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205 NOTICES AND PROCEDURE ON HEARING PRIOR TO DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

Whenever the Division decides to deny, suspend, or revoke a license, it shall send to the applicant or licensee a notice stating the reasons for the action by certified mail. The applicant or licensee may appeal such notice to the ~~Long Term Care Facility Advisory Board as permitted by Arkansas Statute Annotated §82-211. Procedures for appeal to the Long Term Care Facility Advisory Board are incorporated in these regulations as Appendix A. Director of the Department of Human Services in accordance with Ark. Code Ann. § 20-10-208. See, also, Section 403 of these regulations.~~

403 APPEALS

~~If a Medicaid-certified facility is not satisfied with the results of the informal dispute resolution, it may request a hearing before the Long Term Care Facility Advisory Board within the 60-day time frame for appeal. There is no appeal from an informal dispute resolution decision. If the facility chooses, it may appeal an adverse decision while also undergoing an informal dispute resolution hearing, or it may by-pass the informal dispute resolution process entirely and instead appeal directly to the board within the 60-day appeal period. Appeals must be made to the Director of the Department of Human Services in accordance with Ark. Code Ann. § 20-10-208. Requests must be submitted in writing to:~~

~~Chairman
Long Term Care Facility Advisory Board
P.O. Box 8059, Slot S409
Little Rock, AR 72203-8059~~

~~Director
Department of Human Services
P.O. Box 1437, Slot S201
Little Rock, AR 72203-1437~~

Medicare and Medicare/Medicaid certified facilities may request a hearing by either the Associate Regional Administrator in the Dallas office of the Centers for Medicare and Medicaid Services or the Departmental Appeals Board at the addresses below at any point within the 60 day time frame for appeals.

HCF-2
Associate Regional Administrator
Division of Health Standards and Quality
Centers for Medicare and Medicaid Services
1200 Main Tower Building
Dallas, TX 75202

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Department of Health and Human Services
Departmental Appeals Board, MS 6127
Civil Remedies Division
330 Independence Avenue, S.W.
Cohen Building - Room G-644
Washington, D.C. 20201

If the facility chooses to appeal to either of these agencies, a copy of the appeal should also be forwarded to the OLTC.

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206 NOTICE AND PROCEDURE ON HEARING PRIOR TO DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

Whenever the Division decides to deny, suspend, or revoke a license, it shall send to the applicant or licensee a notice stating the reasons for the action by certified mail. The applicant or licensee may appeal such notice to the ~~Long Term Care Facility Advisory Board as permitted by Arkansas Statute Annotated §82-211. Procedures for appeal to the Long Term Care Facility Advisory Board are incorporated in these regulations as Appendix A. Director of the Department of Human Services in accordance with Ark. Code Ann. § 20-10-208. See, also, Section 2003 of these regulations.~~

2003 APPEALS

~~If a Medicaid-certified facility is not satisfied with the results of the informal dispute resolution, it may request a hearing before the Long Term Care Facility Advisory Board within the 60-day time frame for appeal. There is no appeal from an informal dispute resolution decision. If the facility chooses, it may appeal an adverse decision while also undergoing an informal dispute resolution hearing, or it may by-pass the informal dispute resolution process entirely and instead appeal directly to the board within the 60-day appeal period. Appeals must be made to the Director of the Department of Human Services in accordance with Ark. Code Ann. § 20-10-208. Requests must be submitted in writing to:~~

~~Chairman
Long Term Care Facility Advisory Board
P.O. Box 8059, Slot S409
Little Rock, AR 72203-8059~~

~~Director
Department of Human Services
P.O. Box 1437, Slot S201
Little Rock, AR 72203-1437~~

Medicare and Medicare/Medicaid certified facilities may request a hearing by either the Associate Regional Administrator in the Dallas office of the Health Care Financing Administration or the Departmental Appeals Board at the addresses below at any point within the 60 day time frame for appeals.

HCF-2
Associate Regional Administrator
Division of Health Standards and Quality
Centers for Medicare and Medicaid Services
1200 Main Tower Building
Dallas, TX 75202

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Department of Health and Human Services
Departmental Appeals Board, MS 6127
Civil Remedies Division
330 Independence Avenue, S.W.
Cohen Building - Room G-644
Washington, D.C. 20201

If the facility chooses to appeal to either of these agencies, a copy of the appeal should also be forwarded to the OLTC.

APPENDIX A

RULES OF ORDER FOR ALL APPEALS BEFORE THE LONG TERM CARE FACILITY ADVISORY BOARD

1. ~~The Long Term Care Facility Advisory Board shall hear all appeals by licensed long term care facilities, long term care administrators, or other parties regulated by the Office of Long Term Care with regards to licensure and certification under the authority of Section II of Act 58 of 1969 as amended by Act 28 of 1979 (Ark. Stat. Ann §82-2211).~~
2. ~~All appeals shall be made in writing to the Chairman of the Board within thirty (30) days of receipt of notice of intended action. The notice shall include the nature of intended action, regulation allegedly violated, and the nature of the evidence supporting allegation and set forth with particularity asserted basis for the appeal with supporting documentation attached and set forth with particularity those asserted violations, discrepancies, and dollar amounts which the appellant contends are in compliance with all rules and regulations.~~
3. ~~Appeals must be heard by the Board within sixty (60) days following date of Chairman's receipt of written appeal unless otherwise agreed by both parties. The Chairman shall notify the party or parties of the date, time, and place of the hearing at least seven (7) working days prior to the hearing date.~~
4. ~~Preliminary motions must be made in writing and submitted to the Chairman and/or hearing officer with service to opposing party at least three (3) days prior to hearing date unless otherwise directed by the Chairman or hearing officer.~~
5. ~~All papers filed in any proceeding shall be typewritten on white paper using one side of the paper only and will be double spaced. They shall bear a caption clearly showing the title of the proceeding in connection with which they are filed together with the docket number if any. All papers shall be signed by the party or his authorized representative or attorney and shall contain his address and telephone number. All papers shall be served either on the Legal Department of Social Services, the attorney for the party, or if no attorney for the party, service shall be made on the party.~~

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6. ~~The Chairman of the Board shall act as Chairman in all appeal hearings. In the absence of the Chairman, the Board may elect one of their members to serve as Chairman. The Chairman shall vote only in case of a tie. The Chairman and/or Board may request legal counsel and staff assistance in the conduct of the hearing and in the formal preparation of their decision.~~
7. ~~A majority of the members of the Board shall constitute a quorum for all appeals.~~
8. ~~If the appellant fails to appear at a hearing, the Board may dismiss the hearing and render a decision based on the evidence available.~~
9. ~~Any dismissal may be rescinded by the Board if the appellant makes application to the Chairman in writing within ten (10) calendar days after the mailing of the decision, showing good cause for his failure to appear at the hearing. All parties shall be notified in writing of an order granting or denying any application to vacate a decision.~~
10. ~~Any party may appear at the hearing and be heard through an attorney at law or through a designated representative. All persons appearing before the Board shall conform to the standards of conduct practiced by attorneys before the courts of the State.~~
11. ~~Each party shall have the right to call and examine parties and witnesses; to introduce exhibits; to question opposing witnesses and parties on any matter relevant to the issued; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against which party first called him to testify; and to rebut the evidence against him.~~
12. ~~Testimony shall be taken only on oath or affirmation under penalty of perjury.~~
13. ~~Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited, and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.~~
14. ~~The Chairman or hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. The Office of Long Term Care shall present its case first.~~
15. ~~A party shall arrange for the presence of his witnesses at the hearing.~~
16. ~~Any member of the Board may question any party or witness.~~

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17. ~~A complete record of the proceedings shall be made. A copy of the record may be transcribed and reproduced at the request of a party to the hearing provided he bears the cost thereof.~~
18. ~~Written notice of the time and place of a continued or further hearing shall be given, except that when a continuance or further hearing is ordered during a hearing, oral notice of the time and place of the hearing may be given to each party present at the hearing.~~
19. ~~In addition to these rules, the hearing provisions of the Administrative Procedure Act (Ark. Stat. Ann §5-701 et. seq.) shall apply.~~
20. ~~At the conclusion of testimony and deliberations by the Board, the Board shall vote on motions for disposition of the appeal. After reaching a decision by majority vote, the Board may direct that findings of fact and conclusions of law be prepared to reflect the Board's recommendations to the Commissioner of Social Services. At this discretion and for good cause the Commissioner of Social Services shall have the right to accept, reject or modify a recommendation, or to return the recommendation to the Board for further consideration for a more conclusive recommendation. All decisions shall be based on findings of fact and law and are subject to and must be in accordance with applicable State and Federal laws and regulations. The final decision by the Commissioner of Social Services shall be rendered in writing to the appellant.~~
21. ~~All decisions of the Commissioner may be reviewed by a court of competent jurisdiction as provided under the Administrative Procedure Act.~~

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206 NOTICES AND PROCEDURE ON HEARING PRIOR TO DENIAL, SUSPENSION OR REVOCATION OF LICENSE

- 206.1 Whenever the Division decides to deny, suspend, or revoke a license, it shall send to the applicant or licensee a notice stating the reasons for the action by certified mail. The applicant or licensee may appeal such notice to the ~~Long Term Care Facility Advisory Board as permitted by Arkansas Law. Procedures for appeal to the Long Term Care Facility Advisory Board are incorporated in these regulations as Appendix A.~~ Director of the Department of Human Services in accordance with Ark. Code Ann. § 20-10-208.

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207 ADMINISTRATIVE APPEALS

~~Procedures for appeal to the Long Term Care Facility Advisory Board are incorporated in these regulations as Appendix A. Whenever the Division imposes a Civil Money Penalty or an Administrative Remedy, it shall send to the applicant or licensee a notice stating the reasons for the action by certified mail. The applicant or licensee may appeal such notice to the Director of the Department of Human Services in accordance with Ark. Code Ann. § 20-10-208.~~

APPENDIX A RULES OF ORDER FOR ALL APPEALS BEFORE THE LONG TERM CARE FACILITY ADVISORY BOARD

- ~~1. Pursuant to Arkansas Code Annotated § 20-10-303 the Long Term Care Facility Advisory Board shall hear all appeals by licensed long term care facilities, long term care administrators, or other parties regulated by the Office of Long Term Care with regard to licensure and certification.~~
- ~~2. All appeals shall be made in writing to the Chairman of the Board within 30 days of receipt of notice of intended action. The notice shall include the nature of intended action, regulation allegedly violated, and the nature of the evidence supporting allegation and set forth with particularity asserted violations, discrepancies and dollar amounts which the appellant contends are in compliance with all rules and regulations.~~
- ~~3. Appeals must be heard by the Board within sixty (60) days following date of the Chairman's receipt of written appeal unless otherwise agreed by both parties. The chairman shall notify the party or parties of the date, time, and place of the hearing at least seven (7) working days prior to the hearing date.~~
- ~~4. Preliminary motions must be made in writing and submitted to the Chairman and/or hearing officer with service to opposing party at least three (3) days prior to hearing date unless otherwise directed by the Chairman or hearing officer.~~
- ~~5. All papers filed in any proceeding shall be typewritten on white paper using one side of the paper only and will be double spaced. They shall bear a caption clearly showing the title of the proceeding in connection with which they are filed together with the docket number, if any. All papers shall be signed by the party or his authorized representative or attorney and shall contain his address and telephone number. All papers shall be served either on the Office of Chief Counsel of the Department of Human Services, the attorney for the party, or if no attorney for the party, service shall be made on the party.~~
- ~~6. The Chairman of the Board shall act as Chairman in all appeals hearings. In absence of the Chairman, the Board may elect one of their members to serve as Chairman. The Chairman shall vote in case of a tie. The Chairman and/or Board may request legal counsel and staff assistance in the conduct of the hearing and in the formal preparation of their decision.~~

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- ~~7. A majority of the members of the Board shall constitute a quorum for all appeals.~~
- ~~8. If the appellant fails to appear at a hearing, the Board may dismiss the hearing and render a decision based on the evidence available.~~
- ~~9. Any dismissal may be rescinded by the Board if the appellant makes application to the Chairman in writing within ten (10) calendar days after the mailing of the decision, showing good cause for his failure to appear at the hearing. All parties shall be notified in writing of an order granting or denying any application to vacate a decision.~~
- ~~10. Any party may appear at the hearing and be heard through an attorney at law or through a designated representative. All persons appearing before the Board shall conform to the standards of conduct practiced by attorneys before the courts of the State.~~
- ~~11. Each party shall have the right to call and examine parties and witnesses; to introduce exhibits; to question opposing witnesses and parties on any matter relevant to the issue; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.~~
- ~~12. Testimony shall be taken only on oath, or affirmation under penalty of perjury.~~
- ~~13. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited, and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.~~
- ~~14. The Chairman or hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and safeguard the rights of the parties. The Office of Long Term Care shall present its case first.~~
- ~~15. A party shall arrange for the presence of his witnesses at the hearing.~~
- ~~16. Any member of the Board may question any party or witness.~~
- ~~17. A complete record of the proceedings shall be made. A copy of the record may be transcribed and reproduced at the request of a party to the hearing provided he bears the cost thereof.~~
- ~~18. Written notice of the time and place of a continued or further hearing shall be given, except that when a continuance or further hearing is ordered during a hearing, oral notice of the time and place of the hearing may be given to each party present at the hearing.~~

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~~19. In addition to these rules the hearing provisions of the Arkansas Administrative Procedure Act (Arkansas Code Annotated § 25-15-201 et. seq.) shall apply.~~

~~20. At the conclusion of testimony and deliberations by the Board, the Board shall vote on motions for disposition of the appeal. After reaching a decision by majority vote, the Board may direct that findings of fact and conclusions of law be prepared to reflect the Board's recommendations to the Director of the Division of Medical Services. At his discretion and for good cause the Director of the Division of Medical Services shall have the right to accept, reject or modify a recommendation, or to return the recommendation to the Board for further consideration for a more conclusive recommendation. All decisions shall be based on findings of fact and law and are subject to and must be in accordance with applicable state and federal laws and regulations. The final decision by the Director of the Division of Medical Services shall be rendered in writing to the appellant.~~

~~21. All decisions of the Director of the Division of Medical Services may be reviewed by a court of competent jurisdiction as provided under the Arkansas Administrative Procedure Act. Repealed.~~

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212. Notice and Procedure on Hearing Prior to Denial, Suspension, or Revocation of a License: Whenever the Office of Long Term Care denies, suspends, or revokes a License, it shall send to the applicant or Licensee, by certified mail, a notice stating the reasons for the action. ~~The notice shall state the nature of intended action, the regulation allegedly violated, and the nature of the evidence supporting the allegation and shall set forth with particularity the asserted violations, discrepaneies, and dollar amounts.~~ The applicant or Licensee may appeal such notice to the ~~Long Term Care Facility's Advisory Board as permitted by Ark. Code Ann. § 20-10-303~~ Director of the Department of Human Services in accordance with Ark. Code Ann. § 20-10-208.

212.1. ~~———— All appeals shall be made in writing, directed to the Chairman of the Board, within 30 days of receipt of notice of intended action. The appeal shall state the basis for the appeal with supporting documentation attached and shall set forth with particularity those asserted violations, discrepaneies, and dollar amounts which the appellant contends are in compliance with these Regulations.~~

212.2. ~~———— Appeals must be heard by the Board within sixty (60) days following date of the Chairman's receipt of written appeal unless otherwise agreed by both parties. The Chairman shall notify the party or parties of the date, time and place of hearings at least seven (7) working days prior to the hearing date.~~

212.3. ~~———— Preliminary motions must be made in writing and submitted to the Chairman of hearing officer, with service to the opposing party, at least three (3) days prior to hearing date, unless otherwise directed by the Chairman or hearing officer.~~

212.4. ~~———— All pleadings filed in any proceeding shall be typewritten on white paper, size 8 1/2 by 11 inches, using one side of the paper only and double spaced. They shall bear a caption clearly showing the title of the proceeding in connection with which they are filed.~~

~~———— All pleadings shall be signed by the party or his authorized representative or attorney and shall contain signer's address and telephone number. All pleadings shall be served upon each of the parties, unless the Board orders otherwise because of numerous parties. Each pleading required to be served upon a party shall contain a statement by the party or his attorney stating that a copy of the pleading has been served, the date and method of service, and, if by mail, the name and address of the persons served. Service on the Office of Long Term Care shall be made to the Office of Chief Counsel of the Department of Human Services.~~

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~~Service on a party represented by an attorney shall be on the attorney.~~

~~212.5 The Chairman of the Board shall act as Chairman in all appeal hearings. In the absence of the Chairman, the Board may elect one of their members to serve as Chairman. The Chairman shall vote only in case of a tie. The Chairman or Board may request legal Counsel and staff assistance in the conduct of the hearing and in the formal preparation of their decision.~~

~~212.6 A majority of the members of the Board shall constitute a quorum of all appeals.~~

~~212.7 If the appellant fails to appear at a hearing, the board may dismiss the appeal or render a decision based on the evidence available.~~

~~212.8 A dismissal for non-appearance may be set aside by the Board if the appellant makes application to the Chairman in writing within ten (10) calendar days after the mailing of the decision, showing good cause for his failure to appear at the hearing. All parties shall be notified in writing of an order granting or denying any application to vacate the decision.~~

~~212.9. Any party may appear at the hearing and be heard through an attorney at law or through a designated representative. All persons practiced by attorneys before the courts of the State.~~

~~212.10. Each party shall have the right to call and examine parties and witnesses; to introduce exhibits; to question opposing witnesses and parties on any matter relevant to the issue; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him.~~

~~212.11. Testimony shall be taken only on oath or affirmation under penalty or perjury.~~

~~212.12. Irrelevant, immaterial, and unduly repetitious evidence shall be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonable prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted of record. When a hearing will be expedited, any part of the parties will not be substantially prejudiced; any part of the evidence may be received in written form.~~

~~212.13. The Chairman or hearing officer shall control the taking of evidence in a manner best suited to ascertain the facts and~~

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~~safeguard the rights of the parties. The Office of Long Term Care shall present its case first.~~

~~212.14. A party shall arrange for the presence of his witnesses at the hearing.~~

~~212.15. Any member of the Board may question any party or witness.~~

~~212.16. A complete record of the proceedings shall be made. A copy of the record may be transcribed and reproduced at the request of a party to the hearing, provided he bears the cost thereof.~~

~~212.17. Written notice of the time and place of continued or further hearing shall be given, except that when a continuance or further hearing is ordered during a hearing, oral notice of the time and place of the hearing may be given to each party present at the hearing.~~

~~212.18. In addition to these rules the hearing provisions of the Administrative Procedure Act (Ark. Code Ann. § 25-15-101 *et seq.*) shall apply.~~

~~212.19. At the conclusion of testimony and deliberations by the Board, the Board shall vote on motions for disposition of the appeal. After reaching a decision by majority vote those members, the Board may direct that findings of fact and conclusions of law be prepared to reflect the Board's recommendations to the Chairman. At his discretion the Chairman shall have the right to accept, reject, or modify a recommendation, or to return the recommendation to the Board for further consideration for a more conclusive recommendation. All decisions shall be based on findings of fact and law and are subject to and must be in accordance with applicable State and Federal laws and regulations. The final decision by the Chairman shall be rendered in writing to the appellant.~~