

**PROPOSED REGULATION OF THE
ADMINISTRATOR OF THE
AGING SERVICES DIVISION OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R167-06

September 5, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-41, NRS 427A.070 and 427A.175.

A REGULATION relating to aging persons; establishing regulations relating to complaints filed by older patients for property damage against certain facilities and agencies that provide care for older patients; establishing a hearing process for such complaints; and providing other matters properly relating thereto.

Section 1. Chapter 427A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 41, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 41, inclusive, of this regulation, the words and terms defined in sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Complainant” means an older patient who files a complaint pursuant to NRS 427A.175.*

Sec. 4. *“Division” means the Aging Services Division of the Department of Health and Human Services.*

Sec. 5. *“Older patient” has the meaning ascribed to it in NRS 449.063.*

Sec. 6. *“Person” means a natural person, partnership, association, corporation or other public or private entity.*

Sec. 7. *“Respondent” means a facility or agency against which a complaint has been filed pursuant to NRS 427A.175.*

Sec. 8. *“Specialist” means the Specialist for the Rights of Elderly Persons appointed pursuant to NRS 427A.1232.*

Sec. 9. *The provisions of sections 2 to 41, inclusive, of this regulation:*

1. Govern all practice and procedure for a complaint filed by an older patient for damage to property pursuant to NRS 427A.175 and for the investigation and hearing of that complaint; and

2. Must be liberally construed to secure a just, speedy and economical determination of all issues presented to the Administrator of the Division and the Specialist.

Sec. 10. *Each provision of sections 2 to 41, inclusive, of this regulation is hereby declared to be severable and the invalidity of any provision does not affect the validity of any other provision.*

Sec. 11. *In special cases, upon a showing of good cause, the Specialist may permit deviation from the requirements set forth in sections 2 to 41, inclusive, of this regulation if compliance is impractical or unnecessary.*

Sec. 12. *Formal written communications and documents must be addressed to the Specialist and shall be deemed to be received officially only when delivered to the Specialist.*

Sec. 13. *Notices, findings of fact, opinions and decisions of the Specialist, and any document filed by a party, may be served by mail. Service shall be deemed to be complete when*

a true copy of the document, properly addressed and with postage paid, is deposited with the United States Postal Service.

Sec. 14. *Each document that is required to be served must contain an acknowledgment of service or certificate of mailing.*

Sec. 15. *The time within which any act required by sections 2 to 41, inclusive, of this regulation must be accomplished is computed by excluding the first day and including the last day unless the last day is a Saturday, Sunday or legal holiday, in which case the next business day is the last day of the time limit.*

Sec. 16. *Each pleading must be:*

- 1. Designated as a complaint, answer or motion; and*
- 2. Signed by the party submitting it.*

Sec. 17. *1. An original and two legible copies of each pleading must be filed with the Specialist in all matters before him.*

2. The Specialist may direct that the party who filed a pleading make copies of it available to any other person who has requested copies, if the Specialist first determines that the person making the request may be affected by the proceeding.

Sec. 18. *The Specialist may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings must be liberally construed and defects that do not affect a substantial right of a party must be disregarded.*

Sec. 19. *1. An older patient who wishes to file a complaint pursuant to NRS 427A.175 must file two copies of the complaint with the Division within 1 year after the older patient sustains damage to his property. The complaint must be in writing and signed and verified by the complainant.*

2. A complaint must be stated with sufficient particularity to enable the respondent to prepare a defense.

Sec. 20. 1. Within 10 days after the Division receives a complaint, the supervisor of the region in which the respondent is located shall contact the complainant or his representative to schedule a settlement conference in accordance with subsection 2 of NRS 427A.175 with the Administrator of the Division or his designee to attempt to resolve the matter without the necessity of a hearing.

2. The Administrator of the Division or his designee shall:

(a) Preside at the conference; and

(b) Complete a report on the outcome of the conference.

3. The conference does not affect the right of the complainant or respondent to a hearing.

Sec. 21. 1. A respondent has 10 days after being served a complaint in which to file his answer with the Specialist, regardless of whether a settlement conference is scheduled pursuant to section 20 of this regulation.

2. If the respondent fails to answer within 10 days, he shall be deemed to have denied generally the allegations contained in the complaint.

3. If no answer is filed and a hearing is requested pursuant to section 22 of this regulation, the hearing will proceed solely upon the issues set forth in the complaint, unless the hearing is continued to a future date by order of the Specialist.

Sec. 22. 1. If a settlement is not reached pursuant to subsection 2 of NRS 427A.175 and the complainant or respondent requests a hearing, the hearing must be before the Specialist.

2. Notice of the place, date and hour of a hearing must be served at least 20 days before the date set for the hearing.

3. *A hearing which has previously been continued may be rescheduled with at least 10 days' notice.*

4. *Each hearing must be held at a place in the State designated by the Specialist in the notice of hearing.*

Sec. 23. *At any hearing, each party may enter appearances, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the proceeding.*

Sec. 24. *A party may enter an appearance at the beginning of a hearing or at any time designated by the Specialist by giving his name and address and stating his position or interest to the Specialist. The appearance must be recorded in the transcript of the hearing.*

Sec. 25. 1. *If the complainant or the respondent fails to appear at a scheduled hearing and no continuance has been requested or granted, the Specialist may hear the evidence of witnesses who have appeared and may proceed to consider the matter and dispose of it on the basis of the evidence before him.*

2. *Any person who fails to appear for a scheduled hearing or to request a continuance because of accident, sickness or other reasonable cause may, within 15 days after the failure, apply to the Specialist to reopen the proceedings.*

3. *The Specialist, upon finding the cause to reopen the proceedings sufficient and reasonable, will immediately fix a time and place for the rescheduled hearing and give notice thereof.*

4. *At the time and place fixed, a second hearing must be held at which the person who requested the second hearing may testify in his own behalf or present other evidence beneficial to his cause.*

5. Witnesses who have previously testified are not required to appear at a second hearing on the same matter unless so directed by the Specialist.

Sec. 26. Each party to a hearing, his counsel and all spectators shall conduct themselves in a respectful manner.

Sec. 27. The Specialist will call the proceeding to order, take the appearances and make any introductory remarks. Each party may then make an opening statement.

Sec. 28. Matters must be heard at a hearing in the following order:

- 1. The opening statements of the complainant and the respondent.*
- 2. The presentation of the case of the complainant, followed by cross-examination.*
- 3. The presentation of the case of the respondent, if any, followed by cross-examination.*
- 4. The rebuttal testimony by the complainant, if any.*
- 5. The rebuttal testimony by the respondent, if any.*
- 6. The closing arguments, in the following order:*
 - (a) The argument of the complainant.*
 - (b) The argument of the respondent.*
 - (c) The rebuttal argument of the complainant.*

Sec. 29. 1. In conducting a hearing, the Specialist is not bound by the Nevada Rules of Civil Procedure and an informality in any proceeding or in the manner of taking of testimony does not invalidate any decision the Specialist issues.

2. The Nevada Rules of Civil Procedure may be generally followed, but may be relaxed by the Specialist if deviation from those rules of evidence will aid in ascertaining the facts.

3. If an objection is made to the admissibility of evidence, the evidence may be received but it is subject to any subsequent ruling of the Specialist.

4. The Specialist may exclude inadmissible, incompetent, cumulative or irrelevant evidence.

5. A party objecting to the introduction of evidence shall briefly state the grounds of the objection at the time the evidence is offered.

6. Evidence admitted at hearings must be material and relevant to the issues.

Sec. 30. *All testimony to be considered in a hearing must be taken under oath. Before taking the witness stand, each person must swear before the Specialist to the truthfulness of the testimony he is about to give in the hearing.*

Sec. 31. 1. *The Specialist may consolidate two or more proceedings into one hearing if it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by consolidation.*

2. The Specialist will determine the order of procedure in a consolidated hearing.

Sec. 32. *The Specialist may, before or during a hearing, and on a proper showing, grant continuances for submission of further proof of any matter or for any other just cause.*

Sec. 33. 1. *With the approval of the Specialist, the parties may stipulate to any fact at issue by a written stipulation introduced in evidence as an exhibit or by oral statements shown upon the record.*

2. Any stipulation is binding upon all parties to it and may be treated as evidence at the hearing.

3. The Specialist may demand proof by requiring evidence of the facts stipulated.

Sec. 34. 1. *The Specialist may order briefs to be filed and specify a time limit for their filing.*

2. *Three copies of any requested brief must be filed with the Specialist in matters before him.*

3. *Each brief must be accompanied by an acknowledgment of service or a certificate of mailing to other parties of record.*

4. *After the filing of briefs and the deciding of contested motions, the Specialist may set the matter for oral argument and give reasonable notice to all parties.*

Sec. 35. *The Specialist may take official notice of:*

1. *The rules, regulations, official reports, decisions and orders of any regulatory agency of the State.*

2. *Matters of common knowledge and established technical or scientific facts.*

3. *Official documents, if relevant and properly introduced into the record of formal proceedings by reference. A proper and definite reference to the documents must be made by the party offering them, and the documents must be published and generally circulated so that the parties in interest may examine the documents and present rebuttal evidence.*

Sec. 36. *The Specialist will cause a record to be made of all formal hearings. Any party who wishes to secure a copy of the record may obtain it from the Specialist upon payment of the proper fee.*

Sec. 37. *Unless otherwise ordered, a proceeding stands submitted for decision by the Specialist after the taking of evidence, the filing of briefs or the presentation of oral argument required by the Specialist.*

Sec. 38. 1. *The Specialist will issue a decision not later than 60 days after the hearing.*

2. *The Specialist will mail or personally deliver a copy of the decision to the Administrator of the Division and each party of record or his representative.*

3. *Additional copies of the decision may be obtained by making a written request to the Specialist.*

Sec. 39. 1. *The Specialist shall summarize the proceedings in a written report using the following format:*

A. *INTRODUCTION—The date, time and place of the hearing and the name of each person present at the hearing.*

B. *NATURE OF CASE—Overview of the issues presented during the hearing.*

C. *FINDINGS OF FACT—The facts of the case as determined by the Specialist.*

D. *CONCLUSIONS OF LAW—The laws, regulations, procedural rules and policies which support the findings and decision of the Specialist.*

E. *DECISION—The decision of whether the respondent is liable for damages to the complainant and, if the respondent is liable for damages, the amount of the surety bond pursuant to NRS 449.065 or the substitute for the surety bond necessary to pay for the damages pursuant to NRS 449.067 to be released to the Division.*

2. *The Specialist shall submit the written report prepared pursuant to this section to the Administrator of the Division with the case record required pursuant to section 40 of this regulation.*

Sec. 40. 1. *The Specialist shall keep the record of each hearing that he conducts which contains:*

(a) *All correspondence that the Specialist has received regarding the subject matter of the hearing;*

(b) All exhibits presented and accepted during the hearing; and

(c) A narrative log of all contacts that the Specialist has had with the complainant or his representative, the respondent, members of the staff of the Division, or legal counsel for any of the participants in the hearing.

2. The case record established by the Specialist constitutes the official record of the hearing.

3. After the Specialist has rendered a decision, he shall submit the case record and the audiotape recording of the hearing to the office of the Division in Carson City. That office shall retain the record of the hearing and the audiotape recording for:

(a) Four years after the date of the decision; or

(b) Until the resolution of a judicial review of the decision,

↳ whichever occurs later.

Sec. 41. *Any person aggrieved by a decision issued pursuant to a hearing held pursuant to NRS 427A.175 may appeal to the Administrator of the Division whose decision on the appeal is a final decision.*