

ASSEMBLY BILL NO. 31—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE AGING AND DISABILITY
SERVICES DIVISION OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the Specialist for the Rights of Elderly Persons and the Community Advocate for Elder Rights. (BDR 38-130)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to public welfare; revising provisions relating to the Specialist for the Rights of Elderly Persons and the Community Advocate for Elder Rights; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Office of the Specialist for the Rights of Elderly Persons within the Aging and Disability Services Division of the Department of Health and Human Services and requires the Governor to appoint the Specialist for the Rights of Elderly Persons. (NRS 427A.123, 427A.1232) **Section 8** of this bill changes the name of the Specialist for the Rights of Elderly Persons to the Attorney for the Rights of Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition. **Section 3** of this bill defines the term "person with a physical disability." **Section 4** of this bill defines the term "person with a related condition." **Section 5** of this bill defines the term "person with an intellectual disability." Finally, **section 6** of this bill redefines the term "elderly person" as an "older person."

Section 9 of this bill expands the scope of the powers and duties of the Attorney for the Rights of Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition to include: (1) services to older persons, persons with a physical disability, persons with an intellectual disability and persons with a related condition; and (2) acting as the State legal assistance developer for the purposes of satisfying certain requirements of federal law. **Sections 7, 10, 11 and 13** of this bill make conforming changes.



* A B 3 1 *

Existing law establishes the Office of the Community Advocate for Elder Rights within the Aging and Disability Services Division of the Department of Health and Human Services and requires the Administrator of that Division to appoint the Community Advocate for Elder Rights. (NRS 427A.300) Under existing law, the Community Advocate for Elder Rights is required to provide assistance to persons who are 60 years of age or older and do not reside in facilities for long-term care. (NRS 427A.310) **Section 12** of this bill authorizes the Administrator to direct the Community Advocate for Elder Rights to provide assistance to persons who are less than 60 years of age and do not reside in facilities for long-term care.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 427A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive of this act.

Sec. 2. *As used in NRS 427A.122 to 427A.1236, inclusive, and sections 2 to 5, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 427A.122 and sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Person with a physical disability” means a person of any age with a physical disability that substantially limits the person’s ability to participate and contribute independently in the community in which he or she lives.*

Sec. 4. *“Person with a related condition” means a person of any age who has a severe, chronic disability which:*

1. Is attributable to:

(a) Cerebral palsy or epilepsy; or

(b) Any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with an intellectual disability and requires treatment or services similar to those required by a person with an intellectual disability;

2. Is manifested before the person affected attains the age of 22 years;

3. Is likely to continue indefinitely; and

4. Results in substantial functional limitations in three or more of the following areas of major life activity:

(a) Taking care of oneself;

(b) Understanding and use of language;

(c) Learning;

(d) Mobility;

(e) Self-direction; and



(f) Capacity for independent living.

Sec. 5. *“Person with an intellectual disability” means a person of any age with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.*

Sec. 6. NRS 427A.122 is hereby amended to read as follows:

427A.122 ~~{As used in NRS 427A.122 to 427A.1236, inclusive, unless the context otherwise requires, “elderly”}~~ **“Older person”** means a person who is 60 years of age or older.

Sec. 7. NRS 427A.123 is hereby amended to read as follows:

427A.123 The Office of ~~{Specialist}~~ **Attorney** for the Rights of ~~{Elderly}~~ **Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition** is hereby created within the Aging and Disability Services Division of the Department.

Sec. 8. NRS 427A.1232 is hereby amended to read as follows:

427A.1232 1. The Governor shall appoint the ~~{Specialist}~~ **Attorney** for the Rights of ~~{Elderly}~~ **Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition** for a term of 4 years. The person appointed:

(a) Must be an attorney licensed to practice law in this State;

(b) Must be qualified by training and experience to perform the duties and functions of the office;

(c) Is in the unclassified service of the State; and

(d) Shall report upon request to the Administrator regarding the performance of the duties and the functioning of the office.

2. The Governor may remove the ~~{Specialist}~~ **Attorney** for the Rights of ~~{Elderly}~~ **Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition** from office for inefficiency, neglect of duty or malfeasance in office.

Sec. 9. NRS 427A.1234 is hereby amended to read as follows:

427A.1234 1. The ~~{Specialist}~~ **Attorney** for the Rights of ~~{Elderly}~~ **Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition** shall:

(a) Provide advocacy and education relating to the legal rights of ~~{elderly}~~ **older persons , persons with a physical disability, persons with an intellectual disability or persons with a related condition** and shall facilitate the development of legal services to assist ~~{elderly}~~ **those** persons in securing and maintaining their legal rights.

(b) Provide, upon request, technical assistance, training and other support relating to the legal rights of ~~{elderly}~~ **older persons , persons with a physical disability, persons with an intellectual disability or persons with a related condition, as appropriate, to:**



(1) An attorney who is providing legal services for an ~~elderly~~ older person ~~+~~, *a person with a physical disability, a person with an intellectual disability or a person with a related condition;*

(2) An employee of a law enforcement agency;

(3) The Ombudsman or an advocate;

(4) An employee of an office for protective services of any county; ~~and~~

(5) An employee of the Division ~~+~~; and

(6) *Groups that advocate for older persons, persons with a physical disability, persons with an intellectual disability or persons with a related condition.*

(c) Review existing and proposed policies, legislation and regulations that affect ~~elderly~~ older persons , *persons with a physical disability, persons with an intellectual disability or persons with a related condition* and make recommendations as appropriate to the Administrator.

(d) Review and analyze information relating to the nature and extent of abuse, neglect, exploitation, isolation and abandonment of ~~elderly~~ older persons , *persons with a physical disability, persons with an intellectual disability or persons with a related condition* to identify services that need to be provided, including, without limitation:

(1) Methods of intervening on behalf of an ~~elderly~~ older person , *a person with a physical disability, a person with an intellectual disability or a person with a related condition* to protect the ~~elderly~~ older person , *person with a physical disability, person with an intellectual disability or person with a related condition* from abuse, neglect, exploitation, isolation or abandonment; and

(2) Enforcing the laws of this state governing abuse, neglect, exploitation, isolation and abandonment of ~~elderly~~ older persons ~~+~~, *persons with a physical disability, persons with an intellectual disability or persons with a related condition.*

2. The ~~Specialist~~ Attorney for the Rights of ~~Elderly~~ Older Persons *and Persons with a Physical Disability, an Intellectual Disability or a Related Condition* may:

(a) Have access to, inspect, copy and subpoena all records in the possession of any clerk of a court, law enforcement agency or public or private institution, wherever situated, that relate to the abuse, neglect, exploitation, isolation or abandonment of an ~~elderly~~ older person ~~+~~, *a person with a physical disability, a person with an intellectual disability or a person with a related condition.*

(b) Have access to all written records in the possession of any person, government, governmental agency or political subdivision



1 of a government that relate to the abuse, neglect, exploitation,
2 isolation or abandonment of an ~~elderly~~ older person ~~+~~, *a person*
3 *with a physical disability, a person with an intellectual disability or*
4 *a person with a related condition.*

5 (c) Represent and assist any ~~incompetent~~ *incapacitated older*
6 *person, person with a physical disability, person with an*
7 *intellectual disability or person with a related condition* until a
8 guardian is appointed for that person.

9 (d) Use the information obtained pursuant to paragraphs (a) and
10 (b) to resolve complaints relating to the abuse, neglect, exploitation,
11 isolation or abandonment of an ~~elderly~~ older person ~~+~~, *a person*
12 *with a physical disability, a person with an intellectual disability or*
13 *a person with a related condition.*

14 (e) Develop services relating to financial management for an
15 ~~elderly~~ older person, *a person with a physical disability, a person*
16 *with an intellectual disability or a person with a related condition*
17 who is at risk of having a guardian ~~or conservator~~ appointed by a
18 court to manage his or her property.

19 (f) *Act as the State legal assistance developer as described in*
20 *42 U.S.C. § 3058j.*

21 (g) Appear as amicus curiae on behalf of ~~elderly~~ older persons
22 *, persons with a physical disability, persons with an intellectual*
23 *disability or persons with a related condition* in any court in this
24 state.

25 ~~(g)~~ (h) Perform such other functions as are necessary to carry
26 out the duties and the functions of the office of the ~~Specialist~~
27 *Attorney* for the Rights of ~~Elderly~~ Older Persons ~~+~~ *and Persons*
28 *with a Physical Disability, an Intellectual Disability or a Related*
29 *Condition.*

30 **Sec. 10.** NRS 427A.1236 is hereby amended to read as
31 follows:

32 427A.1236 All records in the possession of the ~~Specialist~~
33 *Attorney* for the Rights of ~~Elderly~~ Older Persons *and Persons*
34 *with a Physical Disability, an Intellectual Disability or a Related*
35 *Condition* relating to his or her counseling or representation of an
36 ~~elderly~~ older person, *a person with a physical disability, a person*
37 *with an intellectual disability or a person with a related condition*
38 are confidential and must not be released to any other person except
39 upon order of a court of competent jurisdiction or pursuant to
40 NRS 239.0115.

41 **Sec. 11.** NRS 427A.175 is hereby amended to read as follows:

42 427A.175 1. Within 1 year after an older patient sustains
43 damage to his or her property as a result of any act or failure to act
44 by a facility for intermediate care, a facility for skilled nursing, a
45 residential facility for groups, a home for individual residential care,



1 an agency to provide personal care services in the home, an
2 intermediary service organization, a community health worker pool,
3 a peer support recovery organization or an agency to provide
4 nursing in the home in protecting the property, the older patient may
5 file a verified complaint with the Division setting forth the details of
6 the damage.

7 2. Upon receiving a verified complaint pursuant to subsection
8 1, the Administrator shall investigate the complaint and attempt to
9 settle the matter through arbitration, mediation or negotiation.

10 3. If a settlement is not reached pursuant to subsection 2, the
11 facility, home, agency, organization or older patient may request a
12 hearing before the ~~{Specialist}~~ *Attorney* for the Rights of ~~{Elderly}~~
13 *Older Persons* ~~{}~~ *and Persons with a Physical Disability, an*
14 *Intellectual Disability or a Related Condition*. If requested, the
15 ~~{Specialist}~~ *Attorney* for the Rights of ~~{Elderly}~~ *Older Persons* *and*
16 *Persons with a Physical Disability, an Intellectual Disability or a*
17 *Related Condition* shall conduct a hearing to determine whether the
18 facility, home, agency, pool or organization is liable for damages to
19 the patient. If the ~~{Specialist}~~ *Attorney* for the Rights of ~~{Elderly}~~
20 *Older Persons* *and Persons with a Physical Disability, an*
21 *Intellectual Disability or a Related Condition* determines that the
22 facility, home, agency, pool or organization is liable for damages to
23 the patient, the ~~{Specialist}~~ *Attorney* for the Rights of ~~{Elderly}~~
24 *Older Persons* *and Persons with a Physical Disability, an*
25 *Intellectual Disability or a Related Condition* shall order the
26 amount of the surety bond pursuant to NRS 449.065 or the
27 substitute for the surety bond necessary to pay for the damages
28 pursuant to NRS 449.067 to be released to the Division. The
29 Division shall pay any such amount to the older patient or the estate
30 of the older patient.

31 4. The Division shall create a separate account for money to be
32 collected and distributed pursuant to this section.

33 5. As used in this section:

34 (a) "Agency to provide nursing in the home" has the meaning
35 ascribed to it in NRS 449.0015;

36 (b) "Agency to provide personal care services in the home" has
37 the meaning ascribed to it in NRS 449.0021;

38 (c) "Community health worker pool" has the meaning ascribed
39 to it in NRS 449.0028;

40 (d) "Facility for intermediate care" has the meaning ascribed to
41 it in NRS 449.0038;

42 (e) "Facility for skilled nursing" has the meaning ascribed to it
43 in NRS 449.0039;

44 (f) "Home for individual residential care" has the meaning
45 ascribed to it in NRS 449.0105;



(g) "Intermediary service organization" has the meaning ascribed to it in NRS 449.4304;

(h) "Older patient" has the meaning ascribed to it in NRS 449.065;

(i) "Peer support recovery organization" has the meaning ascribed to it in NRS 449.01563; and

(j) "Residential facility for groups" has the meaning ascribed to it in NRS 449.017.

Sec. 12. NRS 427A.310 is hereby amended to read as follows:

427A.310 **1.** The Community Advocate for Elder Rights shall provide assistance to persons who are 60 years of age or older and do not reside in facilities for long-term care. The assistance must include at least the:

~~1-1~~ **(a)** Coordination of resources and services available to aging persons within their respective communities, including the services provided through a program established pursuant to NRS 427A.250 or 427A.255;

~~1-2~~ **(b)** Dissemination of information to aging persons on issues of national and local interest, including information regarding the services of the Community Advocate for Elder Rights and the existence of groups of aging persons with similar interests and concerns; and

~~1-3~~ **(c)** Advocacy of issues relating to aging persons.

2. The Administrator may direct the Community Advocate for Elder Rights to provide assistance to a person who:

(a) Is less than 60 years of age; and

(b) Does not reside in a facility for long-term care.

Sec. 13. NRS 449.065 is hereby amended to read as follows:

449.065 **1.** Except as otherwise provided in subsections 6 and 7 and NRS 449.067, each facility for intermediate care, facility for skilled nursing, peer support recovery organization, residential facility for groups, home for individual residential care, agency to provide personal care services in the home and agency to provide nursing in the home shall, when applying for a license or renewing a license, file with the Administrator of the Division of Public and Behavioral Health a surety bond:

(a) If the facility, agency, organization or home employs less than 7 employees, in the amount of \$5,000;

(b) If the facility, agency, organization or home employs at least 7 but not more than 25 employees, in the amount of \$25,000; or

(c) If the facility, agency, organization or home employs more than 25 employees, in the amount of \$50,000.

2. A bond filed pursuant to this section must be executed by the facility, agency, organization or home as principal and by a surety company as surety. The bond must be payable to the Aging



1 and Disability Services Division of the Department of Health and
2 Human Services and must be conditioned to provide
3 indemnification to an older patient who the ~~Specialist~~ *Attorney* for
4 the Rights of ~~Elderly~~ *Older* Persons *and Persons with a Physical*
5 *Disability, an Intellectual Disability or a Related Condition*
6 determines has suffered property damage as a result of any act or
7 failure to act by the facility, agency, organization or home to protect
8 the property of the older patient.

9 3. Except when a surety is released, the surety bond must cover
10 the period of the initial license to operate or the period of the
11 renewal, as appropriate.

12 4. A surety on any bond filed pursuant to this section may be
13 released after the surety gives 30 days' written notice to the
14 Administrator of the Division of Public and Behavioral Health, but
15 the release does not discharge or otherwise affect any claim filed by
16 an older patient for property damaged as a result of any act or failure
17 to act by the facility, agency, organization or home to protect the
18 property of the older patient alleged to have occurred while the bond
19 was in effect.

20 5. A license is suspended by operation of law when the facility,
21 agency, organization or home is no longer covered by a surety bond
22 as required by this section or by a substitute for the surety bond
23 pursuant to NRS 449.067. The Administrator of the Division of
24 Public and Behavioral Health shall give the facility, agency,
25 organization or home at least 20 days' written notice before the
26 release of the surety or the substitute for the surety, to the effect that
27 the license will be suspended by operation of law until another
28 surety bond or substitute for the surety bond is filed in the same
29 manner and amount as the bond or substitute being terminated.

30 6. The Administrator of the Division of Public and Behavioral
31 Health may exempt a peer support recovery organization, residential
32 facility for groups or a home for individual residential care from the
33 requirement of filing a surety bond pursuant to this section if the
34 Administrator determines that the requirement would result in undue
35 hardship to the peer support recovery organization, residential
36 facility for groups or home for individual residential care.

37 7. The requirement of filing a surety bond set forth in this
38 section does not apply to a facility for intermediate care, facility for
39 skilled nursing, peer support recovery organization, residential
40 facility for groups, home for individual residential care, agency to
41 provide personal care services in the home or agency to provide
42 nursing in the home that is operated and maintained by the State of
43 Nevada or an agency thereof.

44 8. As used in this section, "older patient" means a patient who
45 is 60 years of age or older.



1 **Sec. 14.** The Legislative Counsel shall, in preparing the
2 Nevada Revised Statutes or any supplements to the Nevada
3 Administrative Code, use the authority set forth in subsection 10 of
4 NRS 220.120 to change appropriately the name of the agency,
5 officer or instrumentality of the State whose name is changed or
6 whose responsibilities are transferred pursuant to the provisions of
7 this act to refer to the appropriate agency, officer or instrumentality.
8 **Sec. 15.** This act becomes effective upon passage and
9 approval.

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