PROPOSED REGULATION OF THE DEPARTMENT

OF HEALTH AND HUMAN SERVICES

LCB File No. R157-05

November 8, 2005

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

AUTHORITY: §§1-5, 7-13, 16, 18, 22, 25, 26, 28 and 30-42, section 5 of chapter 353, Statutes of Nevada 2005, at page 1327 (NRS 439.735); §§6, 14, 15, 17, 19, 20, 21, 23, 24, 27 and 29, section 5 of chapter 353, Statutes of Nevada 2005, at page 1327 (NRS 439.735), section 15 of chapter 353, Statutes of Nevada 2005, at page 1331, and section 6 of chapter 342, Statutes of Nevada 2005, at page 1261; §§43-49, 54, 55, 58 and 60, NRS 439.655, section 15 of chapter 353, Statutes of Nevada 2005, at page 1331, and section 6 of chapter 342, Statutes of Nevada 2005, at page 1261; §§50-53, 56, 57, 59, 61 and 62, NRS 439.655.

A REGULATION relating to public health; enacting provisions establishing the disability prescription program for the provision of prescription drugs and pharmaceutical services for certain persons with disabilities; prescribing the content and form of a request for a subsidy from the disability prescription program; designating the proof that must be submitted with such a request; adopting provisions to protect the confidentiality of information supplied by a person who makes such a request; establishing procedures for requesting hearings and appeals of certain determinations made by the Department of Health and Human Services concerning the disability prescription program; enacting provisions and revisions providing for the coordination of the disability prescription program and the senior prescription program with the Medicare Part D benefit; revising the provisions governing the information that must be submitted with a request for a subsidy from the senior prescription program; revising the provisions to protect the confidentiality of information supplied by a senior citizen who makes a request for a subsidy from the senior prescription program; revising various other provisions pertaining to the content and form of a request for a subsidy from the senior prescription program and the proof that must be submitted with such a request; and providing other matters properly relating thereto.

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 50, inclusive, of this regulation.

Sec. 2. ***Sections 2 to 42, inclusive, of this regulation may be referred to as the disability prescription program.***

Sec. 3. ***As used in sections 2 to 42, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 to 19, inclusive, of this regulation have the meanings ascribed to them in those sections.***

Sec. 4. ***"Applicant" means a person who applies to the Department to receive a subsidy for coverage for prescription drugs and pharmaceutical services pursuant to section 7 of chapter 353, Statutes of Nevada 2005, at page 1329 (NRS 439.755).***

Sec. 5. ***"Contractor" means a private insurer with whom the Department has entered into a contract pursuant to section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (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.***

Sec. 6. ***"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.

Sec. 7. ***"Department" means the Department of Health and Human Services.***

Sec. 8. ***"Disability" has the meaning ascribed to it in NRS 426.068.***

Sec. 9. ***"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 section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (NRS 439.745).***

Sec. 10. ***"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 his designee to preside at a hearing conducted pursuant to sections 31 to 39, inclusive, of this regulation.

Sec. 11. ***"Household" means an applicant and the spouse of the applicant.***

Sec. 12. ***"Household income" has the meaning ascribed to it in NRS 427A. 480.***

Sec. 13. ***"Income" has the meaning ascribed to it in NRS 427A.485.***

Sec. 14. ***"Medicare Advantage Plan With Prescription Drug Coverage" or "MA-PD" means health benefits coverage, including, without limitation, qualified prescription drug coverage, offered pursuant to Part 423.4 of Title 42 of the Code of Federal Regulations under a policy or contract with Medicare by a Medicare Advantage organization as described in Part 422.2 of Title 42 of the Code of Federal Regulations.***

Sec. 15. ***"Medicare Part D" means the federal prescription drug benefit established pursuant to Part 423 of Title 42 of the Code of Federal Regulations.***

Sec. 16. ***"Open enrollment" means a period prescribed by the Department during which an application for a subsidy may be filed.***

Sec. 17. ***"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 Part 423.272 of Title 42 of the Code of Federal Regulations 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.***

Sec. 18. ***"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 section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (NRS 439.745), for coverage for prescription drugs and pharmaceutical services.***

Sec. 19. ***"Traditional disability prescription program" means the prescription drug benefits available to eligible applicants who are not also eligible for Medicare Part D.***

Sec. 20. ***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.***

Sec. 21. ***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 section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (NRS 439.745).

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 disability 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 section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (NRS 439.745).

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 disability prescription program.

Sec. 22. ***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.***

Sec. 23. ***1. In addition to meeting the criteria for receiving a subsidy set forth in section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (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 section 7 of chapter 353, Statutes of Nevada 2005, at page 1329 (NRS 439.755).

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

(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 income tax returns, a copy of his 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 his 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 his 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 social security number.

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

(a) Each applicant must declare whether he 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 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 authorized representative and, as such, to enroll him in an appropriate PDP or MA-PD. Such authority does not preclude the applicant from changing his 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.

➥ 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 section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (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.

Sec. 24. *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 section 25 of this regulation.

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 section 31 of this regulation; and

(c) The procedures for a hearing before the Department as set forth in sections 31 to 39, inclusive, of this regulation.

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.

Sec. 25. *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 adjusted income level, which is his 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 section 24 of this regulation.

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.

Sec. 26. ***1. For the purposes of determining whether an applicant satisfies the eligibility requirement set forth in section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (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 section 23 of this regulation 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 section 23 of this regulation, an applicant is not eligible for a subsidy if the household income of the applicant for the year in which the applicant submits his application exceeds the maximum household income set forth in section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (NRS 439.745).

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

Sec. 27. ***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 section 23 of this regulation that relates to his eligibility to receive a subsidy, including, without limitation, a change in his:

(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,

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

Sec. 28. *1. If the Department approves an application for a subsidy, the enrollee remains eligible to receive the subsidy as long as he 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.

Sec. 29. ***1. If an enrollee who is receiving a subsidy wishes to discontinue receiving the subsidy, he must submit a written request to that effect to the Department and notify the contractor in writing.***

2. If, based on information the Department receives, the Department reasonably believes that an enrollee no longer meets the criteria for receiving a subsidy because one of the circumstances set forth in subsection 3 applies to the enrollee, the Department shall provide the enrollee with notice as set forth in section 30 of this regulation 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 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 section 6 of chapter 353, Statutes of Nevada 2005, at page 1327 (NRS 439.745);

(d) The enrollee knowingly provided incorrect information on the application that he filed with the Department pursuant to section 23 of this regulation 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 section 25 of this regulation.

Sec. 30. *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 section 31 of this regulation for requesting a hearing to review the decision of the Department;

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

4. That if he wishes to receive coverage provided by a policy of health insurance that a contractor issued to the enrollee, he must pay to the contractor, in a timely manner, the entire premium established by the contractor.

Sec. 31. ***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.

Sec. 32. ***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 section 33 of this regulation.

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.

Sec. 33. ***1. The Department will deny a request for a hearing received pursuant to section 31 of this regulation if:***

(a) The sole issue being contested is an issue that may only be resolved by amending the provisions of sections 2 to 11, inclusive, of chapter 353, Statutes of Nevada 2005, at pages 1327, 1328 and 1329 (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 section 31 of this regulation.

2. If a person who filed a request for a hearing wishes to have the hearing dismissed, he must submit a written request for the dismissal of the hearing, signed by him, to the hearing officer before the date of the hearing. Upon receipt of the request for dismissal, the hearing officer shall dismiss the hearing and notify the person requesting the dismissal and the Department of the dismissal.

Sec. 34. *All testimony to be considered in a hearing must be taken under oath. Except as otherwise provided in section 36 of this regulation, before testifying, a person must swear or affirm before the hearing officer to the truthfulness of the testimony he is about to give in the hearing.*

Sec. 35. *1. Except as otherwise provided in section 36 of this regulation, a hearing must be conducted in person by a hearing officer.*

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

Sec. 36. ***1. The hearing officer may conduct the hearing over the telephone if he determines it is in the best interest of each party to the hearing to do so.***

2. A hearing that is conducted over the telephone must be conducted at the office of a state agency 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 section 34 of this regulation to the applicant or enrollee; and

(c) Receive any additional evidence that the applicant or enrollee wishes to submit and transmit it to the hearing officer by facsimile machine.

3. As used in this section, "facsimile machine" means a device that sends or receives a reproduction or facsimile of a document or photograph which is transmitted electronically or telephonically by telecommunications lines.

Sec. 37. ***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 section 35 of this regulation, after the hearing; and

(d) The decision of the hearing officer.

Sec. 38. ***1. The hearing officer presiding over a hearing conducted pursuant to sections 31 to 39, inclusive, of this regulation 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 was a party if he 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.

Sec. 39. ***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 section 35 of this regulation, 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 authorized representative, if any.

Sec. 40. ***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.

Sec. 41. ***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 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 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 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.

Sec. 42. *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.*

Sec. 43. *"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.

Sec. 44. *"Medicare Advantage plan with prescription drug coverage" or "MA-PD" means health benefits coverage, including, without limitation, qualified prescription drug coverage, offered pursuant to Part 423.4 of Title 42 of the Code of Federal Regulations under*

a policy or contract with Medicare by a Medicare Advantage organization as described in Part 422.2 of Title 42 of the Code of Federal Regulations.

Sec. 45. *"Medicare Part D" means the federal prescription drug benefit established pursuant to Part 423 of Title 42 of the Code of Federal Regulations.*

Sec. 46. *"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 Part 423.272 of Title 42 of the Code of Federal Regulations 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.*

Sec. 47. *"Traditional senior prescription program" means the prescription drug benefits available to eligible applicants who are not also eligible for Medicare Part D.*

Sec. 48. *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.*

Sec. 49. *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 any federal subsidy under Medicare Part D must apply for and use any such subsidy before requesting such coverage through the senior prescription program.

4. 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.

5. 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.

Sec. 50. ***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.

Sec. 51. NAC 439.800 is hereby amended to read as follows:

439.800 NAC 439.800 to 439.862, inclusive, ***and sections 43 to 50, inclusive, of this regulation*** may be referred to as the senior prescription program.

Sec. 52. NAC 439.802 is hereby amended to read as follows:

439.802 As used in NAC 439.800 to 439.862, inclusive, ***and sections 43 to 50, inclusive, of this regulation,*** unless the context otherwise requires, the words and terms defined in NAC 439.804 to 439.822, inclusive, ***and sections 43 to 47, inclusive, of this regulation*** have the meanings ascribed to them in those sections.

Sec. 53. NAC 439.808 is hereby amended to read as follows:

439.808 "Department" means the Department of **[~~Human Resources.~~]** ***Health and Human Services.***

Sec. 54. NAC 439.826 is hereby amended to read as follows:

439.826 1. In addition to meeting the criteria for receiving a subsidy set forth in NRS 439.665, an applicant who wishes to receive a subsidy must file a properly completed application for a subsidy with the Department during a period of open enrollment.

2. The application must be made:

(a) On a form prescribed by the Department; and

(b) Under oath as required by NRS 439.670.

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

(a) Age by submitting a copy of his 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 income tax returns, a copy of his 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 his application; ~~[and]~~

(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 his 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 social security number.

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

(a) Each applicant must declare whether he 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 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 authorized representative and, as such, to enroll him in an appropriate PDP or MA-PD. Such authority does not preclude the applicant from changing his 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.

~~[6.]~~ ***7.*** An application shall be deemed received by the Department on the date that the completed application is received by the Department.

~~[7.]~~ ***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.

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

~~[8.]~~ ***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.

Sec. 55. NAC 439.828 is hereby amended to read as follows:

439.828 1. Within 45 days after receiving an application for a subsidy, the Department will provide written notice to the applicant of its approval or denial of the application.

2. If the application is approved, the notice must state:

(a) The amount of the subsidy that the Department will pay to a contractor ***, 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 [to the contractor] the name of the [applicant] ***new enrollee*** whose application was approved [.] ***to the contractor or any other entity necessary to ensure appropriate coordination of benefits.***

Sec. 56. NAC 439.830 is hereby amended to read as follows:

439.830 1. Except as otherwise provided in [subsection] ***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 adjusted income level, which is his 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.

~~[3.]~~ ***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.

[4.] ***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 ***,*** [and] 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.

Sec. 57. NAC 439.831 is hereby amended to read as follows:

439.831 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 [8] ***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 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 his 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.

Sec. 58. NAC 439.834 is hereby amended to read as follows:

439.834 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 [so] 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 eligibility to receive a subsidy, including, without limitation, a change in his:

(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

[(g)] ***(i)*** Eligibility for supplemental security income,

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

Sec. 59. NAC 439.836 is hereby amended to read as follows:

439.836 1. If the Department approves an application for a subsidy, the enrollee remains eligible to receive the subsidy as long as he 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.

Sec. 60. NAC 439.838 is hereby amended to read as follows:

439.838 1. If an enrollee who is receiving a subsidy wishes to discontinue receiving the subsidy, he must submit a written request to that effect to the Department and notify the contractor in writing.

2. If, based on information the Department receives, the Department reasonably believes that an enrollee no longer meets the criteria for receiving a subsidy because one of the

circumstances set forth in subsection 3 applies to the enrollee, it shall provide the enrollee with notice as set forth in NAC 439.840 and an opportunity for a hearing.

3. The circumstances in which an enrollee no longer meets the criteria for receiving a subsidy include, without limitation, that:

(a) ***The enrollee 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 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;

[(b)] ***(d)*** The household income of the enrollee exceeds the maximum household income set forth in NRS 439.665;

[(c)] ***(e)*** The enrollee knowingly provided incorrect information on the application that he filed with the Department pursuant to NAC 439.826 and failed to correct the information within a reasonable time as determined by the Department;

[(d)] ***(f)*** The enrollee failed to maintain residency in this State; or

[(e)] ***(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.

Sec. 61. NAC 439.858 is hereby amended to read as follows:

439.858 1. If a hearing officer overturns a decision of the Department to deny a subsidy or that an enrollee is ineligible to 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

[(b)] ***(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.

Sec. 62. NAC 439.862 is hereby amended to read as follows:

439.862 The records of the Department relating to an applicant or enrollee are confidential, and [may only be released to:

~~1. A person who has received authorization to obtain the records from the applicant or enrollee that is in writing and signed by the applicant or enrollee;~~

~~2. A person who is authorized to obtain the records pursuant to an order of a court of competent jurisdiction; or~~

~~3. An employee of the Department or the contractor who needs the records for purposes relating to the administration of NRS 439.635 to 439.690, inclusive.]~~ ***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.***