

LCB File No. R200-03

PROPOSED REGULATION OF THE DEPARTMENT OF HUMAN  
RESOURCES

SENIOR PRESCRIPTION PROGRAM

General Provisions

**AC 439.800 Short title.** ([NRS 439.655](#)) [NAC 439.800](#) to [439.862](#), inclusive, may be referred to as the senior prescription program.

**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 [439.822](#), inclusive, have the meanings ascribed to them in those sections.

**NAC 439.804 “Applicant” defined.** ([NRS 439.655](#)) “Applicant” means a person who applies to the department to receive ~~[a subsidy for the cost of a policy of health insurance payable by the department]~~ *prescription drug coverage* pursuant to [NRS 439.670](#).

**NAC 439.806 “Contractor” defined.** ([NRS 439.655](#)) “Contractor” means 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.

**NAC 439.808 “Department” defined.** ([NRS 439.655](#)) “Department” means the department of human resources.

**NAC 439.810 “Enrollee” defined.** ([NRS 439.655](#)) “Enrollee” means a person:

1. Who the department has determined is eligible *for prescription drug coverage* ~~[to receive a subsidy for the cost of a policy of health insurance]~~ pursuant to [NRS 439.665](#).~~]; and~~
- ~~—2. To whom a contractor has issued a policy of health insurance.]~~

**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 his designee* to preside at a hearing conducted pursuant to [NAC 439.842](#) to [439.856](#), inclusive.

**NAC 439.813 “Household” defined.** ([NRS 439.655](#)) “Household” means an applicant and the spouse of the applicant.

**NAC 439.814 “Household income” defined.** ([NRS 439.655](#)) “Household income” has the meaning ascribed to it in [NRS 439.640](#).

NAC 439.816 “Income” defined. ([NRS 439.655](#)) “Income” has the meaning ascribed to it in [NRS 439.645](#).

NAC 439.818 “Open enrollment” defined. ([NRS 439.655](#)) “Open enrollment” means a period prescribed by the department during which an application for *prescription drug coverage* ~~[a subsidy]~~ may be filed.

NAC 439.820 “Senior citizen” defined. ([NRS 439.655](#)) “Senior citizen” has the meaning ascribed to it in [NRS 439.650](#).

NAC 439.822 “Subsidy” defined. ([NRS 439.655](#)) “Subsidy” means the amount of money that the department will *may* pay to a contractor *or pay* on behalf of a senior citizen who meets the criteria for receiving a subsidy set forth in [NRS 439.665](#) for ~~[the cost of a policy of health insurance that the contractor issued to the senior citizen]~~ prescription drug coverage.

#### Application and Eligibility

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.

NAC 439.826 Requirements for application; open enrollment; request for waiver of eligibility requirement regarding household income. ([NRS 439.655](#))

1. In addition to meeting the criteria for *prescription drug coverage* ~~[receiving a subsidy]~~ set forth in [NRS 439.665](#), an applicant who wishes to *participate* ~~[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. *An applicant may be required to provide proof of age by submitting a copy of his birth certificate, driver’s license, social security letter, military discharge papers or other appropriate document.*

4. *An applicant may be required to provide proof of income by submitting a copy of Social Security form SSA-1099, wage statements, dividend statements, and/or other sources of income received in the year of application.*

5. *An applicant may be required to submit a copy of his income tax returns.*

6. *An applicant may be required to provide proof of one-year residency by submitting utility bills, a rental agreement, or any other documents that show the applicant maintained residency for the 12 months preceding application.*

7. *An applicant must provide the department with his social security number.*

~~[3.]~~ 8. Each year in which there is money available *from funds appropriated for prescription drug coverage* ~~[for such subsidies in the fund for a healthy Nevada]~~, the department will designate at least one period of open enrollment.

~~[4.]~~ 9. An application shall be deemed received by the department on the date that the completed application is received by the department.

*10. An application is deemed completed only if the form is filled out in full; incomplete applications will be returned unprocessed.*

~~[5.]~~ *11.* If the applicant *or enrollee* requests a waiver of the eligibility requirement regarding household income pursuant to subsection 5 of [NRS 439.665](#) because ~~[the circumstances of the applicant's household have changed as a result]~~ of an illness, 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 documents to satisfy the Department that an extreme financial hardship exists*. The department will consider each request for such a waiver on a case-by-case basis.

**NAC 439.828 Notice of approval or denial of application; notice of approval to contractor; response from contractor. ([NRS 439.655](#))**

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

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

(a) The amount of the subsidy that the department will pay to a contractor on behalf of the applicant; and

~~[(b) That within 60 days after the date of the notice, the applicant must submit an enrollment form to a contractor to obtain a policy of health insurance from the contractor to remain eligible to receive the subsidy]~~ (b) *The amount of the annual household income on which eligibility is based.*~~.]~~

*(c) If the applicant is deemed eligible, but there is insufficient money available from funds appropriated for prescription drug coverage [to pay a subsidy], the notice must state that the applicant has been placed on a waiting list in the order of priority described in NAC 439.830.*

3. If the application is denied, the notice must state:

(a) The reason for the denial;

(b) The procedure for requesting a hearing to review the decision of the department as set forth in [NAC 439.842](#); and

(c) The procedures for a hearing before the department as set forth in [NAC 439.842](#) to [439.856](#), inclusive.

4. ~~[In addition to the requirements set forth in subsection 3, if the application is denied because there is insufficient money available in the fund for a healthy Nevada to pay a subsidy, the notice must state that the applicant has been placed on a waiting list in the order of priority described in NAC 439.830.~~

~~—5.]~~ Within 30 days after the department approves an application, the department will provide to the contractor the name of the applicant whose application was approved. ~~[Within the limit on time set forth in the contract entered into with the department pursuant to NRS 439.665, the contractor shall provide written notice to the department of each policy of health insurance issued by the contractor to an applicant whose application was approved.]~~

**NAC 439.830 Order of priority if money in fund is insufficient; qualifying hardship. ([NRS 439.655](#))**

1. Except as otherwise provided in subsection 2, if there is insufficient money available ~~[in the fund for a healthy Nevada]~~ *from funds appropriated for prescription drug coverage* to pay a subsidy for each applicant, the department will rank the applicants whose applications are approved based on their household income. The applicant with the lowest household income will receive priority over the other applicants. If the household income of two applicants is exactly

the same amount, the applicant whose application was received earlier by the department will receive priority over the other applicant.

2. If the department determines that an applicant has a qualifying hardship, the applicant will receive priority over the other applicants. If two or more applicants have qualifying hardships, the department will determine the order of priority ~~[as]~~ between each of those applicants *based on need*.

3. For the purposes of this section, an applicant shall be deemed to have a qualifying hardship if the applicant submits to the department:

(a) Documentation satisfactory to the department that verifies that the monthly cost of ~~of [for]~~ prescription drugs for the applicant's household is *causing a hardship* ~~[51 percent or more of the monthly household income];~~

(b) A written statement signed by a licensed physician certifying that because of the applicant's need for a prescription drug, the failure of the applicant to take the prescription drug will place the life of the applicant in imminent danger; or

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

**NAC 439.831 Calculation of household income.** ([NRS 439.655](#)) For the purposes of determining whether an applicant satisfies the eligibility requirement set forth in [NRS 439.665](#) regarding household income, the department:

1. Will calculate the monthly household income for the month in which an application is filed with the department pursuant to [NAC 439.826](#) and multiply that number by 12; or

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

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

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

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

*(d) Annual income in the year of application cannot exceed the limits set forth in NRS. 439.665.*

**NAC 439.832 Termination of eligibility: Cause; notification; remedy.** ([NRS 439.655](#))

~~[1. If an applicant whose application was approved fails to submit an enrollment form to a contractor to obtain a policy of health insurance from the contractor within 60 days after the date of a notice of approval provided pursuant to NAC 439.828, the department will provide written notice to the applicant of its intent to terminate his eligibility to receive a subsidy. The notice must be provided within 70 days after the date of the notice of approval provided pursuant to NAC 439.828 and must state that the applicant is not eligible to receive a subsidy unless the applicant:~~

~~— (a) Requests a hearing in the manner set forth in NAC 439.842;~~

~~— (b) Submits proof to the department before the date scheduled for the hearing that he has submitted an enrollment form to a contractor to obtain a policy of health insurance from the contractor; or~~

~~— (c) Establishes good cause for failing to submit an enrollment form to a contractor to obtain such a policy of health insurance.~~

~~— 2. If an applicant fails to take any of the actions listed in subsection 1, the applicant is not eligible to receive a subsidy. The department will send written notice to that effect to the applicant. The notice must also state that the applicant:~~

- ~~—(a) Is no longer eligible to be placed on the waiting list; and~~  
~~—(b) Must reapply during a period of open enrollment if he wishes to be eligible to receive a subsidy in the future.~~  
~~—3. If an applicant is not eligible to receive a subsidy pursuant to subsection 2, the department will grant a subsidy to an applicant on the waiting list in the order of priority described in NAC 439.830. If, at any time, the department determines that there is money available for paying a subsidy in the fund for a healthy Nevada, the department may grant a subsidy to an applicant on the waiting list in the order of priority described in NAC 439.830. If the department grants a subsidy pursuant to this subsection, it will provide written notice to the applicant as set forth in NAC 439.828.]~~

**NAC 439.834 Information and documentation; cooperation required by applicant or enrollee. ([NRS 439.655](#))**

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 continue 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 Medicaid; or
- (g) Eligibility for supplemental security income,

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

**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 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 state agencies.

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 but not limited to, a copy of his income tax returns.*

*4. If the department is unable to obtain the additional documentation, the enrollee will be deemed ineligible to continue to qualify for prescription drug coverage..*

**NAC 439.838 Request for discontinuation of *prescription drug coverage* ~~[subsidy]~~ by enrollee; criteria for ineligibility to continue *prescription drug coverage* ~~[receiving subsidy]~~. (NRS 439.655)**

1. If an enrollee wishes to discontinue receiving *prescription drug coverage* ~~[a subsidy]~~, he must submit a written request to that effect to the department and notify the contractor in writing.

2. If, based on information the department receives, the department reasonably believes that an enrollee no longer meets the criteria for receiving *prescription drug coverage* ~~[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 *prescription drug coverage* include, without limitation, that:

(a) ~~[The enrollee has failed to maintain coverage under a policy of health insurance that a contractor issued to the enrollee;]~~ The enrollee is eligible for Medicaid *with prescription benefits*,

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

(c) 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) *The enrollee failed to maintain residency in the state of Nevada;*

(e) *The enrollee failed to respond timely to the annual eligibility determination or income verification request.*

4. ~~[If the department reasonably believes that an enrollee is ineligible to continue to receive a subsidy based upon the circumstances set forth in paragraph (a) of subsection 3, the notice provided to the enrollee must state that the contractor may terminate coverage as provided in the policy of health insurance under which the enrollee is covered regardless of whether the enrollee requests a hearing before the department.]~~

The department will deem an enrollee to be ineligible to continue *prescription drug coverage* ~~[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 applicant is not eligible to receive prescription drug coverage pursuant to subsection 3, the department will grant prescription drug coverage to an applicant on the waiting list in the order of priority described in NAC 439.830. If, at any time, the department determines that there is money available for paying a subsidy from the funds appropriated for prescription drug coverage, the department may grant coverage to an applicant on the waiting list in the order of priority described in NAC 439.830. If the department grants coverage pursuant to this subsection, it will provide written notice to the applicant as set forth in NAC 439.828*

**NAC 439.840 Notice of determination regarding ineligibility; contents. (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 continue to receive a subsidy. The notice must inform the enrollee:

1. Of the reason that the enrollee is ineligible to continue to receive a subsidy;
2. Of the procedures set forth in [NAC 439.842](#) for requesting a hearing to review the decision of the department;



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

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

### Hearing

#### **NAC 439.842 Request for hearing.** ([NRS 233B.050](#), [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.

#### **NAC 439.844 Reasons for denial of request; request for dismissal.** ([NRS 233B.050](#), [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 in the fund for a healthy Nevada appropriated for prescription drug coverage;

(c) The sole issue being contested is an issue that relates to a determination of the coverage of the 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, 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.

**NAC 439.846 Testimony under oath.** ([NRS 233B.050](#), [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 is about to give in the hearing.

#### **NAC 439.848 Representation; evidence.** ([NRS 233B.050](#), [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 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.

**NAC 439.850 Hearing conducted by telephone. ([NRS 233B.050](#), [439.655](#))**

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 [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.

**NAC 439.852 Retention of record. ([NRS 233B.050](#), [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.

**NAC 439.854 Official recording of hearing; request for copy. ([NRS 233B.050](#), [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 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.



**NAC 439.856 Decision in writing; notification. ([NRS 233B.050](#), [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 authorized representative, if any.

**NAC 439.858 Duties of department if denial of subsidy overturned by hearing officer. ([NRS 233B.050](#), [439.655](#))**

1. If a hearing officer overturns a decision of the department to deny a subsidy or that an enrollee is ineligible to continue to receive a subsidy, the department will:

(a) Pay the amount of the subsidy due the contractor from the date that the applicant or the enrollee appealed the decision of the department to the date that the decision of the hearing officer was issued; and

(b) Reimburse the applicant or the enrollee, upon receipt of proof of payment for any premium paid to the contractor for a policy of health insurance from the date that the applicant or the enrollee appealed the decision of the department to the date that the decision of the hearing officer was issued.

2. The provisions of this section apply regardless of whether the department appeals the decision of the hearing officer.

**Miscellaneous Provisions**

**NAC 439.860 Recoupment of subsidy paid in error. ([NRS 439.655](#))**

1. Except as otherwise provided in subsection 4, the department will pursue all legal remedies for the collection of debt, including, without limitation, those remedies set forth in [chapter 353C of NRS](#), to recoup a subsidy that was paid in error from the contractor or enrollee determined by the department to be responsible for the error, including, without limitation, a subsidy that was paid:

(a) To a contractor who was not entitled to receive payment of the subsidy;

(b) For an enrollee whose application for a subsidy was submitted with fraudulent intent; or

(c) For an enrollee who was otherwise not qualified to receive the subsidy.

2. The department will deposit all money it collects for a subsidy that was paid in error with the state treasurer for credit to the fund for a healthy Nevada.

3. The department may offset any amount due the department from a contractor because the contractor was not entitled to receive payment of a subsidy or was paid an amount in excess of that which he was entitled to receive for payment of a subsidy against any amount owing to that contractor by the department for the payment of any subsidy.

4. The provisions of paragraph (c) of subsection 1 do not apply if the amount of the subsidy that was paid is \$100 or less.

***5. An enrollee deemed to have a subsidy overpayment may request a waiver or reduction of the overpayment based on hardship. The request must be in writing and addressed to the department. The department will consider each request for waiver or reduction of overpayment on a case-by-case basis. A request for a waiver or reduction of an overpayment resulting from submittal of a fraudulent application will not be considered.***

**NAC 439.862 Confidentiality of records.** ([NRS 439.655](#)) 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.