

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

LCB File No. R143-01

Effective December 17, 2001

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

AUTHORITY: §§1-15 and 19, NRS 439.655; §16-18, 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 3 of this regulation.

Sec. 2. *For the purposes of determining whether an applicant satisfies the eligibility requirement set forth in NRS 439.665 regarding household income, the department:*

1. 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. May, if the household income fluctuates from month to month:

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

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

(c) Multiply the quotient calculated pursuant to paragraph (b) by 12.

Sec. 3. *“Household” means an applicant and the spouse of the applicant.*

Sec. 4. NAC 439.800 is hereby amended to read as follows:

439.800 NAC 439.800 to 439.862, inclusive, *and sections 2 and 3 of this regulation* may be referred to as the senior prescription program.

Sec. 5. NAC 439.802 is hereby amended to read as follows:

439.802 As used in NAC 439.800 to 439.862, inclusive, *and sections 2 and 3 of this regulation* unless the context otherwise requires, the words and terms defined in NAC 439.804 to 439.822, inclusive, *and section 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 439.804 is hereby amended to read as follows:

439.804 “Applicant” means a person who ~~is~~:

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

Sec. 7. NAC 439.810 is hereby amended to read as follows:

439.810 “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] :~~

1. Who the department has determined is eligible to receive ~~such] a~~ subsidy *for the cost of a policy of health insurance* pursuant to NRS 439.665 ~~is] ; and~~

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

Sec. 8. NAC 439.818 is hereby amended to read as follows:

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

Sec. 9. NAC 439.822 is hereby amended to read as follows:

439.822 “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 ~~for~~ *for* the cost of a policy of health insurance that the *contractor issued to the* senior citizen . ~~[purchased from the contractor.]~~

Sec. 10. 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. 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.

5. If the applicant 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, the applicant must include with that request a written statement signed by a licensed physician certifying the illness or disability. The department will consider each request for such a waiver on a case-by-case basis.

Sec. 11. 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 ~~purchase~~ *submit an enrollment form to a contractor to obtain* a policy of health insurance from ~~the~~ *the* 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 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 ~~50~~ *30* days after the ~~end of a period of open enrollment,~~ *department approves an application,* the department will provide to the contractor the ~~names~~ *name* of the ~~applicants whose applications were approved during that period of open enrollment,~~ *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 ~~the purchase of a~~ *each* policy of health insurance ~~from~~ *issued by* the contractor ~~by~~ *to* an applicant whose application was approved.

Sec. 12. NAC 439.830 is hereby amended to read as follows:

439.830 ~~The~~

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, 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.

3. 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 prescription drugs for the applicant's household is 51 percent or more of the monthly household income;

(b) A written statement signed by a licensed physician certifying that because of the applicant's need for a prescription drug, 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. 13. NAC 439.832 is hereby amended to read as follows:

439.832 1. If an applicant whose application was approved fails to ~~purchase~~ *submit an enrollment form to a contractor to obtain* a policy of health insurance from ~~the~~ *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 ~~purchase~~ *submitted an enrollment form to a contractor to obtain* a policy of health insurance from ~~the~~ *the* contractor; or

(c) Establishes good cause for failing to ~~purchase~~ *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.

Sec. 14. NAC 439.838 is hereby amended to read as follows:

439.838 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 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 ~~pay, in a timely manner, the premiums on~~ *maintain coverage under* a policy of health insurance that ~~he purchased from~~ a contractor ~~[-:]~~ *issued to the enrollee;*

(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 NAC 439.826 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~~ *under which* the enrollee *is covered* 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. 15. 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 coverage provided by the policy of health insurance ~~the purchased from~~ *that* a contractor ~~is~~ *issued to the enrollee*, he must pay to the contractor, in a timely manner, the entire premium established by the contractor.

Sec. 16. 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;

(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~~ *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. 17. NAC 439.850 is hereby amended to read as follows:

439.850 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]~~ *or another location approved by the hearing officer in advance of the hearing, at which a representative of the department* 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 NAC 439.846 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. 18. 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 ~~[pay:~~

~~—(a) The]:~~

(a) Pay 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.]; and~~

(b) Reimburse the applicant or the enrollee, upon receipt of proof of payment for any premium paid to the 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. 19. NAC 439.860 is hereby amended to read as follows:

439.860 1. ~~[The]~~ *Except as otherwise provided in subsection 4, 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.

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 November 16, 2001. A copy of the regulations as adopted is attached hereto:

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066 LCB FILE R143-01

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 R143-01-00 was noticed on October 16 at all public libraries in the state, Aging Services, 505 E. King St., Grant Sawyer Building, and with LCB. There was no public response received. A copy of the workshop summary 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: 0

(c) Submitted to the agency written comments: None submitted

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. Additionally the proposed regulations were sent to senior law offices. There were no responses 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.

No changes 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 a subsidy of \$107 per month per enrollee, totaling about \$7 million in state fiscal year 2002. 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 2002, this is approximately \$277,614.

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.