

LCB File No. R197-09

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

**INTERMEDIARY SERVICE ORGANIZATION TO PROVIDE
PERSONAL CARE SERVICES IN THE HOME**

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

General Provisions

Section 1. Chapter 427A of NAC is hereby amended by adding thereto the provisions set forth as section 1, inclusive, of these regulations.

Sec. 2. Definitions:

1. *“Division” means the Aging and Disability Services Division of the Department of Health and Human Services.* ~~[“Office” means the Office of Disability Services of the Department of Health and Human Services.]~~

Sec. 53. Conditional Certification: (the following will replace the entire current section 53, related to Provisional Certification)

1. *If, during the process of certification or re-certification, the Division finds that an intermediary service organization is substantially, but not fully compliant with the provisions of the applicable statutes and regulations, the Division may issue a conditional certification for up to 90 days, contingent upon the intermediary service organization meeting the conditions, issued in writing by the Division, necessary to bring the intermediary service organization into full compliance.*

Sec. 54. Appeals Process:

Request for administrative review of complaint.

1. A person who is certified to operate an intermediary service organization may submit a written request to the Division Administrator or his designee for an administrative review of a complaint, if the certificate applicant:

- 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 certificate applicant, a request for an administrative review must be mailed by registered or certified mail, return receipt requested, to the Administrator or his designee.

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 certificate applicant;*
- b. A statement of the complaint, including each issue that the certificate applicant considers relevant to the complaint;*
- c. A statement of each resolution of the complaint offered by the certificate applicant;*
- d. Citations to the statutes or regulations, if any, which pertain to the complaint;*
- e. A statement which supports the position of the certificate applicant;*
- f. The mailing address and telephone number of the certificate applicant; and*
- g. The signature of the certificate applicant and the date of his signature.*

Time and location of administrative review.

- 1. The Administrator or his designee shall conduct an administrative review at a time and place which is reasonable for the parties. Unless otherwise scheduled to accommodate the certificate applicant, the Administrator or his designee shall conduct an administrative review within 10 business days after the Administrator or his designee receives a request for an administrative review.*

Procedure for administrative review.

- 1. An administrative review must be:
 - a. Conducted informally without attorneys or witnesses;*
 - b. Based on the record available, except that the certificate applicant may, upon his request, appear and present additional facts.**

Issuance and delivery of written decision.

- 1. Not later than 15 business days after an administrative review, the Administrator or his designee shall issue a written decision, including his findings of fact and conclusions of law concerning the complaint and any appropriate orders.*
- 2. The Division will mail the written decision to the certificate applicant by registered or certified mail, return receipt requested, or a representative of the Division may personally deliver the decision to the certificate applicant. If the decision is personally delivered to the certificate applicant, the certificate applicant shall date and sign a copy of the decision as an acknowledgment of the receipt.*

Request for hearing after written decision.

- 1. Not later than 15 business days after receipt of a written decision on a complaint, a certificate applicant 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 certificate applicant.*

Conduct of hearing by hearing officer; notice of time, date and place of hearing.

- 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 have no personal involvement in the complaint.*
- 2. Not less than 10 days before the date of the hearing, the Division will, in accordance with NRS 233B.121, provide to all parties notice of the time, date and place of the hearing.*

Representation of certificate applicant at hearing.

- 1. The certificate applicant may be represented at the hearing by an attorney or another person designated by the certificate applicant.*

Rules of evidence.

- 1. 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.*

Rights of parties at hearing.

- 1. Each party must be granted the opportunity to present his case, examine and cross-examine witnesses, and rebut evidence.*

Methods of resolution.

1. *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.*

Final decision; appeal.

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 decision in accordance with the provisions of NAC 426.XXX.*

Record of hearing.

1. *The record of the hearing must include:*
 - a. *The transcript of the oral testimony provided at the hearing;*
 - b. *All pleadings and motions filed by the parties;*
 - c. *Any rulings made by the hearing officer, including rulings on offers of proof;*
 - d. *Evidence that was admitted;*
 - e. *Facts which were officially noticed by the hearing officer; and*
 - f. *Any other decision, opinion or report of the hearing officer.*

Transcript of proceedings.

1. *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.*

Judicial review or arbitration of final decision.

1. *A certificate applicant or the Division may appeal the final decision of a hearing officer and request judicial review pursuant to NRS 233B.130 to 233B.150, inclusive.*

2. *A certificate applicant may, in lieu of appealing the final decision of a hearing officer pursuant to NRS 233B.130 to 233B.150, inclusive, request arbitration pursuant to 34 C.F.R. § 395.13 not later than 20 days after service of the final decision of the hearing officer.*