

LCB File No. R157-05

**PROPOSED REGULATION OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES**

**NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Adoption of Disability Rx Regulations
And
Notice of Hearing for the Amendment of Senior Rx Regulations
Department of Health and Human Services**

The Department of Health and Human Services (DHHS) will hold a public hearing by video-conference at 9 a.m. on Monday, October 17, 2005, at the locations listed below. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of Disability Rx regulations and the amendment of Senior Rx regulations that pertain to Chapter 439 of the Nevada Administrative Code.

Nevada Legislature	Grant Sawyer Building	Univ of NV School of Medicine
401 S. Carson St.	555 E. Washington Ave.	701 Walnut St., Griswold Hall
Room 3138	Room 4401	Room 31
Carson City, Nevada	Las Vegas, Nevada	Elko, Nevada

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

1. AB 495, effective July 1, 2005, reserves not more than 2.5% of the Fund for a Healthy Nevada each year for direct expenditure by the Department to subsidize any portion of the cost of providing prescription drugs and pharmaceutical services to persons with disabilities. Regulations considered at this hearing will govern this program, called Disability Rx. Implementation is set for January 1, 2006. Cost to the State is included in the legislatively approved budget.
2. AB 524, effective June 1, 2005, directs the Department to coordinate each state pharmaceutical or medical program with Medicare Part D in a way that maximizes federal benefits and minimizes out-of-pocket expenses and disruption to eligibility and enrollment. Amendments to Senior Rx regulations reflect that mandate. Implementation is set for January 1, 2006. Cost to the State is included in the legislatively approved budget.

Persons wishing to comment upon the proposed action of the Department of Health and Human Services may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to: Senior Rx and Disability Rx Program Manager, 1716 E. College Parkway, Suite 113, Carson City, NV 89706. Written submissions must be received by the Department of Health and Human Services on or before 5 p.m. Thursday, October 13, 2005. If no person who is directly affected by the proposed action appears to request time to make an

oral presentation, the Department of Health and Human Services may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted/amended will be on file at the State Library, 100 Stewart St., Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted/amended will be available at the Department of Health and Human Services, 505 E. King St., Room 600, Carson City, Nevada, and at the Senior Rx and Disability Rx offices, 1716 E. College Parkway, Suite 113, Carson City, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. This does not apply to a public body subject to the Open Meeting Law.

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

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

- Director's Office of the Department of Health and Human Services, 505 E. King St., Main Lobby and Room 600, Carson City, Nevada.
- Nevada State Library, 100 Stewart St., Carson City, Nevada.
- Washoe County Library, 301 S. Center St., Reno, Nevada.
- Grant Sawyer State Office Building, 555 E. Washington Ave., Room 1001, Las Vegas, Nevada.
- Clark County Public Library, 833 Las Vegas Blvd., Las Vegas, Nevada.

**PROPOSED REGULATION OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES**

Draft – Disability Rx Regulations – September 7, 2005

Chapter 439 of NAC

Short title. (NRS 439.---) NAC -- to ---, inclusive, may be referred to as the disability prescription program (Disability Rx).

Definitions. (NRS 439.---) As used in NAC -- to ---, inclusive, unless the context otherwise requires, the words and terms defined in NAC --- to --- inclusive, have the meanings ascribed to them in those sections.

“Applicant” defined. (NRS 439.---) “Applicant” means a person who applies to the Department to receive a subsidy for coverage for prescription drugs and pharmaceutical services pursuant to NRS 439.---.

“Contractor” defined. (NRS 439.---) “Contractor” means a private insurer with whom the Department has entered into a contract pursuant to NRS 439.--- 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.

“Coordination of Benefits” defined (NRS 439 ---) “Coordination of Benefits” (aka Wrap-Around Coverage) means the coordination of Disability Rx with Medicare Part D benefits in a manner that maximizes coverage of prescription drugs and pharmaceutical services, minimizes disruptions in enrollment and eligibility for state programs, minimizes out-of-pocket expenses for enrollees, and maximizes federal funding.

“Department” defined. (NRS 439.---) “Department” means the Department of Health and Human Services.

“Disability” defined. (NRS 439.---) “Disability” has the meaning ascribed to it in NRS 426.068.

“Enrollee” defined. (NRS 439.---) “Enrollee” means a person who the Department has determined is eligible to receive a subsidy for coverage for prescription drugs and pharmaceutical services pursuant to NRS 439.---.

“Hearing officer” defined. (NRS 439.---) “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 --- to ---, inclusive.*

“Household” defined. (NRS 439.---) “Household” means an applicant and the spouse of the applicant.

“Household income” defined. (NRS 439.---) “Household income” has the meaning ascribed to it in NRS 427A.480.

“Income” defined. (NRS 439.---) “Income” has the meaning ascribed to it in NRS 427A.485.

“Medicare Advantage Plan With Prescription Drug Coverage” (MA-PD) “Medicare Advantage Plan With Prescription Drug Coverage” (MA-PD) means health benefits coverage, including qualified prescription drug coverage, offered under a policy or contract with Medicare by a Medicare Advantage organization pursuant to 42 CFR 423.4 and as defined in 42 CFR 422.2.

“Medicare Part D” defined. “Medicare Part D” refers to the federal prescription drug benefit established pursuant to 42 CFR 423.

“Open enrollment” defined. (NRS 439.---) “Open enrollment” means a period prescribed by the Department during which an application for a subsidy may be filed.

“Prescription Drug Plan” (PDP) “Prescription Drug Plan” (PDP) means prescription drug coverage that is offered under a policy, contract, or plan that has been approved as specified in 42 CFR 423.272 and that is offered by a PDP sponsor (certified non-governmental entity) that has a contract with the Centers for Medicare and Medicaid Services (CMS) that meets the contract requirements under subpart K of 42 CFR 423.

“Subsidy” defined. (NRS 439.---) “Subsidy” means the amount of money that the Department may pay to a contractor, to a PDP or MA-PD, or to Nevada Medicaid on behalf of a person with disabilities who meets the criteria for receiving a subsidy set forth in NRS 439.--- for coverage for prescription drugs and pharmaceutical services.

“Traditional Disability Rx” defined. “Traditional Disability Rx” refers to the prescription benefits available to eligible applicants who are not also eligible for Medicare Part D.

Types of Subsidies

Traditional Disability Rx. (NRS 439.---) Persons with disabilities who are not eligible for Medicare Part D may be eligible for traditional benefits under Disability Rx. Traditional benefits are based on funding availability and contractual agreements with a pharmacy benefit manager selected by the Department through a formal bidding process. Disability, income, and residency requirements are set forth in NAC ---.

Coordination of Benefits/Wrap-Around Coverage (NRS 439.---) Persons with disabilities who are eligible for Medicare Part D may be eligible for State assistance with out-of-pocket expenses. Wrap-around coverage is based on funding availability and legislative approval of state subsidies that are intended to maximize federal benefits and, to the extent possible,

minimize out-of-pocket expenses. Eligibility for wrap-around coverage is based on requirements that are similar, but not identical, to requirements for Traditional Disability Rx.

- 1. Eligible applicants must be between the ages of 18 and 61, have a verifiable disability, and have an annual income that is less than the amount set forth in NRS 439.---*
- 2. Applicants who are eligible for Medicare Part D are required to enroll in Medicare Part D and a Prescription Drug Plan (PDP) or Medicare Advantage Plan with Prescription Drug Coverage (MA-PD).*
- 3. Applicants who are eligible for any federal subsidy under Medicare Part D are required to apply for and utilize such subsidies before requesting wrap-around coverage through Disability Rx.*
- 4. Applicants who are not eligible for full Medicaid in the State of Nevada must meet a one-year residency requirement as set forth in NRS 439.---*
- 5. Applicants who are enrolled in full Medicaid in the State of Nevada are not required to meet the one-year residency requirement for subsidies approved by the Legislature. This provision is in accordance with NRS 439.---, which requires the Department to minimize disruption in the eligibility of persons in this State for state and federal programs that provide coverage for prescription drugs and pharmaceutical services. Dependent upon the technical aspects of coordination of benefits, the Department may not require these applicants to actually enroll in the Disability Rx program in order to receive state wrap-around coverage.*

Application and Eligibility

Request for information. (NRS 439.---) 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.

Requirements for application; open enrollment; request for waiver of eligibility requirement regarding household income. (NRS 439.---

- 1. In addition to meeting the criteria for receiving a subsidy set forth in NRS 439.---, 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.---*
- 3. The Department may require an applicant to provide, with his application, proof of his:*
 - (a) Disability by submitting 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, and/or other appropriate documentation satisfactory to the Department including, but not limited to, a physicians' statement;*
 - (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, 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 information about his status with regard to Medicare Part D and answer related questions.*
 - (a) *Each applicant must declare whether he is eligible for and enrolled in Medicare Part D and either a PDP or MA-PD.*
 - (b) *If enrolled in a Medicare Part D PDP or MA-PD, the applicant must provide the name of the plan.*
 - (c) *Each applicant eligible for Medicare Part D must avail himself of these benefits and apply for any applicable federal low-income subsidies before seeking additional assistance through Disability Rx.*
 - (c) *If not enrolled in Medicare Part D because the applicant missed the Medicare open enrollment period, the applicant must state the reason. Dependent upon the circumstances, he may be considered for temporary enrollment in the Traditional Disability Rx program. The applicant must then enroll in Medicare Part D and a PDP or MA-PD at the next available opportunity or be terminated from Disability Rx.*
 - (d) *By checking “yes” or “no” in the appropriate place, the applicant must decide whether to grant Disability Rx 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 prior to Medicare Part D implementation on January 1, 2005, or during subsequent open enrollment periods if not satisfied with the assignment made by Disability Rx.*
 - 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 (NRS 439.---) because of an illness 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 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.*

Notice of approval or denial of application; notice of approval to contractor. (NRS 439.---)

- 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, an MA-PD or PDP, or to 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 ---.*
- 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 ---; and*
 - (c) The procedures for a hearing before the Department as set forth in NAC --- to ---, inclusive.*
- 4. Within 30 days after the Department approves an application, the Department will provide to the contractor, and/or other entities necessary to ensure appropriate coordination of benefits, the name of the new enrollee whose application was approved.*

Order of priority if there is insufficient money available; qualifying hardship; granting of subsidy to applicant on waiting list if sufficient money becomes available. (NRS 439.---)

- 1. Except as otherwise provided in subsection 2, 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 makes access to assistance with the cost of prescription drugs emergent, 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 (actual income minus medical costs or the cost of another qualifying hardship).*
- 4. If, at any time, the Department determines that there is sufficient money available from the amount allocated for subsidies by the Department for more applicants, the Department may grant a subsidy to an applicant on the waiting list in the order of priority described in this section. If the Department grants a subsidy pursuant to this subsection, the Department will provide written notice to the applicant in the manner set forth in NAC ---.*
- 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 and/or out-of-pocket medical expenses 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.*

Calculation of household income; eligibility for subsidy if maximum household income exceeded. (NRS 439.---)

- 1. For the purposes of determining whether an applicant satisfies the eligibility requirement set forth in NRS 439.--- 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 --- and multiply that number by 12; or*
 - (b) May, if the household income fluctuates from month to month:*
 - (1) Add the monthly household income over a period of at least 2 months;*
 - (2) Divide the sum calculated pursuant to subparagraph (1) by the number of months within the period described in subparagraph (1); and*
 - (3) Multiply the quotient calculated pursuant to subparagraph (2) by 12.*
- 2. Except as otherwise provided in subsection 8 of NAC ---, 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.--- The year in which the applicant submits his application is tied neither to the calendar year nor the fiscal year; rather, it begins with the month that the application is submitted and carries forward through the succeeding 12 months.*

Information and documentation: Cooperation with Department; updating. (NRS 439.---)

- 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 --- 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.*

Continuing eligibility; annual review. (NRS 439.---)

- 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.*

Discontinuation of subsidy to enrollee: Request by enrollee; ineligibility of enrollee; granting of subsidy to applicant on waiting list if enrollee determined ineligible. (NRS 439.---)

- 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 --- 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 declines to enroll in it or in a PDP or MA-PD, and/or declines to apply for any federal subsidies available to him;*
 - (b) The enrollee is eligible for coverage for prescription drugs and pharmaceutical services through Medicare Part D and qualifies for federal low-income subsidy as a "Very Low-Income Beneficiary";*
 - (c) The household income of the enrollee exceeds the maximum household income set forth in NRS 439.---;*
 - (d) The enrollee knowingly provided incorrect information on the application that he filed with the Department pursuant to NAC --- 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 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--.

Notice to enrollee of determination regarding ineligibility. (NRS 439.---) If the Department determines that an enrollee no longer meets the criteria for receiving a subsidy set forth in this chapter and Chapter 439 of NRS, it will notify the enrollee in writing that the enrollee is ineligible to receive a subsidy. The notice must inform the enrollee:

- 1. Of the reason that the enrollee is ineligible to receive a subsidy;*
- 2. Of the procedures set forth in NAC --- 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*

Hearing

Request for hearing. (NRS 439.---)

- 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.*

Continuation of benefits

- 1. Benefits of an existing enrollee may be continued pending the outcome of the hearing if the enrollee requests such continuation within 10 days of 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 ---.*
- 3. If benefits are continued and the decision of the hearing officer upholds the Department's decision, the Department may require the enrollee to reimburse the Department for benefits paid on the enrollee's behalf.*

Reasons for denial of request; request for dismissal. (NRS 439.---)

- 1. The Department will deny a request for a hearing received pursuant to NAC --- if:
 - (a) The sole issue being contested is an issue that may only be resolved by amending the provisions of NRS 439.--- to 439.---, inclusive;*
 - (b) The sole issue being contested is that the Department denied an application for a subsidy, discontinued paying a subsidy or reduced the amount of a subsidy, if that action by the Department was based only upon the limits of the money available from the amount allocated for subsidies by the Department;*
 - (c) The sole issue being contested is an issue that relates to a determination of the coverage of a policy of health insurance under which an enrollee is covered and the enrollee has failed to complete a process for resolving disputes established by the contractor; or*
 - (d) The request is not received by the Department within the limit on time set forth in NAC--.**

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.*

Testimony under oath. (NRS 439.---) All testimony to be considered in a hearing must be taken under oath. Except as otherwise provided in NAC ---, 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.

Representation; evidence. (NRS 439.---)

1. *Except as otherwise provided in NAC ---, 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.*

Hearing conducted by telephone. (NRS 439.---)

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 --- 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.*

Retention of record. (NRS 439.---)

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 ---, after the hearing; and*
- (d) *The decision of the hearing officer.*

Official recording of hearing; request for copy. (NRS 439.---)

- 1. *The hearing officer presiding over a hearing conducted pursuant to NAC --- to ---, 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.*

Decision of hearing officer. (NRS 439.---)

- 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.*

Duties of Department if decision of Department is overturned by hearing officer. (NRS 439.---)

- 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 enrollee for the actual out-of-pocket prescription expenses 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; and*
 - (b) *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.*

Miscellaneous Provisions

Recoupment of subsidy paid in error; request by enrollee for waiver or reduction in amount required to be returned. (NRS 439.---)

- 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.*

Confidentiality of records. (NRS 439.---) 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 1993 (HIPAA). Any use or release of protected health information must comply with the Department of Health and Human Services Director's Office HIPAA Privacy Manual, which reflects the provisions of 45 CFR 164.

Draft Amendments – September 14, 2005 – Changes in *Bold/Italic*

Senior Rx Regulations – NAC 439.800 – 439.862

NAC 439.800 Short title. (NRS 439.655) NAC 439.800 to 439.862, inclusive, may be referred to as the senior prescription program (*Senior Rx*).

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 coverage for prescription drugs and pharmaceutical services 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.

“Coordination of Benefits” defined (NRS 439 ---) “Coordination of Benefits” (aka Wrap-Around Coverage) means the coordination of Senior Rx with Medicare Part D benefits in a manner that maximizes coverage of prescription drugs and pharmaceutical services, minimizes disruptions in enrollment and eligibility for state programs, minimizes out-of-pocket expenses for enrollees, and maximizes federal funding.

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

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

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.

“Medicare Advantage Plan With Prescription Drug Coverage” (MA-PD) “Medicare Advantage Plan With Prescription Drug Coverage” (MA-PD) means health benefits coverage, including qualified prescription drug coverage, offered under a policy or contract with Medicare by a Medicare Advantage organization pursuant to 42 CFR 423.4 and as defined in 42 CFR 422.2.

“Medicare Part D” defined. “Medicare Part D” refers to the federal prescription drug benefit established pursuant to 42 CFR 423.

NAC 439.818 “Open enrollment” defined. (NRS 439.655) “Open enrollment” means a period prescribed by the Department during which an application for a subsidy may be filed.

“Prescription Drug Plan” (PDP) “Prescription Drug Plan” (PDP) means prescription drug coverage that is offered under a policy, contract, or plan that has been approved as specified in 42 CFR 423.272 and that is offered by a PDP sponsor (certified non-governmental entity) that has a contract with the Centers for Medicare and Medicaid Services (CMS) that meets the contract requirements under subpart K of 42 CFR 423.

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 may pay to a contractor, *to a PDP or MA-PD, or to Nevada Medicaid* on behalf of a senior citizen who meets the criteria for receiving a subsidy set forth in NRS 439.665 for coverage for prescription drugs and pharmaceutical services.

“Traditional Senior Rx” defined. “Traditional Senior Rx” refers to the prescription benefits available to eligible applicants who are not also eligible for Medicare Part D.

Types of Subsidies

Traditional Senior Rx. (NRS 439.---) Senior citizens who are not eligible for Medicare Part D may be eligible for traditional benefits under Senior Rx. Traditional benefits are based on funding availability and contractual agreements with a pharmacy benefit manager selected by the Department through a formal bidding process. Age, income, and residency requirements are set forth in NAC ---.

Coordination of Benefits/Wrap-Around Coverage (NRS 439.---) Senior citizens who are eligible for Medicare Part D may be eligible for State assistance with out-of-pocket expenses. Wrap-around coverage is based on funding availability and legislative approval of state subsidies that are intended to maximize federal benefits and, to the extent possible, minimize out-of-pocket expenses. Eligibility for wrap-around coverage is based on requirements that are similar, but not identical, to requirements for Traditional Senior Rx.

- 1. Eligible applicants must be at least 62 years of age and have an annual income that is less than the amount set forth in NRS 439.---.*
- 2. Applicants who are eligible for Medicare Part D are required to enroll in Medicare Part D and a Prescription Drug Plan (PDP) or Medicare Advantage Plan with Prescription Drug Coverage (MA-PD).*
- 3. Applicants who are eligible for any federal subsidy under Medicare Part D are required to apply for and utilize such subsidies before requesting wrap-around coverage through Senior Rx.*
- 4. Applicants who are not eligible for full Medicaid in the State of Nevada must meet a one-year residency requirement as set forth in NRS 439.---.*
- 5. Applicants who are enrolled in full Medicaid in the State of Nevada are not required to meet the one-year residency requirement for subsidies approved by the Legislature, if any. This provision is in accordance with NRS 439.---, which requires the Department to*

minimize disruption in the eligibility of persons in this State for state and federal programs that provide coverage for prescription drugs and pharmaceutical services. Dependent upon the technical aspects of coordination of benefits, the Department may not require these applicants to actually enroll in the Senior Rx program in order to receive state wrap-around coverage, if any.

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 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;

(c) Assets by submitting a copy of income tax returns, copies of savings account statements, 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 information about his status with regard to Medicare Part D and answer related questions.

(a) Each applicant must declare whether he is eligible for and enrolled in Medicare Part D and either a PDP or MA-PD.

(b) If enrolled in a Medicare Part D PDP or MA-PD, the applicant must provide the name of the plan.

(c) Each applicant eligible for Medicare Part D must avail himself of these benefits and apply for any applicable federal low-income subsidies before seeking additional assistance through Senior Rx.

(c) If not enrolled in Medicare Part D because the applicant missed the Medicare open enrollment period, the applicant must state the reason. Dependent upon the

circumstances, he may be considered for temporary enrollment in the Traditional Senior Rx program. The applicant must then enroll in Medicare Part D and a PDP or MA-PD at the next available opportunity or be terminated from Senior Rx.

(d) By checking “yes” or “no” in the appropriate place, the applicant must decide whether to grant Senior Rx 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 prior to Medicare Part D implementation on January 1, 2005, or during subsequent open enrollment periods if not satisfied with the assignment made by Senior Rx.

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 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.

NAC 439.828 Notice of approval or denial of application; notice of approval to 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, *an MA-PD or PDP, or to 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, *and/or other entities necessary to ensure appropriate coordination of benefits*, the name of the *new enrollee* whose application was approved.

NAC 439.830 Order of priority if there is insufficient money available; qualifying hardship; granting of subsidy to applicant on waiting list if sufficient money becomes available. (NRS 439.655)

1. Except as otherwise provided in subsection 2, 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 (actual income minus medical costs or the cost of another qualifying hardship).

4. If, at any time, the Department determines that there is sufficient money available from the amount allocated for subsidies by the Department for more applicants, the Department may grant a subsidy to an applicant on the waiting list in the order of priority described in this section. If the Department grants a subsidy pursuant to this subsection, the Department will provide written notice to the applicant in the manner set forth in NAC 439.828.

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 *and/or out-of-pocket medical expenses* 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.

NAC 439.831 Calculation of household income; eligibility for subsidy if maximum household income exceeded. (NRS 439.655)

1. For the purposes of determining whether an applicant satisfies the eligibility requirement set forth in NRS 439.665 regarding household income, the Department:

(a) Will calculate the monthly household income for the month in which an application is filed with the Department pursuant to NAC 439.826 and multiply that number by 12; or

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

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

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

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

2. Except as otherwise provided in subsection 8 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. *The year in which the applicant submits his application is tied neither to the calendar year nor the fiscal*

year; rather, it begins with the month that the application is submitted and carries forward through the succeeding 12 months.

NAC 439.834 Information and documentation: Cooperation with Department; updating. (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 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

(i) 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 *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.

NAC 439.838 Discontinuation of subsidy to enrollee: Request by enrollee; ineligibility of enrollee; granting of subsidy to applicant on waiting list if enrollee determined ineligible. (NRS 439.655)

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 declines to enroll in it or in a PDP or MA-PD, and/or declines to apply for any federal subsidies available to him;

(b) The enrollee is eligible for coverage for prescription drugs and pharmaceutical services through Medicare Part D and qualifies for federal low-income subsidy as a “Very Low-Income Beneficiary”;

(c) The household income of the enrollee exceeds the maximum household income set forth in NRS 439.665;

(d) 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;

(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 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.

NAC 439.840 Notice to enrollee of determination regarding ineligibility. (NRS 439.655)

If the Department determines that an enrollee no longer meets the criteria for receiving a subsidy set forth in this chapter and chapter 439 of NRS, it will notify the enrollee in writing that the enrollee is ineligible to receive a subsidy. The notice must inform the enrollee:

1. Of the reason that the enrollee is ineligible to receive a subsidy;
2. Of the procedures set forth in NAC 439.842 for requesting a hearing to review the decision of the Department;
3. Of any free or inexpensive legal services available in the area and must provide telephone numbers of the organizations providing those services; and

Hearing

NAC 439.842 Request for hearing. (NRS 439.655)

1. An applicant or enrollee who is aggrieved by a decision of the Department concerning a subsidy and who wishes to have a hearing before the Department must file a written request for a hearing with the Department within 30 days after the date of the notice of the decision from the Department.

2. The Department will schedule a hearing within 45 days after it receives the request for a hearing.

NAC 439.--- Continuation of benefits

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

5. The Department will deny a request for continuation of benefits if the request for a hearing is also denied pursuant to NAC 439.844.

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

NAC 439.844 Reasons for denial of request; request for dismissal. (NRS 439.655)

1. The Department will deny a request for a hearing received pursuant to NAC 439.842 if:

(a) The sole issue being contested is an issue that may only be resolved by amending the provisions of NRS 439.635 to 439.690, inclusive;

(b) The sole issue being contested is that the Department denied an application for a subsidy, discontinued paying a subsidy or reduced the amount of a subsidy, if that action by the Department was based only upon the limits of the money available from the amount allocated for subsidies by the Department;

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

(d) The request is not received by the Department within the limit on time set forth in NAC 439.842.

2. If a person who filed a request for a hearing wishes to have the hearing dismissed, 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 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 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 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 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 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 of hearing officer. (NRS 439.655)

1. The decision of a hearing officer must be in writing and be based exclusively on evidence presented at the hearing or, if requested by the hearing officer pursuant to NAC 439.848, after the hearing.

2. Within 30 days after the date of the hearing, the Department will send the decision of the hearing officer by certified mail to the applicant or enrollee and to his authorized representative, if any.

NAC 439.858 Duties of Department if decision of Department is overturned by hearing officer. (NRS 439.655)

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

(a) *Reimburse the applicant or enrollee for the actual out-of-pocket prescription expenses 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; and

(b) 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.

Miscellaneous Provisions

NAC 439.860 Recoupment of subsidy paid in error; request by enrollee for waiver or reduction in amount required to be returned. (NRS 439.655)

1. Except as otherwise provided in subsections 4 and 5, the Department will pursue all legal remedies for the collection of debt, including, without limitation, those remedies set forth in chapter 353C of NRS, to recoup a subsidy that was paid in error from the contractor or enrollee determined by the Department to be responsible for the error, including, without limitation, a subsidy that was paid:

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

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

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

2. The Department will deposit all money it collects for a subsidy that was paid in error with the State Treasurer for credit to the Fund for a Healthy Nevada.

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

NAC 439.862 Confidentiality of records. (NRS 439.655) The records of the Department relating to an applicant or enrollee are confidential, *and are considered protected health information under the Health Insurance Portability and Accountability Act of 1993 (HIPAA). Any use or release of protected health information must comply with the Department of Health and Human Services Director's Office HIPAA Privacy Manual, which reflects the provisions of 45 CFR 164.*