

E. Petition to Remove Neglect Findings

Pursuant to federal law 42 U.S.C. § 1395i-3(g)(1)(D), in the case of a finding of neglect under Subsection A of Section VIII of these regulations, the Office of Long Term Care shall establish a procedure that permits a certified nursing assistant to petition for the removal of a substantiated finding of neglect. The procedure to file a petition shall be as follows:

1. Factors that must be met are:
 - a. The certified nursing assistant must have a substantiated finding of neglect. There shall not be a petition process available for substantiated findings of physical abuse, verbal abuse or misappropriation of resident property.
 - b. The Office of Long Term Care makes a determination that the petition applicant's employment and personal record does not reflect a pattern of abusive behavior or neglect. Factors to be considered shall include, but shall not be limited to:
 - The neglect that resulted in a finding was a singular occurrence as identified in the incident investigation file.
 - The petition applicant does not have a criminal conviction related to neglect, abusive behavior or physical violence.
 - The petition applicant's name does not appear on the DHHS/Division of Aging and Adult Services' Adult Abuse Registry or the DHHS/Division of Children and Family Services' Child Abuse Registry.
 - Whether a pattern of abusive behavior or neglect is discovered through reference checks with prior employers or other parties.
 - Character references as provided by the petition applicant.
 - c. At least one year has passed since the petition applicant's substantiated finding of neglect was placed on the Registry.
2. The procedure to file for a petition to remove a neglect finding shall include the following:
 - a. Petition applicants shall submit a letter requesting the removal of the neglect finding. The letter shall be addressed to:

Office of Long Term Care
Nursing Assistant Training Program
Mail Slot S-405

P.O. Box 8059
Little Rock, AR 72203-8059

- b. The petition applicant must provide the following information with their request letter:
- Full name and current mailing address
 - Day-time phone number
 - Social Security Number
 - Date of birth
 - Name and day-time phone number of at least two personal character references
 - Letters of reference from any employment within the previous year from the date of the petition request. This letter must include a statement attesting to the petition applicant's work performance in relation to the lack of any incidents involving abusive or negligent behavior.
 - A current criminal record report from the Arkansas State Police. If the petition applicant is currently or has recently (within the previous 12 months) lived in another state, a criminal record report must be provided from that state. All criminal record reports must be an original document and copies will not be accepted.
3. The Office of Long Term Care shall review each petition request for consideration for removal of the neglect finding. The review shall be conducted by an administrative review panel consisting of at least three members appointed by the Office Director. The panel shall meet within thirty (30) days of any petition request. The review panel shall consider all information submitted by the petition applicant and may conduct additional research as needed.
4. The review panel shall render a decision within thirty (30) calendar days of the panel's review, and the petition applicant shall be notified in writing within 10 business days of the review committee's final determination.
5. If the petition to remove the neglect finding is approved, the Registry shall be updated within 10 work days to show the petition applicant no longer has the neglect record and shall be eligible for employment in Arkansas long term care facilities. Note that any CNA whose certification has been expired for over 24 months must successfully complete the state competency test to re-establish employment eligibility as a certified nursing assistant.

6. Any applicant whose petition has been denied may not re-apply for a subsequent petition request for a period of at least 12 months from the date of the previous denial.
7. If the petition to remove the neglect finding is denied by the review panel, any further appeals of the committee's determination shall be based on the appeals procedures as listed below:
 - a. Administrative hearings are available to persons, herein referred to as petitioners, who disagree with determinations to deny a petition to remove a neglect finding made by the Office of Long Term Care as described in these regulations.
 - b. When a petitioner wishes to appeal, he/she may do so by mailing a written notice of appeal to Appeals and Hearings (Slot 1001), Office of Chief Counsel, Arkansas Department of ~~Health and~~ Human Services, P.O. Box 1437, Little Rock, Arkansas 72203. The notice shall be mailed by certified mail, return receipt requested. The notice of appeal shall state the following:
 1. Name of the petitioner;
 2. Address of the petitioner;
 3. Date of birth of the petitioner;
 4. Phone number, if any, of the petitioner;
 5. The petitioner's place of employment;
 6. A short statement explaining why the petitioner believes the determination/decision is in error.
 - c. The notice of appeal must be received by the Appeals and Hearing Office within 30 calendar days from the mailing date of the notification document of the determination of petition denial. No appeal shall be accepted prior to such a determination/decision.
 - d. A hearing shall be conducted by the Appeals and Hearings Section, Office of Chief Counsel, Department of ~~Health and~~ Human Services. The procedures to conduct the hearing are as follows:
 1. The hearing record will contain all documents, exhibits and testimony admitted into evidence by the hearing officer. Within 20 calendar days of receipt of notice that a petitioner has requested a hearing, the petitioner and the Office of Long Term Care will

prepare a file to be submitted to the Appeals and Hearings Section, and mail a copy of the file by certified mail, return receipt requested, to the other party. The file will contain only documentary evidence supporting or tending to support each party's allegations. The Office of Long Term Care will also submit an Administrative Hearing Statement summarizing the determination/ decision. This statement is not evidence. Only such portions of each file as are determined by the hearing officer to be relevant shall be included in the Administrative Hearing Record.

2. Both parties will be advised by the Appeals and Hearings Section via certified mail, return receipt requested, that they have ten (10) calendar days from the date the certified mail receipt was signed to review the hearing file and submit a request to subpoena witnesses. The request shall include the name, address and telephone number of all witnesses not employed by the Department of ~~Health and~~ Human Services (DHHS). DHHS employees will be expected to attend hearings and present testimony without the benefit of a subpoena and will be notified by the Appeals and Hearings Section of their required presence at the hearing. Each party will be notified of any witnesses requested and will have five (5) business days from the receipt of this notice to request subpoenas for rebuttal witnesses.

The Department of ~~Health and~~ Human Services, Office of Chief Counsel, will issue the subpoenas, pursuant to the terms and authority of Ark. Code Ann. § 20-76-103.

3. After the time frame has expired for subpoenaing witnesses, the hearing officer will schedule the hearing to afford the petitioner, the Office of Long Term Care, and their attorneys, if any, at least ten (10) calendar days notice of the date, place and time of the hearing. The scheduling letter, sent via certified mail with return receipt requested, shall also contain the name of the hearing officer who will conduct the hearing. In the event the petitioner, the Office of Long Term Care representative, or an attorney representing the petitioner suffers from illness or cannot attend the hearing due to scheduling conflicts, that party may request the hearing be continued. The hearing will be rescheduled by the hearing officer upon a showing of good cause. A request for continuance made by the petitioner or the petitioner's attorney will constitute a waiver of any objection as to timeliness of the hearing. In each case, the hearing and hearing record must be completed within one hundred twenty (120) calendar days of receipt of the request for a hearing.

4. The hearing will take place at a place, time, and manner determined by the Appeals and Hearing Office. Hearings may be conducted by telephone, by personal appearance of the parties, or by record review by the Appeals and Hearings Office.

5. If the petitioner fails to appear for the hearing when conducted by telephone or by personal appearance of the parties and does not contact the Appeals and Hearings Section prior to the date of the hearing of his/her inability to attend, the appeal will be deemed abandoned. The petitioner will be advised of this fact in the scheduling letter.

6. It is the responsibility of the Office of Long Term Care to designate a representative prior to the time of the hearing. The representative should be familiar with the circumstances of the determination/decision and be able to summarize the pertinent aspects of the situation and present the documentation to support the basis for the determination/decision. The representative should also be able to answer questions posed by the petitioner or the hearing officer relative to the issues and should be prepared to cross examine adverse witnesses. The representative may request the services of an Office of Chief Counsel attorney for representation at the hearing.

7. If any party is to be represented by an attorney, notice shall be given to all parties and to the Appeals and Hearings Section at least ten (10) calendar days prior to the hearing. Failure to furnish notice shall entitle other parties to a continuance to obtain counsel. Petitioner's failure to furnish notice shall constitute a waiver of objection as to timeliness of the hearing.

8. The hearing will be conducted by a hearing officer from the Appeals and Hearings Section who had no part in the determination/decision upon which the hearing is being conducted.

9. The petitioner may be accompanied by friends or other persons and may be represented by a friend, legal counsel, or other designated representative.

10. The hearing officer may not review the case record or other material either prior to or during the hearing unless such material is made available to the petitioner or his/her representative.

11. The hearing will be conducted in an informal but orderly manner. The hearing officer will explain the hearing procedure to

the petitioner. The administrative hearing statement will be read by the Office of Long Term Care representative. The Office of Long Term Care shall then present its case. After completion of the Office's case, the petitioner's case will be presented. The parties shall have the opportunity to present witnesses, advance arguments, offer additional evidence, and to confront and cross examine adverse witnesses. If the petitioner is unable to present his evidence in a logical manner, the hearing officer will assist the petitioner. Questioning of all parties will be confined to the issue(s) involved.

12. The hearing officer will prepare a comprehensive report of the proceedings. The report will consist of an introduction, recommended findings of fact, conclusions of law and decision. The report shall be submitted to the Director of the Division of Medical Services who, after reviewing the record, may accept, reverse or remand the report. If the Director accepts the report, such acceptance shall be reduced to writing and shall constitute the final agency determination. That determination shall be mailed to the petitioner and the Office of Long Term Care. If the Director remands the report, the hearing officer shall proceed in accordance with the instructions contained in the remand determination. The concluding determination made by the Director shall constitute the final agency determination. The determination shall be mailed to the petitioner and the Office of Long Term Care.

e. Any further review must be pursued in accordance with the Administrative procedure Act, Arkansas Code Annotated § 25-15-101 et seq