

LCB File No. R167-06

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

**(Note that the text of this regulation was previously located in R163-06;
these sections have been removed from that regulation for separate consideration)**

***COMPLAINTS AGAINST CERTAIN FACILITIES AND AGENCIES
THAT PROVIDE CARE FOR OLDER PATIENTS
(NRS 427A.175; NRS 449.065)***

NAC 427A.175 Definitions. As used in NAC 427A.175 through NAC 427A.1782, inclusive, unless the context otherwise requires:

- 1. "Hearing officer" means the Specialist for the Rights of Elderly Persons of the Department of Health and Human Services, or a person designated by him.*
- 2. "Person" means a natural person, partnership, association, corporation or other public or private entity.*
- 3. "Complainant" is a resident claiming the loss or damage to his property as a result of any act or failure to act by a facility for long term care.*
- 4. "Respondent" means a facility against which a complaint has been filed.*

NAC 427A.1751 Scope and construction. The provisions of NAC 427A.175 through NAC 427A.1782:

- 1. Govern all practice and procedure for a hearing held pursuant to NRS 427A.175 and NRS 449.065 and;*
- 2. Must be liberally construed to secure a just, speedy and economical determination of all issues presented to the hearing officer.*

NAC 427A.1752 Severability. Each provision of NAC 427A.175 through 427A.1782, inclusive, is hereby declared to be severable and the invalidity of any provision does not affect the validity of any other provision.

NAC 427A.1753 Deviation from requirements. In special cases, upon a showing of good cause, the hearing officer may permit deviation from the requirements set forth in NAC 427A.175 through NAC 427A.1782 if compliance is impractical or unnecessary.

NAC 427A.1754 Communications to hearing officer. Formal written communications and documents must be addressed to the hearing officer and shall be deemed to be received officially only when delivered to the hearing officer.

NAC 427A.1755 Service of documents: Method. Notices, findings of fact, opinions and decisions of the hearing officer, 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.

NAC 427A.1756 Service of documents: Proof. Each document that is required to be served must contain an acknowledgment of service or certificate of mailing.

NAC 427A.1757 Computation of time. The time within which any act required by NAC 427A.175, through NAC 427A.1782 must be 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.

NAC 427A.1758 Pleadings: Designation; execution. Each pleading, if filed, must be:

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

NAC 427A.1759 Pleadings: Filing; availability.

1. An original and two legible copies of each pleading, if filed, must be filed with the hearing officer in all matters before him.

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

NAC 427A.1760 Pleadings: Amendment; construction. The hearing officer 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.

NAC 427A.1761 Complaints: Investigation; form, contents and filing; notice.

- 1. The complaint must be in writing and signed and verified by the person making it, and two copies must be filed with the specialist for the rights of elderly persons within 1 year after the act complained of was committed.*
- 2. A complaint must be stated with sufficient particularity to enable the respondent to prepare a defense.*
- 3. If, from the complaint, it appears that the charges may be well founded, the specialist for the rights of elderly persons shall send written notice to the respondent by certified mail at least 20 days before the date set for the hearing. The notice must set forth the complaint and the date of the hearing.*

NAC 427A.1762 Answers to complaints.

- 1. A respondent has 10 days after being served a complaint in which to file his answer with the hearing officer.*
- 2. If the respondent fails to answer within 10 days, he shall be deemed to have denied generally the allegations of the complaint.*
- 3. If no answer is filed, 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 hearing officer.*

NAC 427A.1763 Hearings: Presiding officer; location; notice.

- 1. A hearing held pursuant to NRS 427A.175 must be held before the hearing officer or a person designated by him.*
- 2. A hearing that has previously been continued may be reset on at least 10 days' notice.*

3. *Each hearing must be held at a place in the state designated by the hearing officer in the notice of hearing.*

NAC 427A.1764 Hearings: Rights of parties. At any hearing, each party may enter appearances, introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the proceeding.

NAC 427A.1765 Hearings: Appearance of parties. A party may enter an appearance at the beginning of a hearing or at any time designated by the hearing officer by giving his name and address and stating his position or interest to the hearing officer. The appearance must be recorded in the transcript of the hearing.

NAC 427A.1766 Hearings: Failure to appear.

1. *If the complainant or the respondent fails to appear at a scheduled hearing and no continuance has been requested or granted, the hearing officer 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 hearing officer to reopen the proceedings.*

3. *The hearing officer, upon finding the cause 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 hearing must be held at which the person 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 hearing officer.*

NAC 427A.1767 Hearings: Conduct of persons. Each party to a hearing, his counsel and all spectators shall conduct themselves in a respectful manner.

NAC 427A.1768 Hearings: Preliminary procedure. The hearing officer will call the proceeding to order, take the appearances and make any introductory remarks. Each party may then make an opening statement.

NAC 427A.1769 Hearings: Order of procedure. 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 respondent's case, if any, followed by cross-examination.*
- 4. The rebuttal testimony by the complainant, if any.*
- 5. The rebuttal testimony by respondent, if any.*
- 6. The closing arguments, in the following order:*
 - (a) The argument of the complainant, if any.*
 - (b) The argument of the respondent.*
 - (c) The rebuttal argument of the complainant.*

NAC 427A.1770 Hearings: Rules of procedure and evidence.

- 1. In conducting a hearing, the hearing officer is not bound by the Nevada Rules of Civil Procedure and no informality in any proceeding or in the manner of taking of testimony invalidates any decision he issues.*
- 2. The Nevada Rules of Civil Procedure may be generally followed, but may be relaxed by the hearing officer 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 hearing officer.*
- 4. The hearing officer 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.*

NAC 427A.1771 Hearings: Oaths of witnesses. All testimony to be considered in a hearing must be taken under oath. Before taking the witness stand, each person must swear before the hearing officer to the truthfulness of the testimony he is about to give in the hearing.

NAC 427A.1772 Hearings: Consolidation.

- 1. The hearing officer 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 hearing officer will determine the order of procedure in a consolidated hearing.*

NAC 427A.1773 Hearings: Continuances. The hearing officer 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.

NAC 427A.1774 Stipulations of parties.

- 1. With the approval of the hearing officer, 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 hearing officer may demand proof by requiring evidence of the facts stipulated.*

NAC 427A.1775 Briefs; setting matter for oral argument.

- 1. The hearing officer 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 hearing officer 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. Following the filing of briefs and after deciding contested motions, the hearing officer may set the matter for oral argument and give reasonable notice to all parties.*

NAC 427A.1776 Official notice. The hearing officer 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.*

NAC 427A.1777 Transcripts. The hearing officer will cause a record to be made of all formal hearings. Any party who wishes to secure a copy of the recording may obtain it from the hearing officer upon payment of the proper fee.

NAC 427A.1778 Submission of matter for decision. Unless otherwise ordered, a proceeding stands submitted for decision by the hearing officer after the taking of evidence, the filing of briefs or the presentation of oral argument required by the hearing officer.

NAC 427A.1779 Issuance of decision.

- 1. The hearing officer will issue a decision not later than 60 days after the hearing.*
- 2. The hearing officer will mail or personally deliver a copy of the decision to the Administrator and each party of record or his representative.*
- 3. Additional copies of the decision may be obtained by making a written request to the hearing officer.*

NAC 427A.1780 Report of reviewing officer summarizing proceedings.

1. A reviewing officer shall summarize the proceedings in a written report using the following format:

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

B. NATURE OF CASE—Overview of the issues presented during the administrative review.

C. FINDINGS OF FACT—The facts of the case as determined by the reviewing officer.

D. CONCLUSIONS OF LAW—The laws, regulations, procedural rules and policies that support the findings and decision of the reviewing officer.

E. DECISION—The decision to either uphold or overrule the action of the Division.

2. The reviewing officer shall submit the written report to the Administrator of the Division with the case record.

NAC 472A.1781 Case record of review; retention of case record and recording.

1. A reviewing officer shall keep a case record of each administrative review that he conducts which contains:

(a) All correspondence that the reviewing officer has received regarding the subject matter of the administrative review;

(b) All exhibits presented and accepted during the administrative review; and

(c) A narrative log of all contacts that the reviewing officer has had with the applicant or client or his representative, members of the staff of the Division, or legal counsel for any of the participants in the administrative review.

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

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

NAC 427A.1782 Appeal of decision. Any person aggrieved by a decision issued pursuant to a hearing held pursuant to NRS 427A.175 may appeal to the Administrator whose decision on the appeal is a final decision.