ADOPTED REGULATION OF THE

AGING AND DISABILITY SERVICES DIVISION OF THE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

LCB File No. R018-10

Effective July 22, 2010

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

AUTHORITY: §§1-16, NRS 427A.250.

A REGULATION relating to services to aging persons; revising the requirements for eligibility for the program established by the Aging and Disability Services Division of the Department of Health and Human Services to provide certain community-based services to frail elderly persons; revising provisions relating to the individual assessment of and the plan of care and case management for persons enrolled in the program; revising provisions relating to the provision and scope of services available to persons enrolled in the program; revising provisions relating to a request for administrative review concerning the program; and providing other matters properly relating thereto.

Section 1. NAC 427A.350 is hereby amended to read as follows:

427A.350 As used in NAC 427A.350 to 427A.488, inclusive, unless the context otherwise requires, the words and terms defined in NAC 427A.354 to **[**~~427A.383,~~**]** ***427A.3815,*** inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NAC 427A.356 is hereby amended to read as follows:

427A.356 "Case management" means a process **[**~~where a recipient's needs are identified and the social, habilitative and medical services to meet those needs are located, coordinated and monitored.~~**]** ***in which a person is assisted in gaining access to services provided by COPE and to medical, educational, social and other services, without regard to the source of funding from which the access is gained.***

Sec. 3. NAC 427A.388 is hereby amended to read as follows:

427A.388 1. The records of a recipient are confidential and may only be released to:

(a) A person who is authorized by the recipient or his legal representative pursuant to a signed, written authorization to release information.

(b) A person who is authorized to view the records of a recipient pursuant to an order of a court of competent jurisdiction.

(c) An employee of the Division, if the Social Services Manager deems it necessary.

(d) ~~[A member of the staff of an agency of this State established pursuant to the Protection and Advocacy of Mentally Ill Individuals Act of 1986, 42 U.S.C. §§ 10801 et seq., if:~~

~~(1) The Social Services Manager deems it necessary;~~

~~(2) The recipient is a client of that agency and the recipient or his legal representative authorizes the release of the record; or~~

~~(3) A complaint regarding a recipient is received by the agency or there is probable cause to believe that the recipient has been abused or neglected and is unable to authorize the release of the record because of his mental or physical condition, does not have a guardian or other legal representative or is a ward of this State.~~

~~(e) An employee of another division of the Department of Health and Human Services, pursuant to the provisions of NRS 232.357, if that employee submits a written request to the Social Services Manager.]~~ ***A member of the staff of an agency that is required by state or federal law to investigate allegations of crimes committed against older persons, persons with mental illness or persons with disabilities if the member of the staff provides:***

(1) A written request for the records; and

(2) A written authorization to release the records which is signed by the recipient or his or her legal representative.

(e) A member of the staff of an agency that is required by state or federal law to pursue legal, administrative or other remedies to ensure the rights of older persons, persons with mental illness or persons with disabilities if the member of the staff provides:

(1) A written request for the records; and

(2) A written authorization to release the records which is signed by the recipient or his or her legal representative.

2. The records of a recipient may be released for statistical or evaluative purposes if they are used in such a way that the identity of the recipient is not disclosed.

3. To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient, for aid, insurance or medical assistance to which he may be entitled, information from the records may be released if the recipient or his legal representative has signed a written authorization to release information for such a purpose.

4. A written authorization to release information is effective ~~[for 1 year after the date it is signed.]~~ ***until the case to which the information authorized to be released pertains is closed by the Division.***

5. Any review and release of records must comply with the Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 300gg, et seq.

Sec. 4. NAC 427A.400 is hereby amended to read as follows:

427A.400 1. A person may apply for enrollment in COPE by completing an application and submitting it to an office of the Division. If an applicant meets the criteria for eligibility listed in NAC 427A.402 and funds are available, the Division will authorize services from COPE

for the applicant and the applicant must be enrolled in COPE. The eligibility of a recipient must be reestablished annually.

2. The Division may, at the discretion of the Administrator, establish a waiting list for enrollment in COPE to ensure service will be provided within a reasonable time as established by the Department of Health and Human Services.

3. If an applicant is denied enrollment, the staff of the Division shall inform the applicant ***in writing*** of the reason or reasons why his application was denied and provide to the applicant ***written*** information regarding the right to an appeal.

4. If possible, referrals must be made to other agencies for the provision of services to an applicant who has been denied enrollment in COPE.

Sec. 5. NAC 427A.402 is hereby amended to read as follows:

427A.402 1. To be eligible for COPE, a person must:

(a) Be 65 years of age or older.

(b) Function at a level required for a person under the care of a nursing facility and ~~[require]~~ ***be determined to be at risk of*** placement in a nursing facility within 30 days if not for the services provided by COPE.

(c) Be:

(1) A citizen of the United States;

(2) An alien who was legally admitted into the United States for permanent residency; or

(3) An alien who has been granted temporary residency under the Immigration Reform and Control Act of 1986, 8 U.S.C. §§ 1101, et seq.,

➥ and sign the application or an addendum to the application certifying that he is a citizen of the United States or an alien with such lawful immigration status. The Division may require an applicant to provide additional verification of the requirements of this paragraph.

(d) Reside in this State with the intention of making this State his place of residence for an indefinite period.

(e) Provide the Division with his social security number. An applicant who has not been issued a social security number shall obtain a number and provide it to the Division within a reasonable time after submitting his application.

(f) Meet the requirements for monthly income and assets as set by:

(1) Medicaid, as noted in the Eligibility and Payments Manual of the Division of Welfare and Supportive Services of the Department of Health and Human Services; and

(2) The Commission.

(g) Reside in a private residence.

(h) Not be receiving care at an acute care hospital or nursing facility.

(i) Not be receiving services that duplicate the services of COPE.

(j) Agree to accept the services of COPE.

(k) Demonstrate a continued need for the services of COPE.

(l) Agree to use available personal and financial resources to support his or her need for services.

2. If an applicant has been approved for service, but no providers of service are available in his area, the Division will make reasonable efforts to obtain services for the applicant. The Division will notify the applicant if there are no providers of service available in his area.

Sec. 6. NAC 427A.430 is hereby amended to read as follows:

427A.430 All recipients must receive an individual assessment ***which is conducted by qualified personnel of the Division*** using the standardized assessment tool to identify the specific needs of the recipient. The assessment must be conducted in ~~[person at the residence of the recipient]~~ ***a face-to-face meeting with the recipient in the setting in which the services of COPE will be provided*** and ***must*** be completed before the services of COPE will be initiated.

Sec. 7. NAC 427A.432 is hereby amended to read as follows:

427A.432 1. A written plan of care must be developed for each recipient after the assessment required by NAC 427A.430 is completed. The recipient, his family or his designated representative shall participate in the process of developing the plan. The plan of care must be reviewed and signed by the case manager and the recipient or a designated representative of the recipient.

2. The plan of care must ~~[include:~~

~~(a) A statement of the needs of the recipient;~~

~~(b) The objectives to be met by the services provided;~~

~~(c)]~~ ***be a written document that includes, without limitation:***

(a) A description of the recipient's need for care and services which is based on the assessment conducted pursuant to NAC 427A.430;

(b) The specific services to be provided, including the frequency and identity of the provider of such services;

~~[(d) The estimated time to be dedicated to case management each month; and~~

~~(e)]~~ ***and***

(c) The individualized goals of the recipient.

3. The plan of care must provide for service in the most integrated setting possible.

4. After the plan of care is completed, it may be revised at any time. Any revision to the plan must be discussed with the recipient or his designated representative by the case manager.

5. A copy of the plan of care must be given to the recipient or his designated representative.

6. A new plan of care must be developed by the case manager and signed by the recipient at least once every ~~[12 months]~~ ***365 days*** or upon a significant change in the condition of or support available to the recipient.

Sec. 8. NAC 427A.436 is hereby amended to read as follows:

427A.436 1. A recipient must be reassessed by his case manager in ~~[person and at the residence of the recipient]~~ ***a face-to-face meeting with the recipient in the setting in which the services of COPE are provided*** at least once every ~~[12 months,]~~ ***365 days,*** using the standardized assessment tool, to:

(a) Determine whether the Division should reauthorize services for the recipient.

(b) If necessary, revise any information gathered during the assessment made pursuant to NAC 427A.430.

(c) Review the recipient's:

(1) Ability to perform activities of daily living, including, without limitation, the need for minimum essential personal assistance, as defined in NRS 426.723;

(2) Need for ongoing services; and

(3) Systems of support such as family, friends or volunteers.

(d) Evaluate the services being provided by COPE and any progress made toward the goals listed in the plan of care.

(e) Assist in the development of a new ***or revised*** plan of care.

2. The Division will reauthorize services from COPE for a recipient for not more than ~~[12 months]~~ ***365 days*** if his ~~[level]~~ ***:***

(a) Level of functioning continues to meet the requirements for a patient under the care of a nursing facility ~~[and his financial]~~ ***; and***

(b) Financial status has not changed so as to render him ineligible for COPE. ***A recipient is rendered ineligible for COPE if, within 60 months before submitting an application for enrollment in COPE pursuant to NAC 427A.400, the recipient divests or transfers his or her assets in an attempt to qualify for services from COPE.***

Sec. 9. NAC 427A.438 is hereby amended to read as follows:

427A.438 1. A case manager shall:

(a) Collect information to verify the eligibility of a recipient.

(b) Evaluate the level of care needed by the recipient.

(c) Develop a plan of care for the recipient.

(d) Estimate the costs of services for the recipient.

(e) Monitor, on an ongoing basis, the provision of services, including, without limitation, the plan of care for the recipient.

(f) Carry out the duties prescribed in paragraphs (a) to (e), inclusive, for a recipient on an annual basis.

2. A case manager shall provide services that assist persons in gaining access to ~~[a waiver, to other services offered by the State]~~ ***services provided by COPE*** and to medical, social, educational and other services, without regard to the source of funding from which access to the service is gained. ~~[These]~~ ***The*** services of a case manager ~~[may also]~~ ***must*** be provided by the

Division **.** ~~[, by an agency of this State or by a private provider who is independent of the Division or an agency of this State.]~~

Sec. 10. NAC 427A.440 is hereby amended to read as follows:

427A.440 1. If economically feasible, the following services will be made available to recipients:

(a) Adult day care, if such service is provided:

(1) In a licensed facility for the care of adults during the day, as the term is defined in NRS 449.004;

(2) For 4 or more hours per day;

(3) On a regularly scheduled basis; and

(4) For 1 or more days per week.

(b) The provision of a personal care attendant to assist a recipient who is functionally impaired with activities of daily living, including ~~[shopping, laundry, cleaning,]~~ bathing, dressing, using the toilet, ~~[preparing meals]~~ ***mobility*** and eating. The provision of services by a personal care attendant does not require an order from a physician.

(c) The provision of a homemaker to assist a recipient who is functionally impaired with ***instrumental*** activities of daily living, including laundry, cleaning and preparing meals. The provision of services by a homemaker does not require an order from a physician.

(d) The provision of a companion for a recipient to provide relief for the primary caregiver. ***The provision of services by a companion will be provided in the recipient's home and will include nonmedical care, supervision and socialization.*** The companion will not be required to perform the services of a personal care attendant pursuant to paragraph (b).

(e) Case management services **.** ~~[to assist recipients with gaining access to a waiver, to other services offered by the State and to medical, social, educational and other services, regardless of the funding source from which access is gained.]~~

(f) A personal emergency response system.

(g) Services to assist with heavy household chores necessary to maintain a clean, sanitary and safe home environment.

(h) Respite services provided to recipients unable to care for themselves. Respite services must be provided on a short-term basis due to an absence of or need for relief of those persons normally providing the care.

2. ~~[If the Social Services Manager has determined that a recipient is eligible to receive respite care and the requirements of NAC 427A.442 have been met, supervised respite care for a person who is functionally impaired will be available through COPE. Such care will be provided in the recipient's home for not more than 24 hours per day and not more than 14 days per fiscal year.~~

~~3.]~~ Any services provided pursuant to this section must be provided in accordance with the recipient's plan of care, and any person providing such services must be under the supervision of ***the providing agency and*** the case manager.

3. As used in this section:

(a) "Adult day care" means social services provided during the day in a community group setting for the purpose of supporting frail, impaired or elderly adults or adults with disabilities who can benefit from care in a group setting.

(b) "Personal emergency response system" means an electronic device that enables a person to secure help in an emergency.

Sec. 11. NAC 427A.442 is hereby amended to read as follows:

427A.442 1. If the Social Services Manager has determined that a recipient is eligible to receive respite care at his residence, such care will be made available only if:

(a) The recipient has a primary caregiver who lives at the recipient's home;

(b) The caregiver needs ~~[respite;]~~ ***relief from his or her duties as a caregiver;***

(c) The recipient needs supervised care at his residence at all times;

(d) There are trained respite workers available in the recipient's area; and

(e) Funds for respite care are available.

2. ***Respite care governed by subsection 1 must not be provided to a recipient for more than 336 hours per fiscal year.***

3. A plan of care must be developed for respite care provided to a recipient at his home. The plan may include the services of a personal care attendant and the services of a homemaker or companion.

~~[3.]~~ ***4.*** Regularly scheduled services of COPE may be suspended during any period in which respite care is being provided. The provider of respite care may perform any suspended services of COPE that were provided at the recipient's home.

Sec. 12. NAC 427A.456 is hereby amended to read as follows:

427A.456 1. In addition to any other requirements for closing a case and terminating the services of COPE set forth in NAC 427A.350 to 427A.488, inclusive, the Division will close a case and terminate services if:

(a) The recipient dies.

(b) The recipient fails to meet the criteria for eligibility listed in NAC 427A.402.

(c) The recipient or his designated representative requests the discontinuation of his services.

(d) The recipient fails to apply for, pursue or accept a claim for other benefits or fails to provide information essential to establish such a claim.

(e) The recipient's residence becomes unsafe for the recipient or his providers of service.

(f) The recipient or his designated representative participates in any activity designed to defraud COPE or the Division.

(g) ~~[The recipient fails to pay his portion of the cost of services provided by the Division. (h)]~~ The cost of services provided to the recipient is more than 100 percent of the average cost of care for a patient who receives care in a nursing facility.

~~[(i)]~~ ***(h)*** The recipient fails to cooperate with the established plan of care.

~~[(j)]~~ ***(i)*** Funds previously available have been expended.

2. The Division may close a case if service becomes unavailable in the area where the recipient resides.

3. Except in the case of the death of a recipient, the Division will notify a recipient or his designated representative, in writing, if the recipient's case is being closed. The notice will be given at least 15 days before the services are to be terminated and will include:

(a) The effective date the case is closed;

(b) The reason or reasons for closing the case;

(c) A statement of the rights of the recipient to an administrative review; and

(d) The process for filing a request for an administrative review.

Sec. 13. NAC 427A.462 is hereby amended to read as follows:

427A.462 1. An applicant or a recipient or his designated representative may request an administrative review by:

(a) Signing, dating and returning to the office of the Division responsible for the region in which the applicant or recipient resides the letter notifying him of the action to be taken by the Division; or

(b) Submitting a written request to the office of the Division responsible for the region in which the applicant or recipient resides.

2. Except as otherwise provided in subsection 4, the request for an administrative review must be received in the regional office of the Division within 15 days after the date of the letter notifying the applicant or recipient or his designated representative of the action to be taken. The date of the letter shall be deemed the first day of the 15-day period.

3. If the 15th day falls on a holiday or weekend, the time for submitting a request will be extended to the next working day.

4. The Division will not accept a request for an administrative review received after the time specified in subsection 2 unless the applicant or recipient or his designated representative demonstrates good cause for the failure to comply with the deadline.

5. The Administrator of the Division ***or a person designated by the Administrator*** will review any requests to waive the deadline for good cause and shall make a determination within 10 days after the receipt of the request.

6. If the Administrator ***or a person designated by the Administrator*** determines that the applicant or recipient or his designated representative has demonstrated good cause for the failure to comply with the 15-day deadline, he will schedule an administrative review for the applicant or recipient.

7. If the Administrator ***or a person designated by the Administrator*** determines that the applicant or recipient or his designated representative has not demonstrated good cause for the

failure to comply with the 15-day deadline, he will notify the applicant or recipient or his designated representative that the request for an administrative review is denied.

Sec. 14. NAC 427A.464 is hereby amended to read as follows:

427A.464 1. Within 10 days after the Division receives a request for an administrative review, the ~~[supervisor]~~ ***Social Services Manager*** of the region in which the applicant or recipient resides shall contact the applicant or recipient or his designated representative to schedule a conference with a member of the staff of the Division to attempt to resolve the matter without the necessity of an administrative review.

2. The ~~[supervisor]~~ ***Social Services Manager*** shall:

(a) Preside at the conference; and

(b) Complete a report on the outcome of the conference.

3. The conference does not affect the right of the applicant or recipient to an administrative review.

Sec. 15. NAC 427A.468 is hereby amended to read as follows:

427A.468 1. A recipient is entitled to receive services from COPE while an administrative review of a termination of those services is pending, ***if funding is available,*** unless the recipient or his designated representative requests in writing that the services be discontinued.

2. If the services are continued and the decision to terminate those services is upheld, the recipient may be required to pay for the cost of any services provided after the date on which those services were originally scheduled to be terminated.

Sec. 16. NAC 427A.368, 427A.3793, 427A.383 and 427A.444 are hereby repealed.

TEXT OF REPEALED SECTIONS

427A.368 "Division" defined. (NRS 427A.250) "Division" means the Aging Services Division of the Department of Health and Human Services.

427A.3793 "Personal emergency response system" defined. (NRS 427A.250) "Personal emergency response system" means an electronic device that enables a person to secure help in an emergency.

427A.383 "Waiver" defined. (NRS 427A.250) "Waiver" means the option provided by the Social Security Act pursuant to 42 U.S.C. § 1396n(c) which permits the State to offer home and community-based services to eligible persons, including, without limitation, the community home-based initiatives program.

427A.444 Payment by recipient of partial cost of services provided. (NRS 427A.250)

1. The Division may require a recipient to pay a portion of the cost of services provided by COPE. The amount charged to a recipient must be established by the Commission, but in no case may the amount exceed the actual cost of the services.

2. The amount charged to a recipient may only be applied to the costs of:

(a) Case management.

(b) The services provided by a homemaker.

(c) The care provided by a personal care attendant.

(d) Respite care.

(e) Adult day care.

(f) The services of a companion.

(g) Services for heavy household chores.

(h) A personal emergency response system.

3. Any amount charged to a recipient will be collected by the Division, is due on or before the fifth day of each month and is for the preceding month's service.

4. The recipient or his designated representative must pay by check or money order and may make the payment by:

(a) Mailing or otherwise submitting the check or money order to any office of the Division; or

(b) Submitting the check or money order to the case manager in person.

5. The Division may terminate the services of a recipient for failure to pay any amount owing when it is due.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R018-10

The Aging and Disability Services Division of the Department of Health and Human Services adopted regulations assigned LCB File No. R018-10 which pertain to chapter 427A of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

1. **A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.**
Notice of public workshop was posted on February 24, 2010 and workshop was held on March 17, 2010. Notice of public hearing was posted on May 25, 2010 and public workshop was held on June 24, 2010. Posting included e-mailing notices to public libraries in all counties in which Aging and Disability Services Division does not have an office, to all Division offices, to a list of other public places where interested parties would see the notice. They were also posted on the Division web site.
Written comments were accepted up to the day before the workshop and the day before the hearing. Summaries may be obtained at the Aging and Disability Services Division, 3416 Goni Road #132, Carson City NV 89706.

2. **The number of persons who: (a) attended each hearing; (b) testified at each hearing; and (c) submitted to the agency written statements.**
Twenty-eight people attended the workshop statewide, and 1 person testified. One written statement was received.
Twenty-four people attended the hearing statewide, and 2 people testified. Three written statements were received the day of the hearing.

3. **A description of how comment 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.**
The proposed amendments to the Nevada Administrative Code Chapter 427A.350-488 *et.seq.* will not have an effect on any small businesses. These amendments apply only to issues that are managed within the Aging and Disability Services Division and no current policies and procedures governing the activities of contracting businesses are affected.

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.**
Not applicable.

5. **The estimated economic effect of the adopted regulation on the businesses 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;**
    No effects.

b. Both immediate and long-term effects;
No effects.

6. The estimated cost to the agency for enforcement of the adopted regulation.
None

7. A description of any regulation 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.
None.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.
Not applicable.

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.
None