

NAC Chapters 427A.010-310

ADVOCATES FOR RESIDENTS OF FACILITIES FOR LONG-TERM CARE

NAC 427A.010 **Definitions.** ([NRS 427A.070](#), [427A.135](#), [427A.138](#)) As used in [NAC 427A.010](#) to [427A.310](#), inclusive, unless the context otherwise requires:

1. “Advocate” includes a volunteer advocate appointed by the {Administrator} *State Long Term Care Ombudsman* pursuant to [NRS 427A.127](#).
2. “Complainant” means a resident who files a complaint pursuant to [NRS 427A.125](#) to [427A.165](#), inclusive, or a person who files a complaint on behalf of a resident. The term includes a person claiming retaliation for having filed a complaint, a person who provides information regarding a complaint, and an advocate or the representative of an advocate.
3. “Hearing officer” means the {Specialist for the Rights of Elderly Persons} *Attorney for the Rights of Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition* or a person designated by him or her.
4. “Person” means a natural person, partnership, association, corporation or other public or private entity.
5. “Resident” means a resident of a facility for long-term care {who is 60 years of age or older}.
6. “Respondent” means a person against whom a complaint has been filed.
7. {“Specialist for the Rights of Elderly Persons”} *Attorney for the Rights of Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition* means the person appointed pursuant to [NRS 427A.1232](#).

(Added to NAC by Aging Services Div., eff. 6-19-90; A by R163-06, 9-18-2007; A by Aging & Disability Services Div. by R017-10, 7-22-2010)

NAC 427A.012 “Family council” interpreted.

NAC 427A.014 “Notify” interpreted.

NAC 427A.016 “Person or persons designated as responsible for decisions regarding the resident” interpreted.

NAC 427A.018 “Resident council” interpreted.

NAC 427A.020 Scope and construction.

NAC 427A.030 Severability.

NAC 427A.040 Deviation from requirements.

NAC 427A.042 Training of advocates.

NAC 427A.044 Forming and activities of residents’ councils and family councils

NAC 427A.048 Posting of notice regarding Ombudsman and advocate and procedure for making complaint. ([NRS 427A.165](#))

1. Each facility for long-term care shall post a notice which describes the purpose of the Ombudsman and an advocate and sets forth the procedure for making a complaint to the Ombudsman or an advocate if a resident’s rights have been violated.

2. The notice described in subsection 1:

(a) Must be posted in prominent locations throughout the facility for long-term care, including, without limitation:

- (1) The entry area;
- (2) The dining area; and
- (3) An area where residents convene for activities; and

(b) Must include, without limitation:

(1) The name of the program established in this State by the Ombudsman to assist residents of facilities for long-term care; and

(2) The {address and telephone number of each office} *contact information* of the Aging and Disability Services Division in this State.

3. As used in this section, “resident’s rights” includes the rights of a resident of a facility for long-term care as set forth in 42 C.F.R. § 483.10.

(Added to NAC by Aging & Disability Services Div. by R017-10, eff. 7-22-2010)

NAC 427A.050 Communications to hearing officer.

NAC 427A.060 Service of documents: Method.

NAC 427A.070 Service of documents: Proof.

NAC 427A.080 Computation of time.

NAC 427A.090 Pleadings: Designation; execution.

NAC 427A.100 Pleadings: Filing; availability.

NAC 427A.110 Pleadings: Amendment; construction.

NAC 427A.120 Complaints: Appointment of investigator; form, contents and filing; notice. ([NRS 427A.070](#), [427A.135](#), [427A.138](#))

1. The Administrator of the Aging and Disability Services Division of the Department of Health and Human Services shall appoint an investigator to investigate each complaint concerning an alleged violation of [NRS 427A.135](#) or [427A.138](#).

2. The complaint must be in writing and signed and verified by the complainant, and two copies must be filed with the {Specialist for the Rights of Elderly Persons} *Attorney for the Rights of Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition* within 1 year after the act complained of was committed.

3. A complaint must be stated with sufficient particularity to enable the respondent to prepare a defense.

4. If, from the complaint, it appears that the charges may be well founded, the {Specialist for the Rights of Elderly Persons} *Attorney for the Rights of Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition* shall send written notice to the person charged by certified mail at least 20 days before the date set for the hearing. The notice must set forth the charges and the date of the hearing.

(Added to NAC by Aging Services Div., eff. 6-19-90; A 9-19-90; R163-06, 9-18-2007)

NAC 427A.125 Ombudsman or advocate may advocate for and assist resident during discharging process.

NAC 427A.130 Answers to complaints.

NAC 427A.140 Hearings: Presiding officer; location; notice.

NAC 427A.150 Hearings: Rights of parties.

NAC 427A.160 Hearings: Appearance of parties.

NAC 427A.170 Hearings: Failure to appear.

NAC 427A.180 Hearings: Conduct of persons.

NAC 427A.190 Hearings: Preliminary procedure.

NAC 427A.200 Hearings: Order of procedure

NAC 427A.210 Hearings: Rules of procedure and evidence

NAC 427A.220 Hearings: Oaths of witnesses.

NAC 427A.230 Hearings: Consolidation.

NAC 427A.240 Hearings: Continuances.

NAC 427A.250 Stipulations of parties.

NAC 427A.260 Briefs; setting matter for oral argument.

NAC 427A.270 Official notice

NAC 427A.280 Records of formal hearings.

NAC 427A.290 Submission of matter for decision.

NAC 427A.300 Issuance of decision.

NAC 427A.310 Appeal of decision.

NAC Chapters 427A.320-3395

COMPLAINTS FOR DAMAGE TO PROPERTY OF OLDER PATIENTS OF CERTAIN FACILITIES, AGENCIES AND ORGANIZATIONS

- NAC 427A.320 Definitions.**
- NAC 427A.3205 “Complainant” defined.**
- NAC 427A.321 “Division” defined.**
- NAC 427A.3215 “Older patient” defined.**

NAC 427A.323 “Specialist” defined. ([NRS 427A.070](#), [427A.175](#)) “Specialist” means the {Specialist for the Rights of Elderly Persons Attorney for the Rights of Older Persons and Persons with a Physical Disability, an Intellectual Disability or a Related Condition} appointed pursuant to [NRS 427A.1232](#).

(Added to NAC by Aging Services Div. by R167-06, eff. 9-18-2007)

- NAC 427A.3235 Scope and construction.**
- NAC 427A.324 Severability.**
- NAC 427A.3245 Deviation from requirements**
- NAC 427A.325 Communications to Specialist.**
- NAC 427A.3255 Service of documents: Method.**
- NAC 427A.326 Service of documents: Proof.**
- NAC 427A.3265 Computation of time.**
- NAC 427A.327 Pleadings: Designation; execution.**
- NAC 427A.3275 Pleadings: Filing; availability.**
- NAC 427A.328 Pleadings: Amendment; construction.**
- NAC 427A.3285 Complaints: Form, contents and filing.**
- NAC 427A.329 Settlement conferences.**
- NAC 427A.3295 Answers to complaints.**
- NAC 427A.330 Hearings: Presiding officer; location; notice.**
- NAC 427A.3305 Hearings: Rights of parties.**
- NAC 427A.331 Hearings: Appearance of parties.**
- NAC 427A.3315 Hearings: Failure to appear.**
- NAC 427A.332 Hearings: Conduct of persons.**
- NAC 427A.3325 Hearings: Preliminary procedure.**
- NAC 427A.333 Hearings: Order of procedure.**
- NAC 427A.3335 Hearings: Rules of procedure and evidence.**
- NAC 427A.334 Hearings: Oaths of witnesses.**
- NAC 427A.3345 Hearings: Consolidation.**
- NAC 427A.335 Hearings: Continuances.**
- NAC 427A.3355 Stipulations of parties.**
- NAC 427A.336 Briefs; setting matter for oral argument.**
- NAC 427A.3365 Official notice.**
- NAC 427A.337 Records of formal hearings.**
- NAC 427A.3375 Submission of matter for decision.**
- NAC 427A.338 Issuance of decision.**
- NAC 427A.3385 Report of Specialist summarizing proceedings.**
- NAC 427A.339 Case record of hearing; submission and retention of case record and recording.**
- NAC 427A.3395 Appeal of decision.**

NAC Chapters 427A.350-488

{PROGRAM TO PROVIDE COMMUNITY-BASED SERVICES TO FRAIL ELDERLY PERSONS

General Provisions

NAC 427A.350 Definitions. (NRS 427A.250) 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.3815, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.354 “Asset” defined. (NRS 427A.250) “Asset” means income and resources that:

1. Belong to an applicant or recipient; and
2. Have monetary value.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.356 “Case management” defined. (NRS 427A.250) “Case management” means a process 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.358 “Case manager” defined. (NRS 427A.250) “Case manager” means a person who meets the qualifications set forth in NAC 427A.428 and who carries out the duties of case management for a recipient of COPE.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.364 “Commission” defined. (NRS 427A.250) “Commission” means the Nevada Commission on Aging.

(Added to NAC by Aging Services Div., eff. 7-16-92)

NAC 427A.365 “COPE” defined. (NRS 427A.250) “COPE” means the Community Service Options Program for the Elderly established by the Division pursuant to NRS 427A.250 to provide community-based services to frail elderly persons.

(Added to NAC by Aging Services Div. by R163-06, eff. 9-18-2007)

NAC 427A.367 “Designated representative” defined. (NRS 427A.250) “Designated representative” means a person designated to act on behalf of a recipient pursuant to NAC 427A.384.

(Added to NAC by Aging Services Div. by R163-06, eff. 9-18-2007)

NAC 427A.372 “Fiscal year” defined. (NRS 427A.250) “Fiscal year” means a period beginning on July 1 and ending on June 30 of the following year.

(Added to NAC by Aging Services Div., eff. 7-16-92)

NAC 427A.374 “Income” defined. (NRS 427A.250) “Income” means the receipt of money or other thing of value.

(Added to NAC by Aging Services Div., eff. 7-16-92)

NAC 427A.378 “Legal representative” defined. (NRS 427A.250) “Legal representative” means:

1. A person who has been designated to act for an applicant or a recipient of COPE by a power of attorney.
2. A legal guardian of an applicant or a recipient; or
3. Any other person who is legally authorized to act for an applicant or a recipient.
(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.379 “Nursing facility” defined. (NRS 427A.250) “Nursing facility” means a facility for intermediate care as defined in NRS 449.0038, or a facility for skilled nursing as defined in NRS 449.0039.
(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97)

NAC 427A.3797 “Recipient” defined. (NRS 427A.250) “Recipient” means a person who is enrolled in COPE.
(Added to NAC by Aging Services Div. by R163-06, eff. 9-18-2007)

NAC 427A.380 “Respite care” defined. (NRS 427A.250) “Respite care” means care for a patient that provides a respite for the primary caregiver from the stresses and responsibilities that result from the daily care of the patient.
(Added to NAC by Aging Services Div., eff. 7-16-92)

NAC 427A.381 “Social Services Manager” defined. (NRS 427A.250) “Social Services Manager” means the Social Services Manager of community-based care of the Division.
(Added to NAC by Aging Services Div. by R163-06, eff. 9-18-2007)

NAC 427A.3815 “Standardized assessment tool” defined. (NRS 427A.250) “Standardized assessment tool” means the form used to measure the needs of a recipient of COPE.
(Added to NAC by Aging Services Div. by R163-06, eff. 9-18-2007)

NAC 427A.384 Designation of representative to act on behalf of recipient. (NRS 427A.250) If a recipient has difficulty acting on his or her own behalf, the recipient may designate a representative to act on his or her behalf. If the recipient designates such a representative, the recipient shall notify the Division and all subsequent correspondence from the Division must be sent to the recipient and his or her designated representative.
(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.386 Transfer of case between regions of State. (NRS 427A.250) If a recipient moves from one region in this State to another, his or her case must be transferred to the office of the Division responsible for the region to which the recipient has moved.
(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.388 Confidentiality and release of records of recipient. (NRS 427A.250)

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 or her 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 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 the recipient may be entitled, information from the records may be released if the recipient or his or her legal representative has signed a written authorization to release information for such a purpose.

4. A written authorization to release information is effective 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.390 Review and copying of case file of recipient. (NRS 427A.250)

1. The Division will make a recipient's case file available for review upon the request of the recipient.

2. A recipient may authorize another person to review the recipient's case file by signing a form for the release of information. The form will be provided by the Division. The signing of the form must be witnessed by a person other than the person who is being authorized to review the file.

3. A copy of the plan of care, statement of understanding or release of information must be provided at no charge to the recipient, or the person authorized to review the file. A copy of any other document in the case file must be furnished to the recipient or the person authorized to review the file at a charge not to exceed the actual cost to the Division of producing the copy.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

Enrollment and Determination of Eligibility

NAC 427A.400 Enrollment in Program: Procedure; denial. (NRS 427A.250)

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 or her 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.402 Eligibility for Program; duties of Division when no provider is available. (NRS 427A.250)

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 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 the person 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 or her place of residence for an indefinite period.

(e) Provide the Division with his or her 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 or her 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 or her 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 or her area.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.404 Evaluation of income and assets of applicant or recipient. (NRS 427A.250) The Division will evaluate the income and assets of an applicant or a recipient in determining the eligibility or continued eligibility of the applicant or recipient for enrollment in COPE. Such evaluation must be conducted on an annual basis.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.406 Income of applicant or recipient: Limitation; determination; reporting. (NRS 427A.250)

1. The allowable gross monthly income of a recipient must be determined during any month that services are provided by COPE in accordance with the institutional guidelines established by the Division of Welfare and Supportive Services of the Department of Health and Human Services subject to the amendments set forth by the Commission, if any.

2. To determine the gross monthly income of an applicant or a recipient, any income excluded pursuant to NAC 427A.408 during the month on which the determination is based must be subtracted from the total amount of income received by the applicant or recipient for that month.

3. All income, except income excluded pursuant to NAC 427A.408, must be verified, documented and counted in determining the eligibility of an applicant or the continued eligibility of a recipient.

4. An applicant or a recipient shall:

(a) Report to the Division all changes in his or her income.

(b) Ensure that all income and verification of that income is reported to the Division.

5. If any income of the applicant or recipient is distributed among more than one person, only the applicant's or recipient's portion of the income may be counted in determining the eligibility of the applicant or the continued eligibility of the recipient.

6. Any money that is deposited in a bank account will be considered income for the month it is deposited and will thereafter be considered an asset.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007)

NAC 427A.408 Income of applicant or recipient: Exclusions. (NRS 427A.250) The following income must be excluded from the determination of the eligibility of an applicant or continued eligibility of a recipient:

1. A refund of taxes.

2. Any money from a state agency that is intended to supplement the needs of the applicant or recipient. Such money may not come from federal funds.

3. A payment from the United States Department of Housing and Urban Development.

4. A payment from the Energy Assistance Program.

5. Infrequent and irregular income if the total income does not exceed \$20 monthly and it is impossible to estimate such income in the future.

6. A payment from Volunteers in Service to America.

7. A payment from the Retired and Senior Volunteer and Foster Grandparent Programs.

8. A payment from Indian General Assistance.

9. Aid and Attendance or Housebound Benefits received from the Veteran's Administration.

10. Income necessary for a plan of achieving self-support for an applicant or recipient who is blind or has a disability. The plan must be an individual plan, in writing and approved by the Social Security Administration.

11. A reimbursement from the Veteran's Administration for unusual medical expenses.

12. A payment received from an absent parent or stepparent for child support.

13. Infrequent gifts from friends, including gifts of cash received on a special occasion such as Christmas, a birthday or an anniversary.

14. A payment on Medicare premiums.

15. Money received pursuant to a loan.

16. A payment in cash from an insurance company as reimbursement for medical costs paid by the recipient or to be applied toward medical bills.

17. Money received by members of an Indian tribe for the satisfaction of a judgment entered pursuant to a lawsuit or per capita payments made pursuant to Public Law 98-64, 25 U.S.C. §§ 117a, et seq.

18. Income the applicant or recipient receives as a result of another person's death that is used for the expenses of the deceased person's last illness or burial. Any portion of such income remaining after deducting such expenses must be counted as income for the month the income was received. As used in this subsection, "expenses for a person's last illness or burial" include related hospital and medical expenses and expenses for the funeral, burial plot, interment, new clothing to wear to the funeral, food for visiting relatives and taxi fare to and from the hospital and funeral home.

19. A refund for a deposit or overcharge.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007)

NAC 427A.410 Assets of applicant or recipient: Limitation. (NRS 427A.250) The assets of an applicant or recipient may not exceed the limit for assets set forth in the institutional guidelines established

by the Division of Welfare and Supportive Services of the Department of Health and Human Services subject to the amendments set forth by the Commission, if any.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007)

NAC 427A.422 Cooperation with Division in determining eligibility; notification of change in circumstances material to eligibility. (NRS 427A.250)

1. An applicant or a recipient or his or her designated representative shall cooperate with the Division in securing any information necessary to determine the applicant's eligibility or the recipient's continued eligibility for enrollment in COPE. If the applicant or recipient or the designated representative fails to so cooperate, the Division will deny the application or terminate the services of COPE.

2. If the application process is delayed because the applicant or his or her designated representative is not cooperating pursuant to subsection 1, and the applicant or his or her designated representative cooperates on or before the Division's deadline for processing the application, the process must be continued.

3. An applicant or a recipient or his or her designated representative shall inform the Division if any of the following changes concerning the applicant or recipient occurs:

- (a) His or her address changes;
- (b) His or her living arrangements change;
- (c) His or her income or assets change;
- (d) The applicant or recipient is hospitalized or placed under institutional care;
- (e) The applicant or recipient changes his or her name; or
- (f) Any other change in circumstances material to the applicant's eligibility or recipient's continued eligibility for enrollment in COPE.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.424 Provision by recipient of monthly statements of bank accounts; action by Division on information received between reassessments. (NRS 427A.250)

1. A recipient may be required to provide copies of statements of his or her bank accounts each month.

2. Any information received by the Division between each reassessment that may affect the eligibility of the recipient will be evaluated and acted on if applicable.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

Provision of Services

NAC 427A.428 Qualifications of case manager. (NRS 427A.250) To be eligible to act as a case manager, a person must:

1. Hold a current license as a social worker or associate in social work issued pursuant to chapter 641B of NRS;

2. Hold a current license as a registered nurse issued pursuant to chapter 632 of NRS; or

3. If the person does not hold a current license as a social worker:

- (a) Meet the criteria for licensure as a social worker;
- (b) Hold a current license in a related capacity, including, without limitation, a marriage and family therapist licensed pursuant to chapter 641A of NRS or a counselor who is certified pursuant to chapter 641C of NRS; and

(c) Be exempt from the provisions of chapter 641B of NRS pursuant to NRS 641B.040.

(Added to NAC by Aging Services Div. by R163-06, eff. 9-18-2007)

NAC 427A.430 Individual assessment of recipients. (NRS 427A.250) 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 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.432 Plan of care for recipient: Development and revision; contents; provision of copy to recipient. (NRS 427A.250)

1. A written plan of care must be developed for each recipient after the assessment required by NAC 427A.430 is completed. The recipient, the recipient's family or his or her 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 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; 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 or her designated representative by the case manager.

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

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

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.436 Periodic reassessment of recipient and reauthorization of services. (NRS 427A.250)

1. A recipient must be reassessed by his or her case manager in a face-to-face meeting with the recipient in the setting in which the services of COPE are provided at least once every 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 365 days if the recipient's:

(a) Level of functioning continues to meet the requirements for a patient under the care of a nursing facility; and

(b) Financial status has not changed so as to render him or her 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.438 Duties of case manager. (NRS 427A.250)

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 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. The services of a case manager must be provided by the Division.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.440 Provision and scope of services under Program. (NRS 427A.250)

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 bathing, dressing, using the toilet, 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.
 - (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. 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.442 Provision of respite care. (NRS 427A.250)

1. If the Social Services Manager has determined that a recipient is eligible to receive respite care at the recipient's 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 relief from his or her duties as a caregiver;
- (c) The recipient needs supervised care at his or her 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 or her home. The plan may include the services of a personal care attendant and the services of a homemaker or companion.

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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.450 Procedure when recipient, applicant or person residing with recipient or applicant has communicable disease. (NRS 427A.250)

1. If a recipient, an applicant or a person who resides with the recipient or applicant has a communicable disease, the provision of service to the recipient or the processing of the application must be temporarily suspended until the infected person has been examined by a licensed physician, a registered nurse or a physician assistant and has been determined to be free of the disease or is no longer contagious.

2. As used in this section, "communicable disease" means a disease that is caused by a specific infectious agent or its toxic products, and that can be transmitted, either directly or indirectly, from one person to another. The term does not include acquired immune deficiency syndrome or the human immunodeficiency virus.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007)

NAC 427A.452 Procedure upon placement of recipient in hospital or nursing facility. (NRS 427A.250)

1. If a recipient is placed in a hospital or a nursing facility, the Division will suspend the recipient's services during the time he or she is in the hospital or nursing facility.

2. If the recipient remains in the hospital or nursing facility for 45 days or more, the Division will terminate the recipient's services and close his or her case.

3. If the recipient remains in the hospital or nursing facility for less than 45 days, the Division will review the recipient's case and his or her services may be reinstated or the case may be closed.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007)

NAC 427A.454 Reduction of services: Notification of recipient; reasons; request by recipient. (NRS 427A.250)

1. If any services of COPE must be reduced, the recipient or his or her designated representative will be notified by the Division before the reduction of those services takes effect. This notification will include the reason for the reduction of services and information regarding the right of the recipient to an administrative review.

2. The Division may reduce the services of COPE for the following reasons:

- (a) The recipient or his or her designated representative requests a reduction in services.

- (b) The recipient no longer needs the service.
- (c) The recipient no longer needs the number of service hours previously provided.
- (d) Another agency, program or support system will provide the service.
- (e) Available funds have been expended.

3. A recipient or his or her designated representative may request a reduction of services provided by COPE. The Division will record the request in the recipient's case file and revise the plan of care for the recipient to reflect the change in services.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.456 Termination of services: Grounds; notification of recipient. (NRS 427A.250)

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 or her designated representative requests the discontinuation of the 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 or her providers of service.
- (f) The recipient or his or her designated representative participates in any activity designed to defraud COPE or the Division.
- (g) 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.
- (h) The recipient fails to cooperate with the established plan of care.
- (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 or her 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A 1-10-97; R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

Administrative Review

NAC 427A.460 Right of review. (NRS 427A.250)

1. An applicant for services of COPE is entitled to an administrative review if his or her application is denied.

2. A recipient is entitled to an administrative review if:

- (a) The recipient's services are terminated;
- (b) The recipient's services are reduced without his or her concurrence;
- (c) The recipient has not been given a choice between community home-based care and institutional care; or
- (d) The recipient has a grievance concerning the delivery, quality, duration or scope of his or her services.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.462 Request for review. (NRS 427A.250)

1. An applicant or a recipient or his or her 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 the applicant or recipient 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 or her 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 or her 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 or her designated representative has demonstrated good cause for the failure to comply with the 15-day deadline, he or she 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 or her designated representative has not demonstrated good cause for the failure to comply with the 15-day deadline, he or she will notify the applicant or recipient or his or her designated representative that the request for an administrative review is denied.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.464 Preliminary conference for resolution of matter. (NRS 427A.250)

1. Within 10 days after the Division receives a request for an administrative review, the Social Services Manager of the region in which the applicant or recipient resides shall contact the applicant or recipient or his or her 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 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.466 Appointment and initial duties of reviewing officer; provision of notice; postponement; withdrawal of request; failure to appear. (NRS 427A.250)

1. If, after the conference is held, the applicant or recipient wishes to continue with the administrative review, the Administrator of the Division will appoint a reviewing officer. Within 15 days after the appointment, the reviewing officer shall establish a date, time and location for the review.

2. The Division will mail a notice of the date, time and location of the administrative review to the applicant or recipient or his or her designated representative at least 10 working days before the date scheduled for the review, unless the applicant or recipient or his or her designated representative requests a review in a shorter period.

3. If requested by the Division or by the applicant or recipient or his or her designated representative, the reviewing officer may postpone an administrative review for good cause. If the reviewing officer determines that a postponement is warranted, the reviewing officer shall reschedule the administrative review for a date which is not later than 15 days after the original date for the review.

4. The applicant or recipient or his or her designated representative is entitled to withdraw the request for an administrative review any time before the reviewing officer renders a decision. The withdrawal must be in writing, dated and signed by the applicant or recipient or his or her designated representative and mailed or delivered to the regional office of the Division which received the request for the administrative review. If an applicant or a recipient or his or her designated representative indicates verbally a desire to withdraw a request for an administrative review, the Division will instruct him or her to submit a written withdrawal.

5. The reviewing officer shall cancel the administrative review if the applicant or recipient or his or her designated representative fails to appear for the scheduled administrative review after receiving proper notification. The reviewing officer shall notify the applicant or recipient or his or her designated representative within 1 working day after the failure to appear that the administrative review will be considered cancelled unless the applicant or recipient or his or her designated representative can demonstrate good cause for failing to appear. The applicant or recipient or his or her designated representative must submit the reasons for failing to appear within 10 days after the date of the letter notifying the applicant or recipient or his or her designated representative of the cancellation if the applicant or recipient or his or her designated representative wishes to continue the administrative review. The Administrator of the Division will determine whether good cause has been demonstrated for failing to appear.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.468 Continuation of services during review. (NRS 427A.250)

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 or her 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.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007; A by Aging & Disability Services Div. by R018-10, 7-22-2010)

NAC 427A.470 Right to representation. (NRS 427A.250) An applicant or a recipient is entitled to represent himself or herself or to be represented by another person, including a legal representative, at the administrative review. The Division will inform the applicant or recipient or his or her designated representative of this right:

1. At the time he or she applies for enrollment in COPE; and
2. In a letter notifying the recipient of the action of the Division that is subject to administrative review.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.472 Attendance by case manager; procedure when case manager unable to attend. (NRS 427A.250)

1. A reviewing officer shall request the case manager responsible for the contested action of the Division to attend the administrative review.

2. If the case manager is unable to attend the review:

(a) The supervisor for the region in which the applicant or recipient resides shall serve as the representative of the Division.

(b) The case manager shall provide the reviewing officer with a report that contains:

- (1) A summary of the factors on which the contested action of the Division is based; and

(2) All applicable laws, regulations and policies of the Division or the Division of Welfare and Supportive Services of the Department of Health and Human Services.

Ê The reviewing officer shall cause the report of the case manager to be read into the record and entered into evidence during the administrative review.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.474 Disclosure of documents, records and additional relevant information. (NRS 427A.250)

1. An applicant or a recipient or his or her designated representative is entitled to receive:

(a) Before the administrative review, a photocopy of all documents and records that will be used in the administrative review. The Division will provide these photocopies at no charge.

(b) From the Division, photocopies of additional relevant information that will not be used at the administrative review upon payment of a charge not to exceed the actual cost to the Division of producing the photocopies.

2. During the review, the Division will provide the applicant or recipient or his or her designated representative with a photocopy of all documents presented by the Division at the administrative review.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.476 Conducting of review. (NRS 427A.250)

1. A reviewing officer shall:

(a) Conduct the administrative review in an informal manner; and

(b) Ensure that all relevant issues are considered during the administrative review.

2. The reviewing officer may cause the removal from the administrative review of any person who:

(a) Uses disrespectful language;

(b) Engages in contemptuous conduct; or

(c) Refuses to comply with the directions of the reviewing officer.

(Added to NAC by Aging Services Div., eff. 7-16-92)

NAC 427A.478 Recording of review. (NRS 427A.250)

1. A reviewing officer shall record the administrative review with an audiotape recorder.

2. The reviewing officer's tape recorder is the only recording device that may be allowed at the administrative review.

(Added to NAC by Aging Services Div., eff. 7-16-92)

NAC 427A.480 Case record of review; submission and retention of case record and recording. (NRS 427A.250)

1. A reviewing officer shall keep a case record of each administrative review that he or she conducts which contains:

(a) All correspondence that the reviewing officer has received regarding the subject matter of the administrative review;

(b) All exhibits presented and accepted during the administrative review; and

(c) A narrative log of all contacts that the reviewing officer has had with the applicant or recipient or his or her designated representative, members of the staff of the Division, or legal counsel for any of the participants in the administrative review.

2. The case record established by the reviewing officer constitutes the official record of the hearing.

3. After the reviewing officer has rendered a decision, the reviewing officer shall submit the case record and the audiotape recording to the office of the Division in Carson City. That office shall retain the case record and the audiotape recording for:

(a) Four years after the date of the decision; or

(b) Until the resolution of a judicial review of the decision,

Ê whichever occurs later.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.482 Procedure upon review. (NRS 427A.250)

1. At the beginning of the administrative review, the reviewing officer shall:
 - (a) Introduce himself or herself;
 - (b) Announce the date and time;
 - (c) State the name of the person requesting the administrative review;
 - (d) State the reason for the administrative review;
 - (e) Cause each person present to introduce himself or herself and to state the person's purpose in attending the administrative review; and
 - (f) Advise those present that the administrative review is being recorded by an audiotape recorder.
 2. The representative of the Division shall state the basis of the contested action taken by the Division. If the case manager is not present, the report prepared by the case manager pursuant to subsection 2 of NAC 427A.472 must be read into the record.
 3. The reviewing officer shall allow the applicant or recipient or his or her designated representative to make a statement concerning the grievance and to present supporting evidence.
 4. The reviewing officer shall collect, number and log all relevant evidence.
 5. The reviewing officer, the applicant or recipient or his or her designated representative or the representative of the Division may request that evidence which is not available at the administrative review be submitted. If such a request is made, the reviewing officer may:
 - (a) Continue the administrative review and order further investigation or request a party to produce the additional evidence; or
 - (b) Close the administrative review but hold the record open to permit submission of any additional evidence.
- Ê If additional evidence is submitted, the reviewing officer shall provide each party with the opportunity to examine that evidence.
6. If the reviewing officer determines after the administrative review is closed that the record is unclear or insufficient to make a decision, the reviewing officer may contact the applicant or recipient or his or her designated representative or the representative of the Division for clarification or additional information. Any material submitted after the close of the review must be made available to all participants in the administrative review and each shall have the opportunity for rebuttal. The reviewing officer may reopen the administrative review if the nature of the additional information or the rebuttal thereof makes further consideration necessary.
 7. Before closing the review, the reviewing officer shall advise those present that:
 - (a) The reviewing officer will base his or her decision on the case record and the testimony and evidence presented at the administrative review;
 - (b) The reviewing officer will render a decision within 15 days after the date of the administrative review;
 - (c) The reviewing officer will inform the applicant or recipient or his or her designated representative by mail of the decision; and
 - (d) The applicant or recipient or his or her designated representative may appeal the decision of the reviewing officer to the Administrator of the Division.

(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.484 Decision of reviewing officer. (NRS 427A.250)

1. The decision of a reviewing officer must:
 - (a) Be based on the evidence and information presented at the administrative review and any additional information submitted pursuant to subsection 6 of NAC 427A.482;
 - (b) Comply with the regulations of the Division that were in effect at the time the Division took the contested action;
 - (c) Comply with the policies of COPE;

- (d) Contain a summary of the findings of fact;
 - (e) Identify supporting evidence and regulations;
 - (f) Respond to any reasonable arguments of the applicant or recipient or his or her designated representative; and
 - (g) Be submitted in writing to the Administrator of the Division with the case record and all exhibits presented during the administrative review.
2. In issuing a decision, the reviewing officer shall not consider changes in physical or social factors that occur after the close of the administrative review.
(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.486 Notification of decision and right to appeal; request for appeal. (NRS 427A.250)

1. A reviewing officer shall mail the written decision to the applicant or recipient or his or her designated representative within 15 days after the close of the administrative review. In addition to the written decision, the reviewing officer shall notify the applicant or recipient or his or her designated representative by mail of:
- (a) The right to appeal the decision of the reviewing officer to the Division; and
 - (b) The process to request an appeal to the Administrator of the Division.
2. A request for an appeal to the Administrator of the Division must be received by the Administrator within 10 days after the date of the decision.
(Added to NAC by Aging Services Div., eff. 7-16-92; A by R163-06, 9-18-2007)

NAC 427A.488 Report of reviewing officer summarizing proceedings. (NRS 427A.250)

1. A reviewing officer shall summarize the proceedings in a written report using the following format:
- A. INTRODUCTION—The date, time and place of the administrative review and the name of each person present at the administrative review.
 - B. NATURE OF CASE—Overview of the issues presented during the administrative review.
 - C. FINDINGS OF FACT—The facts of the case as determined by the reviewing officer.
 - D. CONCLUSIONS OF LAW—The laws, regulations, procedural rules and policies which support the findings and decision of the reviewing officer.
 - E. DECISION—The decision to either uphold or overrule the action of the Division.
2. The reviewing officer shall submit the written report to the Administrator of the Division with the case record.
(Added to NAC by Aging Services Div., eff. 7-16-92)}

NAC 427A.556

Assessments conducted by public agency providing autism services. ([NRS 427A.872](#))

1. A public agency providing autism services shall conduct an assessment, as described in subsection 3, of a person with autism spectrum disorder or who is suspected of having autism spectrum disorder:

(a) Before providing services to the person or, if a diagnosis of autism spectrum disorder is made after the public agency providing autism services begins to provide services to the person, after the diagnosis is made.

(b) Except as otherwise provided in subsection 2, at the time the person ceases to receive services from the public agency providing autism services.

2. The requirements of paragraph (b) of subsection 1 do not apply if the person with autism spectrum disorder began receiving early intervention services from *Aging and Disabilities Services Division* {*the Division of Public and Behavioral Health of the Department*} not more than 90 days before the person reached the age of 3 years.

3. An assessment conducted pursuant to this section must include, without limitation, an assessment of the:

(a) Physical health of the person, including, without limitation, the vision and hearing of the person;

(b) Cognitive ability of the person using a norm-referenced instrument;

(c) Receptive and expressive language levels of the person using a norm-referenced instrument; and

(d) Adaptive behavior of the person in multiple settings using a standardized measure of adaptive behavior.

4. As used in this section, “early intervention services” has the meaning ascribed to it in 20 U.S.C. § 1432.

(Added to NAC by Aging & Disability Services Div. by R013-12, eff. 9-14-2012)

**{PROGRAM TO ENABLE PERSONS WITH PHYSICAL DISABILITIES TO LIVE IN
UNSUPERVISED SETTINGS**

REVISER'S NOTE.

NAC 426.675 to 426.770, inclusive, have been renumbered and moved to chapter 427A of NAC in accordance with section 91 of chapter 428, Statutes of Nevada 2009, at page 2407, which authorized the related provisions of chapter 426 of NAC to be renumbered and moved to chapter 427A of NAC.

General Provisions

NAC 427A.675 Definitions. (NRS 427A.793) As used in NAC 427A.675 to 427A.789, inclusive, unless the context otherwise requires, the words and terms defined in NAC 427A.680 to 427A.720, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010; R016-12, 9-14-2012)—(Substituted in revision for NAC 426.675)

NAC 427A.680 “Administrator” defined. (NRS 427A.793) “Administrator” means the Administrator of the Division.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006)—(Substituted in revision for NAC 426.680)

NAC 427A.685 “Contractor” defined. (NRS 427A.793) “Contractor” means any person or governmental or private agency or organization with which the Division enters into a contract pursuant to NAC 427A.743.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010)— (Substituted in revision for NAC 426.685)

NAC 427A.687 “Division” defined. (NRS 427A.793) “Division” means the Aging and Disability Services Division of the Department of Health and Human Services.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006)—(Substituted in revision for NAC 426.695)

NAC 427A.690 “Essential personal care” defined. (NRS 427A.793) “Essential personal care” means the tasks described in NAC 427A.735.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006)—(Substituted in revision for NAC 426.690)

NAC 427A.695 “Financial assistance” defined. (NRS 427A.793) “Financial assistance” means assistance provided by a program manager to persons with physical disabilities for such essential personal care as is necessary to enable them to live in a noninstitutional or unsupervised residential setting.

(Added to NAC by Aging & Disability Services Div. by R024-10, eff. 7-22-2010)

NAC 427A.700 “Person with a physical disability” defined. (NRS 427A.793) “Person with a physical disability” has the meaning ascribed to it in NRS 427A.791.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006)— (Substituted in revision for NAC 426.700)

NAC 427A.705 “Personal care attendant” defined. (NRS 427A.793) “Personal care attendant” means a person who has the knowledge and skill to provide essential personal care pursuant to NAC 427A.675 to 427A.789, inclusive.

(Added to NAC by Dep’t of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R016-12, 9-14-2012)— (Substituted in revision for NAC 426.705)

NAC 427A.707 “Program manager” defined. (NRS 427A.793) “Program manager” means:

1. The Division; or
2. A person, agency or organization outside of the Division with which the Division has entered into a contract pursuant to NAC 427A.743.

(Added to NAC by Aging & Disability Services Div. by R024-10, eff. 7-22-2010)

NAC 427A.710 “Recipient” defined. (NRS 427A.793) “Recipient” means a person who receives financial assistance for essential personal care pursuant to NAC 427A.675 to 427A.789, inclusive.

(Added to NAC by Dep’t of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R016-12, 9-14-2012)— (Substituted in revision for NAC 426.710)

NAC 427A.720 “Support services for independent living” defined. (NRS 427A.793) “Support services for independent living” includes, without limitation:

1. Assisting a recipient in developing a comprehensive plan to support his or her 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.

(Added to NAC by Dep’t of Health & Human Services by R005-06, eff. 5-4-2006)—(Substituted in revision for NAC 426.720)

NAC 427A.725 Eligibility for financial assistance; provision of care by Division. (NRS 427A.793)

1. To be eligible for financial assistance pursuant to NAC 427A.675 to 427A.789, inclusive, 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 as determined pursuant to subsection 1 of NAC 427A.730;
- (d) Use all other resources in the community that provide essential personal care or financial assistance for essential personal care before requesting financial assistance pursuant to NAC 427A.675 to 427A.789, inclusive;
- (e) Except as otherwise provided in subsection 2, require not 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 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 NAC 427A.765.

2. Except as otherwise provided in this subsection, the Division may provide not more than 35 hours of essential personal care each week to a recipient. In addition, the 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 or her disability is exacerbated or he or she has a short-term illness that is not related to the 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 pursuant to subsection 1 that is maintained by the Division.

(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 Division from providing 35 hours or less of essential personal care each week for a person who is also receiving services from another program.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010; R016-12, 9-14-2012)— (Substituted in revision for NAC 426.725)

NAC 427A.730 Eligibility for provision of financial assistance; priority given under certain circumstances. (NRS 427A.793)

1. Financial assistance may be provided to an eligible person who:

(a) Has a traumatic brain injury; or

(b) Requires assistance with at least two of the following tasks:

(1) Bathing.

(2) Toileting.

(3) Eating.

2. The program manager shall give priority in the provision of financial assistance to an eligible person who:

(a) Has a condition that is terminal and is not expected to live for more than 1 year;

(b) Receives acute or extended care in an institutional setting but who, with financial assistance provided pursuant to NAC 427A.675 to 427A.789, inclusive, would be able to function in a setting in which the person controls and manages his or her daily activities; or

(c) Is experiencing a crisis as determined by the program manager due to an unanticipated change in the circumstances of the eligible person.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010; R016-12, 9-14-2012)— (Substituted in revision for NAC 426.730)

NAC 427A.735 Scope of essential personal care. (NRS 427A.793) Essential personal care is limited to assisting a person who is eligible to receive financial assistance pursuant to NAC 427A.675 to 427A.789, inclusive:

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. In light housekeeping;

11. 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

12. In other minor needs directly related to maintenance of personal hygiene.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R016-12, 9-14-2012)— (Substituted in revision for NAC 426.735)

NAC 427A.740 Duties of program manager. (NRS 427A.793) The program manager shall:

1. Reevaluate a recipient's eligibility every 12 months and when his or her need for essential personal care changes.
2. Coordinate the provision of essential personal care to eligible persons.
3. Provide assessments of recipients. An assessment must:
 - (a) Be conducted by a licensed professional who is familiar with essential personal care and the independent living needs of persons with physical disabilities;
 - (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 the recipient's perspective of his or her needs for care.
4. Provide referrals to independent living and other services as appropriate for the needs of recipients.
(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010; R016-12, 9-14-2012)— (Substituted in revision for NAC 426.740)

NAC 427A.743 Contract for provision of essential personal care and other services. (NRS 427A.793) The Division may enter into a contract with a contractor to provide essential personal care and other services pursuant to NAC 427A.675 to 427A.789, inclusive.

(Added to NAC by Aging & Disability Services Div. by R024-10, eff. 7-22-2010; A by R016-12, 9-14-2012)

NAC 427A.745 Monitoring and evaluation of contractors; submission by contractors of reports and proposed procedural changes. (NRS 427A.793)

1. If the Division has entered into a contract pursuant to NAC 427A.743, the Division will monitor the management and the financial records of the contractor and will evaluate the contractor's efficiency in administering the provisions of the contract.
2. The contractor shall submit to the Division:
 - (a) Reports summarizing the activities of programs providing essential personal care at times and on forms as determined by the Division.
 - (b) Any proposed procedural changes for review and approval before they are carried out.
 - (c) Such other reports as the Division requests.
(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010)— (Substituted in revision for NAC 426.745)

NAC 427A.750 Notification of program manager of changes in income or need for essential personal care of recipient. (NRS 427A.793) A recipient shall notify the program manager 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 or her family, the income of the recipient's family that would affect the recipient's eligibility; and
2. Need for essential personal care.
(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010)— (Substituted in revision for NAC 426.750)

NAC 427A.755 Application for financial assistance; statement of need for care; notification and date of eligibility; notification of position on waiting list. (NRS 427A.793)

1. An applicant for financial assistance must submit to the program manager 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 program manager shall, within 30 days after receiving a completed application, notify the applicant in writing whether he or she is eligible for financial assistance.

3. If money is available, a person may be eligible to receive financial assistance on the date the determination of eligibility is made.

4. If money is not available, the program manager shall notify the person that the person will be placed on the waiting list maintained by the Division of persons eligible for financial assistance in the order of their priority.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010)— (Substituted in revision for NAC 426.755)

NAC 427A.765 Determination of financial eligibility; determination of portion of cost to be paid by recipient; payment of costs by contractor. (NRS 427A.793)

1. An applicant is not eligible to receive financial assistance pursuant to subsection 1 of NAC 427A.725, if his or her 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, one-half of the gross monthly income of the applicant earned through employment, any additional gross monthly income of the applicant and the gross monthly income of the applicant's spouse must be counted. From the total must be deducted any amount paid directly by the applicant or the applicant's spouse that is not reimbursed by any other source for:

(a) Medicine prescribed for the applicant or the applicant's spouse or dependent child by a physician;

(b) Medical care provided to the applicant or the applicant's spouse or dependent child by a doctor, hospital or other medical facility;

(c) Special equipment, services or supplies to help the applicant or any other member of the household who also has a disability do what a person who is not disabled can do; and

(d) Health insurance and the cost thereof, including, without limitation, the payment of premiums and copayments for the applicant or the applicant's spouse or dependent child.

Ê 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 300 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 300 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 the recipient according to the following formula:

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

Ê where "A" is the recipient's gross monthly income; "B" is the sum, on a monthly basis, of the recipient's and his or her 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 300 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 20 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, with the approval of the Administrator, or the Division, as applicable, may pay 100 percent of the cost of the essential personal care of a recipient.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006; A by Aging & Disability Services Div. by R024-10, 7-22-2010; R016-12, 9-14-2012)— (Substituted in revision for NAC 426.765)

NAC 427A.770 Grounds for termination of care. (NRS 427A.793) Care provided by a personal care attendant to a recipient may be terminated if the recipient:

1. Fails to pay his or her 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 NAC 427A.750.

(Added to NAC by Dep't of Health & Human Services by R005-06, eff. 5-4-2006)— (Substituted in revision for NAC 426.770)

Administrative Review

NAC 427A.775 Right of review. (NRS 427A.793)

1. An applicant for financial assistance is entitled to an administrative review if his or her application is denied.

2. A recipient is entitled to an administrative review if:

- (a) The recipient's financial assistance is terminated;
- (b) The recipient's financial assistance is reduced without his or her concurrence;
- (c) The recipient has not been given a choice between community home-based care and institutional care; or

(d) The recipient has a grievance concerning the delivery, quality, duration or scope of his or her financial assistance.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.776 Request for review. (NRS 427A.793)

1. An applicant for financial assistance or a recipient or his or her 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 the applicant or recipient 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, a 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 or her 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 or her designated representative demonstrates good cause for the failure to comply with the deadline.

5. The Administrator or a person designated by the Administrator will review any requests to waive the deadline for good cause and will 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 or her designated representative has demonstrated good cause for the failure to comply with the 15-day deadline, he or she 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 or her designated representative has not demonstrated good cause for the failure to comply with the 15-day deadline, he or she will notify the applicant or recipient or his or her designated representative that the request for an administrative review is denied.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.777 Preliminary conference for resolution of matter. (NRS 427A.793)

1. Within 10 days after the Division receives a request for an administrative review, the program manager of the region in which the applicant for financial assistance or recipient resides shall contact the applicant or recipient or his or her 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 program 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.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.778 Appointment and initial duties of review team; provision of notice; postponement; withdrawal of request; failure to appear. (NRS 427A.793)

1. If, after the conference is held, the applicant for financial assistance or recipient wishes to continue with the administrative review, the Administrator will appoint a review team made up of two or more members from the Subcommittee on Personal Assistance for Persons with Severe Functional Disabilities of the Nevada Commission on Services for Persons with Disabilities and one member of the staff of the Division. Within 15 days after the appointment, the review team must establish a date, time and location for the review.

2. The Division will mail a notice of the date, time and location of the administrative review to the applicant or recipient or his or her designated representative at least 10 working days before the date scheduled for the review, unless the applicant or recipient or his or her designated representative requests a review in a shorter period.

3. If requested by the Division or by the applicant or recipient or his or her designated representative, the review team may postpone an administrative review for good cause. If the review team determines that a postponement is warranted, the review team must reschedule the administrative review for a date which is not later than 15 days after the original date for the review.

4. The applicant or recipient or his or her designated representative is entitled to withdraw the request for an administrative review any time before the review team renders a decision. The withdrawal must be in writing, dated and signed by the applicant or recipient or his or her designated representative and mailed or delivered to the regional office of the Division which received the request for the administrative review. If an applicant or a recipient or his or her designated representative indicates verbally a desire to withdraw a request for an administrative review, the Division will instruct him or her to submit a written withdrawal.

5. The review team shall cancel the administrative review if the applicant or recipient or his or her designated representative fails to appear for the scheduled administrative review after receiving proper notification. The review team shall notify the applicant or recipient or his or her designated representative within 1 working day after the failure to appear that the administrative review will be considered cancelled unless the applicant or recipient or his or her designated representative can demonstrate good cause for failing to appear. The applicant or recipient or his or her designated representative must submit the reasons for failing to appear within 10 days after the date of the letter notifying the applicant or recipient or his or her designated representative of the cancellation if the applicant or recipient or his or her designated representative wishes to continue the administrative review. The Administrator will determine whether good cause has been demonstrated for failing to appear.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.779 Continuation of services during review. (NRS 427A.793)

1. A recipient is entitled to receive financial assistance while an administrative review of a termination of that financial assistance is pending, if funding is available, unless the recipient or his or her designated representative requests in writing that the financial assistance be discontinued.

2. If financial assistance is continued and the decision to terminate that financial assistance is upheld, the recipient may be required to repay the amount of any financial assistance provided after the date on which that financial assistance was originally scheduled to be terminated.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.780 Right to representation. (NRS 427A.793) An applicant for financial assistance or a recipient is entitled to represent himself or herself or to be represented by another person, including a legal representative, at the administrative review. The Division will inform the applicant or recipient or his or her designated representative of this right:

1. At the time he or she applies for financial assistance; and

2. In a letter notifying the applicant or recipient or his or her designated representative of the action of the Division that is subject to administrative review.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.781 Attendance by certain member of staff; procedure when member of staff unable to attend. (NRS 427A.793)

1. A review team shall request the member of the staff of the Division who made the decision that is the subject of the contested action of the Division to attend the administrative review.

2. If that member of the staff is unable to attend the review:

(a) The supervisor for the region in which the applicant for financial assistance or recipient resides must serve as the representative of the Division.

(b) That member of the staff must provide the review team with a report that contains:

(1) A summary of the factors on which the contested action of the Division is based; and

(2) All applicable laws, regulations and policies of the Division.

3. The review team shall cause the report it receives pursuant to paragraph (b) of subsection 2 to be read into the record and entered into evidence during the administrative review.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.782 Disclosure of documents, records and additional relevant information. (NRS 427A.793)

1. An applicant for financial assistance or a recipient or his or her designated representative is entitled to receive:

(a) Before the administrative review, a photocopy of all documents and records that will be used in the administrative review. The Division will provide those photocopies at no charge.

(b) From the Division, photocopies of additional relevant information that will not be used at the administrative review upon payment of a charge not to exceed the actual cost to the Division of producing the photocopies.

2. During the review, the Division will provide the applicant or recipient or his or her designated representative with a photocopy of all documents presented by the Division at the administrative review.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.783 Conducting of review. (NRS 427A.793)

1. A review team shall:

(a) Conduct the administrative review in an informal manner; and

(b) Ensure that all relevant issues are considered during the administrative review.

2. The review team may cause the removal from the administrative review of any person who:

(a) Uses disrespectful language;

- (b) Engages in contemptuous conduct; or
 - (c) Refuses to comply with the directions of the review team.
- (Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.784 Recording of review. (NRS 427A.793)

1. A review team shall record the administrative review with an audiotape recorder.
 2. The review team's audiotape recorder is the only recording device that may be allowed at the administrative review.
- (Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.785 Case record of review; submission and retention of case record and recording. (NRS 427A.793)

1. A review team shall keep a case record of each administrative review that it conducts which contains:
 - (a) All correspondence that the review team has received regarding the subject matter of the administrative review;
 - (b) All exhibits presented and accepted during the administrative review; and
 - (c) A narrative log of all contacts that the review team has had with the applicant for financial assistance or recipient or his or her designated representative, members of the staff of the Division or legal counsel for any of the participants in the administrative review.
 2. The case record established by the review team constitutes the official record of the hearing.
 3. After the review team has rendered a decision, the review team shall submit the case record and the audiotape recording to the office of the Division in Carson City. That office shall retain the case record and the audiotape recording:
 - (a) For 4 years after the date of the decision; or
 - (b) Until the resolution of a judicial review of the decision,
- Ê whichever occurs later.
- (Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.786 Procedure upon review. (NRS 427A.793)

1. At the beginning of the administrative review, the review team shall:
 - (a) Introduce each member of the review team;
 - (b) Announce the date and time;
 - (c) State the name of the person requesting the administrative review;
 - (d) State the reason for the administrative review;
 - (e) Cause each person present to introduce himself or herself and to state the person's purpose in attending the administrative review; and
 - (f) Advise those present that the administrative review is being recorded by an audiotape recorder.
2. The representative of the Division shall state the basis of the contested action taken by the Division. If the member of the staff of the Division who made the decision that is the subject of the contested action of the Division is not present, the report prepared by that member of the staff pursuant to paragraph (b) of subsection 2 of NAC 427A.781 must be read into the record.
3. The review team shall allow the applicant for financial assistance or recipient or his or her designated representative to make a statement concerning the grievance and to present supporting evidence.
4. The review team shall collect, number and log all relevant evidence.
5. The review team, the applicant or recipient or his or her designated representative or the representative of the Division may request that evidence which is not available at the administrative review be submitted. If such a request is made, the review team may:
 - (a) Continue the administrative review and order further investigation or request a party to produce the additional evidence; or

(b) Close the administrative review but hold the record open to permit submission of any additional evidence.

Ê If additional evidence is submitted, the review team shall provide each party with the opportunity to examine that evidence.

6. If the review team determines after the administrative review is closed that the record is unclear or insufficient to make a decision, the review team may contact the applicant or recipient or his or her designated representative or the representative of the Division for clarification or additional information. Any material submitted after the close of the review must be made available to all participants in the administrative review and each shall have the opportunity for rebuttal. The review team may reopen the administrative review if the nature of the additional information or the rebuttal thereof makes further consideration necessary.

7. Before closing the review, the review team shall advise those present that:

(a) The review team will base its decision on the case record and the testimony and evidence presented at the administrative review;

(b) The review team will render a decision within 15 days after the date of the administrative review;

(c) The review team will inform the applicant or recipient or his or her designated representative by mail of the decision; and

(d) The applicant or recipient or his or her designated representative may appeal the decision of the review team to the Administrator.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.787 Decision of review team. (NRS 427A.793)

1. The decision of a review team must:

(a) Be based on the evidence and information presented at the administrative review and any additional information submitted pursuant to subsection 6 of NAC 427A.786;

(b) Comply with the regulations of the Division that were in effect at the time the Division took the contested action;

(c) Contain a summary of the findings of fact;

(d) Identify supporting evidence and regulations;

(e) Respond to any reasonable arguments of the applicant for financial assistance or recipient or his or her designated representative; and

(f) Be submitted in writing to the Administrator with the case record and all exhibits presented during the administrative review.

2. In issuing a decision, the review team shall not consider changes in physical or social factors that occur after the close of the administrative review.

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.788 Notification of decision and right to appeal; request for appeal. (NRS 427A.793)

1. The review team shall mail the written decision to the applicant for financial assistance or recipient or his or her designated representative within 15 days after the close of the administrative review. In addition to the written decision, the review team shall notify the applicant or recipient or his or her designated representative by mail of:

(a) The right to appeal the decision of the review team to the Administrator; and

(b) The process to request an appeal to the Administrator.

2. A request for an appeal to the Administrator must be received by the Administrator within 10 days after the date of the decision.

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

(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)

NAC 427A.789 Report of review team summarizing proceedings. (NRS 427A.793)

1. The review team shall summarize the proceedings in a written report using the following format:

- A. INTRODUCTION—The date, time and place of the administrative review and the name of each person present at the administrative review.
 - B. NATURE OF CASE—Overview of the issues presented during the administrative review.
 - C. FINDINGS OF FACT—The facts of the case as determined by the review team.
 - D. CONCLUSIONS OF LAW—The laws, regulations, procedural rules and policies which support the findings and decision of the review team.
 - E. DECISION—The decision to either uphold or overrule the action of the Division.
2. The review team shall submit the written report to the Administrator with the case record.
(Added to NAC by Aging & Disability Services Div. by R016-12, eff. 9-14-2012)}

NAC Chapters 435.395-430

ASSISTANCE TO PARENT OR OTHER RELATIVE CARING FOR CERTAIN PERSONS WITH INTELLECTUAL DISABILITIES AT HOME

NAC 435.395 “Parent or other relative” interpreted. ([NRS 435.365](#)) As used in [NRS 435.365](#), the Division will interpret “parent or other relative” to mean:

1. A biological parent or relative of a person with an intellectual *or developmental disability*; or
2. A person who has legally adopted or is the legal guardian of such a person.

(Added to NAC by Men. Hygiene & Men. Retardation Div. by R130-97, eff. 12-12-97)

NAC 435.400 Qualifications of person with intellectual *or developmental disability*. ([NRS 435.365](#))

1. A parent or other relative of a person with an intellectual *or developmental disability* is eligible for assistance pursuant to [NAC 435.400](#) to [435.430](#), inclusive, if the person with an intellectual or developmental disability:

(a) Has a severe or profound intellectual *or developmental disability* or if under 6 years of age and has developmental delays requiring support equivalent to the support required by a person with a severe or profound intellectual *or developmental disability*; and

(b) Meets the financial requirements for fee reduction established by the Division pursuant to [NRS 433.404](#) and [435.115](#).

2. The Division will consider the person to have a profound or severe intellectual *or developmental disability* within the meaning of [NRS 435.365](#) if:

(a) A psychological examiner diagnoses the person as having a profound or severe intellectual *or developmental disability* based on the results obtained by generally accepted methods for assessing the intellectual capability and coping or adaptive skills of the person; or

(b) The person is under 6 years of age and a multidisciplinary team identifies him or her as having developmental delays that require support that is equivalent to the support required by a person with a profound or severe intellectual disability.

3. The diagnosis required by subsection 2 must be made in accordance with the criteria set forth *in the most recent versions of Intellectual Disability: Definition, Diagnosis, Classification, and Systems of Support published by the American Association on Intellectual and Developmental Disabilities and the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.* {Mental Retardation: Definition, Classification and Systems of Support, 9th edition, 1992. A copy of the publication may be obtained from the American Association on Mental Retardation, 444 North Capitol Street, N.W., Washington, D.C. 20000-1512, for the price of \$65, plus \$4 for shipping and handling. }

4. As used in this section:

(a) “Multidisciplinary team” means a psychological examiner and one or more other persons, including a parent, legal guardian, clinician, educator, physician, social worker, therapist, case manager or nurse of a person with an intellectual *or developmental disability*, who, because of personal or specialized knowledge, are qualified to provide or interpret information relating to the person’s cognitive, physical, psychological, language, speech and social development or self-help skills.

(b) “Psychological examiner” means a psychologist who is licensed in this State or any other person who, because of specialized training and knowledge, including any training and knowledge required to assess the intellectual capabilities or an impairment of the adaptive behavior of a person, is qualified to diagnose a person as having:

(1) A profound or severe intellectual *or developmental disability*; or

(2) Developmental delays that require support that is equivalent to the support required by a person with a profound or severe intellectual disability.

[Men. Hygiene & Men. Retardation Div., Financial Assistance § 1, eff. 8-21-81] — (NAC A by R130-97, 12-12-97)

NAC 435.405 Application for financial assistance. ([NRS 435.365](#))

1. An application for financial assistance from the Division for care provided by a parent or other relative of a person with an intellectual *or developmental disability* who resides in the same household must be submitted to the Division on a form which, upon request, will be provided by the Division.

2. Upon receipt of the application, a staff member of the Division will:

- (a) Conduct an interview with the applicant;
- (b) Request any additional information required for the applicant to complete the application; and
- (c) Inform the applicant of the services available from the Division.

[Men. Hygiene & Men. Retardation Div., Financial Assistance § 2, eff. 8-21-81] — (NAC A by R130-97, 12-12-97)

NAC 435.410 Eligibility for assistance. ([NRS 435.365](#))

1. To be eligible for assistance pursuant to [NAC 435.400](#) to [435.430](#), inclusive, an applicant must reside in this State *and reside in the same household as the person with whom they are applying for*.

2. In determining whether the applicant or his or her relative with an intellectual *or developmental disability* is reasonably able to pay for the care and support of the relative, the Division will consider:

- (a) The adequacy of the financial resources of those persons; and
- (b) Whether the applicant or his or her relative with an intellectual *or developmental disability* is eligible in accordance with the schedules of fees established pursuant to [NRS 433.404](#) and [435.115](#) for a reduction of fees for services other than services provided by the Division pursuant to [NAC 435.400](#) to [435.430](#), inclusive.

3. To determine the adequacy of the care that the applicant will provide for the relative with an intellectual *or developmental disability*, the Division will consider whether the relative will be provided care in accordance with a plan approved by the Division.

4. Eligibility for continued assistance will be reviewed with the applicant at least annually.

[Men. Hygiene & Men. Retardation Div., Financial Assistance § 3, eff. 8-21-81] — (NAC A 9-15-89; R130-97, 12-12-97)

NAC 435.415 Determination and notice of eligibility for and amount of assistance; retroactive assistance; death of relative with intellectual *or developmental disability*. ([NRS 435.365](#))

1. The Division will:

(a) Determine whether an applicant is eligible for assistance and the amount of that assistance, if any; and

(b) Provide the applicant written notice of the decision.

2. If an applicant becomes eligible for assistance, he or she is entitled to retroactive assistance from the first day of the month after the date on which the Division received the completed application.

3. If the relative of the person with an intellectual *or developmental disability* for whose care assistance is provided pursuant to [NAC 435.400](#) to [435.430](#), inclusive, dies while eligible for the assistance, the applicant is entitled to receive 1 additional month of assistance pursuant to those sections.

[Men. Hygiene & Men. Retardation Div., Financial Assistance § 4, eff. 8-21-81] — (NAC A by R130-97, 12-12-97)

NAC 435.425 Reporting of certain changes to Division. ([NRS 435.365](#))

1. If a change occurs in the home of a person who is receiving assistance for providing care to a relative with an intellectual *or developmental disability* pursuant to the provisions of [NAC 435.400](#) to [435.430](#), inclusive, and that change affects the adequacy of that care or the eligibility of the person to receive the assistance as specified in a form provided to the person by the Division, the person shall report the change to the Division within 30 days after the change occurs.

2. If a change occurs in the diagnosis of an intellectual *or developmental disability* of a relative specified in subsection 1, the person receiving assistance for the relative shall report the change to the Division on or before the end of the month in which the change occurs. The report must include any materials for testing used to conduct the diagnosis.

3. A report specified in this section must be submitted on a form provided by the Division.

[Men. Hygiene & Men. Retardation Div., Financial Assistance § 5 subsec. 2, eff. 8-21-81] — (NAC A 9-15-89; R130-97, 12-12-97)

NAC Chapters 435.500-740

SUPPORTED LIVING ARRANGEMENT SERVICES

- NAC 435.500 Policy and scope.
- NAC 435.505 Definitions.
- NAC 435.5054 “Certificate” defined.
- NAC 435.5056 “Developmental disability” defined.
- NAC 435.5058 “Guardian” defined.
- NAC 435.506 “Intellectual disability” defined.
- NAC 435.5062 “Parent” defined.
- NAC 435.5066 “Person” defined.
- NAC 435.507 “Provider of supported living arrangement services” defined.
- NAC 435.5074 “Provisional certificate” defined.
- NAC 435.5078 “Quality assurance review” defined.
- NAC 435.5082 “Regional center” defined.
- NAC 435.5086 “Supported living arrangement services” defined.

NAC 435.509 “Written service authorization” defined. ([NRS 435.333](#)) “Written service authorization” means a document issued by a regional center authorizing a provider of supported living arrangement services to provide supported living arrangement services pursuant to *{an individual support} a person centered plan*.

(Added to NAC by Aging & Disability Services Div. by R144-16, eff. 5-16-2018)

NAC 435.510 Provisional certificate or certificate required for eligibility for payment from Division.

NAC 435.515 Provisional certificate: Submission and contents of application. ([NRS 435.333](#)) A completed application for a provisional certificate must be submitted to the Division, on a form furnished by the Division, and must include, without limitation:

1. For a provider of supported living arrangement services who is a natural person:
 - (a) Proof that the applicant is 18 years of age or older;
 - (b) Three or more letters of professional reference;
 - (c) Proof that the applicant has successfully completed a classroom course in cardiopulmonary resuscitation according to the guidelines of the American Red Cross or American Heart Association;
 - (d) Proof that the applicant is currently certified in standard first aid through:
 - (1) A course from the American Red Cross;
 - (2) A course from the American Heart Association; or
 - (3) An equivalent course in standard first aid, if the applicant submits proof that such course meets or exceeds the requirements of the American Red Cross or American Heart Association;
 - (e) *{Written verification, on a form prescribed by the Division, stating that the fingerprints of the applicant were taken and} The applicant has established an account with the Nevada Department of Public Safety and has submitted fingerprints to be* directly forwarded electronically or by another means to the Central Repository for Nevada Records of Criminal History and that the applicant has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the applicant’s background and to such other law enforcement agencies as the Division deems necessary;
 - (f) Proof that the applicant has sufficient working capital to ensure that the applicant would be financially capable of providing supported living arrangement services for a period of at least 3 months without compensation;

(g) Proof that the applicant satisfies the same or similar criteria of a qualified intellectual disability professional set forth in 42 C.F.R. § 483.430; {or has obtained a waiver of the criteria from the applicable regional center;}

(h) If applicable, a copy of the applicant's state business license and a copy of the current business license issued for the applicant's business by the county, city or town in which the applicant's business is located or written verification that the applicant is exempt from any requirement to obtain a business license;

(i) Proof of industrial insurance in compliance with [chapters 616A to 616D](#), inclusive, of NRS or an affidavit stating that the applicant has elected not to be included within the terms, conditions and provisions of [chapters 616A to 616D](#), inclusive, of NRS pursuant to [NRS 616B.659](#); and

(j) Any other information required by the Division.

2. For a provider of supported living arrangement services that is an organization consisting of a partnership, firm, corporation, association, state or local government or agency thereof:

(a) If applicable, a copy of the state business license of the organization and a copy of the current business license issued for the organization's business by the county, city or town in which the organization is located or written verification that the organization is exempt from any requirement to obtain a business license;

(b) The federal tax identification number of the organization;

(c) A copy of the bylaws, articles of incorporation, articles of association, articles of organization, partnership agreement, constitution and any other substantially equivalent documents of the organization, and any amendments thereto;

(d) A list of the members of the governing body of the organization which includes the terms of office of those members;

(e) If the applicant is an association or a corporation:

(1) The name, title and principal business address of each officer and member of its governing body; and

(2) The signature of the chief executive officer or an authorized representative;

(f) If the applicant is a corporation, the name and address of each person holding more than 10 percent of its stock;

(g) Proof that at least one supervisor, administrator or manager of the provider satisfies the same or similar criteria of a qualified intellectual disability professional set forth in 42 C.F.R. § 483.430; {or has obtained a waiver of the criteria from the applicable regional center;}

(h) For each officer or other person who oversees the provision of supported living arrangement services:

(1) Three or more letters of professional reference; and

(2) {Written verification, on a form prescribed by the Division, stating that the fingerprints of the officer or other person were taken and} *The applicant has established an account with the Nevada Department of Public Safety and has submitted fingerprints to be* directly forwarded electronically or by another means to the Central Repository for Nevada Records of Criminal History and that the officer or other person has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the background of the officer or other person and to such other law enforcement agencies as the Division deems necessary;

(i) Proof that the applicant has sufficient working capital to ensure that the provider is financially capable of providing supported living arrangement services for a period of at least 3 months without compensation;

(j) Copies of any policies and procedures of the organization relating to the provision of supported living arrangement services;

(k) Proof that the applicant has an office independent of the location where supported living arrangement services are provided;

(l) Proof of industrial insurance in compliance with [chapters 616A to 616D](#), inclusive, of NRS; and

(m) Such other information as may be required by the Division.

[Men. Hygiene & Men. Retardation Div., Residences § 4 subsecs. 1 & 2, eff. 2-5-82] — (NAC A by Div. of Men. Health & Dev. Services by R071-06, 11-13-2006; A by Aging & Disability Services Div. by R144-16, 5-16-2018)

NAC 435.517 Provisional certificate: Incomplete application.

NAC 435.518 Provisional certificate: Establishment of screening panel to interview applicant; inspection of physical site under certain circumstances; training of applicant; conditions for issuance; validity. ([NRS 435.333](#))

1. After the Division has determined that an application for a provisional certificate is complete, the Division shall establish a screening panel composed of employees of the Division to interview the applicant.

2. Upon successful completion of the interview, except as otherwise provided in subsection 3, the Division shall:

(a) If the applicant has secured a physical site, schedule an inspection of the physical site at which the applicant will provide supported living arrangement services; and

(b) Upon approval of the physical site, schedule the applicant for training concerning the provision of supported living arrangement services.

3. If the Division does not schedule the inspection described in paragraph (a) of subsection 2, the Division shall schedule the applicant for training concerning the provision of supported living arrangement services.

4. The Division shall issue a provisional certificate to the applicant upon:

(a) Successful completion of the training described in subsection 2 or 3;

(b) **{Receipt}** *Verification* of all reports on the background of an applicant, officer or other person required pursuant to [NAC 435.515](#);

(c) If applicable, approval of the physical site at which the applicant will provide supported living arrangement services; and

(d) The provider of supported living arrangement services:

(1) Entering into a written provider contract with the Division which sets forth specific requirements concerning the provision of supported living arrangement services; and

(2) Receiving a written service authorization from the applicable regional center for each person who will receive supported living arrangement services from the provider. The written service authorization must conform with any individual support plan developed with and agreed to by the person who will receive supported living arrangement services or his or her parent or guardian.

5. After the provider of supported living arrangement services enters into the written provider contract and receives the written service authorization, the provider must provide each person receiving supported living arrangement services with the level of supervision required pursuant to his or her written service authorization to ensure that the health and welfare needs of the person are met.

6. A provisional certificate is valid until the Division or applicable regional center completes the initial quality assurance review.

(Added to NAC by Div. of Men. Health & Dev. Services by R071-06, eff. 11-13-2006; A by Aging & Disability Services Div. by R144-16, 5-16-2018)

NAC 435.520 Provisional certificate: Grounds for denial of application; notice of denial; reapplication after denial.

NAC 435.521 Certificate: Determination of compliance with requirements; quality assurance review; issuance; validity.

NAC 435.522 Certificate: Renewal.

NAC 435.523 Standards for provision of quality care.

NAC 435.524 Quality assurance review: Conduct by Division or regional center.

NAC 435.525 Establishment of policies by organization.

NAC 435.535 Duty to develop, implement, coordinate and monitor provision of services; assistance from qualified persons and professionals. (NRS 435.333)

1. A provider of supported living arrangement services shall ensure adequate:

(a) Development and implementation of {individual support} *person centered* plans for persons receiving supported living arrangement services;

(b) Training of the provider, if the provider is a natural person, and the employees and independent contractors of the provider;

(c) Coordination of the provision of supported living arrangement services between multiple providers of supported living arrangement services to the same person who is receiving supported living arrangement services and between providers of supported living arrangement services and the persons described in paragraph (b) of subsection 2; and

(d) Monitoring of the provision of supported living arrangement services.

2. A provider of supported living arrangement services shall make arrangements for obtaining services from:

(a) Qualified persons, with sufficient experience as determined by the Division, to provide oversight to the provider to ensure that the provider is complying with the requirements of subsection 1; and

(b) Professionally qualified or other specially trained persons, including, without limitation, nurses, behavior specialists and dietitians, as needed to assist in program development and planning, carrying out and monitoring the provision of supported living arrangement services.

3. The need for the services described in subsection 2 must be determined initially by {an individual support} *person centered* plan team and be reviewed by the team on a regular basis, but not less frequently than annually.

[Men. Hygiene & Men. Retardation Div., Residences § 18, eff. 2-5-82] — (NAC A by Div. of Men. Health & Dev. Services by R071-06, 11-13-2006; A by Aging & Disability Services Div. by R144-16, 5-16-2018)

NAC 435.537 Requirements for hiring employee or contracting with independent contractor; submission of fingerprints for criminal history.

NAC 435.538 Termination of employment or contract; opportunity to correct information.

NAC 435.540 Financial planning, records and reports.

NAC 435.555 Evaluation of capacity of provider to meet needs of person for support; assessment for development of individualized habilitation plan; exception. (NRS 435.333)

1. A provider of supported living arrangement services may not provide supported living arrangement services to a person until the {individual support} *person centered* plan team has evaluated the capacity of the provider to meet the needs of the person for support, except as otherwise provided in subsection 4.

2. The evaluation must include an interim plan for habilitation to support the needs of the person relating to health and welfare.

3. Not later than {30} 90 days after a provider of supported living arrangement services begins providing supported living arrangement services to a person, the provider shall complete an assessment for the purpose of developing an individualized plan for habilitation for the person. The assessment must describe the interests and skills of the person who is receiving supported living arrangement services and recommend a level of supervision for the person.

4. In an urgent situation, a provider of supported living arrangement services may accept a person for the provision of supported living arrangement services for a period of not more than 5 working days before completing the evaluation, if the Division approves the acceptance of the person under such urgent circumstances.

[Men. Hygiene & Men. Retardation Div., Residences § 13, eff. 2-5-82] — (NAC A by Div. of Men. Health & Dev. Services by R071-06, 11-13-2006; A by Aging & Disability Services Div. by R144-16, 5-16-2018)

NAC 435.675 Administration of medication.

NAC 435.689 Maintenance of records: Evidence of use of services; evidence of compliance with industrial insurance provisions; personnel files; inspection by Division.

NAC 435.695 Maintenance of records: Separate record for each person receiving services; availability for review.

NAC 435.705 Retention of certain records; availability for review.

NAC 435.711 Right of person receiving services to file complaint; resolution of complaint; final decision.

NAC 435.719 Grounds for suspension or denial of certificate; plan of improvement; imposition of sanctions; suspension, reduction or reimbursement of contractual payment; appeal; final decision.

NAC 435.725 Grounds for revocation of provisional certificate or certificate. ([NRS 435.333](#))

11. Misappropriation of the property of a person who is receiving supported living arrangement services.

12. Abuse, neglect, exploitation or coercion of a person who is receiving supported living arrangement services.

13. Harassing, coercive, intimidating, insulting, abusive or disruptive language or behavior directed at:

(a) An employee of a regional center;

(b) An employee or independent contractor of a provider of supported living arrangement services;

(c) Another provider of supported living arrangement services or other services; or

(d) A person who is receiving supported living arrangement services or a family member or guardian of such a person.

14. The provider of supported living arrangement services, an officer or employee of the provider or an independent contractor of the provider who oversees the provision of supported living arrangement services is excluded from participation in Medicare, Medicaid and other federal health care programs pursuant to 42 U.S.C. §§ 1320a-7 et seq. or any regulations adopted pursuant thereto.

15. *The provider has failed to accept a service authorization or deliver services within 12 months of the provisional certificate being granted.*

[Men. Hygiene & Men. Retardation Div., Residences § 45, eff. 2-5-82] — (NAC A by Div. of Men. Health & Dev. Services by R071-06, 11-13-2006; A by Aging & Disability Services Div. by R144-16, 5-16-2018)

NAC 435.730 Notice of intent to revoke provisional certificate or certificate.

NAC 435.735 Termination of services pending revocation of provisional certificate or certificate.

NAC 435.740 Revocation of provisional certificate or certificate: Request for {hearing;} appeal; final decision. ([NRS 435.333](#))

{1. To be afforded a hearing on an intended revocation of a provisional certificate or a certificate, the provider of supported living arrangement services must, within 15 calendar days after receiving notice of the intent to revoke, file with the Division a written request for a hearing.}

{2.}1. When a decision to revoke a provisional certificate or a certificate is rendered by the Division, the provider of supported living arrangement services may appeal that decision to the Administrator or a designee thereof if the provider files with the Division a written notice of appeal within 15 calendar days after receiving notice of the decision of the Division. *The provider must submit supporting information with the written appeal.*

2. *The appeal process shall not delay, or hinder actions taken by the Division to assure the health and welfare of persons receiving services from the provider.*

3. *The Division will submit documentation for the revocation of provisional certificate or certificate to the Administrator.*

4. The Administrator or a designee thereof will consider an appeal and render his or her decision on the appeal within 30 calendar days after a notice of the appeal is filed with the Division.

5. The decision of the Administrator or a designee thereof concerning an appeal filed pursuant to this section is a final decision for the purposes of judicial review.

[Men. Hygiene & Men. Retardation Div., Residences § 48, eff. 2-5-82] — (NAC A by Div. of Men. Health & Dev. Services by R071-06, 11-13-2006; A by Aging & Disability Services Div. by R144-16, 5-16-2018)

NAC Chapters 435.775-965

JOBS AND DAY TRAINING SERVICES

NAC 435.775 Policy and scope.

NAC 435.780 Definitions.

NAC 435.785 “Certificate” defined.

NAC 435.790 “Developmental disability” defined.

NAC 435.795 “Guardian” defined.

NAC 435.800 “Intellectual disability” defined.

NAC 435.805 “Jobs and day training services” defined.

NAC 435.810 “Nonprofit organization” defined.

NAC 435.815 “Parent” defined.

NAC 435.818 “Person” defined.

NAC 435.821 “Provider of jobs and day training services” defined

NAC 435.824 “Provisional certificate” defined.

NAC 435.828 “Quality assurance review” defined.

NAC 435.832 “Regional center” defined.

NAC 435.838 “Written service authorization” defined.

NAC 435.840 Provisional certificate or certificate required for eligibility for payment from Division.

NAC 435.845 Provisional certificate: Submission and contents of application. ([NRS 435.220](#))

A completed application for a provisional certificate must be submitted to the Division, on a form furnished by the Division, and must include, without limitation:

1. For a provider of jobs and day training services who is a natural person:
 - (a) Proof that the applicant is 18 years of age or older;
 - (b) Three or more letters of professional reference;
 - (c) Proof that the applicant has successfully completed a classroom course in cardiopulmonary resuscitation according to the guidelines of the American Red Cross or American Heart Association;
 - (d) Proof that the applicant is currently certified in standard first aid through:
 - (1) A course from the American Red Cross;
 - (2) A course from the American Heart Association; or
 - (3) An equivalent course in standard first aid, if the applicant submits proof that such course meets or exceeds the requirements of the American Red Cross or American Heart Association;
 - (e) Written verification, on a form prescribed by the Division, stating that the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository for Nevada Records of Criminal History and that the applicant has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the applicant's background and to such other law enforcement agencies as the Division deems necessary;
 - (f) Proof that the applicant has sufficient working capital to ensure that the applicant is financially capable of providing jobs and day training services for a period of at least 3 months without compensation;
 - (g) Proof that the applicant satisfies the same or similar criteria of a qualified intellectual disability professional set forth in 42 C.F.R. § 483.430; **{or has obtained a waiver of the criteria from the applicable regional center;}**
 - (h) If applicable, a copy of the applicant's state business license and a copy of the current business license issued for the applicant's business by the county, city or town in which the applicant's business is located or written verification that the applicant is exempt from any requirement to obtain a business license;

(i) Proof of industrial insurance in compliance with [chapters 616A to 616D](#), inclusive, of NRS or an affidavit stating that the applicant has elected not to be included within the terms, conditions and provisions of [chapters 616A to 616D](#), inclusive, of NRS pursuant to [NRS 616B.659](#); and

(j) Any other information required by the Division.

2. For a provider of jobs and day training services that is an organization consisting of a partnership, firm, corporation or association, including, without limitation, a nonprofit organization, or a state or local government or agency thereof:

(a) If applicable, a copy of the state business license of the organization and a copy of the current business license issued for the organization's business by the county, city or town in which the organization is located or written verification that the organization is exempt from any requirement to obtain a business license;

(b) The federal tax identification number of the organization;

(c) A copy of the bylaws, articles of incorporation, articles of association, articles of organization, partnership agreement, constitution and any other substantially equivalent documents of the organization, and any amendments thereto;

(d) A list of the members of the governing body of the organization which includes the terms of office of those members;

(e) If the applicant is an association or a corporation:

(1) The name, title and principal business address of each officer and member of its governing body; and

(2) The signature of the chief executive officer or an authorized representative;

(f) If the applicant is a corporation, the name and address of each person holding more than 10 percent of its stock;

(g) Proof that at least one supervisor, administrator or manager of the provider satisfies the same or similar criteria of a qualified intellectual disability professional set forth in 42 C.F.R. § 483.430 or has obtained a waiver of the criteria from the applicable regional center;

(h) For each officer or other person who oversees the provision of jobs and day training services:

(1) Three or more letters of professional reference; and

(2) **{Written verification, on a form prescribed by the Division, stating that the fingerprints of the officer or other person were taken and}** *The applicant has established an account with the Nevada Department of Public Safety and has submitted fingerprints to be* directly forwarded electronically or by another means to the Central Repository for Nevada Records of Criminal History and that the officer or other person has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the background of the officer or other person and to such other law enforcement agencies as the Division deems necessary;

(i) Proof that the applicant has sufficient working capital to ensure that the provider is financially capable of providing jobs and day training services for a period of at least 3 months without compensation;

(j) Copies of any policies and procedures of the organization relating to the provision of jobs and day training services;

(k) If the applicant will provide jobs and day training services in a facility-based setting, proof that the appropriate local or state fire officials or other qualified persons have conducted an annual inspection of each physical site at which the applicant will provide jobs and day training services;

(l) If applicable, proof that the organization has a certificate authorizing special minimum wages as provided for in the Fair Labor Standards Act of 1938, 29 U.S.C. § 214, and the regulations adopted pursuant thereto, 29 C.F.R. Part 525;

(m) Proof of industrial insurance in compliance with [chapters 616A to 616D](#), inclusive, of NRS; and

(n) Such other information as may be required by the Division.

(Added to NAC by Aging & Disability Services Div. by R145-16, eff. 5-16-2018)

NAC 435.850 Provisional certificate: Incomplete application.

NAC 435.855 Provisional certificate: Establishment of screening panel to interview applicant; inspection of physical site under certain circumstances; training of applicant; conditions for issuance; validity. ([NRS 435.220](#))

1. After the Division has determined that an application for a provisional certificate is complete, the Division shall establish a screening panel composed of employees of the Division to interview the applicant.
2. Upon successful completion of the interview, the Division shall:
 - (a) If the applicant has secured a physical site, schedule an inspection of the physical site at which the applicant will provide jobs and day training services; or
 - (b) If the Division does not schedule the inspection described in paragraph (a), schedule the applicant for training concerning the provision of jobs and day training services.
3. If the Division conducts an inspection of the physical site pursuant to subsection 2, the Division must, upon approval of the physical site, schedule the applicant for training concerning the provision of jobs and day training services.
4. The Division shall issue a provisional certificate to the applicant upon:
 - (a) Successful completion of the training described in subsection 2 or 3;
 - (b) **{Receipt}** *Verification* of all reports on the background of an applicant, officer or other person required pursuant to [NAC 435.845](#);
 - (c) If applicable, approval of the physical site at which the applicant will provide jobs and day training services; and
 - (d) The provider of jobs and day training services:
 - (1) Entering into a written provider contract with the Division which sets forth specific requirements concerning the provision of jobs and day training services; and
 - (2) Receiving a written service authorization from the applicable regional center for each person who will receive jobs and day training services from the provider. The written service authorization must conform with any individual support plan developed with and agreed to by the person who will receive jobs and day training services or his or her parent or guardian.
5. After the provider of jobs and day training services enters into the written provider contract and receives the written service authorization, the provider must provide each person receiving jobs and day training services with the level of supervision required pursuant to his or her written service authorization to ensure the health and welfare needs of the person are met.
6. A provisional certificate is valid until the Division or applicable regional center completes the initial quality assurance review.

(Added to NAC by Aging & Disability Services Div. by R145-16, eff. 5-16-2018)

NAC 435.860 Provisional certificate: Grounds for denial of application; notice of denial; reapplication after denial.

NAC 435.865 Certificate: Determination of compliance with requirements; quality assurance review; issuance; validity.

NAC 435.870 Certificate: Renewal.

NAC 435.875 Standards for provision of quality care. ([NRS 435.220](#)) A provider of jobs and day training services must comply with the following standards for the provision of quality care concerning jobs and day training services:

1. Compliance with any state or federal statute or regulation required for the Division to receive state or federal funding concerning the provision of jobs and day training services, including, without limitation, any standards of care set forth in:
 - (a) The State Plan for Medicaid;
 - (b) The *Medicaid Services Manual* established by the Division of Health Care Financing and Policy of the Department of Health and Human Services; and

(c) The home and community-based services waiver granted pursuant to 42 U.S.C. § 1396n by the Secretary of the United States Department of Health and Human Services;

2. Compliance with any state or federal requirements concerning fiscal management, reporting and employment law;

3. Conformance to the delivery of services required pursuant to any **[individual support]** *centered* plan developed with and agreed to by a person who is receiving jobs and day training services or his *person* or her parent or guardian;

4. Assurance of the health and welfare of persons receiving jobs and day training services;

5. Establishment of procedures for internal quality assurance;

6. Compliance with the requirements of:

(a) [Chapter 435](#) of NRS concerning the provision of jobs and day training services;

(b) [NAC 435.775](#) to [435.965](#), inclusive; and

(c) The written provider contract entered into and the written service authorizations received pursuant to [NAC 435.855](#);

7. Prompt reporting of any change in the officers or ownership of the provider of jobs and day training services to the applicable regional center;

8. Cooperation with any investigation by the Division or a regional center; and

9. Obtaining the approval of the Division:

(a) For any additional physical sites at which jobs and day training services will be provided before providing such services at those physical sites; and

(b) Before remodeling or expanding any existing physical sites at which jobs and day training services are provided.

(Added to NAC by Aging & Disability Services Div. by R145-16, eff. 5-16-2018)

NAC 435.880 Quality assurance review: Conduct by Division or regional center.

NAC 435.885 Establishment of policies by organization.

NAC 435.890 Duty to develop, implement, coordinate and monitor provision of services; assistance from qualified persons and professionals. ([NRS 435.220](#))

1. A provider of jobs and day training services shall ensure adequate:

(a) Development and implementation of **{individual support}** *person centered* plans for persons receiving jobs and day training services;

(b) Training of the provider, if the provider is a natural person, and the employees and independent contractors of the provider;

(c) Coordination of the provision of jobs and day training services between multiple providers of jobs and day training services to the same person who is receiving jobs and day training services and between providers of jobs and day training services and the persons described in paragraph (b) of subsection 2; and

(d) Monitoring of the provision of jobs and day training services.

2. A provider of jobs and day training services shall make arrangements for obtaining services from:

(a) Qualified persons, with sufficient experience as determined by the Division, to provide oversight to the provider to ensure that the provider is complying with the requirements of subsection 1; and

(b) Professionally qualified or other specially trained persons, including, without limitation, employment specialists, nurses and behavior specialists, as needed to assist in program development and planning, carrying out and monitoring the provision of jobs and day training services.

3. The need for the services described in subsection 2 must be determined initially by **{an individual support}** *a person centered* team and be reviewed by the team on a regular basis, but not less frequently than annually.

(Added to NAC by Aging & Disability Services Div. by R145-16, eff. 5-16-2018)

NAC 435.893 Requirements for hiring employee or contracting with independent contractor; submission of fingerprints for criminal history. ([NRS 435.220](#))

NAC 435.895 Termination of employment or contract; opportunity to correct information. ([NRS 435.220](#))

NAC 435.898 Financial planning, records and reports. ([NRS 435.220](#))

NAC 435.900 Evaluation of capacity of provider to meet needs of person for support; assessment for development of individualized habilitation plan; exception. ([NRS 435.220](#))

1. A provider of jobs and day training services may not provide jobs and day training services to a person until the {individual support} *person centered* plan team has evaluated the capacity of the provider to meet the needs of the person for support, except as otherwise provided in subsection 4.

2. The evaluation must include an interim plan for habilitation to support the needs of the person relating to health and welfare.

3. Not later than {30} 90 days after a provider of jobs and day training services begins providing jobs and day training services to a person, the provider shall complete an assessment for the purpose of developing an individualized plan for habilitation for the person. The assessment must describe the interests and skills of the person who is receiving jobs and day training services and recommend a level of supervision for the person.

4. In an urgent situation, a provider of jobs and day training services may accept a person for the provision of jobs and day training services for a period of not more than 5 working days before completing the evaluation, if the Division approves the acceptance of the person under such urgent circumstances.

(Added to NAC by Aging & Disability Services Div. by R145-16, eff. 5-16-2018)

NAC 435.905 Administration of medication.

NAC 435.910 Eligibility of provider for payment from Division; exception.

NAC 435.915 Reporting and use of gifts, bequests, grants or income.

NAC 435.920 Statement of intent to enter into contract between provider of services and county and school officials and public and private agencies.

NAC 435.925 Maintenance of records: Evidence of use of services; evidence of compliance with industrial insurance provisions; personnel files; inspection by Division

NAC 435.930 Maintenance of records: Separate record for each person receiving services; availability for review.

NAC 435.935 Retention of certain records; contents of administrative and fiscal records; availability for review.

NAC 435.940 Right of person receiving services to file complaint; resolution of complaint; final decision.

NAC 435.945 Grounds for suspension or denial of certificate; plan of improvement; imposition of sanctions; suspension, reduction or reimbursement of contractual payment; appeal; final decision.

NAC 435.950 Grounds for revocation of provisional certificate or certificate. ([NRS 435.220](#))
Each of the following acts and omissions constitutes a ground for the revocation of a provisional certificate or a certificate:

1. A misrepresentation of or failure to disclose any material fact in the application for the provisional certificate or the certificate or in any financial record or other document requested by the Division or a regional center.

2. A lack of personnel in sufficient number or qualifications to provide proper training and support for persons receiving jobs and day training services.

3. A provider of jobs and day training services has any deficiency concerning the provision of jobs and day training services that may cause imminent risk of harm or which poses a probable risk of harm to the health or welfare of persons receiving jobs and day training services.

4. A violation of any requirement set forth in [NAC 435.775](#) to [435.965](#), inclusive.

5. An accumulation or pattern of minor violations of the provisions of [NAC 435.775](#) to [435.965](#), inclusive, if the violations taken as a whole endanger the health or welfare of any person who is receiving jobs and day training services.

6. Any fraudulent activity by a provider of jobs and day training services or an employee or independent contractor of the provider, including, without limitation, any fraudulent billing, a violation of any law pertaining to wage and hour standards, falsification of records or misuse of the funds of a person who is receiving jobs and day training services.

7. Failure to comply with any obligations or with the policies and procedures of the Division set forth in the written provider contract entered into and the written service authorizations received pursuant to [NAC 435.855](#).

8. Any refusal to participate in any aspect of a quality assurance review or any other review or investigation by the Division or a regional center.

9. The failure or refusal of the provider of jobs and day training services to implement or maintain any actions required by the Division or a regional center to correct a deficiency identified during a quality assurance review or any other review or investigation by the Division or a regional center.

10. The failure or refusal of a provider of jobs and day training services to return an adequate plan of improvement within 15 days after receiving a statement of deficiencies as required pursuant to [NAC 435.945](#).

11. Misappropriation of the property of a person who is receiving jobs and day training services.

12. Abuse, neglect, exploitation or coercion of a person who is receiving jobs and day training services.

13. Harassing, coercive, intimidating, insulting, abusive or disruptive language or behavior directed at:

(a) An employee of a regional center;

(b) An employee or independent contractor of a provider of jobs and day training services;

(c) Another provider of jobs and day training services or other services; or

(d) A person who is receiving jobs and day training services or a family member or guardian of such a person.

14. The provider of jobs and day training services, an officer or employee of the provider or an independent contractor of the provider who oversees the provision of jobs and day training services is excluded from participation in Medicare, Medicaid and other federal health care programs pursuant to 42 U.S.C. §§ 1320a-7 et seq., or any regulations adopted pursuant thereto.

15. The provider has failed to accept a service authorization or deliver services within 12 months of the provisional certificate being granted.

(Added to NAC by Aging & Disability Services Div. by R145-16, eff. 5-16-2018)

NAC 435.955 Notice of intent to revoke provisional certificate or certificate.

NAC 435.960 Termination of services pending revocation of provisional certificate or certificate.

NAC 435.965 Revocation of provisional certificate or certificate: Request for {hearing} appeal; final decision. ([NRS 435.220](#))

{1.} {To be afforded a hearing on an intended revocation of a provisional certificate or a certificate, the provider of jobs and day training services must, within 15 calendar days after receiving notice of the intent to revoke, file with the Division a written request for a hearing.}

1. When a decision to revoke a provisional certificate or a certificate is rendered by the Division, the provider of jobs and day training services may appeal that decision to the Administrator or a designee thereof if the provider files with the Division a written notice of appeal within 15 calendar days after receiving notice of the decision of the Division. The provider must submit supporting information with the written appeal.

2. The appeal process shall not delay, or hinder actions taken by the Division to assure the health and welfare of persons receiving services from the provider.

3. *The Division will submit documentation for the revocation of provisional certificate or certificate to the Administrator.*

4. The Administrator or a designee thereof will consider an appeal and render his or her decision on the appeal within 30 calendar days after a notice of the appeal is filed with the Division.

5. The decision of the Administrator or a designee thereof concerning an appeal filed pursuant to this section is a final decision for the purposes of judicial review.

(Added to NAC by Aging & Disability Services Div. by R145-16, eff. 5-16-2018)

NAC Chapters 439.750-790

{DISABILITY PRESCRIPTION PROGRAM

General Provisions

NAC 439.750 Short title. (NRS 439.735) NAC 439.750 to 439.790, inclusive, may be referred to as the Disability Prescription Program.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.751 Definitions. (NRS 439.735) As used in NAC 439.750 to 439.790, inclusive, unless the context otherwise requires, the words and terms defined in NAC 439.752 to 439.767, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.752 "Applicant" defined. (NRS 439.735) "Applicant" means a person who applies to the Department to receive a subsidy for coverage for prescription drugs and pharmaceutical services pursuant to NRS 439.755.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.753 "Contractor" defined. (NRS 439.735) "Contractor" means:

1. A private insurer with whom the Department has entered into a contract pursuant to NRS 439.745 to make available, at a reasonable cost, policies of health insurance that provide coverage to certain persons with disabilities for prescription drugs and pharmaceutical services; or

2. An entity with which the Department has entered into a contract to manage pharmaceutical benefits, including, without limitation, processing and paying claims for pharmaceutical benefits on behalf of the Department.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.754 "Coordination of benefits" defined. (NRS 439.735) "Coordination of benefits" means the coordination of the Disability Prescription Program with Medicare Part D in a manner that:

1. Maximizes coverage for prescription drugs and pharmaceutical services for persons in this State;

2. Minimizes disruptions in the enrollment of persons in this State in state and federal programs that provide coverage for prescription drugs and pharmaceutical services;

3. Minimizes disruptions in the eligibility of persons in this State for state and federal programs that provide coverage for prescription drugs and pharmaceutical services;

4. Minimizes out-of-pocket expenses for prescription drugs and pharmaceutical services for Medicare beneficiaries in this State; and

5. Maximizes federal funding for coverage for prescription drugs and pharmaceutical services for persons in this State.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.755 "Department" defined. (NRS 439.735) "Department" means the Department of Health and Human Services.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.756 "Disability" defined. (NRS 439.735) "Disability" has the meaning ascribed to it in NRS 426.068.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.757 “Enrollee” defined. (NRS 439.735) “Enrollee” means a person who the Department has determined is eligible to receive a subsidy for coverage for prescription drugs and pharmaceutical services pursuant to NRS 439.745.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.758 “Hearing officer” defined. (NRS 439.735) “Hearing officer” means a person who:

1. Did not participate in the decision of the Department that is the subject of the hearing; and
2. Is appointed by the Director of the Department or a designee thereof to preside at a hearing conducted pursuant to NAC 439.779 to 439.787, inclusive.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.759 “Household” defined. (NRS 439.735) “Household” means an applicant and the spouse of the applicant.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.760 “Household income” defined. (NRS 439.735) “Household income” has the meaning ascribed to it in NRS 439.640.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.761 “Income” defined. (NRS 439.735) “Income” has the meaning ascribed to it in NRS 439.645.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.762 “Medicare Advantage plan with prescription drug coverage” and “MA-PD” defined. (NRS 439.735) “Medicare Advantage plan with prescription drug coverage” or “MA-PD” means health benefits coverage, including, without limitation, qualified prescription drug coverage, offered pursuant to 42 C.F.R. § 423.4 under a policy or contract with Medicare by a Medicare Advantage organization as described in 42 C.F.R. § 422.2.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.763 “Medicare Part D” defined. (NRS 439.735) “Medicare Part D” means the federal prescription drug benefit established pursuant to Part 423 of Title 42 of the Code of Federal Regulations.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.764 “Open enrollment” defined. (NRS 439.735) “Open enrollment” means a period prescribed by the Department during which an application for a subsidy may be filed.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.765 “Prescription drug plan” and “PDP” defined. (NRS 439.735) “Prescription drug plan” or “PDP” means coverage for prescription drugs that is offered under a policy, contract or plan which has been approved as specified in 42 C.F.R. § 423.272 and which is offered by a sponsor that has a contract with the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services that meets the contract requirements under Subpart K of Part 423 of Title 42 of the Code of Federal Regulations.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.766 “Subsidy” defined. (NRS 439.735) “Subsidy” means the amount of money that the Department may pay to a contractor, prescription drug plan or Medicare Advantage plan with prescription drug coverage or to the State Plan for Medicaid on behalf of a person with a disability who meets the criteria for receiving a subsidy set forth in NRS 439.745 for coverage for prescription drugs and pharmaceutical services.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.767 “Traditional Disability Prescription Program” defined. (NRS 439.735) “Traditional Disability Prescription Program” means the prescription drug benefits available to eligible applicants who are not also eligible for Medicare Part D.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

Application and Eligibility

NAC 439.768 Eligibility for traditional benefits. (NRS 439.735) Persons with disabilities who are not eligible for Medicare Part D may be eligible for traditional benefits under the Disability Prescription Program, based on the availability of funding and contractual agreements with a pharmacy benefit manager selected by the Department through a formal bidding process.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.769 Eligibility for coordination of benefits. (NRS 439.735) A person with a disability who is eligible for Medicare Part D may be eligible for assistance with out-of-pocket expenses for prescription drugs and pharmaceutical services. The availability of such coverage is subject to the availability of funding and legislative approval of state subsidies that are intended to maximize federal benefits and, to the extent possible, minimize out-of-pocket expenses for prescription drugs and pharmaceutical services. Eligibility for such coverage is subject to requirements that are similar, but not identical, to the requirements for the Traditional Disability Prescription Program, including, without limitation, all the following requirements:

1. An applicant must be at least 18 years of age but not more than 61 years of age.
2. An applicant must have a verifiable disability.
3. An applicant must have an annual income that is less than the amount set forth in NRS 439.745.
4. An applicant who is eligible for Medicare Part D must enroll in Medicare Part D and a prescription drug plan or Medicare Advantage plan with prescription drug coverage.
5. An applicant who is eligible for any federal subsidy under Medicare Part D must apply for and use any such subsidy before requesting such coverage through the Disability Prescription Program.
6. An applicant who is not eligible for full Medicaid in this State must meet a 1-year residency requirement as set forth in NRS 439.745.
7. An applicant who is enrolled in full Medicaid in this State is not required to meet the 1-year residency requirement for a subsidy approved by the Legislature. Depending upon the technical aspects of the coordination of benefits, the Department may allow such an applicant to receive such coverage without actually enrolling in the Disability Prescription Program.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.770 Request for information. (NRS 439.735) 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.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.771 Requirements for application; request for waiver of eligibility requirement regarding household income. (NRS 439.735)

1. In addition to meeting the criteria for receiving a subsidy set forth in NRS 439.745, 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 pursuant to NRS 439.755.

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

(a) Disability by submitting:

(1) A copy of a disability determination letter issued by a public agency or private organization, approved by the Department, whose programs or services are based at least in part on disability;

(2) Any other appropriate documentation satisfactory to the Department, including, without limitation, the statement of a physician; or

(3) Any combination of the proof required pursuant to subparagraph (1) or (2);

(b) Income by submitting a copy of his or her income tax returns, a copy of his or her Social Security Form SSA-1099, copies of wage statements, copies of dividend statements or other appropriate documentation satisfactory to the Department of any other sources of income received by the applicant in the 12 months immediately preceding the date of the application;

(c) Assets by submitting a copy of income tax returns, copies of savings account statements, copies of stock certificates or other appropriate documentation satisfactory to the Department; and

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

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

5. Each applicant shall provide the following information about his or her status regarding Medicare Part D:

(a) Each applicant must declare whether he or she is eligible for and enrolled in Medicare Part D, whether in a PDP or MA-PD, and, if so, must provide the name of the plan.

(b) Each applicant who is eligible for Medicare Part D must avail himself or herself of that benefit and apply for any applicable federal low-income subsidy before seeking additional assistance through the Disability Prescription Program.

(c) If the applicant is not enrolled in Medicare Part D because the applicant missed the period of open enrollment, such an applicant must state the reason for missing the period of open enrollment. Depending upon the circumstances, such an applicant may be considered for temporary enrollment in the Traditional Disability Prescription Program. The applicant must then enroll in Medicare Part D and a PDP or MA-PD at the next available opportunity or the applicant will be terminated from the Disability Prescription Program.

(d) By checking "Yes" or "No" in the appropriate place, the applicant must decide whether to grant the Disability Prescription Program the authority to act as his or her authorized representative and, as such, to enroll the applicant in an appropriate PDP or MA-PD. Such authority does not preclude the applicant from changing his or her PDP or MA-PD before implementation of Medicare Part D on January 1, 2006, or during subsequent periods of open enrollment if the applicant is not satisfied with the assignment made by the Disability Prescription Program.

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

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

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

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

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

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

8. If an applicant or enrollee requests a waiver of the eligibility requirement regarding household income pursuant to subsection 5 of NRS 439.745 because of an illness or disability or extreme financial hardship, the applicant or enrollee must include with that request a written statement signed by a licensed physician certifying the illness or disability or other appropriate documentation that satisfies the Department

that an extreme financial hardship exists. The Department will consider each request for such a waiver on a case-by-case basis.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.772 Notice of approval or denial of application; notice of name of new enrollee. (NRS 439.735)

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, PDP or MA-PD, or to the State Plan for Medicaid on behalf of the applicant;

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

(c) If the applicant is deemed eligible but there is insufficient money available from the amount allocated for subsidies by the Department, that the applicant has been placed on a waiting list in the order of priority described in NAC 439.773.

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 439.779; and

(c) The procedures for a hearing before the Department as set forth in NAC 439.779 to 439.787, inclusive.

4. Within 30 days after the Department approves an application, the Department will provide the name of the new enrollee whose application was approved to the contractor or any other entity necessary to ensure appropriate coordination of benefits.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.773 Order of priority if there is insufficient money available; qualifying hardship; granting of subsidy to applicant on waiting list if sufficient money becomes available. (NRS 439.735)

1. Except as otherwise provided in subsections 2, 3 and 4, if there is insufficient money available for each applicant from the amount allocated for subsidies by the Department, the Department will rank the applicants whose applications are approved based on their household income. The applicant with the lowest household income will receive priority over the other applicants. If the household income of two applicants is exactly the same amount, the applicant whose application was received earlier by the Department will receive priority over the other applicant.

2. If an applicant documents a medical condition that will deteriorate rapidly if prescribed medications are not taken, the applicant will receive priority over other applicants on the waiting list, regardless of income level. If two applicants document such emergent medical conditions, the applicant whose application was received earlier by the Department will receive priority over the other applicant.

3. If the Department determines that an applicant whose income exceeds the established limits has a qualifying financial hardship, the applicant will be ranked on the priority list at his or her adjusted income level, which is the applicant's actual income minus medical costs or the cost of another qualifying hardship.

4. If, at any time, the Department determines that there is sufficient money available from the amount allocated for subsidies by the Department for more applicants, the Department may grant a subsidy to an applicant on the waiting list in the order of priority described in this section. If the Department grants a subsidy pursuant to this subsection, the Department will provide written notice to the applicant in the manner set forth in NAC 439.772.

5. 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 of prescription drugs, pharmaceutical services or out-of-pocket medical expenses, or any combination thereof, for the applicant's household is causing a hardship; or

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

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.774 Calculation of household income; eligibility for subsidy if maximum household income exceeded. (NRS 439.735)

1. For the purposes of determining whether an applicant satisfies the eligibility requirement set forth in NRS 439.745 regarding household income, the Department:

(a) Will calculate the monthly household income for the month in which an application is filed with the Department pursuant to NAC 439.771 and multiply that number by 12; or

(b) May, if the household income fluctuates from month to month:

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

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

(3) Multiply the quotient calculated pursuant to subparagraph (2) by 12.

2. Except as otherwise provided in subsection 8 of NAC 439.771, an applicant is not eligible for a subsidy if the household income of the applicant for the year in which the applicant submits his or her application exceeds the maximum household income set forth in NRS 439.745.

3. For the purposes of subsection 2, the year in which the applicant submits the application:

(a) Is not tied to the calendar year or fiscal year; and

(b) Begins with the month that the application is submitted and carries forward through the succeeding 12 months.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.775 Information and documentation: Cooperation with Department; updating. (NRS 439.735)

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 to cooperate, the Department will deny the application or will deem the enrollee ineligible to receive a subsidy.

2. An enrollee shall update the information contained in the application filed with the Department pursuant to NAC 439.771 that relates to his or her eligibility to receive a subsidy, including, without limitation, a change in his or her:

(a) Name;

(b) Address;

(c) Telephone number;

(d) Household income;

(e) Marital status;

(f) Eligibility for Medicare Part D;

(g) Enrollment in a PDP or MA-PD or the selection of a different PDP or MA-PD;

(h) Eligibility for Medicaid; or

(i) Eligibility for supplemental security income,

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

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.776 Continuing eligibility; annual review. (NRS 439.735)

1. If the Department approves an application for a subsidy, the enrollee remains eligible to receive the subsidy as long as he or she 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 federal, state, county and local agencies, as well as other organizations that administer programs for low-income persons or persons with disabilities.

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, including, without limitation, a copy of the income tax returns of the enrollee.

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

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.777 Discontinuation of subsidy to enrollee: Request by enrollee; ineligibility of enrollee; granting of subsidy to applicant on waiting list if enrollee determined ineligible. (NRS 439.735)

1. If an enrollee who is receiving a subsidy wishes to discontinue receiving the subsidy, the enrollee 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, the Department shall provide the enrollee with notice as set forth in NAC 439.778 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 is eligible for coverage for prescription drugs and pharmaceutical services through Medicare Part D, but the enrollee declines to enroll in that program or in a PDP or MA-PD, or the enrollee declines to apply for any federal subsidy available to him or her, or both;

(b) The enrollee is eligible for coverage for prescription drugs and pharmaceutical services through Medicare Part D and qualifies for a federal low-income subsidy as a "very low-income beneficiary";

(c) The household income of the enrollee exceeds the maximum household income set forth in NRS 439.745;

(d) The enrollee knowingly provided incorrect information on the application that he or she filed with the Department pursuant to NAC 439.771 and failed to correct the information within a reasonable time as determined by the Department;

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

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

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

5. If an enrollee no longer meets the criteria for receiving a subsidy because one of the circumstances set forth in subsection 3 applies to the enrollee, the Department will grant a subsidy to an applicant on the waiting list, if any, in the order of priority described in NAC 439.773.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.778 Notice to enrollee of determination regarding ineligibility. (NRS 439.735) 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 receive a subsidy. The notice must inform the enrollee:

1. Of the reason that the enrollee is ineligible to receive a subsidy;

2. Of the procedures set forth in NAC 439.779 for requesting a hearing to review the decision of the Department; and

3. Of any free or inexpensive legal services available in the area and must provide telephone numbers of the organizations providing those services.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

Hearings

NAC 439.779 Request for hearing; scheduling of hearing. (NRS 439.735)

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.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.780 Continuation of benefits pending outcome of hearing. (NRS 439.735)

1. Benefits of an existing enrollee may be continued pending the outcome of the hearing if the enrollee requests such continuation within 10 days after the date of the decision by the Department.

2. The Department will deny a request for continuation of benefits if the request for a hearing is also denied pursuant to NAC 439.781.

3. If benefits are continued and the decision of the hearing officer upholds the decision of the Department, the Department may require the enrollee to reimburse the Department for benefits paid on behalf of the enrollee.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.781 Denial of request for hearing; request for dismissal. (NRS 439.735)

1. The Department will deny a request for a hearing received pursuant to NAC 439.779 if:

(a) The sole issue being contested is an issue that may only be resolved by amending the provisions of NRS 439.705 to 439.795, 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 from the amount allocated for subsidies by the Department;

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

(d) The request is not received by the Department within the limit on time set forth in NAC 439.779.

2. If a person who filed a request for a hearing wishes to have the hearing dismissed, the person must submit a written request for the dismissal of the hearing, signed by him or her, 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.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.782 Testimony under oath. (NRS 439.735) All testimony to be considered in a hearing must be taken under oath. Except as otherwise provided in NAC 439.784, before testifying, a person must swear or affirm before the hearing officer to the truthfulness of the testimony he or she is about to give in the hearing.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.783 Conducting hearing in person; representation; evidence. (NRS 439.735)

1. Except as otherwise provided in NAC 439.784, a hearing must be conducted in person by a hearing officer.

2. An applicant or enrollee may represent himself or herself or may, in writing, authorize a person to represent him or her 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.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.784 Conducting hearing by telephone. (NRS 439.735)

1. The hearing officer may conduct the hearing over the telephone if he or she 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 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 begin the hearing;

(b) Administer the oath required pursuant to NAC 439.782 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.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.785 Retention of record. (NRS 439.735)

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 NAC 439.783, after the hearing; and

(d) The decision of the hearing officer.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.786 Official recording of hearing; request for copy. (NRS 439.735)

1. The hearing officer presiding over a hearing conducted pursuant to NAC 439.779 to 439.787, inclusive, 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 the person was a party if he or she 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.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.787 Decision of hearing officer. (NRS 439.735)

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 NAC 439.783, 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 or her authorized representative, if any.
(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.788 Duties of Department if decision of Department is overturned by hearing officer. (NRS 439.735)

1. If a hearing officer overturns a decision of the Department to deny a subsidy or a decision that an enrollee is ineligible to receive a subsidy, the Department will:
 - (a) Reimburse the applicant or the enrollee for the actual out-of-pocket expenses for prescription drugs or pharmaceutical services incurred 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;
 - (b) Pay the amount of the subsidy due a contractor from the date that the applicant or the enrollee appealed the decision of the Department to the date that the decision of the hearing officer was issued; and
 - (c) Reimburse the applicant or the enrollee, upon receipt of proof of payment for any premium paid to a contractor for a policy of health insurance from the date that the applicant or the enrollee appealed the decision of the Department to the date that the decision of the hearing officer was issued.
2. The provisions of this section apply regardless of whether the Department appeals the decision of the hearing officer.
(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

Miscellaneous Provisions

NAC 439.789 Recoupment of subsidy paid in error; request by enrollee for waiver or reduction of amount required to be returned. (NRS 439.735)

1. Except as otherwise provided in subsections 4 and 5, the Department will pursue all legal remedies for the collection of debt, including, without limitation, those remedies set forth in chapter 353C of NRS, to recoup a subsidy that was paid in error from the contractor or enrollee determined by the Department to be responsible for the error, including, without limitation, a subsidy that was paid:
 - (a) To a contractor who was not entitled to receive payment of the subsidy;
 - (b) For an enrollee whose application for a subsidy was submitted with fraudulent intent; or
 - (c) For an enrollee who was otherwise not qualified to receive the subsidy.
2. The Department will deposit all money it collects for a subsidy that was paid in error with the State Treasurer for credit to the Fund for a Healthy Nevada.
3. The Department may offset any amount due the Department from a contractor because the contractor was not entitled to receive payment of a subsidy or was paid an amount in excess of that which he or she was entitled to receive for payment of a subsidy against any amount owing to that contractor by the Department for the payment of any subsidy.
4. The provisions of paragraph (c) of subsection 1 do not apply if the amount of the subsidy that was paid is \$100 or less.
5. Except as otherwise provided in this subsection, if the Department determines that an enrollee has received a subsidy in an amount that is in excess of the amount which he or she was entitled to receive, the Department will recoup the amount in excess from the enrollee in accordance with this section. An enrollee may request a waiver or reduction of the amount in excess which he or she is required to return to the Department based on hardship. Such a request must be submitted in writing to the Department. The Department will consider each request for such a waiver or reduction on a case-by-case basis. The Department will not consider a request for such a waiver or reduction if the application for a subsidy which resulted in an amount in excess being received by the enrollee was submitted with fraudulent intent.
(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.790 Confidentiality of records. (NRS 439.735) The records of the Department relating to an applicant or enrollee are confidential and are considered protected health information under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA). Any use or release of protected health information must comply with the *HIPAA Privacy Manual* established by the Department, which reflects the provisions of Part 164 of Title 45 of the Code of Federal Regulations.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)}

NAC Chapters 439.800-862

{SENIOR PRESCRIPTION PROGRAM

General Provisions

NAC 439.800 Short title. (NRS 439.655) NAC 439.800 to 439.862, inclusive, may be referred to as the Senior Prescription Program.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.802 Definitions. (NRS 439.655) As used in NAC 439.800 to 439.862, inclusive, unless the context otherwise requires, the words and terms defined in NAC 439.804 to 439.8225, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.804 "Applicant" defined. (NRS 439.655) "Applicant" means a person who applies to the Department to receive a subsidy for coverage for prescription drugs and pharmaceutical services pursuant to NRS 439.670.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004)

NAC 439.806 "Contractor" defined. (NRS 439.655) "Contractor" means:

1. 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; or

2. An entity with which the Department has entered into a contract to manage pharmaceutical benefits, including, without limitation, processing and paying claims for pharmaceutical benefits on behalf of the Department.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.807 "Coordination of benefits" defined. (NRS 439.735) "Coordination of benefits" means the coordination of the Senior Prescription Program with Medicare Part D in a manner that:

1. Maximizes coverage for prescription drugs and pharmaceutical services for persons in this State;

2. Minimizes disruptions in the enrollment of persons in this State in state and federal programs that provide coverage for prescription drugs and pharmaceutical services;

3. Minimizes disruptions in the eligibility of persons in this State for state and federal programs that provide coverage for prescription drugs and pharmaceutical services;

4. Minimizes out-of-pocket expenses for prescription drugs and pharmaceutical services for Medicare beneficiaries in this State; and

5. Maximizes federal funding for coverage for prescription drugs and pharmaceutical services for persons in this State.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.808 "Department" defined. (NRS 439.655) "Department" means the Department of Health and Human Services.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.810 “Enrollee” defined. (NRS 439.655) “Enrollee” means a person who the Department has determined is eligible to receive a subsidy for coverage for prescription drugs and pharmaceutical services pursuant to NRS 439.665.

(Added to NAC by Dep’t of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004)

NAC 439.812 “Hearing officer” defined. (NRS 439.655) “Hearing officer” means a person who:

1. Did not participate in the decision of the Department that is the subject of the hearing; and
2. Is appointed by the Director of the Department or a designee thereof to preside at a hearing conducted pursuant to NAC 439.842 to 439.856, inclusive.

(Added to NAC by Dep’t of Human Resources by R069-00, eff. 3-2-2001; A by R200-03, 9-17-2004)

NAC 439.813 “Household” defined. (NRS 439.655) “Household” means an applicant and the spouse of the applicant.

(Added to NAC by Dep’t of Human Resources by R143-01, eff. 12-17-2001)

NAC 439.814 “Household income” defined. (NRS 439.655) “Household income” has the meaning ascribed to it in NRS 439.640.

(Added to NAC by Dep’t of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.816 “Income” defined. (NRS 439.655) “Income” has the meaning ascribed to it in NRS 439.645.

(Added to NAC by Dep’t of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.817 “Medicare Advantage plan with prescription drug coverage” and “MA-PD” defined. (NRS 439.735) “Medicare Advantage plan with prescription drug coverage” or “MA-PD” means health benefits coverage, including, without limitation, qualified prescription drug coverage, offered pursuant to 42 C.F.R. § 423.4 under a policy or contract with Medicare by a Medicare Advantage organization as described in 42 C.F.R. § 422.2.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.8175 “Medicare Part D” defined. (NRS 439.735) “Medicare Part D” means the federal prescription drug benefit established pursuant to Part 423 of Title 42 of the Code of Federal Regulations.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.818 “Open enrollment” defined. (NRS 439.655) “Open enrollment” means a period prescribed by the Department during which an application for a subsidy may be filed.

(Added to NAC by Dep’t of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001)

NAC 439.819 “Prescription drug plan” and “PDP” defined. (NRS 439.735) “Prescription drug plan” or “PDP” means coverage for prescription drugs that is offered under a policy, contract or plan which has been approved as specified in 42 C.F.R. § 423.272 and which is offered by a sponsor that has a contract with the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services that meets the contract requirements under Subpart K of Part 423 of Title 42 of the Code of Federal Regulations.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.820 “Senior citizen” defined. (NRS 439.655) “Senior citizen” has the meaning ascribed to it in NRS 439.650.

(Added to NAC by Dep’t of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.822 “Subsidy” defined. (NRS 439.655) “Subsidy” means the amount of money that the Department may pay to a contractor on behalf of a senior citizen who meets the criteria for receiving a subsidy set forth in NRS 439.665 for coverage for prescription drugs and pharmaceutical services.

(Added to NAC by Dep’t of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004)

NAC 439.8225 “Traditional Senior Prescription Program” defined. (NRS 439.735) “Traditional Senior Prescription Program” means the prescription drug benefits available to eligible applicants who are not also eligible for Medicare Part D.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

Application and Eligibility

NAC 439.823 Eligibility for traditional benefits. (NRS 439.735) Senior citizens who are not eligible for Medicare Part D may be eligible for traditional benefits under the Senior Prescription Program, based on the availability of funding and contractual agreements with a pharmacy benefit manager selected by the Department through a formal bidding process.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.8235 Eligibility for coordination of benefits. (NRS 439.735) A senior citizen who is eligible for Medicare Part D may be eligible for assistance with out-of-pocket expenses for prescription drugs and pharmaceutical services. The availability of such coverage is subject to the availability of funding and legislative approval of state subsidies that are intended to maximize federal benefits and, to the extent possible, minimize out-of-pocket expenses for prescription drugs and pharmaceutical services. Eligibility for such coverage is subject to requirements that are similar, but not identical, to the requirements for the Traditional Senior Prescription Program, including, without limitation, all the following requirements:

1. An applicant must be 62 years of age or older.
2. An applicant must have an annual income that is less than the amount set forth in NRS 439.665.
3. An applicant who is eligible for Medicare Part D must enroll in Medicare Part D and a prescription drug plan or Medicare Advantage plan with prescription drug coverage.
4. An applicant who is eligible for any federal subsidy under Medicare Part D must apply for and use any such subsidy before requesting such coverage through the Senior Prescription Program.
5. An applicant who is not eligible for full Medicaid in this State must meet a 1-year residency requirement as set forth in NRS 439.665.
6. An applicant who is enrolled in full Medicaid in this State is not required to meet the 1-year residency requirement for a subsidy approved by the Legislature. Depending upon the technical aspects of the coordination of benefits, the Department may allow such an applicant to receive such coverage without actually enrolling in the Senior Prescription Program.

(Added to NAC by Dep’t of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.824 Request for information. (NRS 439.655) 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.

(Added to NAC by Dep’t of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.826 Requirements for application; open enrollment; request for waiver of eligibility requirement regarding household income. (NRS 439.735)

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

2. The application must be made:
 - (a) On a form prescribed by the Department; and
 - (b) Under oath as required by NRS 439.670.
 3. The Department may require an applicant to provide, with the application, proof of his or her:
 - (a) Age by submitting a copy of his or her birth certificate, driver's license, social security letter, Medicare card, military discharge papers or other appropriate document satisfactory to the Department;
 - (b) Income by submitting a copy of his or her income tax returns, a copy of his or her Social Security Form SSA-1099, copies of wage statements, copies of dividend statements or other appropriate documentation satisfactory to the Department of any other sources of income received by the applicant in the 12 months immediately preceding the date of the application;
 - (c) Assets by submitting a copy of income tax returns, copies of savings account statements, copies of stock certificates or other appropriate documentation satisfactory to the Department; and
 - (d) Continuous residency in this State for at least the 12 months immediately preceding the date of the application by submitting a copy of utility bills, rental agreements or any other appropriate documentation satisfactory to the Department.
 4. Each applicant shall provide the Department with his or her social security number.
 5. Each applicant shall provide the following information about his or her status regarding Medicare Part D:
 - (a) Each applicant must declare whether he or she is eligible for and enrolled in Medicare Part D, whether in a PDP or MA-PD, and, if so, must provide the name of the plan.
 - (b) Each applicant who is eligible for Medicare Part D must avail himself or herself of that benefit and apply for any applicable federal low-income subsidy before seeking additional assistance through the Senior Prescription Program.
 - (c) If the applicant is not enrolled in Medicare Part D because the applicant missed the period of open enrollment, the applicant must state the reason for missing the period of open enrollment. Depending upon the circumstances, such an applicant may be considered for temporary enrollment in the Traditional Senior Prescription Program. The applicant must then enroll in Medicare Part D and a PDP or MA-PD at the next available opportunity or the applicant will be terminated from the Senior Prescription Program.
 - (d) By checking "Yes" or "No" in the appropriate place, the applicant must decide whether to grant the Senior Prescription Program the authority to act as his or her authorized representative and, as such, to enroll the applicant in an appropriate PDP or MA-PD. Such authority does not preclude the applicant from changing his or her PDP or MA-PD before implementation of Medicare Part D on January 1, 2006, or during subsequent periods of open enrollment if the applicant is not satisfied with the assignment made by the Senior Prescription Program.
 6. Each year in which there is money available from the amount allocated for subsidies by the Department, the Department will designate at least one period of open enrollment.
 7. An application shall be deemed received by the Department on the date that the completed application is received by the Department.
 8. An application shall be deemed properly completed if the application:
 - (a) Is submitted on the form prescribed by the Department and filled out completely;
 - (b) Includes the documentation described in subsection 3, if such documentation is required by the Department; and
 - (c) Includes the social security number of the applicant as required pursuant to subsection 4.
- Ê The Department will return any incomplete application to the applicant with a designation that the application has not been processed by the Department.
9. If an applicant or enrollee requests a waiver of the eligibility requirement regarding household income pursuant to subsection 5 of NRS 439.665 because of an illness or disability or extreme financial hardship, the applicant or enrollee must include with that request a written statement signed by a licensed physician certifying the illness or disability or other appropriate documentation that satisfies the Department that an extreme financial hardship exists. The Department will consider each request for such a waiver on a case-by-case basis.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.828 Notice of approval or denial of application; notice of name of new enrollee. (NRS 439.735)

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, PDP or MA-PD, or to the State Plan for Medicaid on behalf of the applicant;

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

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

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

(a) The reason for the denial;

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

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

4. Within 30 days after the Department approves an application, the Department will provide the name of the new enrollee whose application was approved to the contractor or any other entity necessary to ensure appropriate coordination of benefits.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.830 Order of priority if there is insufficient money available; qualifying hardship; granting of subsidy to applicant on waiting list if sufficient money becomes available. (NRS 439.655)

1. Except as otherwise provided in subsections 2, 3 and 4, if there is insufficient money available for each applicant from the amount allocated for subsidies by the Department, the Department will rank the applicants whose applications are approved based on their household income. The applicant with the lowest household income will receive priority over the other applicants. If the household income of two applicants is exactly the same amount, the applicant whose application was received earlier by the Department will receive priority over the other applicant.

2. If an applicant documents a medical condition that will deteriorate rapidly if prescribed medications are not taken, the applicant will receive priority over other applicants on the waiting list, regardless of income level. If two applicants document such emergent medical conditions, the applicant whose application was received earlier by the Department will receive priority over the other applicant.

3. If the Department determines that an applicant whose income exceeds the established limits has a qualifying financial hardship, the applicant will be ranked on the priority list at his or her adjusted income level, which is the applicant's actual income minus medical costs or the cost of another qualifying hardship.

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

5. If, at any time, the Department determines that there is sufficient money available from the amount allocated for subsidies by the Department for more applicants, the Department may grant a subsidy to an applicant on the waiting list in the order of priority described in this section. If the Department grants a subsidy pursuant to this subsection, the Department will provide written notice to the applicant in the manner set forth in NAC 439.828.

6. 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 of prescription drugs, pharmaceutical services or out-of-pocket medical expenses, or any combination thereof, for the applicant's household is causing a hardship;

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

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

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.831 Calculation of household income; eligibility for subsidy if maximum household income exceeded. (NRS 439.655)

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

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

(b) May, if the household income fluctuates from month to month:

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

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

(3) Multiply the quotient calculated pursuant to subparagraph (2) by 12.

2. Except as otherwise provided in subsection 9 of NAC 439.826, an applicant is not eligible for a subsidy if the household income of the applicant for the year in which the applicant submits his or her application exceeds the maximum household income set forth in NRS 439.665.

3. For the purposes of subsection 2, the year in which the applicant submits the application:

(a) Is not tied to the calendar year or fiscal year; and

(b) Begins with the month that the application is submitted and carries forward through the succeeding 12 months.

(Added to NAC by Dep't of Human Resources by R143-01, eff. 12-17-2001; A by R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.834 Information and documentation: Cooperation with Department; updating. (NRS 439.735)

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 to cooperate, the Department will deny the application or will deem the enrollee ineligible to receive a subsidy.

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

(a) Name;

(b) Address;

(c) Telephone number;

(d) Household income;

(e) Marital status;

(f) Eligibility for Medicare Part D;

(g) Enrollment in a PDP or MA-PD or selection of a different PDP or MA-PD;

(h) Eligibility for Medicaid; or

(i) Eligibility for supplemental security income,

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

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.836 Continuing eligibility; annual review. (NRS 439.655)

1. If the Department approves an application for a subsidy, the enrollee remains eligible to receive the subsidy as long as he or she 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 federal, state, county and local agencies, as well as other organizations that administer programs for low-income persons or persons with disabilities.

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, including, without limitation, a copy of the income tax returns of the enrollee.

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

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.838 Discontinuation of subsidy to enrollee: Request by enrollee; ineligibility of enrollee; granting of subsidy to applicant on waiting list if enrollee determined ineligible. (NRS 439.735)

1. If an enrollee who is receiving a subsidy wishes to discontinue receiving the subsidy, he or she 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 is eligible for coverage for prescription drugs and pharmaceutical services through Medicare Part D, but the enrollee declines to enroll in that program or in a PDP or MA-PD, or the enrollee declines to apply for any federal subsidy available to him or her, or both;

(b) The enrollee is eligible for coverage for prescription drugs and pharmaceutical services through Medicare Part D and qualifies for a federal low-income subsidy as a "very low-income beneficiary";

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

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

(e) The enrollee knowingly provided incorrect information on the application that he or she filed with the Department pursuant to NAC 439.826 and failed to correct the information within a reasonable time as determined by the Department;

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

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

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

5. If an enrollee no longer meets the criteria for receiving a subsidy because one of the circumstances set forth in subsection 3 applies to the enrollee, the Department will grant a subsidy to an applicant on the waiting list, if any, in the order of priority described in NAC 439.830.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

NAC 439.840 Notice to enrollee of determination regarding ineligibility. (NRS 439.655) 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 receive a subsidy. The notice must inform the enrollee:

1. Of the reason that the enrollee is ineligible 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; and
3. Of any free or inexpensive legal services available in the area and must provide telephone numbers of the organizations providing those services.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

Hearing

NAC 439.842 Request for hearing; scheduling of hearing. (NRS 439.655)

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.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.843 Continuation of benefits pending outcome of hearing. (NRS 439.655)

1. Benefits of an existing enrollee may be continued pending the outcome of the hearing if the enrollee requests such continuation within 10 days after the date of the decision by the Department.

2. The Department will deny a request for continuation of benefits if the request for a hearing is also denied pursuant to NAC 439.844.

3. If benefits are continued and the decision of the hearing officer upholds the decision of the Department, the Department may require the enrollee to reimburse the Department for benefits paid on behalf of the enrollee.

(Added to NAC by Dep't of Health & Human Services by R157-05, eff. 11-17-2005)

NAC 439.844 Denial of request for hearing; request for dismissal. (NRS 439.655)

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 from the amount allocated for subsidies by the Department;

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

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

2. If a person who filed a request for a hearing wishes to have the hearing dismissed, the person must submit a written request for the dismissal of the hearing, signed by him or her, 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.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004)

NAC 439.846 Testimony under oath. (NRS 439.655) All testimony to be considered in a hearing must be taken under oath. Except as otherwise provided in NAC 439.850, before testifying, a person must swear or affirm before the hearing officer to the truthfulness of the testimony he or she is about to give in the hearing.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.848 Conducting hearing in person; representation; evidence. (NRS 439.655)

1. Except as otherwise provided in NAC 439.850, a hearing must be conducted in person by a hearing officer.

2. An applicant or enrollee may represent himself or herself or may, in writing, authorize a person to represent him or her 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.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.850 Conducting hearing by telephone. (NRS 439.655)

1. The hearing officer may conduct the hearing over the telephone if he or she 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 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 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.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001)

NAC 439.852 Retention of record. (NRS 439.655)

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 NAC 439.848, after the hearing; and

(d) The decision of the hearing officer.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.854 Official recording of hearing; request for copy. (NRS 439.655)

1. The hearing officer presiding over a hearing conducted pursuant to NAC 439.842 to 439.856, inclusive, 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 or she was a party if the person 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.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.856 Decision of hearing officer. (NRS 439.655)

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 NAC 439.848, 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 or her authorized representative, if any.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001)

NAC 439.858 Duties of Department if decision of Department is overturned by hearing officer. (NRS 439.655)

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

(a) Reimburse the applicant or the enrollee for the actual out-of-pocket expenses for prescription drugs or pharmaceutical services incurred 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;

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

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

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

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004; A by Dep't of Health & Human Services by R157-05, 11-17-2005)

Miscellaneous Provisions

NAC 439.860 Recoupment of subsidy paid in error; request by enrollee for waiver or reduction of amount required to be returned. (NRS 439.655)

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

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

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

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

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

5. Except as otherwise provided in this subsection, if the Department determines that an enrollee has received a subsidy in an amount that is in excess of the amount which he or she was entitled to receive, the Department will recoup the amount in excess from the enrollee in accordance with this section. An enrollee may request a waiver or reduction of the amount in excess which he or she is required to return to the Department based on hardship. Such a request must be submitted in writing to the Department. The Department will consider each request for such a waiver or reduction on a case-by-case basis. The Department will not consider a request for such a waiver or reduction if the application for a subsidy which resulted in an amount in excess being received by the enrollee was submitted with fraudulent intent.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by R143-01, 12-17-2001; R200-03, 9-17-2004)

NAC 439.862 Confidentiality of records. (NRS 439.655) The records of the Department relating to an applicant or enrollee are confidential and are considered protected health information under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA). Any use or release of protected health information must comply with the *HIPAA Privacy Manual* established by the Department, which reflects the provisions of Part 164 of Title 45 of the Code of Federal Regulations.

(Added to NAC by Dep't of Human Resources by R069-00, eff. 3-2-2001; A by Dep't of Health & Human Services by R157-05, 11-17-2005)}

NAC 442.210-222

{Fees for Certain Early Intervention Services

NAC 442.210 Fees for certain early intervention services provided to infant or toddler with disability. (NRS 439.150, 439.200)

1. The Division of Public and Behavioral Health of the Department of Health and Human Services shall charge and collect fees for early intervention services provided to an infant or toddler with a disability by the Bureau of Early Intervention Services of the Division. The fees must be based upon and not exceed the actual cost to the Division to provide such services.
2. The Division of Public and Behavioral Health shall maintain a copy of the current schedule of fees at each location in which services are provided by the Bureau of Early Intervention Services. A copy of the schedule of fees may be obtained, free of charge, from the Bureau of Early Intervention Services at the Internet address <http://health2k.state.nv.us/BEIS/>, by mail at 3427 Goni Road, Suite 108, Carson City, Nevada 89706, or by telephone at (775) 684-3460.
3. The Bureau may develop a sliding schedule of fees for families that receive early intervention services to pay a percentage of the full fee based on the size and income of the family as set forth in the federal guidelines of poverty established by the United States Department of Health and Human Services.
4. As used in this section:
 - (a) “Early intervention services” has the meaning ascribed to it in the Individuals with Disabilities Education Act, 20 U.S.C. § 1432(4); and
 - (b) “Infant or toddler with a disability” has the meaning ascribed to it in the Individuals with Disabilities Education Act, 20 U.S.C. § 1432(5).[Bd. of Health, Fee Schedule for Sp. Children’s Clinics, eff. 5-10-82] — (NAC A 12-12-86; 10-23-87; 7-16-92; 11-29-94; R105-05, 12-29-2005);

NAC 442.222 Sliding schedule of fees for certain services and supplies concerning family planning. (NRS 439.150, 439.200)

1. For a client who qualifies pursuant to 42 U.S.C. §§ 300 et seq. for services and supplies concerning family planning, the fee, if any, to be charged and collected by *Aging and Disabilities Services Division* {a community health nursing clinic established by the Division of Public and Behavioral Health} for such services and supplies provided by {a nurse of} the Division must be in the amount listed in the sliding schedule of fees established by the Division pursuant to this section.
2. *Aging and Disabilities Services Division* {The Division of Public and Behavioral Health} shall establish a sliding schedule of fees which is based on:
 - (a) A cost analysis of the services and supplies provided by the Division {the community health nursing clinics}; and
 - (b) A ratio between the annual gross income of a household and the federally designated level signifying poverty for a household of that size as determined by the United States Department of Health and Human Services and published annually in the Federal Register.
3. *Aging and Disabilities Services Division* {The Division of Public and Behavioral Health} shall renew and, if necessary, revise the sliding schedule of fees established pursuant to this section:
 - (a) According to generally accepted accounting principles; and
 - (b) As needed, to account for modifications to:
 - (1) {The community health nursing program;}
 - (2) The federally designated levels signifying poverty; and
 - (3) The federal family planning program pursuant to 42 U.S.C. §§ 300 et seq.
4. The sliding schedule of fees established pursuant to this section and any revisions to the sliding schedule of fees become effective upon approval of the sliding schedule of fees by the State Board of Health.

5. Aging and Disabilities Services Division {The Division of Public and Behavioral Health} shall make the sliding schedule of fees established pursuant to this section available:

- (a) On the Internet website of the Division {and in each community health nursing clinic;} and
- (b) To any person upon request.

6. If the annual gross income of the household of a client described in subsection 1 is less than the federally designated level signifying poverty for a household of that size, Aging and Disabilities Services Division {a community health nursing clinic} shall not charge a fee to the client for services or supplies provided by Aging and Disabilities Services Division {a nurse of the Division of Public and Behavioral Health} for matters related to family planning. A client who is required to pay a fee pursuant to this section may not be denied services or supplies for nonpayment of the fee.

7. For the purposes of this section, a teenager is considered a household of one.

8. As used in this section, "household" means an association of persons who live together as a single economic unit, regardless of whether they are related.

(Added to NAC by Bd. of Health, eff. 10-14-82; A 7-16-85, eff. 8-1-85; 2-18-88; 12-15-88; 1-31-90; 5-19-92; 9-1-93; 10-30-97; R119-03, 12-3-2003; R145-11, 5-30-2012)

Commented [NH1]: @Fatima Taylor , so with the correct formatting is this what it is needed?

Commented [FT2R1]: @Nikki Haag Yes, that is correct. is there anything I need to do with the formatting? I see you have them on the same document. That seems to make more sense to have them together on the same document.

Commented [NH3R1]: @Fatima Taylor, we are good. Thank you.

NAC Chapter 707.020

PROGRAM TO PROVIDE DEVICES FOR TELECOMMUNICATION TO PERSONS WITH IMPAIRED SPEECH OR HEARING

NAC 707.020 Calculation and assessment of surcharge for program to provide devices for telecommunication to persons with impaired speech or hearing. (NRS 427A.797, 703.025)

1. The Commission will, on an annual basis, establish the amount of the surcharge to be assessed and collected for the program developed pursuant to NRS 427A.797 by the Aging and Disability Services Division of the Department of Health and Human Services.

2. If, on or before February 1 of each year, the Division files an application with the Commission requesting the establishment of the amount of the surcharge and includes the {approved} annual program budget, *either Governor's Recommended budget or Legislatively Approved budget depending on the year which the budget is being submitted*, the Commission will, except as otherwise provided in NRS 427A.797, base its calculation of the amount of the surcharge on the budget as filed.

3. On or before March 1 of each year, the Regulatory Operations Staff of the Commission shall file its calculation of a proposed amount of the surcharge with the Commission.

4. Within 10 days after the Regulatory Operations Staff of the Commission files its calculation of a proposed amount of the surcharge pursuant to subsection 3, any carrier or interested person may file comments on the proposed amount of the surcharge, and any carrier may request a hearing on the matter. If no request for a hearing is received by the Commission, it will dispense with a hearing and act upon the matter unless it finds that a hearing is necessary or required by statute.

5. On or before June 1 of each year, the Commission will establish and notify each carrier of the amount of the surcharge to be assessed and collected for the period from July 1 of that year to June 30 of the next year from each of its customers pursuant to this section and NRS 427A.797.

6. The surcharge will be assessed in the manner set forth in NRS 427A.797, and will be either a percentage of the basic charge for service to the customer or an equal amount for each customer in a class of customers. The surcharge must be billed by each carrier to its customers on a monthly basis.

7. For the purposes of this section, "annual program budget" includes, without limitation, the amounts established by the Division to:

- (a) Cover the costs of the program;
- (b) Fund the centers for persons who are deaf or have severely impaired speech or hearing established pursuant to subsection 2 of NRS 427A.797; and
- (c) Cover the costs incurred by the Division to carry out the provisions of chapter 656A of NRS that are not covered by the civil penalties received by the Division pursuant to NRS 656A.800.

(Added to NAC by Pub. Service Comm'n, eff. 1-6-86; A by Pub. Utilities Comm'n by R010-04, 6-28-2004; R070-15, 4-4-2016)