

**PROPOSED REGULATION OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R024-10

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

AUTHORITY: §§1-22, NRS 426.245 and 426.275.

A REGULATION relating to persons with disabilities; revising provisions relating to the program established by the Department of Health and Human Services to provide ~~financial assistance~~ *services* to persons with physical disabilities for certain essential personal care; and providing other matters properly relating thereto.

Section 1. Chapter 427A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this regulation.

Sec. 2. As used in sections 2 to 21, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 3. ~~“Chief” means the Chief of the Office.~~ *“Administrator” means the Administrator of the Aging and Disability Services Division.*

Sec. 4. “Contractor” means any person or governmental or private agency or organization with which the ~~Office~~ *Division* enters into a contract pursuant to section 15 of this regulation.

Sec. 5. “Essential personal care” means the tasks described in section 14 of this regulation.

Sec. 6. ~~“Office” means the Office of Disability Services created pursuant to NRS 426.235.~~ *Division means the Aging and Disability Services Division of the Department of Health and Human Services.*

Sec. 7. “Person with a physical disability” has the meaning ascribed to it in NRS 426.265.

Sec. 8. “Personal care attendant” means a person who has the knowledge and skill to provide essential personal care pursuant to sections 2 to 21, inclusive, of this regulation.

Sec. 9. “Recipient” means a person who receives ~~[financial assistance]~~ *services* for essential personal care pursuant to sections 2 to 21, inclusive, of this regulation.

~~[Sec. 10. “Review team” means two or more persons appointed by the contractor to perform the duties required by subsection 1 of section 15 of this regulation.]~~

Sec. 11. “Support services for independent living” includes, without limitation:

1. Assisting a recipient in developing a comprehensive plan to support ~~[his]~~ *their* ability to live independently;
2. Offering assistance, support or direction in performing activities of daily living; and
3. Coordinating such services with other services and coordinating providers of other services on behalf of a recipient.

Sec. 12. 1. To be eligible for ~~[financial assistance]~~ *services* pursuant to sections 2 to 21, inclusive, of this regulation, a person must:

- (a) Be a resident of the State;
- (b) Be diagnosed as a person with a physical disability by a licensed physician;
- (c) Require assistance in one or more of the areas described in section 14 of this regulation;
- (d) Use all other resources in the community that provide essential personal care ~~[or financial assistance for essential personal care]~~ before requesting ~~[financial assistance]~~ *services* pursuant to sections 2 to 21, inclusive, of this regulation;
- (e) Except as otherwise provided in subsection 2, require no more than 35 hours of essential personal care each week from this program to live independently;

(f) Be capable of supervising the attendant who provides the care, except that in extraordinary circumstances the ~~[review team]~~ *Division* may designate a responsible person to supervise the attendant on behalf of the otherwise eligible person;

(g) Be capable of participating in a plan for independent living; and

(h) Be financially eligible pursuant to the provisions of section 20 of this regulation.

2. Except as otherwise provided in this subsection, the ~~[Office]~~ *Division* may provide not more than 35 hours of essential personal care each week to a recipient. In addition, the ~~[Office]~~ *Division* may, based upon its budget and its determination of need:

(a) If a portion of the 35 hours or less of essential personal care that was allocated to a recipient for a week is not used by that recipient in that week, provide temporary:

(1) Emergency care to another recipient if ~~[his]~~ *their* disability is exacerbated or ~~[he has]~~ *they have* a short-term illness that is not related to ~~[his]~~ *their* disability.

(2) Respite care to relieve a family member who provides care for a person on the waiting list of persons eligible to receive ~~[financial assistance]~~ *services* pursuant to subsection 1 that is maintained by the Office.

(b) Provide 120 hours or less per year of respite care to relieve a family member who provides care for a recipient.

3. The provisions of this section do not prohibit the ~~[Office]~~ *Division* from providing 35 hours or less of essential personal care each week for a person who is also receiving services from another program.

Sec. 13. ~~[Financial assistance]~~ *Services* must be ~~[disbursed]~~ *provided* to eligible persons in the following order of priority:

1. A person who has a condition that is terminal and is not expected to live for more than 1 year.

2. A person who is receiving acute or extended care in an institutional setting but who, with ~~financial assistance~~ *services* provided pursuant to sections 2 to 21, inclusive, of this regulation, would be able to function in a setting where ~~he~~ *they* control~~s~~ and manage~~s~~ ~~his~~ *their* daily activities.

3. A person~~:~~

~~—(a) Who is at risk of being placed in an institutional setting within 3 months if financial assistance is not provided pursuant to sections 2 to 21, inclusive, of this regulation; or~~

~~—(b) Whose safety or health would be at a substantial risk if financial assistance was not provided pursuant to sections 2 to 21, inclusive, of this regulation.]~~ *who requires assistance with bathing, toileting and eating pursuant to NRS 426.726, or who has a Traumatic Brain Injury.*

4. A person who *requires assistance with two of the following three tasks: bathing toileting or eating pursuant to NRS 426.726.* ~~[is at risk of being placed in an institutional setting within 1 year unless assistance that is being provided to the person by friends or family continues to be provided.]~~

5. A person who does not satisfy any of the criteria set forth in subsections 1 to 4, inclusive, but who otherwise qualifies for *services* ~~financial assistance~~ pursuant to sections 2 to 21 inclusive, of this regulation.

Sec. 14. Essential personal care is limited to assisting a person who is eligible to receive *services* ~~financial assistance~~ pursuant to sections 2 to 21, inclusive, of this regulation:

1. In the elimination of wastes from the body;
2. In dressing and undressing;

3. In bathing and grooming;
4. In the preparation and eating of meals;
5. In getting in and out of bed;
6. In repositioning while asleep;
7. In the use of prostheses and other medical equipment;
8. In moving about, including, without limitation, assisting a person:
 - (a) In moving from a wheelchair, bed or other piece of furniture;
 - (b) With ambulation; and
 - (c) With exercises to increase the range of motion;
9. In essential laundry;
10. With support services for independent living if the person has an injury to the brain and those services do not exceed 14 hours per week; and
11. In other minor needs directly related to maintenance of personal hygiene.

Sec. 15. The ~~[Office]~~ *Division shall, directly or through contract*~~[-with a contractor who shall]:~~

~~[1.—Establish a review team of persons who have personal or professional knowledge of disabilities, and an understanding of the concept of independent living. The review team shall:
—(a)—Determine an applicant’s eligibility.
—(b)—Authorize the number of hours of essential personal care to be provided to an eligible person based upon a written assessment provided by the contractor pursuant to subsection 9.
—(c)—Obtain medical consultation as needed.]~~

2. Reevaluate a recipient’s eligibility every 12 months and when ~~[his]~~ *their* need for essential personal care changes.

3. Provide essential personal care to eligible persons.

~~[4.— Provide training for personal care attendants and maintain a registry of attendants.]~~

5. Establish a system for the provision of back-up attendants and emergency care.

~~[6.— Ensure that a personal care attendant who is listed in the registry of attendants has coverage for workers' compensation insurance.~~

~~—7.— Establish cooperative agreements with programs providing essential personal care to coordinate interdisciplinary services provided to mutual recipients.~~

~~—8.— Obtain and review the criminal record, if any, of each personal care attendant.]~~

9. Provide assessments of recipients. An assessment must:

(a) Be conducted by a licensed medical professional who is familiar with *essential personal care and* the independent living needs of persons with physical disabilities;

(b) ~~[B]~~ *Whenever possible* be conducted at the location where the services are offered; and

(c) Include the requirements for completing specific tasks, the time required for completion of the tasks and a statement by the recipient concerning ~~[his]~~ *their* perspective of ~~[his]~~ *their* needs for care.

10. Provide referrals to independent living and other services as appropriate for the needs of recipients.

Sec. 16. 1. *If a contractor is involved in the delivery of essential personal care, [F]the [Office] Division* shall monitor the management and the financial records of the contractor and shall evaluate the contractor's efficiency in administering the provisions of the contract.

2. The contractor shall submit to the ~~[Office]~~ *Division*:

(a) ~~[Quarterly r]~~ *Reports* summarizing the activities of programs providing essential personal care *at times and* on forms ~~[provided]~~ *determined* by the ~~[Office]~~ *Division*.

- (b) Any proposed procedural changes for review and approval before they are carried out.
- (c) Such other reports as the ~~{Office}~~ *Division* requests.

Sec. 17. A recipient shall notify the ~~{contractor}~~ *program* of any change in the recipient's:

- 1. Income, the income of the recipient's spouse, or, if the recipient is a dependent child or adult who has no income and is financially supported by ~~{his}~~ *their* family, the income of the recipient's family that would affect the recipient's eligibility; and
- 2. Need for essential personal care.

Sec. 18. 1. An applicant for ~~{financial assistance}~~ *services* must submit to the ~~{contractor}~~ *program* a completed application and a written statement from a licensed physician, physician assistant or registered nurse certifying the applicant's need for essential personal care.

2. The ~~{contractor}~~ *program* shall, within 30 days after receiving a completed application, notify the applicant in writing whether ~~{he is}~~ *they are* eligible for ~~{financial assistance}~~ *services*.

3. If money is available, a person may be eligible to receive ~~{financial assistance}~~ *services* on the date ~~{the review team}~~ *an eligibility determination is made* ~~{determines he is eligible}~~.

4. If money is not available, the ~~{contractor}~~ *program* shall notify the person ~~{of his position on the}~~ that ~~{he is}~~ *they are* being placed on the waiting list maintained ~~{by the Office}~~ of persons eligible for *services* ~~{financial assistance}~~ in the order of their priority.

Sec. 19. 1. An applicant for *services* ~~{financial assistance}~~ or a recipient who disagrees with *an eligibility* decision may, within 15 working days after *receiving* notice of the decision, file an appeal with the ~~{contractor}~~ *program*. The ~~{contractor}~~ *program*:

- (a) May require the applicant or recipient to submit, in writing, evidence to support the appeal; and

(b) Shall render *its* ~~his~~ decision in writing within 30 days after *receiving* ~~he receives~~ the appeal.

2. The applicant or recipient may appeal the decision of the ~~contractor~~ *program* to the ~~Chief~~ *Administrator* by filing a notice of appeal within 15 working days after ~~he~~ *they* receive~~s~~ notice of the decision of the ~~contractor~~ *program*. The ~~Chief~~ *Administrator*:

(a) Shall review the decision in an informal procedure;

(b) May require the applicant, recipient or ~~contractor~~ *program* to submit, in writing, additional evidence to support the appeal or the decision; and

(c) Shall render *a* decision in writing within 30 days after *they* receive~~s~~ the notice of the appeal.

3. The decision of the ~~Chief~~ *Administrator* is a final decision for the purposes of judicial review.

Sec. 20. 1. An applicant is not eligible to receive ~~financial assistance~~ *services* pursuant to subsection 1 of section 12 of this regulation if ~~his~~ *their* gross monthly income, less the expenses set forth in paragraphs (a) to (d), inclusive, of subsection 2, is more than 800 percent of the federally designated level signifying poverty, divided by 12, for the size of family applicable to the applicant, as determined by the United States Department of Health and Human Services and published annually in the Federal Register.

2. In determining the financial eligibility of an applicant, the gross monthly income of the applicant and the applicant's spouse, or, if the applicant is a dependent child or adult who has no income and is financially supported by ~~his~~ *their* family, the gross monthly income of the applicant's family, must be counted. From the total must be deducted any amount paid directly by the applicant or the applicant's spouse or, if the applicant is a dependent child or adult who

has no income and is financially supported by ~~his~~ *their* family, by the applicant's family, that is not reimbursed by any other source for:

(a) Medicine prescribed for the applicant or the applicant's spouse by a physician or, if the applicant is a dependent child or adult who has no income and is financially supported by ~~his~~ *their* family, medicine prescribed for the applicant and each member of the applicant's family;

(b) Medical care provided to the applicant or the applicant's spouse by a doctor, hospital or other medical facility or, if the applicant is a dependent child or adult who has no income and is financially supported by ~~his~~ *their* family, medical care provided to the applicant and each member of the applicant's family by a doctor, hospital or other medical facility;

(c) Special equipment, services or supplies to help the applicant do what a person who is not disabled can do; and

(d) Health insurance and the benefits thereof, including, without limitation, the payment of premiums and copayments for the applicant or the applicant's spouse or, if the applicant is a dependent child or adult who has no income and is financially supported by ~~his~~ *their* family, for each member of the applicant's family.

↪ As used in this subsection, "medical facility" has the meaning ascribed to it in NRS 449.0151 and includes a facility for the rehabilitation of persons with physical disabilities.

3. A recipient whose gross monthly income, less the expenses set forth in paragraphs (a) to (d), inclusive, of subsection 2, is less than 200 percent of the federally designated level signifying poverty, divided by 12, is not required to pay any of the cost for essential personal care. Except as otherwise provided in this section, a recipient whose gross monthly income, less the expenses set forth in paragraphs (a) to (d), inclusive, of subsection 2, is 200 percent or more of the federally designated level signifying poverty, divided by 12, but not greater than 800

percent of the federally designated level signifying poverty, divided by 12, shall pay a portion of the total cost to provide essential personal care to him according to the following formula:

$$\text{Monthly amount of recipient's payment for essential personal care} = \frac{(A-(B+C)) \times (D)}{(A-B)}$$

↳ where “A” is the recipient’s gross monthly income; “B” is the sum, on a monthly basis, of the recipient’s and ~~his~~ *their* spouse’s expenses and, if applicable, the expenses of the recipient’s family, set forth in paragraphs (a) to (d), inclusive, of subsection 2; “C” is the amount that equals 200 percent of the federally designated level signifying poverty, divided by 12, for the size of family applicable to the recipient; and “D” is the cost of providing services for essential personal care, on a monthly basis, for that recipient.

4. Notwithstanding the formula set forth in subsection 3, in no case may the recipient’s payment for essential personal care, on a monthly basis, exceed 25 percent of the amount that equals the difference between A and the sum of B and C.

5. If there are compelling and urgent circumstances, including, without limitation, the circumstance in which payment of any portion of the cost to provide essential personal care to the recipient will cause severe hardship to the recipient, the ~~contractor~~ *program*, with the approval of the ~~Chief~~ *Administrator*, may pay 100 percent of the cost of the essential personal care of a recipient.

Sec. 21. Care provided by a personal care attendant to a recipient may be terminated if the recipient:

1. Fails to pay ~~his~~ *their* share of the cost of such care;

2. Fails to provide documents needed for reevaluation;
3. Willfully defrauds the program; or
4. Fails to comply with the requirements of section 17 of this regulation.