

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

LCB File No. R069-00

Effective March 2, 2001

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

AUTHORITY: §§1-18, 27-29, 31-33, NRS 439.655; §§19-26 and 30, NRS 233B.050 and 439.655.

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 33, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Applicant” means a person who:*

- 1. Has purchased or will purchase a policy of health insurance from a contractor; and*
- 2. Applies to the department to receive a subsidy toward the cost of such a policy payable by the department pursuant to NRS 439.670.*

Sec. 4. *“Contractor” means a private insurer with whom the department has entered into a contract pursuant to NRS 439.665 to make available, at a reasonable cost, policies of health insurance that provide coverage to senior citizens for prescription drugs and pharmaceutical services.*

Sec. 5. *“Department” means the department of human resources.*

Sec. 6. *“Enrollee” means a person who:*

- 1. Purchased a policy of health insurance from a contractor;*

2. Applied to the department to receive a subsidy toward the cost of such a policy that is payable by the department pursuant to NRS 439.670; and

3. The department has determined is eligible to receive such a subsidy pursuant to NRS 439.665.

Sec. 7. *“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 to preside at a hearing conducted pursuant to sections 19 to 26, inclusive, of this regulation.

Sec. 8. *“Household income” has the meaning ascribed to it in NRS 439.640.*

Sec. 9. *“Income” has the meaning ascribed to it in NRS 439.645.*

Sec. 10. *“Open enrollment” means a 30-day period prescribed by the department during which an application for a subsidy may be filed.*

Sec. 11. *“Senior citizen” has the meaning ascribed to it in NRS 439.650.*

Sec. 12. *“Subsidy” means the amount of money that the department will pay to a contractor on behalf of a senior citizen who meets the criteria for receiving a subsidy set forth in NRS 439.665 toward the cost of a policy of health insurance that the senior citizen purchased from the contractor.*

Sec. 13. *Sections 2 to 33, inclusive, of this regulation, may be referred to as the senior prescription program.*

Sec. 14. *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. Each year in which there is money available for such subsidies in the fund for a healthy Nevada, the department will designate at least one period of open enrollment.

4. An application shall be deemed received by the department on the date that the completed application is received by the department.

Sec. 15. *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 purchase a policy of health insurance from a contractor to remain eligible to receive the subsidy.

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 section 19 of this regulation; and

(c) The procedures for a hearing before the department as set forth in sections 19 to 26, inclusive, of this regulation.

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 section 16 of this regulation.

5. Within 50 days after the end of a period of open enrollment, the department will provide to the contractor the names of the applicants whose applications were approved during that period of open enrollment. 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 the purchase of a policy of health insurance from the contractor by an applicant whose application was approved.

Sec. 16. 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.

Sec. 17. 1. If an applicant whose application was approved fails to purchase a policy of health insurance from a contractor within 60 days after the date of a notice of approval provided pursuant to section 15 of this regulation, 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 section 15 of this regulation 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 section 19 of this regulation;*
- (b) Submits proof to the department before the date scheduled for the hearing that he has purchased a policy of health insurance from a contractor; or*

(c) Establishes good cause for failing to purchase 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 section 16 of this regulation. 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 section 16 of this regulation. If the department grants a subsidy pursuant to this subsection, it will provide written notice to the applicant as set forth in section 15 of this regulation.

Sec. 18. *Upon request, the department will provide information to an applicant relating to the criteria for receiving a subsidy, including, without limitation, any documentation that the department may require the applicant to provide to the department to verify that the applicant is eligible to receive a subsidy.*

Sec. 19. 1. *An applicant or enrollee who is aggrieved by a decision of the department concerning a subsidy and who wishes to have a hearing before the department must file a written request for a hearing with the department within 30 days after the date of the notice of the decision from the department.*

2. The department will schedule a hearing within 45 days after it receives the request for a hearing.

Sec. 20. *1. The department will deny a request for a hearing received pursuant to section 19 of this regulation 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;

(c) The sole issue being contested is an issue that relates to a determination of the coverage of the policy of health insurance purchased by an enrollee 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 section 19 of this regulation.

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. 21. *All testimony to be considered in a hearing must be taken under oath. Except as otherwise provided in section 24 of this regulation, before testifying, a person must swear or*

affirm before the hearing officer to the truthfulness of the testimony he is about to give in the hearing.

Sec. 22. 1. *Except as otherwise provided in section 24 of this regulation, a hearing must be conducted in person by a hearing officer.*

2. An applicant or enrollee may represent himself or may, in writing, authorize a person to represent him at the hearing, including, without limitation, an attorney.

3. Upon request, each party to the hearing shall submit to the hearing officer before the hearing copies of any evidence or exhibit that the party will present during the hearing. The provisions of this subsection do not preclude:

(a) A party from presenting additional evidence during the hearing; or

(b) An applicant or enrollee from presenting additional evidence after the hearing if requested by the hearing officer.

Sec. 23. 1. *The decision of a hearing officer must be in writing and be based exclusively on evidence presented at the hearing or, if requested by the hearing officer pursuant to section 22 of this regulation, after the hearing.*

2. Within 30 days after the date of the hearing, the department will send the decision of the hearing officer by certified mail to the applicant or enrollee and to his authorized representative, if any.

Sec. 24. 1. *The hearing officer may conduct the hearing over the telephone if he determines it is in the best interest of each party to the hearing to do so.*

2. A hearing that is conducted over the telephone must be conducted at the office of a state agency which has an agreement with the department that provides, without limitation, that a person designated by the state agency will:

(a) Be available to answer the telephone call the hearing officer places to the state agency to begin the hearing;

(b) Administer the oath required pursuant to section 21 of this regulation to the applicant or enrollee; and

(c) Receive any additional evidence that the applicant or enrollee wishes to submit and transmit it to the hearing officer by facsimile machine.

3. As used in this section, “facsimile machine” means a device that sends or receives a reproduction or facsimile of a document or photograph which is transmitted electronically or telephonically by telecommunications lines.

Sec. 25. 1. *The department will produce a record of the hearing and retain it for 3 years after the date the decision of the hearing officer is issued or until the resolution of any judicial review of the decision, whichever occurs later.*

2. As used in this section, “record of the hearing” means:

(a) All the documents filed with the department concerning the hearing;

(b) The official recording of the hearing or a summary of the hearing prepared by a person designated by the director of the department;

(c) All the evidence presented at the hearing and, if requested by the hearing officer pursuant to section 22 of this regulation, after the hearing; and

(d) The decision of the hearing officer.

Sec. 26. 1. *The hearing officer presiding over a hearing conducted pursuant to sections 19 to 26, inclusive, of this regulation shall cause the hearing to be recorded on audiotape or any other means of sound reproduction. The department will consider that recording to be the official recording of the hearing.*

2. *A person may obtain a copy of the official recording of a hearing in which he was a party if he submits to the department:*

(a) A written request; and

(b) The fee charged by the department for an official recording.

3. *The fee for the official recording must not be more than the actual cost to the department of the audiotape or other medium of sound reproduction used to record the hearing, plus the cost of shipping and handling if applicable.*

Sec. 27. 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.*

Sec. 28. 1. *If an enrollee wishes to discontinue receiving a 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 section 29 of this regulation 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 pay, in a timely manner, the premiums on a policy of health insurance that he purchased from a contractor;

(b) The enrollee is eligible for Medicaid;

(c) The household income of the enrollee exceeds the maximum household income set forth in NRS 439.665; or

(d) The enrollee knowingly provided incorrect information on the application that he filed with the department pursuant to section 14 of this regulation and failed to correct the information within a reasonable time as determined by the department.

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 purchased by the enrollee regardless of whether the enrollee requests a hearing before the department.

5. 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.

Sec. 29. *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 section 19 of this regulation 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 coverage provided by the policy of health insurance he purchased from a contractor, he must pay to the contractor, in a timely manner, the entire premium established by the contractor.*

Sec. 30. 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 pay:*

(a) *The amount of the subsidy due the 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 if the applicant or enrollee had:*

(1) *Purchased a policy of health insurance from a contractor as of the date that the applicant or enrollee appealed the decision of the department; and*

(2) *Paid all the premiums due the contractor as of the date that the decision of the hearing officer was issued.*

(b) *The amount of the subsidy due the contractor from the date that the applicant purchases a policy of health insurance from a contractor upon receipt of proof that the applicant has purchased the policy if the applicant had failed to purchase such a policy as of the date that the applicant appealed the decision of the department.*

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

Sec. 31. 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 section 14 of this regulation 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,*

FLUSH *by notifying the department in writing within 20 days after the information becomes available to him.*

Sec. 32. 1. *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.

Sec. 33. *The records of the department relating to an applicant or enrollee are confidential, and may only be released to:*

1. A person who has received authorization to obtain the records from the applicant or enrollee that is in writing and signed by the applicant or enrollee;

2. A person who is authorized to obtain the records pursuant to an order of a court of competent jurisdiction; or

3. An employee of the department or the contractor who needs the records for purposes relating to the administration of NRS 439.635 to 439.690, inclusive.

LCB File No. R069-00

NOTICE OF PUBLIC HEARING

of the

NEVADA STATE DEPARTMENT OF HUMAN RESOURCES

The Nevada State Department of Human Resources will conduct a public hearing on June 19, 2001, beginning at 10:00 a.m. on the Senior Rx program regulations at the following locations:

1. State of Nevada Legislative Counsel Bureau, at 401 South Carson Street, Room 2135, Carson City, 89701, and
2. Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Room 4412.

The sites will be connected through video conferencing. The public is invited to attend at either location. Public comment is welcome.

Reasonable efforts will be made to assist and accommodate physically handicapped persons attending the meeting. Please call Jane Smedes at 775-684-4001 in advance so that arrangements may be made.

AGENDA

(Action may be taken on those items denoted "Action Items.")

1. Call to Order and roll call. (Action Item)
2. Report by the Senior Rx task force. (Discussion only)
3. Public comments and discussion. (Discussion only)
4. Adoption of Regulations. (Action Item)
5. Adjournment. (Action Item)

This notice and agenda has been posted on or before 9:00 a.m. on June 14, 2001 in accordance with NRS 241.020 at the following locations:

Director's Office of DHR, 505 E. King Street, Main Lobby and the Room 600, Carson City, Nevada.

Nevada State Library, 100 Stewart Street, Carson City, Nevada.

Washoe County Library, 301 S. Center Street, Reno, Nevada.

Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 1001, Las Vegas, Nevada.

Clark County Public Library, 833 Las Vegas Blvd., Las Vegas, Nevada.

LCB File No. R069-00

NOTICE OF ADOPTION OF REGULATION

The Department of Human Resources, Director's Office, adopted regulations assigned LCB File R069-00, which pertain to Chapter 439 of the Nevada Administrative Code on January 19, 2001. A copy of the regulations as adopted is attached hereto:

INFORMATIONAL STATEMENT

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066 LCB FILE R069-00

The following statement is submitted for adopted amendments to Nevada Administrative code (NAC) Chapter 439.

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 R069-00 was noticed 2 times: April 17, 2000 and December 13, 2000, at all public libraries in the state, Aging Services, Kinkead Building, Grant Sawyer Building, and with LCB. Public response focused on the application process, eligibility requirements, the determination and hearing processes, disenrollment, payment of premiums and the cost of insurance. A copy of the written comments may be obtained by calling the Department of Human Resources, Director's Office, at (775) 684-4001 or by writing to the Director's Office at 505 E. King Street, Carson City, NV 89701.

2. The number of persons who

(a) Attended hearings: 3

(b) Testified at hearings: 2

(c) Submitted to the agency written comments: Comments were submitted by Washoe County Senior Law Project, Ernest K. Nielsen, Esq.

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, Kinkead Building, Grant Sawyer Building, and with LCB. Comments were received from the Washoe County Senior Law Project. The comments focused on the annual grant, open enrollment, sixty day time period to purchase insurance, denial of hearings, and termination for failure to pay insurance premium. A copy of the written comments may be obtained by calling the Department of Human Resources, Director's Office, at (775) 684-4001 or by writing to the Director's Office at 505 E. King Street, Carson City, NV 89701.

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.

Changes were made to the regulation based on comments received at the public workshop held May 2, 2000.

- 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 a maximum allowable subsidy of \$40 per month per enrollee, totaling about \$4.5 million in state fiscal year 2001. 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 2 percent ;of the estimated available amount each fiscal year: for state fiscal year 2000, approximately \$35,840; and, for state fiscal year 2001, approximately \$191,460.

- 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.