

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #5

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**FILED**

2004 AUG 30 P 2: 14

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia Bureau of Senior Services TITLE NUMBER: 76

CITE AUTHORITY: WV Code §16-5P

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES  NO

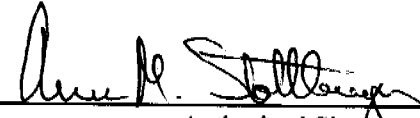
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: West Virginia Commission on Aging Hearing and  
Appeals Procedure

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS September 30, 2004

  
\_\_\_\_\_  
Authorized Signature

TITLE 76  
PROCEDURAL RULES  
WEST VIRGINIA  
BUREAU OF SENIOR SERVICES

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2004 AUG 30 P 2:14

SERIES 1  
HEARING AND APPEALS PROCEDURE

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**§76-1-1. General.**

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

1.2. Authority. -- W. Va. Code 16 P and 45CFR

1.3. Filing Date. -- August 30, 2004

1.4. Effective Date. -- September 30, 2004

**§76-1-2. Hearings and Appeals.**

2.1. The Area Agency on Aging shall provide an opportunity for a hearing to any service provider whose contract/grant is suspended, terminated or non-renewed.

2.2. 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.

2.3. Continuity of Services.

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

(a) Continue operating until this hearing and appeal process is final and a decision rendered; 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 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.

2.4. Request for Area Agency on Aging hearing.

2.4.1. If an entity wishes to appeal the decision of the Area Agency on Aging, it must file a written request for an informal hearing to the Area Agency on Aging within ten (10) working days after receipt of the adverse action.

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.

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

2.4.4. The 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.

2.4.5. The hearing shall be informal and shall provide for participation by the complainant and the Area Agency on Aging.

2.5. The Area Agency on Aging decision.

2.5.1. Within five (5) working days following the hearing, the Area Agency on Aging shall issue a written decision notifying the complainant of its decision.

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. Request for Bureau of Senior Service Hearing/Appeal.**

3.1. The Bureau of Senior Services shall provide an opportunity for a hearing to:

3.1.1. An Area Agency on Aging when the Bureau of Senior Services proposes to:

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

(b) Withdraw the Area Agency 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.

3.1.4. The Bureau of Senior Services shall provide an opportunity to service providers to appeal the decision of the Area Agency on Aging as specified in Section 2.1.

### 3.2. Request for hearing.

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

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.

### 3.3. Scheduling of the hearing.

3.3.1. Upon receipt of a request for a hearing/appeal, the Bureau of Senior Services will appoint an impartial hearing examiner to conduct the hearing.

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

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 ten (10) working days notice to be given to the parties and their representatives.

#### 3.4. Prehearing discovery.

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.

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

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

#### 3.5. Conduct of the hearing.

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

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.

3.5.3. 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.

#### 3.6. Order of the hearing.

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.

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

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.

3.6.4. 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.

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

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.

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

3.6.8. The Bureau of Senior Services may terminate formal hearing procedures at any point if the 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.

### 3.7. The decision.

3.7.1. The hearing examiner shall submit an impartial, written recommendation to the Bureau of Senior Services, setting forth the reasons for and the evidence on which the recommendation is based. The recommendation shall be submitted within 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.

3.7.2. The Bureau of Senior Services shall review the recommendation of the hearing examiner and render a decision.

3.7.3. The Bureau of Senior Services shall issue the written decision within five (5) working days following the receipt of the hearing examiner's recommendations. 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.

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

### 3.8. Final appeal.

3.8.1. The hearing/appeal before the 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.

### 3.9. Definitions.

#### 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.

#### 3.9.2. Commissioner:

The chief administrative officer appointed to administer the duties and responsibility of the Bureau of Senior Services.

#### 3.9.3. Area Agency on Aging (AAA).

An agency designated by the 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.

#### 3.9.4. Adverse action.

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

#### 3.9.5. Service provider.

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

#### 3.9.6. Hearing.

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

#### 3.9.7. Complainant.

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

#### 3.9.8. Respondent.

The party against whom the appeal or complaint is brought.

3.9.9. Hearing Examiner.

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

3.9.10. Parties.

The complainant and respondent.

**MILLER, SNYDER, WEILER & WALTERS**ATTORNEYS AT LAW  
THE MILLER BUILDING  
2 HALE STREET

CHARLESTON, WEST VIRGINIA 25301

KAREN H. MILLER  
JON H. SNYDER  
MARK E. WEILER  
RICHARD W. WALTERS  
WILLIAM E. ELSWICK  
SCOTT W. NUCKLESTELEPHONE  
(304) 343-7910  
TELECOPIER  
(304) 343-7915

August, 26, 2004

**VIA FACSIMILE AND REGULAR MAIL**Ms. Verna Schweer  
WV Bureau of Senior Services  
1900 Kanawha Boulevard, East  
Holly Grove - Building 10  
Charleston, WV 25305-0160

RE: Proposed Amendments to Bureau of Senior Services Hearing and Appeals Procedure

Dear Ms. Schweer:

Recently the Bureau of Senior Services solicited comments from the local councils on aging regarding its proposed amendments to the procedural rules governing hearings and appeals. Pursuant to that request, Council on Aging would like to submit the following comments.

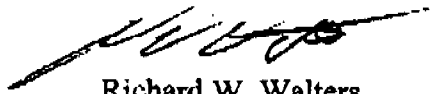
Please be advised that we hereby object to proposed amendment to § 76-1-2.3.1(a). This section gives the Commissioner of the Bureau the power to immediately terminate the contract/grant and order the provider to immediately cease performance under the contract. Such a provision, if utilized, could effectively leave thousands of seniors in any given county without any services. As you well know, the Aging Agencies provide important services to area seniors including in-home health care and meals. If those services were to be suddenly terminated, those seniors would be left without these important services which they depend upon on a daily basis. Although these seniors might eventually be able to find coverage from some other agency or private individual, a period of time would necessarily follow any termination of services under the amended provision during which the seniors would be without services and worriedly searching for someone to care for them. After years of caring for and providing services to seniors, we cannot in good conscience allow for such a contingency.

As a result of the foregoing, we strongly oppose the above referenced amendment. We propose that this amendment be stricken from the proposed amendments. Previously, § 76-1-2.3.1(a) stated that a provider is to continue operating until the hearing and appeal process is final and a decision rendered. This language protects the seniors and ensures that they continue to receive necessary services and care

Ms. Verna Schweer  
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during the course of the appeal process. Accordingly, we suggest that § 76-1-2.3.1(a) should remain as previously written, and the suggested changes currently affecting that section be stricken from the proposed amendments. This is respectfully requested in the best interests of the seniors of this state.

Very truly yours,



Richard W. Walters

RWW/kat

cc: Council on Aging



STATE OF WEST VIRGINIA  
BUREAU OF SENIOR SERVICES

1900 Kanawha Boulevard, East  
Holly Grove - Building 10  
Charleston, West Virginia 25305-0160  
Telephone (304) 558-3317  
FAX (304) 558-0004

Bob Wise  
Governor

Ann M. Stottlemeyer  
Commissioner

August 30, 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 the amended West Virginia Bureau of Senior Services Hearing and Appeals Procedure which is a Title 76 Series 1 Procedural Rule.

A 30 day comment period was held on the amended Hearing and Appeals Procedure, and one comment was received (copy enclosed). After review and consideration of the comment, the Bureau has determined not to make changes to the amended Hearing and Appeals Procedure. An explanation for that decision follows.

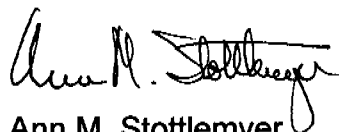
**Comment:** An issue is raised in regard to giving the Commissioner of the Bureau the ability to terminate a contract/grant, thereby ordering the provider to immediately cease performance. A concern is raised that this provision could leave seniors without any services. It is desired that the previous language that allows the provider to continue operating until the hearing and appeals process is final and a decision rendered be left unchanged.

**Response:** The language allowing the provider to continue operating until the hearing and appeals process is final and a decision rendered is still part of the procedure. The new language that gives the Commissioner of the Bureau the ability to terminate a contract and order the provider to cease performance was added for those circumstances that require immediate action. The Bureau has the best interest of seniors as its primary goal, and would, under any circumstances, make the provision of services for seniors a priority.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ann M. Stottlemyer". The signature is written in a cursive style with a large, looping initial "A".

Ann M. Stottlemyer  
Commissioner

Enclosure

AMS/JB/db