who are unable to access, due to lack of providers or lack of financial resources, specialized services that are medically necessary or essential family support services. Families shall participate financially in the cost of care based on a sliding fee scale established by the department.

(b) Children with special health care needs from birth to 21 years of age, as provided in Title V of the Social Security Act.

(c) An infant who receives an award of compensation under s. 766.31(1). The Florida

> Birth-Related Neurological Injury Compensation Association shall reimburse the Children's Medical Services Network the state's share of funding, which must thereafter be used to obtain matching federal funds under Title XXI of the Social Security Act.
>
> (4) Any child who has been provided with surgical or medical care or treatment under this act prior to being adopted and has serious and chronic special health needs shall continue to be eligible to be provided with such care or treatment after his or her adoption, regardless of the financial ability of the persons adopting the child.

5. Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. The Agency for Health Care Administration ("AHCA") is responsible for administering the Medicaid program in Florida. §§ 409.901(2), 409.902, and 409.963, Fla. Stat.

6. Petitioners are Medicaid-eligible minor children who have been enrolled in the CMSN.

7. In 1993, the Florida Legislature passed legislation declaring its intent that the Medicaid program require, to the maximum extent practicable and permitted by federal law, that all Medicaid recipients be enrolled in a managed care program. This intent language was codified in section 409.9121, Florida Statutes, and has remained in effect and unchanged since 1993.

8. In 2011, the Florida Legislature created Part IV of chapter 409, Florida Statutes (codified as sections 409.961

through 409.9841), and directed AHCA to create a statewide, integrated managed care program for all covered services under the Medicaid program, including long-term care services. § 409.964, Fla. Stat.

9. The statewide Medicaid managed care program includes the long-term managed care program and the managed medical assistance program. The law directed AHCA to begin implementation of the long-term care managed care program by July 1, 2012, with full implementation in all regions of the state by October 1, 2013. § 409.978, Fla. Stat. By January 1, 2013, AHCA was required to begin implementing the managed medical assistance program, with full implementation in all regions of the state by October 1, 2014. § 409.971, Fla. Stat.

10. Services in the Medicaid managed care program are provided by eligible plans. § 409.966(1), Fla. Stat. An "eligible plan" means "a health insurer authorized under chapter 624, an exclusive provider organization authorized under chapter 627, a health maintenance organization authorized under chapter 641, a provider service network authorized under s. 409.912(2), or an accountable care organization authorized under federal law." § 409.962(6), Fla. Stat. For purposes of the managed medical assistance program, the term "eligible plan" also includes "the Children's Medical Services Network authorized under chapter 391." Id.

11. Pursuant to sections 409.966 and 409.974(1), AHCA selects a limited number of eligible plans to participate in the Medicaid program using invitations to negotiate. Once selected, the eligible plan becomes a "managed care plan" in the Medicaid program. § 409.962(9), Fla. Stat. (defining "managed care plan" to mean "an eligible plan under contract with [AHCA] to provide services in the Medicaid program").

12. Managed care plans include "specialty plans" that serve "Medicaid recipients who meet specified criteria based on age, medical condition, or diagnosis." § 409.962(14), Fla. Stat.

13. AHCA is required to enter into a five-year contract with each managed care plan selected through the procurement process. § 409.967(1), Fla. Stat. The Legislature granted AHCA statutory authority to "establish such contract requirements as are necessary for the operation of the statewide managed care program." § 409.967(2), Fla. Stat. AHCA's contracts with the managed care plans must contain the statutorily required provisions outlined in section 409.967(2)(a) through (m), as well as "any other provisions [AHCA] may deem necessary." § 409.967(2), Fla. Stat.

14. Part IV of chapter 409 requires all Medicaid recipients to enroll in a managed care plan, unless they are specifically exempted. § 409.969, Fla. Stat. The law requires Medicaid recipients to have a choice of available plans, unless the plan

is restricted by contract to a specific population that does not include the recipient. § 409.969(1), Fla. Stat.

15. Pursuant to section 409.974(4), CMSN's participation in the Medicaid managed care program "shall be pursuant to a single, statewide contract with [AHCA] that is not subject to the procurement requirements or regional plan number limits of this section. The [CMSN] must meet all other plan requirements for the managed medical assistance program."

The Department's Contract with AHCA

16. In accordance with section 409.974(4), the Florida Department of Health, Children's Medical Services, entered into AHCA Contract No. FP031 ("Contract") to serve children with special health care needs through the CMSN Plan. The Contract and its attachments, as referenced in the Contract, contain all the terms and conditions agreed upon by the parties.

17. Section III of Attachment I to the Contract addresses eligibility and enrollment in the CMSN Plan. Section III(B)2. of Attachment 1 to the Contract, provides as follows:

> **2. Enrollment in the CMSN Plan as a Specialty Plan**
>
> **a. Specialty Population Identification**
>
> (1) The [AHCA] shall identify the specialty population eligible for enrollment in the CMSN Plan based on the nightly (Monday through Friday) electronic eligibility data from DOH.

(2) The CMSN Plan shall ensure that only the following children are submitted to [AHCA] as children with chronic conditions:

(a) Children identified by DOH as having met the clinical criteria specified through an [AHCA]-approved clinical screening tool or having met the clinical criteria for enrollment in another Children's Medical Services program provided the [ACHA] has approved the enrollment criteria as appropriate for enrollment in the CMSN Plan.

(b) If a recipient is enrolled in Medicaid under an SSI eligibility assistance category, DOH shall ensure that the clinical screening is still performed for enrollment in the CMSN Plan. The clinical screening must be completed in full and cannot be waived.

(3) The agency shall update FMMIS to indicate recipient eligibility for the CMSN Plan on the penultimate Saturday of each month.

b. Plan-Specific Verification and Eligibility

(1) The CMSN Plan shall have policies and procedures, subject to [AHCA] approval, to verify the eligibility criteria of each enrolled recipient.

(a) The CMSN Plan shall submit policies and procedures regarding screening for clinical eligibility prior to implementation of such policies and procedures and any changes in the [AHCA]-approved clinical screening tool.

(b) The DOH shall submit its clinical screening tool and referral policies and procedures for review by the [AHCA] by April 1 of each year. If no changes have been made to the screening tool or the referral policies and procedures, DOH shall include a statement to that effect.

> (2) Policies and procedures regarding screening for clinical eligibility must include:
>
> (a) Timeframes for verification of clinical eligibility criteria;
>
> (b) Mechanisms for reporting the results of the clinical eligibility screening to the [AHCA];
>
> (c) Mechanisms for submitting disenrollment requests for enrollees that do not meet specialty population eligibility criteria; and
>
> (d) Such other verifications, protocols, or mechanisms as may be required by the [AHCA] to ensure enrolled recipients meet defined eligibility criteria.

The Department's CMSN Clinical Eligibility Screening Guide (Version 12)

18. The subject of this proceeding is Joint Exhibit No. 5: CMSN Clinical Eligibility Screening Guide (Version 12)("Screening Tool"). The Department created the Screening Tool to ensure that children enrolled in the CMSN Plan meet the clinical criteria for participation in the plan.

19. CMSN submitted the Screening Tool to AHCA for approval, and it was approved for use pursuant to the Contract.

20. The Screening Tool became effective subsequent to the effective date of Section III of Attachment 1 to the Contract.

21. The Screening Tool does not reference the Contract, and the Screening Tool is not part of the Contract.

22. The Department began using the Screening Tool in May 2015.

23. Pursuant to the Contract, all 77,990 current participants and all potential participants in the CMSN Plan must be screened to determine their clinical eligibility for the CMSN Plan using the Screening Tool.

24. All Petitioners in this proceeding have been screened through use of the Screening Tool. Respondent stipulates that each Petitioner has standing to bring this proceeding.

25. CMSN nurse care coordinators have called parents of children who participate in the CMSN Plan and have asked those parents the questions in the Screening Tool to determine their CMSN eligibility.

26. The Screening Tool is the primary screening tool used to determine clinical eligibility, and the questions in the Screening Tool are not to be altered or amended in any way by the nurse care coordinators.

27. In determining CMSN clinical eligibility, a "[p]arent/guardian must answer yes to all parts of question 3 (functional limitations and chronicity) . . . AND [a] [p]arent/guardian must answer yes to all parts of at least one other question (dependency or service usage and chronicity)."

28. Following the screening of Petitioners, a CMSN nurse care coordinator orally informed Petitioners' parents about their

child's continued eligibility based on the responses to the Screening Tool.

29. Since the implementation of the Screening Tool, at least 5,922 children have been determined to be clinically ineligible for the CMSN Managed Medical Assistance specialty plan.

30. The Screening Tool does not contain any language that instructs nurse care coordinators to orally inform the parents of the option to have an additional screening tool.

31. The Screening Tool has not been adopted by the Department as a rule pursuant to section 120.54.

32. No evidence was presented that rulemaking is not feasible or practicable.

CONCLUSIONS OF LAW

33. DOAH has jurisdiction over the parties and subject matter of this proceeding pursuant to section 120.56(4), Florida Statutes.

34. Section 120.56(4)(a) authorizes any person who is substantially affected by an agency statement to seek an administrative determination that the statement is actually a rule whose existence violates section 120.54(1)(a) because the agency has not formally adopted the statement. Section 120.54(1)(a) declares that "[r]ulemaking is not a matter of agency discretion" and directs that "[e]ach agency statement

defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable."

35. Section 120.52(16) defines the term "rule," in pertinent part, as:

> each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

36. To be a rule, a statement of general applicability must operate in the manner of a law. Thus, an agency statement is "generally applicable" if it is intended by its own effect to create rights, or to require compliance, or otherwise to have the direct and consistent effect of law. Coventry First, LLC v. Off. of Ins. Reg., 38 So. 3d 200, 203 (Fla. 1st DCA 2010); Jenkins v. State, 855 So. 2d 1219, 1225 (Fla. 1st DCA 2003).

37. Section 120.56(4)(c) authorizes the administrative law judge ("ALJ") to enter a final order determining that all or part of a challenged statement violates section 120.54(1)(a). The ALJ is not authorized to decide, however, whether the statement is an invalid exercise of delegated legislative authority as defined in section 120.52(8)(b) through (f). Thus, in a section 120.56(4) proceeding, it is not necessary or even appropriate for the ALJ to

decide whether an unadopted rule exceeds the agency's grant of rulemaking authority, for example, or whether it enlarges, modifies, or contravenes the specific provisions of law implemented, or is otherwise "substantively" an invalid exercise of delegated legislative authority.

38. Section 120.56(4) is forward-looking in its approach. It is designed to prevent future or recurring agency action based on an unadopted rule, not to provide relief from final agency action that has already occurred. Thus, if a violation is found, the agency must, pursuant to section 120.56(4)(d), "immediately discontinue all reliance upon the statement or any substantially-similar statement as a basis for agency action." See, e.g., Ag. for Health Care Admin. v. HHCI Ltd., 865 So. 2d 593, 596 (Fla. 1st DCA 2004).

39. In Jenkins v. State, 855 So. 2d 1219 (Fla. 1st DCA 2003), the Florida Department of Law Enforcement's ("FDLE") certificate of accuracy ("COA") form that contained standards for the proper concentrations of alcohol breathalyzer testing solutions was challenged as an unadopted rule. The court held that the creation and use of the COA form was an unadopted rule because it included definitive policies of general application utilized by FDLE in determining the accuracy of stock solutions which, in turn, affected the rights of DUI defendants. Id. at 1225.

40. In Department of Business Regulation v. Martin County Liquors, 574 So. 2d 170 (Fla. 1st DCA 1991), the Department of Business Regulation, Division of Alcoholic Beverages and Tobacco ("DABT"), required applicants for an alcoholic beverage license to complete an application, consisting of eight questions which could be answered yes or no regarding the type of business premises, its location and ownership. The application also required the submission of information regarding any rental, lease, or sublease agreements and documents to support the financial arrangements for the premises at which the license would be utilized.

41. Although a statute gave DABT the authority to investigate applications both as to the qualifications of applicants and as to the premises and location to be licensed, there was no specific statutory authority explicitly requiring an applicant to provide right-of-occupancy information or submit documentation supporting financial arrangements. Id. at 173. Accordingly, the court held that DABT's requirement that an applicant file right-of-occupancy information and submit documentation verifying any financial arrangements met the definition of a rule, and was illegal because it was not adopted through formal rulemaking procedures. Id.

42. In Department of Revenue v. Vanjaria Enters, 675 So. 2d 252 (Fla. 5th DCA 1996), the Department of Revenue ("DOR") purported to subject a taxpayer to sales tax based on calculations

pursuant to a procedure set forth in its sales and use tax training manual. The court held that DOR's tax assessment procedure was a "rule" because it was a "statement of general applicability that implements, interprets, or prescribes law or policy." Id. at 255. Specifically, the court found that DOR's tax assessment procedure created its entitlement to taxes while adversely affecting property owners, with the training manual being the sole guide for auditors in their assessment of multiple-use properties. In determining exempt versus nonexempt uses of multiple-use properties, DOR's auditors strictly complied with the procedure set forth in the training manual for all audits performed. Moreover, DOR auditors were not afforded any discretion to take action outside the scope of the training manual. Id.

43. Turning to the instant case, the undisputed facts demonstrate that the Screening Tool meets the definition of a rule because it is a statement of general applicability that implements, interprets, or prescribes law or policy. The undisputed facts demonstrate that the Department created the Screening Tool to ensure that children enrolled in the CMSN Plan meet the clinical criteria for participation in the plan. The Screening Tool sets forth specific criteria to determine eligibility. The Screening Tool is the primary instrument used

to determine ongoing CMSN eligibility; yet, it has not been adopted through rulemaking procedures.

44. All current and potential participants in the CMSN Plan must be screened to determine their clinical eligibility for the CMSN Plan using the Screening Tool. The questions in the Screening Tool cannot be altered or amended in any way by the nurse care coordinators.

45. Because the Screening Tool determines clinical eligibility for all current and potential participants in the CMSN Plan, the tool directly affects the rights of such persons.

46. In its Proposed Final Order, the Department does not argue that the Screening Tool is not a rule. Nor does the Department contend that rulemaking is not feasible or practicable.

47. Instead, the Department contends there is no need for it to engage in rulemaking, because the Screening Tool is exempt from the rulemaking requirements in chapter 120.

48. According to the Department, because the Contract is exempt from rulemaking pursuant to section 409.961, and the Contract requires the creation and use of an AHCA-approved screening tool for determining Medicaid eligibility for the CMSN Plan, it therefore follows that the Screening Tool is exempt from rulemaking.

49. The Department's reliance on section 409.961 is misplaced. Section 409.961 provides as follows:

> **409.961 Statutory construction; applicability; rules.--**
>
> It is the intent of the Legislature that if any conflict exists between the provisions contained in this part and in other parts of this chapter, the provisions in this part control. Sections 409.961-409.985 apply only to the Medicaid managed medical assistance program and long-term care managed care program, as provided in this part. The agency shall adopt any rules necessary to comply with or administer this part and all rules necessary to comply with federal requirements. In addition, the department shall adopt and accept the transfer of any rules necessary to carry out the department's responsibilities for receiving and processing Medicaid applications and determining Medicaid eligibility and for ensuring compliance with and administering this part, as those rules relate to the department's responsibilities, and any other provisions related to the department's responsibility for the determination of Medicaid eligibility. Contracts with the agency and a person or entity, including Medicaid providers and managed care plans, necessary to administer the Medicaid program are not rules and are not subject to chapter 120.

50. Contrary to the Department's contention, the exemption from rulemaking with regard to the Contract itself does not extend to statements of general applicability (which meet the definition of a rule) required to be created by the Contract. There is a distinction between a rule and a contract, which the Legislature envisioned when it enacted section 409.961.[2/]

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Children's Medical Services Network ("CMSN") Clinical Eligibility Screening Guide (Version 12) constitutes an unadopted rule whose existence violates section 120.54(1)(a), Florida Statutes, because the statement has not been adopted through formal rulemaking procedures. Respondent, Department of Health, is hereby ordered to immediately cease using the Screening Tool as a method of determining eligibility.

DONE AND ORDERED this 22nd day of September, 2015, in Tallahassee, Leon County, Florida.

DARREN A. SCHWARTZ
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of September, 2015.

ENDNOTES

[1/] Unless otherwise indicated, all citations to the Florida Statutes are to the 2015 version.

[2/] The Department's reliance on OBS Co. v. Pace Construction Corp., 558 So. 2d 404 (Fla. 1990), and Management Computer Controls, Inc. v. Charles Perry Construction, 743 So. 2d 627 (Fla. 1st DCA 1999), is misplaced. Neither case involved a chapter 120 proceeding. Moreover, the Contract in the instant case does not describe the specific eligibility criteria or adopt the specific eligibility criteria by reference. Likewise, the Screening Tool does not reference the Contract. Indeed, the Screening Tool had not been approved by AHCA when the Contract became effective.

COPIES FURNISHED:

Paolo G. Annino, Esquire
Justin Karpf
Steven Reardon
Megan Shoemaker
FSU College of Law
Public Interest Law Center
425 West Jefferson Street
Tallahassee, Florida 32306-1601
(eServed)

Matthew W. Dietz, Esquire
Law Offices of Matthew W. Dietz, P.L.
2990 Southwest 35th Avenue
Miami, Florida 33133
(eServed)

Jay Patrick Reynolds, Esquire
Florida Department of Health
Prosecution Services Unit
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399
(eServed)

Donna Elizabeth Blanton, Esquire
Angela D. Miles, Esquire
Radey Law Firm, P.A.
301 South Bronough Street, Suite 200
Tallahassee, Florida 32301
(eServed)

Shannon Revels, Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399-1703
(eServed)

Daniel Hernandez, Interim General Counsel
Department of Health
4052 Bald Cypress Way, Bin A-02
Tallahassee, Florida 32399-1701
(eServed)

John H. Armstrong, M.D., F.A.C.S.
State Surgeon General
Department of Health
4052 Bald Cypress Way, Bin A-00
Tallahassee, Florida 32399-1701
(eServed)

Ernest Reddick, Chief
Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250
(eServed)

Alexandra Nam
Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, Florida 32399-0250
(eServed)

Ken Plante, Coordinator
Joint Administrative Procedures
Committee
Room 680, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1400
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.