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Administrative Law

Administrative Law; appeal of an investigation of a provider of services to indigents

NEV. REV. STAT. §§ 232.____, 422.____ (new); § 232.290 (amended).
AB 500 (Committee on Judiciary); 1987 STAT. Ch 694
AB 813 (Price); 1987 STAT. Ch 596

Under existing law, the Welfare Division of the Department of Human Resources (Welfare Division) may penalize specific prohibited acts committed by providers of services¹ under the plan for assistance to the medically indigent.² With the enactment of Chapter 694, any information obtained by the Welfare Division in an investigation of a provider must remain confidential.³ Under Chapter 694, a provider may now request a hearing to review decisions of the Welfare Division.⁴ The hearing officer's decision is appealable to the district court, but that court's review must be confined to the record.⁵ Thus, the court must not substitute a judgment concerning the weight of the evidence for that of the hearing officer.⁶ The court may, however, reverse or modify the decision if the appellant's substantive rights have been prejudiced because the administrative findings, inferences,

1. NEV. REV. STAT. § 422.400 1 (a provider of services is one who supplies medical care, remedial care, or other services pursuant to a contract under the state plan for assistance to the medically indigent).

2. See *id.* §§ 422.400, 422.410 (definitions of unlawful and fraudulent acts and penalties for their violations). See generally 1985 PAC. L.J. REV. NEV. LEGIS. 151, 156 (expansion of penalties against providers of services). See *id.* § 422.234 (state plan for assistance to the medically indigent). See also *id.* §§ 428.010, .030 (eligibility standards for medically indigent).

3. 1987 Nev. Stat. ch. 694, sec. 2, at ____ (enacting NEV. REV. STAT. § 422.____). Nevada has always protected the confidentiality of recipients of public assistance. See generally OP. ATT'Y GEN. 181 (12-8-44) (records of persons applying for state assistance must be kept confidential).

4. 1987 Nev. Stat. ch. 694, sec. 3, at ____ (enacting NEV. REV. STAT. § 422.____). A Welfare Division agent or employee who investigated or made the decision being appealed from may not participate in the hearing or the decision making process. *Id.* Information presented as evidence at a hearing to review an action by the Welfare Division is not confidential except for the identification of any recipient of the assistance. *Id.* sec. 2, at ____ (enacting NEV. REV. STAT. 422.____).

5. *Id.* sec. 3, at ____ (enacting NEV. REV. STAT. § 422.____).

6. *Id.*

conclusions, or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the Welfare Division; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary, capricious, or characterized by abuse of discretion, or clearly unwarranted exercise of discretion.⁷ With the enactment of Chapter 596, the Department of Human Resources is permitted to share confidential information so long as the sharing of information is done in the performance of official duties and complies with applicable laws.⁸

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7. *Id.* Cf. 1985 PAC. L.J. REV. NEV. LEGIS. 1, 3 (appeal of welfare decisions by applicants or recipients of public assistance).

8. 1987 Nev. Stat. ch. 596, sec. 1, at ___ (enacting NEV. REV. STAT. § 232.____). See generally ATT'Y GEN. OP. 174 (6-7-56)(information concerning people applying for public assistance is confidential but may be used to help an independent agency appointed by the governor to make a report provided the information is used in furtherance of applicable law and is kept confidential by that agency).