

**ADOPTED REGULATION OF THE
AGING AND DISABILITY SERVICES DIVISION OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R024-10

Effective July 22, 2010

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

AUTHORITY: §§1-15, NRS 427A.793.

A REGULATION relating to persons with disabilities; revising provisions relating to the program to provide financial assistance to persons with physical disabilities for certain essential personal care; and providing other matters properly relating thereto.

Section 1. Chapter 427A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“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.*

Sec. 3. *“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 section 4 of this regulation.*

Sec. 4. *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.770, inclusive, and sections 2, 3 and 4 of this regulation.*

Sec. 5. NAC 427A.675 is hereby amended to read as follows:

427A.675 As used in NAC 427A.675 to 427A.770, inclusive, *and sections 2, 3 and 4 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 427A.680 to 427A.720, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 427A.685 is hereby amended to read as follows:

427A.685 “Contractor” means any person or governmental or private agency or organization with which the Division enters into a contract pursuant to ~~NAC 427A.740.~~ *section 4 of this regulation.*

Sec. 7. NAC 427A.725 is hereby amended to read as follows:

427A.725 1. To be eligible for financial assistance pursuant to NAC 427A.675 to 427A.770, inclusive, *and sections 2, 3 and 4 of this regulation*, a person must:

- (a) Be a resident of the State;
- (b) Be diagnosed as a person with a physical disability by a licensed physician;
- (c) Require assistance in one or more of the areas described in NAC 427A.735;
- (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.770, inclusive ~~[]~~, *and sections 2, 3 and 4 of this regulation;*
- (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 ~~[review team]~~ *Division* may designate a responsible person to supervise the attendant on behalf of the otherwise eligible person;
- (g) Be capable of participating in a plan for independent living; and

(h) Be financially eligible pursuant to the provisions of 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 disability is exacerbated or he has a short-term illness that is not related to his 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.

Sec. 8. NAC 427A.730 is hereby amended to read as follows:

427A.730 Financial assistance must be ~~disbursed~~ *provided* to eligible persons in the following order of priority:

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

2. A person who is receiving acute or extended care in an institutional setting but who, with financial assistance provided pursuant to NAC 427A.675 to 427A.770, inclusive, *and sections 2,*

3 and 4 of this regulation, would be able to function in a setting where he controls and manages his daily activities.

3. A person:

(a) Who ~~[is at risk of being placed in an institutional setting within 3 months if financial assistance is not provided pursuant to NAC 427A.675 to 427A.770, inclusive; or~~
~~—(b) Whose safety or health would be at a substantial risk if financial assistance was not provided pursuant to NAC 427A.675 to 427A.770, inclusive.]~~ *requires assistance with bathing, toileting and eating; or*

(b) *Who has a traumatic brain injury.*

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

(a) *Bathing;*

(b) *Toileting; or*

(c) *Eating.*

~~[5.— A person who does not satisfy any of the criteria set forth in subsections 1 to 4, inclusive, but who otherwise qualifies for financial assistance pursuant to NAC 427A.675 to 427A.770, inclusive.]~~

Sec. 9. NAC 427A.740 is hereby amended to read as follows:

427A.740 The ~~[Division will contract with a contractor who]~~ *program manager* shall:

1. ~~[Establish a review team of persons who have personal or professional knowledge of disabilities and an understanding of the concept of independent living. The review team shall:~~
~~—(a) Determine an applicant's eligibility.~~

~~—(b) Authorize the number of hours of essential personal care to be provided to an eligible person based upon a written assessment provided by the contractor pursuant to subsection 9.~~

~~—(c) Obtain medical consultation as needed.~~

~~—2.]~~ Reevaluate a recipient's eligibility every 12 months and when his need for essential personal care changes.

~~{3.—Provide}~~

2. Coordinate the provision of essential personal care to eligible persons.

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

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

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

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

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

~~—9.]~~ **3.** Provide assessments of recipients. An assessment must:

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

(b) ~~{Be}~~ **Whenever possible, be** conducted at the location where the services are offered; and

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

~~{10.]~~ **4.** Provide referrals to independent living and other services as appropriate for the needs of recipients.

Sec. 10. NAC 427A.745 is hereby amended to read as follows:

427A.745 1. ~~[The]~~ *If the* Division ~~[will]~~ *has entered into a contract pursuant to section 4 of this regulation, the Division will* monitor the management and the financial records of the contractor and ~~[shall]~~ *will* evaluate the contractor's efficiency in administering the provisions of the contract.

2. The contractor shall submit to the Division:

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

Sec. 11. NAC 427A.750 is hereby amended to read as follows:

427A.750 A recipient shall notify the ~~[contractor]~~ *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 family, the income of the recipient's family that would affect the recipient's eligibility; and

2. Need for essential personal care.

Sec. 12. NAC 427A.755 is hereby amended to read as follows:

427A.755 1. An applicant for financial assistance must submit to the ~~[contractor]~~ *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 ~~[contractor]~~ *program manager* shall, within 30 days after receiving a completed application, notify the applicant in writing whether he is eligible for financial assistance.

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

4. If money is not available, the ~~[contractor]~~ *program manager* shall notify the person ~~[of his position]~~ *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.

Sec. 13. NAC 427A.760 is hereby amended to read as follows:

427A.760 1. An applicant for financial assistance or a recipient who disagrees with a decision ~~[of the review team or the contractor]~~ *regarding eligibility* may, within 15 working days after he receives notice of the decision, file an appeal with the ~~[contractor.]~~ *program manager.*

The ~~[contractor:]~~ *program manager:*

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

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

2. The applicant or recipient may appeal the decision of the ~~[contractor]~~ *program manager* to the Administrator by filing a notice of appeal within 15 working days after he receives notice of the decision of the ~~[contractor.]~~ *program manager.* The Administrator:

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

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

(c) Will render his decision in writing within 30 days after he receives the notice of the appeal.

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

Sec. 14. NAC 427A.765 is hereby amended to read as follows:

427A.765 1. An applicant is not eligible to receive financial assistance pursuant to subsection 1 of NAC 427A.725, if his gross monthly income, less the expenses set forth in paragraphs (a) to (d), inclusive, of subsection 2, is more than 800 percent of the federally designated level signifying poverty, divided by 12, for the size of family applicable to the applicant, as determined by the United States Department of Health and Human Services and published annually in the Federal Register.

2. In determining the financial eligibility of an applicant, the gross monthly income of the applicant and the applicant's spouse, or, if the applicant is a dependent child or adult who has no income and is financially supported by his family, the gross monthly income of the applicant's family, must be counted. From the total must be deducted any amount paid directly by the applicant or the applicant's spouse or, if the applicant is a dependent child or adult who has no income and is financially supported by his family, by the applicant's family, that is not reimbursed by any other source for:

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

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

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

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

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

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

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

↪ where "A" is the recipient's gross monthly income; "B" is the sum, on a monthly basis, of the recipient's and his spouse's expenses and, if applicable, the expenses of the recipient's family, set forth in paragraphs (a) to (d), inclusive, of subsection 2; "C" is the amount that equals 200 percent of the federally designated level signifying poverty, divided by 12, for the size of family

applicable to the recipient; and “D” is the cost of providing services for essential personal care, on a monthly basis, for that recipient.

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

5. If there are compelling and urgent circumstances, including, without limitation, the circumstance in which payment of any portion of the cost to provide essential personal care to the recipient will cause severe hardship to the recipient, the contractor, 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.

Sec. 15. NAC 427A.715 is hereby repealed.

TEXT OF REPEALED SECTION

427A.715 “Review team” defined. (NRS 427A.793) “Review team” means two or more persons appointed by the contractor to perform the duties required by subsection 1 of NAC 427A.740.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R024-10

The Aging and Disability Services Division of the Department of Health and Human Services adopted regulations assigned LCB File No. R024-10 which pertain to chapter 427A of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

- 1. A description of how public comment was solicited, a summary of public response, and explanation how other interested persons may obtain a copy of the summary.**
Notice of public workshop was posted on February 24, 2010 and workshop was held on March 17, 2010. Notice of public hearing was posted on May 25, 2010 and public workshop was held on June 24, 2010. Posting included e-mailing notices to public libraries in all counties in which Aging and Disability Services Division does not have an office, to all Division offices, to a list of other public places where interested parties would see the notice. They were also posted on the Division web site.
Written comments were accepted up to the day before the workshop and the day before the hearing. Summaries may be obtained at the Aging and Disability Services Division, 3416 Goni Road #132, Carson City NV 89706.
- 2. The number of persons who: (a) attended each hearing; (b) testified at each hearing; and (c) submitted to the agency written statements.**
Twenty-eight people attended the workshop statewide, and 1 person testified. No written statements were received.
Twenty-four people attended the hearing statewide, and nobody testified. One written statement was received.
- 3. A description of how comment was solicited from affected businesses, a summary of their response and an explanation of how other interested persons may obtain a copy of the summary.**

There is only one agency that will potentially be impacted by the proposed regulations, and that agency has too many employees to qualify as a small business for purposes of NRS 233B.061. No comments were received formally or informally as to the small business impact of these regulations.
- 4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.**
Not applicable.
- 5. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:**
 - a. Both adverse and beneficial effects;**
No effects.

- b. Both immediate and long-term effects;**
No effects.

- 6. The estimated cost to the agency for enforcement of the adopted regulation.**
None
- 7. A description of any regulation of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**
None.
- 8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**
Not applicable.
- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**
None