





STATE OF WEST VIRGINIA  
BUREAU OF SENIOR SERVICES

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Governor

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Ann M. Stottlemeyer  
Commissioner

[HTTP://WWW.STATE.WV.US/SENIORSERVICES/](http://www.state.wv.us/seniorservices/)

July 27, 2004

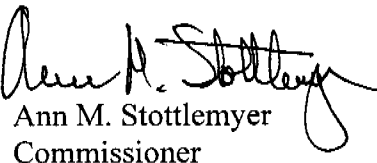
Ms. Judy Cooper, Director  
Administrative Law  
Secretary of State  
Building 1, Suite 157-K  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Dear Ms. Cooper:

The Bureau of Senior Services is hereby filing an amendment to the West Virginia Bureau of Senior Services Hearing and Appeals Procedure which is a Title 76 Series 1 Procedural Rule. Enclosed with the amendment is the Notice of Comment Period on a Proposed Rule, along with a brief summary and Appendix B Fiscal Note.

Thank you for your assistance with this matter. If you have any questions or need additional information, please let me know.

Sincerely,

  
Ann M. Stottlemeyer  
Commissioner

Enclosure

AMS/JB/vgs

## **WEST VIRGINIA BUREAU OF SENIOR SERVICES HEARING AND APPEALS PROCEDURE SUMMARY**

The West Virginia Bureau of Senior Services is amending the Title 76, Series 1 Procedural Rule currently titled the West Virginia Commission on Aging Hearing and Appeals Procedure. The amendments will reflect the name change to the West Virginia Bureau of Senior Services and adjust the procedures to appropriately reflect the new administrative structure of the agency.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Title 76 Procedural Rule Series 1, Hearing and Appeals Procedural

Type of Rule: \_\_\_\_\_ Legislative    \_\_\_\_\_ Interpretive      X   Procedural

Agency: West Virginia Bureau of Senior Services

Address: Holly Grove, Building 10

1900 Kanawha Blvd. E.

Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	N/A	N/A	N/A	N/A	N/A
<b>PERSONAL SERVICES</b>	N/A	N/A	N/A	N/A	N/A
<b>CURRENT EXPENSE</b>	N/A	N/A	N/A	N/A	N/A
<b>REPAIRS &amp; ALTERATIONS</b>	N/A	N/A	N/A	N/A	N/A
<b>EQUIPMENT</b>	N/A	N/A	N/A	N/A	N/A
<b>OTHER</b>	N/A	N/A	N/A	N/A	N/A

2. Explanation of Above Estimates:

The proposed rule will not create an increase or decrease on the economic impact of the agency.

3. Objectives of These Rules:

To amend the existing Hearing and Appeals Procedure to properly reflect the change from the West Virginia Commission on Aging to the West Virginia Bureau of Senior Services in both name and procedural requirements.

Rule Title: Title 76 Procedural Rule Series 1, Hearing and Appeals Procedural

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

N/A

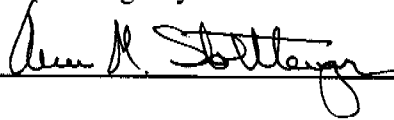
B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: July 27, 2004

Signature of Agency Head or Authorized Representative:



TITLE 76  
PROCEDURAL RULES  
WEST VIRGINIA ~~COMMISSION ON AGING~~  
BUREAU OF SENIOR SERVICES

SERIES 1  
HEARING AND APPEALS PROCEDURE

FILED  
2004 JUL 27 P 4:22  
WEST VIRGINIA  
SECRETARY OF STATE

**§76-1-1. General.**

1.1. Scope. -- These procedural rules govern ~~regional and state~~ West Virginia Bureau of Senior Services hearings and appeals process.

1.2. Authority. -- W. Va. Code ~~§29-14, §29A-5~~ 16 P and 45CFR

1.3. Filing Date. -- ~~July 1, 1986~~

1.4. Effective Date. -- ~~July 31, 1986~~

**§76-1-2. ~~Regional~~ Hearings and Appeals.**

2.1. The ~~Governing Board of the Area~~ the Area Agency on Aging ~~2AAA~~ shall provide an opportunity for a hearing to:

~~(a) Any nutrition project specified in Title III of the Older Americans' Act (1) which the Area Agency proposes to defund.~~

(b) Any any service provider whose contract/grant application to provide services under the area plan under the area plan is denied or whose subgrant or contract is suspended, terminated or not non-renewed.

2.2. ~~(c)~~ The Bureau of Senior Services shall provide an opportunity for a hearing where a service contract/grant between a service provider and the Bureau of Senior Services has been suspended, terminated, or non-renewed. Any hearing on this issue shall be conducted pursuant to Section 3.1 of this Rule and shall not involve the area agency.

~~2.2.~~ 2.3. Continuity of services Services. to:

~~2.2.1.~~ 2.3.1 During the hearing and appeal process, any service provider specified in ~~2.1.A.~~ 2.1. and 2.2. whose contract/grant is suspended, ~~or~~ terminated, or non-renewed shall:

(a) Continue operating until this hearing and appeal process is final and a decision rendered; ~~or provided, should~~ the Commissioner of the Bureau of Senior Services determine that termination of the contract should occur immediately, the Commissioner may order that the parties cease performance under the contract immediately.

(b) During unusual circumstances the ~~West Virginia Commission on Aging~~ Bureau of Senior Services shall determine if alternative contractual arrangements are necessary to assure that services continue. Should the Commissioner, in his or her discretion, determine that alternative contractual arrangements are necessary, the Commissioner shall take any and all appropriate action to ensure the continuation of necessary and appropriate services as required by West Virginia Code §16-5P-1 and 16-5P-6.

~~2.2.2. During the appeal process, a service provider specified in 2.1.B., whose application is not renewed, shall:~~

~~(a) Continue operating until this appeal process is final and a decision rendered; or~~

~~(b) During unusual circumstances, the West Virginia Commission on Aging shall determine alternative contractual arrangements to assure that services continue.~~

~~2.3.~~ 2.4. Request for Area Agency on Aging hearing.

~~2.3.1.~~ 2.4.1. If an entity wishes to appeal the decision of the ~~AAA Governing Board,~~ Area Agency on Aging, it must file a written request for an informal hearing to the ~~Governing Board~~ Area Agency on Aging within ~~five (5)~~ ten (10) working days after receipt of the adverse action. ~~A copy of this request shall also be sent to the AAA.~~

~~2.3.2.~~ 2.4.2. A written request for a hearing shall contain the following information:

(a) The name, address and telephone number of the complainant.

(b) A concise statement of the complaint.

(c) A statement of all relevant facts and the grounds on which the complaint is based.

(d) The relief being sought.

~~2.3.3.~~ 2.4.3. Within five (5) working days of the request, the ~~Governing Board~~ Area Agency on Aging shall schedule a hearing date. The hearing before the ~~Governing Board.~~ Area Agency on Aging shall be completed within thirty (30) days following receipt of the request.

~~2.3.4.~~ 2.4.4. The ~~Governing Board.~~ Area Agency on Aging shall notify the complainant, in writing, of the date, time and location of the hearing, allowing for at least ten (10) working days' notice.

~~2.3.5.~~ 2.4.5. The hearing shall be informal and shall provide for participation by the complainant and the

~~Executive Committee of the Advisory Council~~ Area Agency on Aging.

~~2.4.~~ 2.5. The Area Agency on Aging decision.

~~2.4.1.~~ 2.5.1. Within ~~three (3)~~ five (5) working days following the hearing, the ~~Governing Board~~ Area Agency on Aging shall issue a written decision notifying the complainant ~~and the Executive Committee of the Advisory Council~~ of its decision.

~~2.4.2.~~ 2.5.2. The decision shall include:

(a) A statement setting forth the reason(s) for and the evidence on which the decision was based;

(b) Any instructions necessary to facilitate implementation of the decision; and

(c) Instructions on how to appeal the decision.

**§76-1-3. State Request for Bureau of Senior Service Hearing/Appeal.**

3.1. The ~~State Commission on Aging (COA)~~ Bureau of Senior Services shall provide an opportunity for a hearing/appeal to:

3.1.1. ~~The Governing Board of the An~~ Area Agency on Aging when the ~~State Agency~~ Bureau of Senior Services proposes to:

(a) Disapprove the area plan or plan amendment submitted by the ~~Governing Board of the Area Agency on Aging~~ as specified in 45 C.F.R. §1321.39(b); or

(b) Withdraw the Area Agency ~~to~~ on Aging designation as a planning and service area as provided in 45 C.F.R. §1321.43.

(c) Suspend, terminate or non-renew the Area Agency on Aging grant/contract.

3.1.2. Any applicant for designation as a planning and service area under 45 C.F.R. §1321.39 whose application is denied.

3.1.3. Service providers identified in Section 2.2. whose contract/grant has been suspended, terminated, or non-renewed.

~~3.2.~~ 3.1.4. The ~~State COA~~ Bureau of Senior Services shall provide an opportunity to service providers to appeal the decision of the ~~Regional Governing Board~~ Area Agency on Aging as specified in Section 2.1. 2.1.A. and 2.1.B.

~~3.2.1. Any nutrition project specified in Title III of the Older Americans' Act (1) which the Area Agency proposes to defund.~~

~~3.2.2. Any service provider whose application to provide~~

~~services under an area plan is denied or whose subgrant or contract is suspended, terminated or not renewed.~~

~~3.3.~~ 3.2. Request for hearing.

~~3.3.1.~~ 3.2.1. If an entity wants a hearing/appeal, it must file a written request for a hearing with the ~~State COA~~ Bureau of Senior Services within ~~five (5)~~ ten (10) working days following the receipt of the notice of adverse action. ~~of the Governing Board.~~

~~3.3.2.~~ 3.2.2. A written request for a hearing shall contain the following information:

(a) The name, address and telephone number of the complainant.

(b) The name, address and telephone number of the respondent.

(c) A concise statement of the complaint.

(d) A statement of all relevant facts and the grounds on which the complaint is based.

(e) The relief being sought.

~~3.4.~~ Continuity of services.

~~3.4.1.~~ During the hearing process of an Area Agency ~~Governing Board or applicant specified in 2.1.A. and 2.1.B., the COA may:~~

~~(a) Perform the responsibilities of the Area Agency or~~

~~(b) Assign the responsibilities of the Area Agency on Aging to another agency in the planning and service area.~~

~~3.4.2.~~ During the appeal process of a nutrition project or service provider specified in Section 2.1.A. and 2.1.B., the service shall continue as specified in 2.2.1. or 2.2.2.

~~3.5.~~ 3.3. Scheduling of the hearing.

~~3.5.1.~~ 3.3.1. Upon receipt of a request for a hearing/appeal, hearing, the ~~State Agency (COA)~~ Bureau of Senior Services will appoint an impartial hearing examiner to conduct the hearing.

~~3.5.2.~~ 3.3.2. The ~~State Agency~~ Bureau of Senior Services must complete the hearing process within ~~fifteen (5)~~ sixty (60) working days of the date the request for hearing was received by the State Agency.

~~3.5.3.~~ 3.3.3. The hearing examiner shall notify the complainant and respondent, in writing, of the date, time and location of the hearing, allowing for at least ~~five (5)~~ ten (10) working days notice to be given to the parties and their representatives.

~~3.6.~~ 3.4. Prehearing discovery.

~~3.6.1.~~ 3.4.1. The hearing examiner shall disseminate a copy of the complainant's request for hearing to respondent and all relevant parties to the appeal.

~~3.6.2.~~ 3.4.2. The hearing examiner shall request, from the respondent, written statements in response to complainant's statement.

~~3.6.3.~~ 3.4.3. The hearing examiner shall see that all relevant parties have received written statements from all other relevant parties.

~~3.7.~~ 3.5. Conduct of the hearing.

~~3.7.1.~~ 3.5.1. A hearing examiner appointed by the ~~COA~~ Bureau of Senior Services shall preside at the hearing. ~~Technical rules~~ Rule of evidence shall not apply at such hearing.

~~3.7.2.~~ 3.5.2. The purpose of the hearing shall be:

(a) To give both complainant and respondent an opportunity to appear in person and present testimony, witnesses and documentary evidence relevant to the issue in question.

(b) To give both complainant and respondent an opportunity to cross-examine the opposing party's witnesses.

~~3.7.3.~~ 3.5.3. The hearing examiner shall have the following responsibilities:

(a) To assure that all documents and records presented or referred to during the course of the hearing are made part of the record.

(b) To assure that a stenographic and tape recording be made of all proceedings. The tape shall be retained for a period of one (1) year.

~~3.8.~~ 3.6. Order of the hearing.

~~3.8.1.~~ 3.6.1. The hearing examiner shall open with a statement of the following:

(a) The purpose of the hearing.

(b) The procedure the hearing will follow.

(c) The way the decision will be transmitted to the parties.

~~3.8.2.~~ 3.6.2. The hearing examiner shall ask each party to state the issue being contested.

~~3.8.3.~~ 3.6.3. The complainant or its representative shall present its case through witnesses or documentary evidence. The respondent shall be offered the opportunity to cross-examine any witness.

~~3.8.4.~~ 3.6.4. The respondent or its representative shall present its case through witnesses or documentary evidence. The complainant shall be offered an opportunity to cross-examine any witness.

~~3.8.5.~~ 3.6.5. At any time the hearing examiner may question any witness in order to clarify the witness' testimony.

~~3.8.6.~~ 3.6.6. The hearing examiner shall give each party an opportunity to make a closing statement before terminating the hearing. Both parties shall have the option of submitting written argument should they so choose.

~~3.8.7.~~ 3.6.7. The hearing may be adjourned and continued to another date at the discretion of the hearing examiner.

~~3.8.8.~~ 3.6.8. The ~~-COA~~ Bureau of Senior Services may terminate formal hearing procedures at any point if the ~~-COA~~ Bureau of Senior Services or the agency or organization that requested the hearing negotiated a written agreement that resolves the issues which led to the hearing.

~~3.9.~~ 3.7. The decision.

~~3.9.1.~~ 3.7.1. The hearing examiner shall submit an impartial, written recommendation to the ~~West Virginia Commission on Aging~~ Bureau of Senior Services, setting forth the reasons for and the evidence on which the recommendation is based. The recommendation shall be submitted within ~~three (3) working days~~ ten (10) working days following the conclusion of the hearing; provided, should the parties agree to waive this timeline, the parties, subject to the approval of the hearing examiner, may expand the period for issuance of the decision a reasonable period of time.

~~3.9.2.~~ 3.7.2. The ~~-COA~~ Bureau of Senior Services shall review the recommendation of the ~~Hearing Examiner~~ hearing examiner and render a decision.

~~3.9.3.~~ 3.7.3. The ~~-COA~~ Bureau of Senior Services shall issue the written decision within five (5) working days following the receipt of the hearing examiner's recommendations. ~~conclusion of the hearing.~~ The decision shall set forth the reasons for the decision and the evidence on which the decision is based, along

with any necessary instructions to facilitate the implementation of the decision.

~~3.9.4.~~ 3.7.4. Copies of the decision shall be sent to all parties.

~~3.10.~~ 3.8. Final appeal.

~~3.10.1.~~ 3.8.1. The hearing/appeal before the ~~COA~~ Bureau of Senior Services is final and exhausts all administrative remedies, with one (1) exception. Any applicant for designation in a planning and services area whose application is denied by the Bureau of Senior Services may appeal the denial to the Assistant Secretary for Aging, Administration on Aging.

~~3.10.2.~~ ~~Any application for designation in a planning and service area whose application is denied by the COA may appeal the denial to the United States Commissioner of the Administration on Aging~~

~~3.11.~~ 3.9. Definitions.

~~3.11.1.~~ 3.9.1. Bureau of Senior Services

The agency created by the Legislature pursuant to West Virginia Code §16-5P-1, et seq. to promote services; enhance the health, safety and welfare of West Virginia's senior population; and serve as the primary agency within State Government to provide service to the senior population.

~~West Virginia Commission on Aging (COA).~~

~~The agency created by the Legislature to establish programs and services for the elderly and to implement and administer the Federal Older Americans Act of 1965, as amended. The COA consists of Fifteen (15) members. Five (5) of these are Government Representatives" and ten (10) are citizens of the State, or "Citizen Representatives" appointed by the Governor.~~

~~3.11.2.~~ 3.9.2. ~~Executive Director~~ Commissioner:

~~The chief administrative officer appointed by the Commission on Aging.~~ The chief administrative officer appointed to administer the duties and responsibility of the Bureau of Senior Services.

~~3.11.3.~~ 3.9.3. Area Agency on Aging (AAA).

An agency designated by the ~~COA~~ Bureau of Senior Services to develop and administer the area plan for a comprehensive and coordinated system of services for older persons. The AAA serves as the advocate and focal point for older persons in the planning and service area.

~~3.11.4.~~ ~~Governing Board~~

~~The grantee agency of state and federal funds which directs the policy making and administration of the Area Agency.~~

~~3.11.5 Advisory Council.~~

~~The entity which advised the Area Agency to: Develop and administer the area plan; review and comment on community policies; programs and actions which affect older persons.~~

3.11.6. 3.9.4. Adverse action.

An action or decision not to act which directly affects the complainant and with which the complainant disagrees and wishes to appeal.

~~3.11.7. 3.9.5.~~ Service provider.

An entity that is awarded a ~~subgrant or contract grant/contract~~ from an Area Agency to provide services, ~~under the area plan.~~ (Note: An Area Agency on Aging or the Bureau of Senior Services contract with a profit-making organization requires prior approval from ~~EOA~~. the Bureau of Senior Services.)

~~3.11.8. 3.9.6.~~ Hearing.

A proceeding where the relevant facts and applicable law will be addressed and considered.

~~3.11.9. 3.9.7.~~ Complainant.

A party who makes the complaint in a formal action or proceeding.

~~3.11.10. 3.9.8.~~ Respondent.

The party against whom the appeal or complaint is brought.

~~3.11.11. 3.9.9.~~ Hearing Examiner.

A person designated by the ~~EOA~~ Bureau of Senior Services to preside at hearings, take evidence and make factual and legal findings.

~~3.11.12. 3.9.10.~~ Parties.

The complainant and respondent.