

Extendicare Health Services, Inc., Alternative Dispute Resolution Rules of Procedure

Program Administrator: DJS Administrative Services, Inc.

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## Purpose

These procedural rules have been adopted by Extendicare Health Services, Inc., (EHSI) for the purpose of attempting to resolve disputes with consumers of services related to the delivery of health care, long term care or assisted living services. DJS Administrative Services, Inc. (hereinafter “DJS”) will act as the administrator of this process in accordance with the rules set forth below.

### Due Process Standards for Consumer Healthcare Disputes

DJS reserves the right to refuse to administer any dispute resolution process which may be based upon an agreement between the parties which substantially amends the rules or which does not meet the following Due Process Standards for Consumer Healthcare Disputes.

#### I. Agreement

There must be a written agreement between the parties to engage in the dispute resolution process. The agreement should be knowing and voluntary.

#### II. Capacity

The parties must have capacity both at the time of execution of the agreement and at the time of initiation of the dispute resolution process or be represented by a surrogate or agent with capacity.

#### III. Voluntariness

Execution of an agreement must be voluntary and optional. It must not be executed as a condition of admission, treatment or a condition of remaining in a facility.

#### IV. Witness

The party's signature on the agreement must be witnessed by an individual who has been trained to explain the dispute resolution process to consumers who have questions and to provide consumers with a written explanation of the dispute resolution process.

#### V. Right to Rescission with Review by Counsel

The agreement must provide for a minimum of five (5) business days right of rescission period during which the parties may have the agreement reviewed by counsel.

#### VI. Mediation as Prerequisite to Arbitration

Should the parties' agreement provide for binding arbitration, mediation must be offered as a prerequisite to arbitration, except for those disputes that meet the criteria for resolution under

the Expedited Procedures. However, after a dispute arises, the parties may agree in writing to proceed directly to arbitration.

#### VII. ADR Sessions

Mediation sessions or arbitration hearings must be conducted with adequate notice and with a fair opportunity to be heard and to understand what information is being presented. The place of the proceedings should be accessible to the parties and to the production of relevant evidence and witnesses.

#### VIII. Remedies

Parties may not be denied legal remedies otherwise available to them under applicable laws.

#### IX. Costs

Consumers may not be assessed costs unreasonably related to the costs they would incur had they filed an action in a court with jurisdiction over the matter.

## Rules of Procedure for the Resolution of Consumer Healthcare Disputes

### 1.0 General Rules

#### 1.01 Applicability of Rules

The parties shall be bound by these Rules wherever they have agreed in writing to dispute resolution by DJS or under these Rules. If there is a dispute between the parties regarding the interpretation of these Rules, the presiding arbitrator shall have the authority to make a decision or interpretation regarding the Rules, and the arbitrator's decision or interpretation shall be final and binding.

When parties agree to resolve disputes under these Rules, they accept the terms of these Rules and authorize the Administrator to assist in the process of selecting neutrals and provide such other services as are provided for by the Rules. Parties using these Rules agree to indemnify, hold harmless and release the Administrator, its partners and employees, from any and all liability to the party or a person or entity claiming through the party by reason of or in any way related to the Administrator or its administration of these Rules, the Administrator, the neutral, the Rules, or any action taken or not taken with respect thereto.

#### 1.02 Existence of an Agreement to Resolve Disputes

The provision by the Administrator of any services to parties does not necessarily constitute a determination by the Administrator that an agreement to resolve disputes exists.

#### 1.03 Meaning of Mediator or Arbitrator

The term "neutral" "mediator" or "arbitrator" in these Rules means the mediation or arbitration panel, whether composed of one or more mediators or arbitrators.

#### 1.04 Interpretation of Rules

The provisions of these Rules and any exceptions thereto are subject to applicable laws. Where there is a difference in interpretation among the parties to a dispute resolution process, the issue shall be referred to the presiding arbitrator for a final decision, which shall be binding upon the parties.

## 2.0 Initiating ADR and selection of Mediators and Arbitrators

### 2.01 Demand for Alternative Dispute Resolution

The demand for alternative dispute resolution (“ADR”) shall be made in writing and submitted to DJS, P.O. Box 70324, Louisville, KY 40270-0324; 719 Old Mill Stream Lane, Shepherdsville, KY 40165, (877) 586-1222, [www.djsadministrativeservices.com](http://www.djsadministrativeservices.com), by regular mail, certified mail, electronic mail, or overnight delivery. If the parties choose not to select DJS or, if DJS is unwilling or unable to serve as the Administrator, the parties shall select another independent and impartial entity that is regularly engaged in providing mediation and arbitration services to serve as Administrator. Requests for ADR, regardless of the entity chosen to be Administrator, shall be conducted in accordance with these Rules. A copy of these Rules may be obtained from the Facility’s Executive Director, or from DJS at the address or website listed above.

The demand for ADR (the “Demand”) must include the name, address and telephone numbers of all parties, the requested location of the proceeding, a description of the issue(s) in dispute, and the amount(s) in dispute. The Demand must contain a copy of the ADR Agreement (“Agreement”) or an affidavit affirming that an Agreement was executed by the Resident or the Resident’s legal representative. A Demand Form may be obtained at the web address listed above.

If the Demand is filed by an institution, the required Administration Fees must be included with the Demand.

### 2.02 Payment of Administration Fees when Demand is filed by a Consumer

Upon receipt of a Demand from a consumer, the Administrator shall send a confirmation letter to all parties including a copy of the Demand within three (3) business days.

In the event the claimant is *pro se* a confirmation letter will be sent to all parties and will include the following information:

- A copy of the formal demand made by the plaintiff
- A copy of the EHSI Alternative Dispute Resolution Rules of Procedure
- A detailed Scheduling Order consistent with the ADR agreement;
- A list of three (3) mediators and three (3) arbitrators including instructions on mediator and arbitrator selection.
- Notice that the mediator and arbitrator must be selected within thirty-five (35) days.

The institution must pay the Administration Fees to DJS no later than ten (10) business days from the date on which the institution receives the confirmation letter.

### 2.03 Procedures for Selecting Neutrals

Upon receipt of a Demand by a party to commence the ADR process, the parties shall proceed to select a mediator and an arbitrator. The arbitrator will be in charge of resolving all pre-arbitration disputes and will preside over the arbitration. If the parties are unable to agree on the selection of a mediator, then they agree to allow the presiding arbitrator to choose one for them. If the parties are unable to agree on an arbitrator then each party shall select an arbitrator and the two selected will choose a third who will serve as the presiding arbitrator.

The Administrator shall issue a notice to all of the parties confirming the selection of the mediator and arbitrator.

The parties shall proceed to arbitration if mediation is unsuccessful. After a dispute arises, the parties may agree to forego mediation and proceed directly to arbitration. In arbitration proceedings, the parties may agree to resolve their dispute before a panel of three (3) arbitrators or a single arbitrator. The arbitration shall proceed before a single arbitrator unless one or both parties request a panel of arbitrators.

#### 2.05 Notice to the Neutrals of Appointment

Except for disputes resolved under the Expedited Procedures, notice of the selection of the neutrals shall be mailed to the neutrals by the Administrator with a reference to these Rules.

#### 2.06 Disclosure and Withdrawal

Within five (5) business days of receipt of notice of appointment, a person selected as a neutral shall disclose to the parties in writing any circumstances likely to affect impartiality, including a bias, a financial or personal interest in the result of the mediation or arbitration, or a past or present relationship with a party or a party's counsel or other authorized representative.

A neutral shall refrain from accepting employment or continuing as a neutral in any dispute if he reasonably believes or perceives that his participation would be directly adverse to any interest of his, or a person with whom he has a client or other substantial relationship which may materially limit the neutral's ability to perform his responsibilities. This disclosure requirement continues throughout the ADR process and shall include any pertinent information known or made available to the neutral regarding the prior use by either party of the neutral.

After appropriate disclosure of an interest other than a directly adverse interest, the neutral may serve if all parties consent.

### 3.0 Rules on Regular Procedures for Arbitrations and Mediations

#### 3.01 Preliminary Conferences

A preliminary conference with the parties and/or their counsel and other authorized representatives shall occur within ten (10) days of the selection of the neutrals unless otherwise agreed to by the parties. The neutral may consider any matters that will expedite or facilitate the efficient conduct of proceedings. All agreements reached by the parties during the preliminary conference shall be circulated in writing by the neutral to the parties. In the case of an arbitration a preliminary conference should be scheduled with the presiding arbitrator within (10) days after the mediation has been declared an impasse.

### 3.02 Discovery

The parties shall be allowed to initiate discovery as soon as the demand for ADR has been filed. Discovery must be completed not later than 180 days after the date the Demand for ADR was filed. Permissible discovery shall include: a) 30 interrogatories inclusive of subparts; b) 30 requests for production of documents inclusive of subparts; c) 10 requests for admissions inclusive of subparts; d) depositions of not more than six (6) fact witnesses, and e) depositions of not more than two (2) expert witnesses.

Where warranted, by agreement or by request to the presiding neutral, the parties may conduct such additional reasonable discovery as may be necessary or proper.

The parties agree that in the case of a dispute over the scope of discovery during the mediation phase of the ADR process, such disputes should be resolved by the presiding arbitrator.

### 3.03 Fixing the Locale of the Proceeding

The parties may mutually agree on the locale for the proceeding. If there is no mutual agreement, or if a party objects to the locale, the neutral shall have the power to determine the locale in accordance with the Rules of Procedure and due process considerations.

### 3.04 Date, Time and Place of Proceedings

Unless otherwise agreed by the parties, the neutral shall set the date and time for each proceeding session and shall mail to each party notice thereof at least ten (10) days in advance, unless the parties by mutual written agreement waive such notice or modify the terms thereof.

### 3.05 Statement of the Issues and Relevant Information

Unless otherwise agreed by the parties and the neutral, at least ten (10) days prior to the mediation or arbitration, each party shall provide the neutral with a brief statement of the issues and that party's position on each issue. The parties should enclose all relevant documents to assist the neutral in resolving the dispute.

### 3.06 Proceedings

Unless otherwise agreed by the parties and the neutral, mediation shall occur no later than one hundred twenty (120) days after receipt of the demand for ADR. The parties may be represented at proceedings by counsel or other authorized representative.

A party desiring to make a record of an arbitration proceeding shall make arrangements for the making of such record and shall notify all other parties and the arbitrator of these arrangements in advance of the proceeding. The party or parties requesting the record shall pay the cost of the record and shall furnish a copy of the record to the arbitrator. A party shall be entitled to a copy of any official record of the proceeding upon payment therefore including payment of an equal share of the original expense of making the record.

### 3.07 Authority of the Neutral

The mediator is authorized to facilitate the resolution of the issues in dispute, but may not impose a resolution. The mediator is authorized to determine when each mediation session should be suspended.

The arbitrator is authorized to decide any disputes about discovery or the Rules of Procedure and to render a final and binding award as to the issues in dispute within the scope of the arbitration. Prior to the hearing, the arbitrator shall determine whether a reasoned award explaining the basis for its final award shall issue.

An arbitrator may not delegate any decision-making function to another person without consent of all of the parties.

### 3.08 Confidentiality

Mediation sessions are considered confidential. A mediation session is a settlement negotiation entitled to the protection accorded by Rule 408 of the Federal Rules of Evidence and its state counterparts. Except as otherwise provided in these Rules, all oral communications disclosed to the mediator as part of the mediation and all papers and other written communications created during or exclusively for the mediation shall remain confidential, and the mediator shall not be required to testify with respect thereto in any proceeding.

The parties shall maintain the confidentiality of the mediation sessions and shall not rely on the following as evidence in any proceeding, views of another party or the mediator with respect to settlement or settlement proposals;

(a) admissions by another party; and

(b) settlement proposals.

An arbitrator shall maintain the privacy of any proceeding. It shall be discretionary with the arbitrator to determine the propriety of the attendance of a person other than a party, the



party's counsel or other authorized representative, a stenographer or witnesses. A party may request the application of a rule requiring all persons other than the parties, the party's counsel or other authorized representative and the stenographer to be excluded from the hearing except while testifying as a witness. If a party makes such a request, the arbitrator shall exclude such persons from the hearing except while testifying as a witness.

### 3.09 Termination of Mediation

The mediation shall be considered terminated:

- (a) by the execution of a settlement agreement by the parties;
- (b) by a written declaration of the mediator to the effect that mediation is not productive;
- (c) by a written declaration of a party or parties that the mediation is not productive, *provided that* the mediation proceeding has commenced and the parties have mediated with the mediator for at least four (4) hours; or
- (d) by the mutual written agreement of the parties; or
- (e) if the parties have not specified a specific period for mediation, upon the expiration of thirty (30) days from the time when the parties were deemed to have mediated with the mediator for at least four (4) hours.

The mediator shall immediately notify the Administrator of the termination of any mediation and the results of such mediation. The parties shall proceed to binding arbitration if mediation is unsuccessful. Upon notification that mediation did not result in settlement, the Administrator will notify the parties and the appointed arbitrator(s) of the initiation of the Arbitration process.

## 4.0 Rules Exclusive to Arbitrations

### 4.01 Proceedings

Unless otherwise agreed to by the parties and the neutral, arbitration shall occur no later than sixty (60) days after the unsuccessful termination of mediation.

### 4.02 Oaths

Before the start of the first arbitration hearing, if any, the arbitrator may take an oath of office. The arbitrator shall require witnesses to testify under oath administered by the arbitrator or a duly qualified person.

#### 4.03 Order of Proceedings

An arbitration hearing shall be opened by the taking of the oath of the arbitrator, if any; by announcing of the date, time and place of the hearing, and the presence of the arbitrator, the parties, and their counsel and other authorized representatives, if any; and by announcing the receipt by the arbitrator of the Demand for arbitration, any response, and the notification of appointment of the arbitrator.

The arbitrator may, at the beginning of the hearing, ask for oral or written statements clarifying the issues involved. In some cases, part or all of the above actions will have been accomplished at the preliminary conference conducted by the arbitrator. The arbitrator may conduct a preliminary hearing to resolve evidentiary issues at the request of the parties or at the arbitrator's discretion.

With respect to each claim, the complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator may vary this procedure within the arbitrator's discretion but shall afford a full, equal and reasonable opportunity to all parties for the presentation of any material, relevant, and admissible non-duplicative evidence.

Exhibits, when offered by either party, may be received in evidence at the discretion of the arbitrator. The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of any stenographic record.

The maximum length of the arbitration hearing exclusive of the preliminary evidentiary hearing, if required, shall be five (5) days.

#### 4.04 Failure to Appear

The arbitration may proceed in the absence of a party or a party's counsel or other authorized representative who, after due notice, fails to be present or fails to obtain a postponement. The arbitrator shall require each party who is present to submit such evidence as the arbitrator may require for the making of an award.

#### 4.05 Evidence

The parties may offer such non-duplicative evidence as is relevant, material and admissible to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of a party or upon the arbitrator's own motion.

The arbitrator shall be the judge of the duplicative nature, relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. However,

the arbitrator should refuse to allow the introduction of any evidence that the arbitrator believes would result in the disclosure of confidential information which is privileged under any applicable statute or under applicable law, including, but not limited to, information subject to (a) a quality assurance and/or peer review privilege; (b) a patient-physician privilege; or (c) an attorney-client privilege. All evidence shall be taken in the presence of all of the arbitrators and all of the parties and the parties' counsel and other authorized representatives, except where a party is absent after due notice has been given or has waived the right to be present.

#### 4.06 Inspection or Investigation

An arbitrator finding it necessary for there to be a further inspection or investigation in connection with the arbitration or requested by less than all the parties to make a further inspection or investigation may do so and shall advise the parties of the arbitrator's requirements. An arbitrator requested by all of the parties to make a further inspection or investigation shall do so.

#### 4.07 Interim Measures

The arbitrator may issue such orders for interim relief as may be deemed necessary by the arbitrator or all of the parties to maintain the status quo in the dispute without prejudice to the rights of the parties or to the final determination of the dispute.

#### 4.08 Closing of Hearing or Arbitration Proceeding

When satisfied that the record is complete, the arbitrator shall declare the hearing closed. If written statements are to be submitted, the hearing shall be declared closed as of the final date set by the arbitrator for such submission. If there has been no hearing, the arbitrator shall determine a fair and equitable procedure for receiving evidence and closing the proceeding. The time limit within which the arbitrator is required to make the award shall commence to run upon the closing of the hearing or proceeding.

#### 4.09 Time of Award

The award shall be made promptly by the arbitrator but no later than thirty (30) days from the date of closing of the hearing or proceeding.

#### 4.10 Publication and Form of Award

The award shall be in writing and shall be signed by each arbitrator approving the award. A copy shall be forwarded by the arbitrator to the Administrator and shall be available for publication only if both the arbitrator(s) and all parties agree in writing.

#### 4.11 Scope of Award

Submission by the parties to arbitration under these Rules shall constitute an agreement between or among the parties, that arbitration hereunder shall be the exclusive remedy between or among the parties regarding any claim which could or might have been raised out of or relating to any and all matters covered by said submission or the subject matter thereof.

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the ADR agreement of the parties and consistent with the provisions of the state or federal law applicable to a comparable civil action, including any prerequisites to, credits against or limitations on, such damages.

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award.

#### 4.12 Reconsideration of Award

Within five (5) days after the effective date of an award, a party to an arbitration may request, in writing, the arbitrator to reconsider his award. Such request shall contain a concise statement of the reasons that the arbitrator should reconsider the award. Unless the arbitrator notifies all of the parties that the arbitrator has decided to reconsider the award within five (5) days of the effective date of the request, the request is deemed denied. Within five (5) days after the effective date of an award, the arbitrator may, upon the arbitrator's own initiative, modify the written award to correct non-substantive errors in the award. The arbitrator shall immediately furnish a copy of the modified award to the parties.

#### 4.13 Award

An arbitration award, if any, must be paid within thirty (30) days of the effective date of the award. In the event of non-payment of the award, the prevailing party may bring legal action to enforce the award as if it were a judgment entered by a court of competent jurisdiction.

#### 4.14 Release of Documents for Judicial Proceedings

The Administrator shall, upon the written request of a party, furnish to the party, at the expense of the party, certified copies of any papers, notices, process or other communications in the possession of the Administrator that may be required in judicial proceedings relating to the arbitration.

#### 4.15 Applications to Court and Exclusion of Liability

Neither the Administrator, DJS, nor a neutral in a proceeding under these Rules is a necessary party in judicial proceedings relating to any stage of the dispute resolution process, the mediation, or the arbitration. The parties agree to hold harmless, indemnify, and reimburse DJS, the Administrator, or the neutral for time, costs and expenses incurred in the participation of any legal proceedings to which they are not named as a party.

Parties using these Rules for binding arbitration shall be deemed to have consented that the claims considered in the arbitration have merged into the award, that the award is the only continuing basis of determining the parties' rights and that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

DJS, the Administrator, their officers, members, employees, agents, attorneys, consultants and representatives shall not be liable to a party or a person or entity claiming through the party by reason of or in any way related to the Administration of a proceeding, these Rules, or any action taken or not taken with respect thereto.

Neither the arbitrator nor mediator shall be liable to a party for any act, error or omission in connection with a dispute resolution process conducted under these Rules unless such party is able to establish by clear and convincing evidence that (i) the arbitrator or mediator has actively participated in an effort by a party to obtain an outcome by fraud or corruption; or (ii) the arbitrator or mediator has engaged in corruption or gross misconduct.

## 5.0 Rules Exclusive to Expedited Arbitrations

### 5.01 Expedited Procedures

Expedited Procedures shall be applied in a case where no disclosed claim or counterclaim exceeds \$50,000 exclusive of interest and costs of the proceeding. Parties may also agree in writing to the Expedited Procedures in a case. In any case the parties agree that an award under an expedited process shall not exceed \$50,000.00 exclusive of interest and costs.

(a) Where the Expedited Procedures are to be applied, the arbitration shall be conducted in accordance with the procedures set forth below:

The parties shall accept all notices, process, and other communications from the Administrator by telephone or email.

To the extent that the Rules governing Regular Procedures do not conflict with the Rules governing Expedited Procedures, the Rules governing Regular Procedures shall apply to the Expedited Procedures. All other cases shall be administered in accordance with the Regular Procedures.

### 5.02 Date, Time and Place of Expedited Hearing

The arbitrator shall set the date, time and place of any hearing and will notify the parties by telephone, at least seven (7) days in advance of the hearing date. Unless mutually agreed upon by the parties, in no event shall the date of the hearing be later than thirty (30) days from the effective date of the notice of selection of the arbitrator.

### 5.03 Expedited Hearing

Generally, the expedited hearing shall be completed within one day. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven (7) days.

## 6.0 Other Procedural Rules

### 6.01 Communications

Parties to a process shall be deemed to have consented that any paper, notice or other communication necessary or proper for the initiation or continuation of any proceeding under these Rules may be sent to the party by first class mail, postage prepaid, registered or certified, return receipt requested, addressed to the party at the last known address, by overnight delivery service, or made by personal delivery.

The Administrator, neutrals, and the parties may also use facsimile transmission, telex, telegram or other written forms of electronic communications.

All papers, notices, and other communications sent by first class mail shall be deemed received three (3) days after they are deposited in the United States mail. All papers, notices, and other communications sent or delivered by any other means shall be deemed received upon their actual delivery.

### 6.02 Service

When requested by either the Administrator or the neutral, each party shall provide to the Administrator a copy of any paper, notice or other communication provided by that party to the mediator or another party. The Administrator has no obligation to keep a copy of any paper, notice or other communication provided to it or to act thereon in a timely manner.

### 6.03 Counting of Days

In all instances in which the counting of days is required by these Rules, the day of the event shall count, but the day on which a paper, notice or other communication is sent shall not count. If the date on which some action would otherwise be required to be taken, a paper, notice or other communication would otherwise be required to be sent or a period would otherwise expire on a holiday, a Saturday or a Sunday, such action shall be taken, such paper, notice or communication sent or such period extended to the next succeeding weekday which is not a weekend day or a holiday. For purposes of these Rules, the term "holiday" means such days that are recognized as holidays by the United States Postal Service.

## 7.0 Rules on Administration

### 7.01 Expenses

Except where specified in agreements between the parties, all expenses of the neutrals, including required travel and other expenses of the neutral, shall be borne equally by the parties.

#### 7.02 Neutral's Fee

The compensation of the neutral shall be determined in accordance with the fee and expense schedule of the neutral submitted with the list of neutrals provided by the Administrator, unless other arrangements are made. Other arrangements may be negotiated and agreed upon by the parties and the neutral prior to the commencement of the proceeding. The Administrator should be notified in writing of any arrangements agreed upon that are different from the submitted materials.

#### 7.03 Deposits.

The neutral may require the parties to deposit with the neutral in advance of any proceeding such sums of money as the neutral deems necessary to defray the expense of the proceeding, including the neutral's fee. The neutral shall render an accounting to the parties and return any unexpended balance at the termination of the proceeding, less any costs and expenses associated with the proceeding.

#### 7.04 Amendments and Interpretations

These Rules may be amended or interpreted by the Administrator from time to time, which amendments or interpretations thereafter become binding upon the parties to a proceeding pursuant to these Rules or under the auspices of the Administrator. Any reference to these Rules shall be construed to refer to these Rules as amended and interpreted from time to time.