

Steve Sisolak
Governor

Richard Whitley, MS
Director



DEPARTMENT OF HEALTH AND HUMAN SERVICES

AGING AND DISABILITY SERVICES DIVISION
Helping people. It's who we are and what we do.



Dena Schmidt
Administrator

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment
of Regulation of the
Office for Consumer Health Assistance

The Office for Consumer Health Assistance will hold a public hearing at 1:00 p.m. until adjournment, Thursday, August 18, 2022, via TEAMS. The purpose of the hearing is to receive comments from all interested persons regarding the amendment of regulation that pertain to chapter 439B of the Nevada Administrative Code (NAC), relating to disputes between third party insurers and out-of-network providers over payment of medically necessary emergency services in LCB File No. R101-19 (NRS 439B.700-NRS439B.760).

The public hearing will be conducted virtually via TEAMS Meeting beginning at 1:00 p.m. until adjournment, Thursday, August 18, 2022, at the following:

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 775-321-6111,459013700#](tel:+17753216111459013700) United States, Reno

Phone Conference ID: 459 013 700#

[Find a local number](#) | [Reset PIN](#)

The hearing will be conducted in accordance with NRS 241.020, Nevada's Open Meeting Law.

AGENDA

1. Introduction of hearing process
2. Public comment
3. Adoption of proposed amendments to Nevada Administrative Code (NAC) Chapter 439B relating to disputes between third-party insurers and out-of-network providers over payment of medically necessary emergency services in LCB File No. R101-19 (NRS 439B.700-NRS 439B.760).
4. Public Comment
5. Adjournment

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The proposed changes will amend Chapter 439B of the Nevada Administrative Code relating to disputes between third party insurers and out-of-network providers over payment of medically necessary emergency services in LCB File No. R101-19 (NRS 439B.700-NRS 439B.760).

2. The proposed regulation will provide for:

- Required content of an arbitration request for a disputed claim of less than \$5,000.
- The review and approval of the request by the Department.
- The Department to provide the out-of-network provider and third party insurer with a written list of five randomly selected employees of the State who are qualified to arbitrate the dispute.
- The selection of an arbitrator and the procedure for the arbitration.
- The requirement for a dispute about a claim in the amount of \$5,000 or more, for the out-of-network provider to request a list of five randomly selected arbitrators from the American Arbitration Association or JAMS.
- The procedure for making and withdrawing an election by an entity or organization not otherwise subject to provisions of the law governing the resolution of disputes between a third party insurer and an out-of-network provider of health care over payment for medically necessary emergency services to elect to have those provisions apply to the entity or organization.
- A third party insurer that provides coverage to residents of the State and a provider of health care who provides medically necessary emergency medical services in this State to annually submit to the Department certain information for the purpose of compiling a report.

3. The estimated economic effect of the regulation on the business which NAC 439B regulates:

Third Party Insurers

A. *Adverse effects:* Third party insurers disputing a claim in the amount of \$5,000 or more must follow the arbitration process and procedures set forth by the American Arbitration Association or JAMS.

Third party insurers may experience an adverse effect due to the inability to withdraw the election to participate in the provisions of NRS.439B in less than 120 business days.

Third party insurers may experience an adverse effect of time and effort spent producing reports due by December 31 of each year.

B. *Beneficial effects:* Third party insurers may benefit from the proposed regulation based on timeline requirements for an out-of-network provider to submit their request for arbitration. If an out-of-network provider does not submit their request for arbitration within the timelines of the proposed regulation, the claim is ineligible for arbitration.

Within 10 days of receiving the notice for arbitration, third party insurers are provided a list of five arbitrators. Third party insurers are given the opportunity to strike two names off the list of arbitrators and provide the name or names of remaining arbitrators to the Department.

- C. *Immediate effects:* The immediate and long-term effects the regulation will have on the third party insurers is the time and effort needed to produce relevant information in the timeframes specified in the regulation.
- D. *Long-term effects:* The immediate and long-term effects the regulation will have on the third party insurers is the time and effort needed to produce relevant information in the timeframes specified in the regulation.

Providers of Health Care

- A. *Adverse effects:* Out-of-network providers disputing a claim in the amount of \$5,000 or more must follow the arbitration process and procedures set forth by the American Arbitration Association or JAMS.

Out-of-network providers of medically necessary emergency services have the additional requirements of submitting the request for arbitration in the timeframes specified in the revised proposed regulation. If an out-of-network provider misses the timeframe to submit the request for arbitration, the claim is ineligible for arbitration. This would create an adverse effect on the out-of-network provider's ability to arbitrate a claim for a medically necessary emergency service provided out-of-network.

If a request for arbitration application is not complete and clear, a request for additional information is sent to the out-of-network provider. The out-of-network provider has 10 business days to submit the additional information requested to the Department or the application is deemed incomplete.

The provider may experience an adverse effect of time and effort spent producing reports due by December 31 of each year.

- B. *Beneficial effects:* Out-of-network providers have the benefit of being able to submit the request for arbitration within 30 business days from the date the third-party refused to pay the request for additional amount or failed to pay the request for additional amount.

Within 10 days of receiving the notice for arbitration, out-of-network providers are provided a list of five arbitrators. Out-of-network providers are given the opportunity to strike two names off the list of arbitrators and provide the name or names of remaining arbitrators to the Department.

- C. *Immediate effects:* Upon passage of the proposed regulation, the immediate and long-term effects the regulation will have on out-of-network providers is the time and effort needed to produce relevant information in the timeframes specified in the regulation.

- D. *Long-term effects:* Upon passage of the proposed regulation, the immediate and long-term effects the regulation will have on out-of-network providers is the time and effort needed to produce relevant information in the timeframes specified in the regulation.

The estimated economic effect of the regulation on the public:

- A. *Adverse effects:* The consumer is responsible for copayment, coinsurance or deductible that the coverage requires the covered person to pay for the services when provided in-network. The average length of time for an arbitrator to make a determination is 4.5 months. An adverse effect the consumer may experience is the inability to know the copayment amount, coinsurance, or deductible until the arbitration determination has been made.
- B. *Beneficial effects:* The beneficial effects of the regulation on the public are the same as the beneficial effects of the statute, in that the consumer cannot be balance billed for medically necessary emergency services provided out-of-network except for any copayment, coinsurance or deductible that the coverage requires the covered person to pay for the services when provided by an in-network provider.

A person covered by an Employee Retirement Income Security Act (ERISA) plan that has elected to submit to the provisions of NRS 439B.757 has the benefit of being covered by statute beginning on the first day of the following month if the election to participate in the provisions is received on the first through the 14th day of the month. If the election to participate in the provisions of NRS 439B.757 are received on or after the fifteenth day of the month, the application becomes effective on fifteenth day of the following month.

- C. *Immediate effects:* Upon passage of the proposed regulation provide the benefits as noted in the beneficial section.
- D. *Long-term:* Upon passage of the proposed regulation provide the benefits as noted in the beneficial and immediate sections.

4. To determine the impact on a small business, a Small Business Impact Survey was posted to the Aging and Disability Services Division website along with a copy of the proposed regulation changes, in January 2020 and November 2021. Questions on the survey were:

- 1) How many employees are currently employed by your business?
- 2) Will a specific regulation have an adverse economic effect upon your business?
- 3) Please list each regulation and explain the impact.
- 4) Will the regulation(s) have any beneficial effect upon your business?
- 5) Do you anticipate any indirect adverse effects upon your business?
- 6) Do you anticipate any indirect beneficial effects upon your business?

The results of the small business impact studies are available at <https://adsd.nv.gov/Programs/regulations/>.

5. At this time, it is estimated that there would be an additional cost to the agency of \$257,700 per year to enforce the proposed regulation.
6. The proposed regulation does not overlap or duplicate any other Nevada state or federal regulations.
7. The regulation is not required pursuant to federal law.
8. The regulation does not include provisions which are more stringent than a federal regulation that regulates the same activity.
9. The regulation does not provide a new fee. However, NRS 439B.754 (7), provides for the non-prevailing party to pay the costs of the arbitrator.

Effective June 3, 2022, pursuant to NRS 439B.754 (7), Office for Consumer Health Assistance (OCHA) will begin to recover, from the non-prevailing party, the costs of the arbitrator, as outlined below:

439B.754 (7) If the arbitrator requires:

- (a) The out-of-network provider to accept the amount paid by the third party pursuant to subsection 2 of NRS 439B.748 or paragraph (c) of subsection 1 or subsection 2 of NRS 439B.751, as applicable, as payment in full for the provision of the medically necessary emergency services, except for any copayment, coinsurance or deductible that the coverage requires the covered person to pay for the services when provided by an in-network provider, the out-of-network provider must pay the costs of the arbitrator.
- (b) The third party to pay the additional amount requested by the out-of-network provider pursuant to subsection 2, the third party must pay the costs of the arbitrator.

Persons wishing to comment upon the proposed action of the Office for Consumer Health Assistance may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Agnes Francis at: Office for Consumer Health Assistance, 3208 Goni Road, Suite I-18, Carson City, NV 89706 or by fax at (775) 687-0574 or by email afrancis@adsd.nv.gov. Written submissions must be received by the Office for Consumer Health Assistance on or before August 12, 2022. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Office for Consumer Health Assistance may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at Aging and Disability Services Division, 3208 Goni Road, I-181, Carson City, NV 89706, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours.

A copy of this notice and the regulation to be amended can be obtained by contacting Agnes Francis at 775-687-0501 or by e-mail: afrancis@adsd.nv.gov and can also be found on-line by

going to: Nevada Aging and Disability Services Division:

[https://adsd.nv.gov/Programs/CHA/Office for Consumer Health Assistance \(OCHA\)/](https://adsd.nv.gov/Programs/CHA/Office_for_Consumer_Health_Assistance_(OCHA)/)

This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Notice of this meeting is also posted on the Internet: <https://adsd.nv.gov/>, <https://notice.nv.gov/> and has been sent to the Legislative Counsel Bureau.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

1. Aging and Disability Services Division, Carson City Office, 3208 Goni Road, Suite I-181, Carson City, NV 89706
2. Aging and Disability Services Division, Las Vegas Office, 3320 West Sahara Ave., Suite 100, Las Vegas, NV 89102
3. Aging and Disability Services Division, Reno Office, 9670 Gateway Drive, Suite 100, Reno, NV 89521
4. Nevada State Library and Archives, 100 North Stewart Street, Carson City, NV 89706

We are pleased to make reasonable accommodations for members of the public who have disabilities and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Agnes Francis at afrancis@adsd.nv.gov or 775-687-0501 as soon as possible and at least one business day in advance of the meeting.