

**ADOPTED REGULATION OF THE DEPARTMENT
OF HUMAN RESOURCES**

LCB File No. R200-03

Effective September 17, 2004

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

AUTHORITY: §§1-16, NRS 439.655.

A REGULATION relating to the Fund for a Healthy Nevada; revising various provisions relating to subsidies from the Fund for a Healthy Nevada by the Department of Human Resources to senior citizens for coverage for prescription drugs and pharmaceutical services; and providing other matters properly relating thereto.

Section 1. NAC 439.804 is hereby amended to read as follows:

439.804 “Applicant” means a person who applies to the Department to receive a subsidy for ~~[the cost of a policy of health insurance payable by the Department]~~ *coverage for prescription drugs and pharmaceutical services* pursuant to NRS 439.670.

Sec. 2. NAC 439.810 is hereby amended to read as follows:

439.810 “Enrollee” means a person ~~[-~~
~~—1.—Who]~~ *who* the Department has determined is eligible to receive a subsidy for ~~[the cost of a policy of health insurance]~~ *coverage for prescription drugs and pharmaceutical services* pursuant to NRS 439.665 . ~~[-; and~~

~~—2.—To whom a contractor has issued a policy of health insurance.]~~

Sec. 3. NAC 439.812 is hereby amended to read as follows:

439.812 “Hearing officer” means a person who:

1. Did not participate in the decision of the Department that is the subject of the hearing;
and

2. Is appointed by the Director of the Department *or his designee* to preside at a hearing conducted pursuant to NAC 439.842 to 439.856, inclusive.

Sec. 4. NAC 439.822 is hereby amended to read as follows:

439.822 “Subsidy” means the amount of money that the Department ~~[will]~~ *may* pay to a contractor on behalf of a senior citizen who meets the criteria for receiving a subsidy set forth in NRS 439.665 for ~~[the cost of a policy of health insurance that the contractor issued to the senior citizen.]~~ *coverage for prescription drugs and pharmaceutical services.*

Sec. 5. NAC 439.826 is hereby amended to read as follows:

439.826 1. In addition to meeting the criteria for receiving a subsidy set forth in NRS 439.665, an applicant who wishes to receive a subsidy must file a properly completed application for a subsidy with the Department during a period of open enrollment.

2. The application must be made:

(a) On a form prescribed by the Department; and

(b) Under oath as required by NRS 439.670.

3. *The Department may require an applicant to provide, with his application, proof of his:*

(a) Age by submitting a copy of his birth certificate, driver’s license, social security letter, medicare card, military discharge papers or other appropriate document satisfactory to the Department;

(b) Income by submitting a copy of his income tax returns, a copy of his Social Security Form SSA-1099, copies of wage statements, copies of dividend statements or other appropriate

documentation satisfactory to the Department of any other sources of income received by the applicant in the 12 months immediately preceding the date of his application; and

(c) Continuous residency in this State for at least the 12 months immediately preceding the date of his application by submitting a copy of utility bills, rental agreements or any other appropriate documentation satisfactory to the Department.

4. Each applicant shall provide the Department with his social security number.

5. Each year in which there is money available from the amount allocated for ~~such subsidies in the Fund for a Healthy Nevada,~~ subsidies by the Department, the Department will designate at least one period of open enrollment.

~~4.~~ *6. An application shall be deemed received by the Department on the date that the completed application is received by the Department.*

~~5.—If the~~

7. An application shall be deemed properly completed if the application:

(a) Is submitted on the form prescribed by the Department and filled out completely;

(b) Includes the documentation described in subsection 3, if such documentation is required by the Department; and

(c) Includes the social security number of the applicant as required pursuant to subsection 4.

↪ The Department will return any incomplete application to the applicant with a designation that the application has not been processed by the Department.

8. If an applicant or enrollee requests a waiver of the eligibility requirement regarding household income pursuant to subsection 5 of NRS 439.665 because ~~the circumstances of the applicant's household have changed as a result~~ of an illness or disability ~~;~~ or extreme financial

hardship, the applicant *or enrollee* must include with that request a written statement signed by a licensed physician certifying the illness or disability ~~[]~~ *or other appropriate documentation that satisfies the Department that an extreme financial hardship exists*. The Department will consider each request for such a waiver on a case-by-case basis.

Sec. 6. NAC 439.828 is hereby amended to read as follows:

439.828 1. Within 45 days after receiving an application for a subsidy, the Department will provide written notice to the applicant of its approval or denial of the application.

2. If the application is approved, the notice must state:

(a) The amount of the subsidy that the Department will pay to a contractor on behalf of the applicant; ~~and~~

~~—(b) That within 60 days after the date of the notice, the applicant must submit an enrollment form to a contractor to obtain a policy of health insurance from the contractor to remain eligible to receive the subsidy.]~~

(b) The amount of the annual household income on which the eligibility was based; and

(c) If the applicant is deemed eligible but there is insufficient money available from the amount allocated for subsidies by the Department, that the applicant has been placed on a waiting list in the order of priority described in NAC 439.830.

3. If the application is denied, the notice must state:

(a) The reason for the denial;

(b) The procedure for requesting a hearing to review the decision of the Department as set forth in NAC 439.842; and

(c) The procedures for a hearing before the Department as set forth in NAC 439.842 to 439.856, inclusive.

4. ~~[In addition to the requirements set forth in subsection 3, if the application is denied because there is insufficient money available in the Fund for a Healthy Nevada to pay a subsidy, the notice must state that the applicant has been placed on a waiting list in the order of priority described in NAC 439.830.~~

~~—5.] Within 30 days after the Department approves an application, the Department will provide to the contractor the name of the applicant whose application was approved. [Within the limit on time set forth in the contract entered into with the Department pursuant to NRS 439.665, the contractor shall provide written notice to the Department of each policy of health insurance issued by the contractor to an applicant whose application was approved.]~~

Sec. 7. NAC 439.830 is hereby amended to read as follows:

439.830 1. Except as otherwise provided in subsection 2, if there is insufficient money available ~~[in the Fund for a Healthy Nevada to pay a subsidy]~~ for each applicant ~~[,]~~ *from the amount allocated for subsidies by the Department*, the Department will rank the applicants whose applications are approved based on their household income. The applicant with the lowest household income will receive priority over the other applicants. If the household income of two applicants is exactly the same amount, the applicant whose application was received earlier by the Department will receive priority over the other applicant.

2. If the Department determines that an applicant has a qualifying hardship, the applicant will receive priority over the other applicants. If two or more applicants have qualifying hardships, the Department will determine the order of priority as between each of those applicants ~~[,]~~ *based on the needs of each applicant*.

3. *If, at any time, the Department determines that there is sufficient money available from the amount allocated for subsidies by the Department for more applicants, the Department*

may grant a subsidy to an applicant on the waiting list in the order of priority described in this section. If the Department grants a subsidy pursuant to this subsection, the Department will provide written notice to the applicant in the manner set forth in NAC 439.828.

4. For the purposes of this section, an applicant shall be deemed to have a qualifying hardship if the applicant submits to the Department:

(a) Documentation satisfactory to the Department that verifies that the monthly cost ~~for~~ of prescription drugs *and pharmaceutical services* for the applicant's household is ~~51 percent or more of the monthly household income;~~ *causing a hardship;*

(b) A written statement signed by a licensed physician certifying that , because of the applicant's need for a prescription drug ~~or~~ *or pharmaceutical service*, the failure of the applicant to take the prescription drug will place the life of the applicant in imminent danger; or

(c) Documentation satisfactory to the Department that verifies any other hardship of the applicant that the Department determines is a qualifying hardship.

Sec. 8. NAC 439.831 is hereby amended to read as follows:

439.831 *1.* For the purposes of determining whether an applicant satisfies the eligibility requirement set forth in NRS 439.665 regarding household income, the Department:

~~1.~~ *(a)* Will calculate the monthly household income for the month in which an application is filed with the Department pursuant to NAC 439.826 and multiply that number by 12; or

~~2.~~ *(b)* May, if the household income fluctuates from month to month:

~~(a)~~ *(1)* Add the monthly household income over a period of at least 2 months;

~~(b)~~ *(2)* Divide the sum calculated pursuant to ~~paragraph (a)~~ *subparagraph (1)* by the number of months within the period described in ~~paragraph (a); and~~

~~(c)~~ *subparagraph (1); and*

(3) Multiply the quotient calculated pursuant to ~~paragraph (b)~~ *subparagraph (2)* by 12.

2. Except as otherwise provided in subsection 8 of NAC 439.826, an applicant is not eligible for a subsidy if the household income of the applicant for the year in which the applicant submits his application exceeds the maximum household income set forth in NRS 439.665.

Sec. 9. NAC 439.834 is hereby amended to read as follows:

439.834 1. An applicant or enrollee shall cooperate with the Department in securing all information and documentation necessary to determine or confirm the eligibility of the applicant or continued eligibility of the enrollee to receive a subsidy. If the applicant or enrollee fails so to cooperate, the Department will deny the application or will deem the enrollee ineligible ~~to~~ ~~continue~~ to receive a subsidy.

2. An enrollee shall update the information contained in the application filed with the Department pursuant to NAC 439.826 that relates to his eligibility to receive a subsidy, including, without limitation, a change in his:

- (a) Name;
- (b) Address;
- (c) Telephone number;
- (d) Household income;
- (e) Marital status;
- (f) Eligibility for Medicaid; or
- (g) Eligibility for supplemental security income,

↳ by notifying the Department in writing within 20 days after the information becomes available to him.

Sec. 10. NAC 439.836 is hereby amended to read as follows:

439.836 1. If the Department approves an application for a subsidy, the enrollee remains eligible to receive the subsidy as long as he continues to meet the criteria for receiving a subsidy set forth in this chapter and chapter 439 of NRS.

2. The Department will review the eligibility of each enrollee at least annually. In conducting this review, the Department will compare the information it has received from the enrollee with information concerning the enrollee that is maintained by other state agencies.

3. If the Department is unable to determine the continuing eligibility of the enrollee in the manner set forth in subsection 2, the Department may require the enrollee to provide additional documentation ~~H~~, *including, without limitation, a copy of the income tax returns of the enrollee.*

4. If the Department is unable to obtain the additional documentation required pursuant to subsection 3, the Department will deem the enrollee ineligible to receive a subsidy.

Sec. 11. NAC 439.838 is hereby amended to read as follows:

439.838 1. If an enrollee *who is receiving a subsidy* wishes to discontinue receiving ~~the~~ *the* subsidy, he must submit a written request to that effect to the Department and notify the contractor in writing.

2. If, based on information the Department receives, the Department reasonably believes that an enrollee no longer meets the criteria for receiving a subsidy because one of the circumstances set forth in subsection 3 applies to the enrollee, it shall provide the enrollee with notice as set forth in NAC 439.840 and an opportunity for a hearing.

3. The circumstances in which an enrollee no longer meets the criteria for receiving a subsidy include, without limitation, that:

(a) ~~The enrollee has failed to maintain coverage under a policy of health insurance that a contractor issued to the enrollee;~~

~~(b)~~ The enrollee is eligible for *coverage for prescription drugs and pharmaceutical services through* Medicaid;

~~(e)~~ (b) The household income of the enrollee exceeds the maximum household income set forth in NRS 439.665; ~~for~~

~~(d)~~ (c) The enrollee knowingly provided incorrect information on the application that he filed with the Department pursuant to NAC 439.826 and failed to correct the information within a reasonable time as determined by the Department ~~for~~.

~~4. If the Department reasonably believes that an enrollee is ineligible to continue to receive a subsidy based upon the circumstances set forth in paragraph (a) of subsection 3, the notice provided to the enrollee must state that the contractor may terminate coverage as provided in the policy of health insurance under which the enrollee is covered regardless of whether the enrollee requests a hearing before the Department.~~

~~5.];~~

(d) *The enrollee failed to maintain residency in this State; or*

(e) *The enrollee failed to respond timely to a request for verification of the income of the applicant or of any other annual eligibility requirement.*

4. The Department will deem an enrollee to be ineligible to ~~continue to~~ receive a subsidy if the enrollee does not request a hearing within 30 days after the date of the notice provided to the enrollee pursuant to subsection 2.

5. *If an enrollee no longer meets the criteria for receiving a subsidy because one of the circumstances set forth in subsection 3 applies to the enrollee, the Department will grant a*

subsidy to an applicant on the waiting list, if any, in the order of priority described in NAC 439.830.

Sec. 12. NAC 439.840 is hereby amended to read as follows:

439.840 If the Department determines that an enrollee no longer meets the criteria for receiving a subsidy set forth in this chapter and chapter 439 of NRS, it will notify the enrollee in writing that the enrollee is ineligible ~~{to continue}~~ to receive a subsidy. The notice must inform the enrollee:

1. Of the reason that the enrollee is ineligible ~~{to continue}~~ to receive a subsidy;
2. Of the procedures set forth in NAC 439.842 for requesting a hearing to review the decision of the Department;
3. Of any free or inexpensive legal services available in the area and must provide telephone numbers of the organizations providing those services; and
4. That if he wishes to ~~{continue the}~~ *receive* coverage provided by ~~{the}~~ *a* policy of health insurance that a contractor issued to the enrollee, he must pay to the contractor, in a timely manner, the entire premium established by the contractor.

Sec. 13. NAC 439.844 is hereby amended to read as follows:

439.844 1. The Department will deny a request for a hearing received pursuant to NAC 439.842 if:

- (a) The sole issue being contested is an issue that may only be resolved by amending the provisions of NRS 439.635 to 439.690, inclusive;
- (b) The sole issue being contested is that the Department denied an application for a subsidy, discontinued paying a subsidy or reduced the amount of a subsidy, if that action by the

Department was based only upon the limits of the money available ~~[in the Fund for a Healthy Nevada;]~~ *from the amount allocated for subsidies by the Department;*

(c) The sole issue being contested is an issue that relates to a determination of the coverage of ~~[the]~~ *a* policy of health insurance under which an enrollee is covered and the enrollee has failed to complete a process for resolving disputes established by the contractor; or

(d) The request is not received by the Department within the limit on time set forth in NAC 439.842.

2. If a person who filed a request for a hearing wishes to have the hearing dismissed, he must submit a written request for the dismissal of the hearing, signed by him, to the hearing officer before the date of the hearing. Upon receipt of the request for dismissal, the hearing officer shall dismiss the hearing and notify the person requesting the dismissal and the Department of the dismissal.

Sec. 14. NAC 439.858 is hereby amended to read as follows:

439.858 1. If a hearing officer overturns a decision of the Department to deny a subsidy or that an enrollee is ineligible ~~[to continue]~~ to receive a subsidy, the Department will:

(a) Pay the amount of the subsidy due ~~[the]~~ *to a* contractor from the date that the applicant or the enrollee appealed the decision of the Department to the date that the decision of the hearing officer was issued; and

(b) Reimburse the applicant or the enrollee, upon receipt of proof of payment for any premium paid to ~~[the]~~ *a* contractor for a policy of health insurance from the date that the applicant or the enrollee appealed the decision of the Department to the date that the decision of the hearing officer was issued.

2. The provisions of this section apply regardless of whether the Department appeals the decision of the hearing officer.

Sec. 15. NAC 439.860 is hereby amended to read as follows:

439.860 1. Except as otherwise provided in ~~subsection 4,~~ *subsections 4 and 5*, the Department will pursue all legal remedies for the collection of debt, including, without limitation, those remedies set forth in chapter 353C of NRS, to recoup a subsidy that was paid in error from the contractor or enrollee determined by the Department to be responsible for the error, including, without limitation, a subsidy that was paid:

- (a) To a contractor who was not entitled to receive payment of the subsidy;
- (b) For an enrollee whose application for a subsidy was submitted with fraudulent intent; or
- (c) For an enrollee who was otherwise not qualified to receive the subsidy.

2. The Department will deposit all money it collects for a subsidy that was paid in error with the State Treasurer for credit to the Fund for a Healthy Nevada.

3. The Department may offset any amount due the Department from a contractor because the contractor was not entitled to receive payment of a subsidy or was paid an amount in excess of that which he was entitled to receive for payment of a subsidy against any amount owing to that contractor by the Department for the payment of any subsidy.

4. The provisions of paragraph (c) of subsection 1 do not apply if the amount of the subsidy that was paid is \$100 or less.

5. Except as otherwise provided in this subsection, if the Department determines that an enrollee has received a subsidy in an amount that is in excess of the amount which he was entitled to receive, the Department will recoup the amount in excess from the enrollee in accordance with this section. An enrollee may request a waiver or reduction of the amount in

excess which he is required to return to the Department based on hardship. Such a request must be submitted in writing to the Department. The Department will consider each request for such a waiver or reduction on a case-by-case basis. The Department will not consider a request for such a waiver or reduction if the application for a subsidy which resulted in an amount in excess being received by the enrollee was submitted with fraudulent intent.

Sec. 16. NAC 439.832 is hereby repealed.

TEXT OF REPEALED SECTION

NAC 439.832 Termination of eligibility: Cause; notification; remedy. (NRS 439.655)

1. If an applicant whose application was approved fails to submit an enrollment form to a contractor to obtain a policy of health insurance from the contractor within 60 days after the date of a notice of approval provided pursuant to NAC 439.828, the Department will provide written notice to the applicant of its intent to terminate his eligibility to receive a subsidy. The notice must be provided within 70 days after the date of the notice of approval provided pursuant to NAC 439.828 and must state that the applicant is not eligible to receive a subsidy unless the applicant:

(a) Requests a hearing in the manner set forth in NAC 439.842;

(b) Submits proof to the Department before the date scheduled for the hearing that he has submitted an enrollment form to a contractor to obtain a policy of health insurance from the contractor; or

(c) Establishes good cause for failing to submit an enrollment form to a contractor to obtain such a policy of health insurance.

2. If an applicant fails to take any of the actions listed in subsection 1, the applicant is not eligible to receive a subsidy. The Department will send written notice to that effect to the applicant. The notice must also state that the applicant:

(a) Is no longer eligible to be placed on the waiting list; and

(b) Must reapply during a period of open enrollment if he wishes to be eligible to receive a subsidy in the future.

3. If an applicant is not eligible to receive a subsidy pursuant to subsection 2, the Department will grant a subsidy to an applicant on the waiting list in the order of priority described in NAC 439.830. If, at any time, the Department determines that there is money available for paying a subsidy in the Fund for a Healthy Nevada, the Department may grant a subsidy to an applicant on the waiting list in the order of priority described in NAC 439.830. If the Department grants a subsidy pursuant to this subsection, it will provide written notice to the applicant as set forth in NAC 439.828.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R200-03**

The Department of Human Resources adopted regulations assigned LCB File No. R200-03 which pertain to chapter 439 of the Nevada Administrative Code on July 23, 2004.

Notice date: 6/16/2004
Hearing date: 7/23/2004

Date of adoption by agency: 7/23/2004
Filing date: 9/17/2004

INFORMATIONAL STATEMENT

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

LCB File R200-03 was noticed on June 16, 2004 at all public libraries in the state, Aging Services, 505 E. King St., Grant Sawyer Building, and with LCB. There was one public response received that suggested the addition of language to 439.830 (4b). This addition was to add the words, "...or pharmaceutical service." This addition was adopted. There were no attendees at the workshop or hearing held on July 23, 2004. A copy of the letter suggesting the language change may be obtained by calling the Department of Human Resources, Director's Office, at (775) 687-8711 or by writing to the Senior Rx office at 1761 E. College Parkway, Suite 113, Carson City, NV 89706.

- 2. The number of persons who**
- (a) Attended hearings:** 0
 - (b) Testified at hearings:** 0
 - (c) Submitted to the agency written comments:** 1

3. A description of how comments was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses/interested entities by posting notices at public libraries, Aging Services, 505 E. King St., Grant Sawyer Building, and with LCB. There was one response to the request for comments.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

One change was made.

5. The estimated economic effect of the adopted regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

- (a) There are no estimated immediate or long-term adverse effects anticipated.
- (b) The proposed regulations are expected to have both an immediate and long-term beneficial health and economic impact on low-income Nevada seniors, by subsidizing an insurance product for them, which provides coverage for prescription drugs and pharmaceutical services. The immediate estimated economic effect would be subsidies for prescription drugs totaling about \$7.5 million in state fiscal year 2004. The immediate and long-term economic health impact cannot be specifically estimated but the program aims to improve the health and well being of the program's enrollees, thereby improving the general quality of life for all Nevada's citizens.

6. The estimated cost to the agency for enforcement of the adopted regulation.

The estimated cost to the agency for enforcement of these regulations pursuant to statute is capped by 3 percent of the estimated available amount each fiscal year. For state fiscal year 2004 this is approximately \$280,000.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that the proposed regulation duplicates.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide or involve a new fee, and hence since no fee is involved, there is not a total amount expected to be collected or used.