

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

LCB File No. R197-09

May 19, 2010

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

AUTHORITY: §1, NRS 427A.723 and 427A.733; §2, NRS 427A.723; §§3-13, NRS 427A.733.

A REGULATION relating to intermediary service organizations; providing for the issuance of a provisional certificate; establishing a complaint and appeals process for applicants and certificate holders who are aggrieved by certain actions of the Aging and Disability Services Division of the Department of Health and Human Services; 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 13, inclusive, of this regulation.

Sec. 2. 1. *The Division may issue a provisional certificate to an intermediary service organization pursuant to NRS 427A.723 if the Division determines that the intermediary service organization is substantially, but not fully, in compliance with NRS 427A.701 to 427A.745, inclusive, and NAC 427A.800 to 427A.871, inclusive, and sections 2 to 13, inclusive, of this regulation.*

2. A provisional certificate issued pursuant to subsection 1:

(a) Expires 90 days after its issuance unless, within the 90-day period, the Division issues a nonprovisional certificate to the intermediary service organization.

(b) Is nonrenewable.

3. The Division will provide in writing to each intermediary service organization which is issued a provisional certificate pursuant to subsection 1 the conditions that the intermediary service organization must meet before the Division will issue a nonprovisional certificate.

Sec. 3. 1. An applicant for a certificate to operate an intermediary service organization or a person who is certified to operate an intermediary service organization may submit a written request to the Administrator or the Administrator's designee for an administrative review of a complaint if the complainant:

(a) Has a legitimate grievance with any action of the Division in the certification process; and

(b) Has not resolved the grievance through informal negotiations with an officer of the Division.

2. Not later than 30 days after the occurrence of the action that is the cause of the grievance of the complainant, a request for an administrative review must be mailed by registered or certified mail, return receipt requested, to the Administrator or the Administrator's designee.

3. A request for an administrative review must include:

(a) The date of the occurrence of the action which is the cause of the grievance of the complainant;

(b) A statement of the complaint, including each issue that the complainant considers relevant to the complaint;

(c) A statement of each resolution of the complaint offered by the complainant;

(d) Citations to the statutes or regulations, if any, which pertain to the complaint;

(e) A statement which supports the position of the complainant;

(f) The mailing address and telephone number of the complainant; and

(g) The signature of the complainant and the date of the signature.

Sec. 4. *The Administrator or the Administrator's designee shall conduct an administrative review at a time and place which is reasonable for the parties. Unless otherwise scheduled to accommodate the complainant, the Administrator or the designee shall conduct an administrative review within 10 days after the Administrator or the designee receives a request for an administrative review pursuant to section 3 of this regulation.*

Sec. 5. *An administrative review must be:*

1. Conducted informally without attorneys or witnesses.

2. Based on the record available, except that the complainant may, upon the complainant's request, appear and present additional facts.

Sec. 6. *1. Not later than 15 days after an administrative review, the Administrator or the Administrator's designee shall issue a written decision, including the findings of fact and conclusions of law concerning the complaint and any appropriate orders.*

2. The Division will mail the written decision to the complainant by registered or certified mail, return receipt requested, or a representative of the Division may personally deliver the decision to the complainant and read it to the complainant. If the decision is personally delivered to the complainant, the complainant shall date and sign a copy of the decision as an acknowledgment of the receipt.

Sec. 7. *1. Not later than 15 days after receipt of a written decision on a complaint, a complainant may submit a written request to the Administrator for a hearing on the complaint. The request must be mailed to the Administrator by certified or registered mail, return receipt requested.*

2. The written request for a hearing must include a copy of the original complaint filed by the complainant.

Sec. 8. *1. Not later than 30 days after the Administrator receives a written request for a hearing, a hearing officer appointed by the senior hearings officer of the Hearings Division of the Department of Administration shall conduct a hearing at a time and location that is reasonable for the parties. The hearing officer must not have any personal involvement in the complaint.*

2. Not less than 10 days before the date of the hearing, the Aging and Disability Services Division will, in accordance with NRS 233B.121, provide to all parties notice of the time, date and place of the hearing.

Sec. 9. *1. The complainant may be represented at the hearing by an attorney or another person designated by the complainant.*

2. The hearing officer is not bound by the technical rules of evidence. Decisions concerning the admissibility of evidence must be made in accordance with NRS 233B.123.

3. Each party must be granted the opportunity to present the party's case, examine and cross-examine witnesses, and rebut evidence.

Sec. 10. *Unless otherwise provided by statute, a complaint may be resolved by arbitration, mutual agreement of the parties, settlement, consent decree or default of a party.*

Sec. 11. *1. A final decision by a hearing officer on a complaint must be in writing or stated in the record. A final decision must include findings of fact and conclusions of law. Findings of fact must include a statement of the facts which support the findings.*

2. Not more than 30 days after a final decision is made, a party may appeal the final decision of the hearing officer and request judicial review pursuant to NRS 233B.130 to 233B.150, inclusive.

Sec. 12. *The record of the hearing must include:*

- 1. The transcript of the oral testimony provided at the hearing;*
- 2. All pleadings and motions filed by the parties;*
- 3. Any rulings made by the hearing officer, including rulings on offers of proof;*
- 4. Evidence that was admitted;*
- 5. Facts which were officially noticed by the hearing officer; and*
- 6. Any other decision, opinion or report of the hearing officer.*

Sec. 13. *Upon request of a party, the Division will provide a transcript of the oral proceedings of the hearing. The Division may require payment of the cost incurred for providing the transcript.*