

**PROPOSED REGULATION OF THE DEPARTMENT OF
EMPLOYMENT, TRAINING AND REHABILITATION**

NOTE: DELETIONS ARE INDICATED BY STRIKETHROUGH (-) AND ADDITIONS ARE INDICATED BY BOLD-ITALIC PRINT

Chapter 426 of NAC is hereby amended by adding thereto the provisions set forth as sections 1 to 18, inclusive, of this regulation.

Section 1: Any person applying for or receiving vocational rehabilitation who is aggrieved by any action of the bureau with respect to him is entitled to a fair hearing or voluntary mediation as set forth herein.

Sec. 2: A person applying for, or receiving vocational rehabilitation, who disagrees with a decision of the bureau may, at his sole discretion, contact the Client Assistance Program as specified in 29 U.S.C. § 732(g)(3)(A). If the person applying for, or receiving vocational rehabilitation utilizes the services of the Client Assistance Program as specified in 29 U.S.C. § 732(g)(3)(A), he may also, in his sole discretion, within 15 working days after he receives notice of the decision giving rise to his complaint, or within 15 working days after the event giving rise to the disagreement, whichever is earlier, request in writing through registered or certified mail to the bureau's chief of program services or his assigned counselor, alternative dispute resolution through the Client Assistance Program as specified in 29 U.S.C. § 732(g)(3)(A). If such a request for alternative dispute resolution is received in writing by the bureau's chief of program services or the person's assigned counselor, within the timelines specified herein, the timelines specified in sections 2 through 18, inclusive shall be stayed until either party notifies the other in writing that they do not desire to continue in alternative dispute resolution under the Client Assistance Program. Once such notification is given in writing by either party, the person applying for, or receiving vocational rehabilitation will have 15 working days to make a written request for review by the bureau's chief of program services as specified in section 3. Nothing herein shall prevent a person applying for or receiving vocational rehabilitation to immediately request a review by the bureau's chief of program services as specified in section 3.

Sec. 3: A person applying for, or receiving vocational rehabilitation, who disagrees with a decision of the bureau may, within working 15 days after he receives notice of the decision, or within 15 working days after the event giving rise to the disagreement, file a written complaint with the bureau's chief of program services by registered or certified mail.

Sec. 4: The bureau's chief of program services:

(a) May require the complaining party to submit, in writing, evidence to support the complaint;

(b) Shall review the complaint in an informal procedure, where no witnesses or representatives of the parties are present; and

(c) Shall render his decision in writing as promptly as possible after he receives the complaint and/or additional evidence and shall serve the decision, which shall include findings of facts and conclusions of law, on the complaining party by registered or certified mail.

Sec. 5: *If the complaining party is dissatisfied with the decision of the bureau's chief of program services, he may request mediation pursuant to 29 U.S.C § 722(c)(4) by serving a written request through registered or certified mail on the bureau's chief of program services within 10 working days of receipt of the decision specified in section 4(c). Upon receipt of a request for mediation, the bureau's chief of program services shall promptly render a written decision as to whether or not he will agree to mediation. If the bureau's chief of program services agrees to mediation, any and all time lines for the complaining party to pursue a fair hearing shall be stayed during the mediation process. Either party may inform the other in writing by certified mail that they do not desire to continue with the mediation process.*

Sec. 6: *Within 10 working days after service of the decision of the bureau's chief of program services as set forth in section 4(c), or within 10 working days after either party notifies the other in writing that mediation has not been successful as specified in section 5, or that the bureau will not agree to mediation as set forth in section 5, the complaining party may request a fair hearing in writing by requesting such a hearing from the administrator of the division by registered or certified mail.*

Sec. 7: *After receiving a request for a fair hearing as specified in section 6, the administrator of the division shall promptly forward the request to the chief hearing officer of the Department of Administrations Hearing Divisions for assignment to a neutral hearing officer.*

Sec. 8: *The hearing officer shall conduct a fair hearing pursuant to the provisions of NRS chapter 233B within 30 days of receipt of the request from the bureau's chief of program services at a time and place which is reasonable for the parties.*

Sec. 9: *The parties may stipulate in writing to continue the fair hearing.*

Sec. 10: *The hearing officer may require that the parties to a fair hearing provide pre-hearing statements.*

Sec. 11: *The complaining party may be represented by an attorney or other designated representative at the fair hearing.*

Sec. 12: *Not later than 30 days after the fair hearing, the hearing officer shall issue a written decision meeting the requirements of NRS chapter 233B.*

Sec. 13: *The decision of the hearing officer shall be final for purposes of judicial review and any appeal by either party must be filed within the timelines established by NRS 233B.130(2)(c).*

Sec. 14: *The hearing officer is not bound by the technical rules of evidence. Decisions concerning the admissibility of evidence must be made in accordance with NRS 233B.123.*

Sec. 15: *Each party must be granted the opportunity to present his case, examine and cross-examine witnesses, and rebut evidence. The complaining party shall present his case first, followed by the case of the bureau, followed by such rebuttal evidence as is allowed by the hearing officer.*

Sec. 16: *Unless otherwise provided by statute or regulation, a complaint may be resolved by, mutual agreement of the parties, settlement, consent decree or default of a party.*

Sec. 17: *Transcript of proceedings. Upon request of a party, the bureau will provide a transcript of the oral proceedings of the fair hearing. The bureau may require payment of the cost incurred for providing the transcript unless prohibited by federal or state law. The bureau shall not be required to produce or create a transcript of proceedings unless requested by the claimant as set forth in this section, or unless required to by law.*

Sec. 18: *The record of the fair hearing, on any appeal or other judicial action, must include:*

- (a). The transcript of the oral testimony provided at the hearing;*
- (b). All pleadings and motions filed by the parties;*
- (c). Any rulings made by the hearing officer, including rulings on offers of proof;*
- (d). Evidence that was admitted;*
- (e). Facts which were officially noticed by the hearing officer; and*
- (f). Any other decision, opinion or report of the hearing officer.*

NAC 426.080 is hereby amended to read as follows:

NAC 426.080 Creation; election and term of members; adoption and contents of bylaws; annual meeting. (NRS 426.560, 426.670)

1. The Nevada committee of blind vendors is hereby created. The committee consists of operators who are in good standing with the bureau and are elected in the manner prescribed in the bylaws of the committee.

2. The operators in this state shall adopt bylaws to govern the committee. The adoption must be by a majority of the operators who are present at the meeting to adopt the bylaws and vote upon the adoption. The bylaws are not effective until they are approved by the chief. The bylaws must prescribe:

- (a) The number of members on the committee;
- (b) The method of electing the members;
- (c) The method of selection of the officers of the committee;
- (d) Other matters essential to the proper functioning of the committee; and
- (e) The procedure for the annual meeting of the committee.

3. The members of the committee are elected each even-numbered year by all the operators who are present at the meeting to elect members and vote upon the election of members. The members serve a term of 2 years, and until their successors have been elected and the bureau determines that they are qualified to serve.

4. The committee shall:

(a) Hold a meeting annually ~~[-]~~, *or more frequently if necessary.*

(b) Abide by the provisions of chapter 241 of NRS.

NAC 426.085 is hereby amended to read as follows:

NAC 426.085 Duties. (NRS 426.560, 426.670) The Nevada committee of blind vendors shall:

1. Participate with the bureau in the development of policy and make recommendations on issues which affect the program for vending facilities administered by the bureau;

2. Receive grievances from operators and assist the operators in the presentation of those grievances to the bureau;

Participate with the bureau in a program which is designed to transfer and promote operators;

3. Participate in the development of training programs for operators; ~~[-and]~~

4. Sponsor meetings to provide useful information to operators ~~[-]~~; *and*

5. Make recommendations to the bureau regarding disciplinary actions for operators.

NAC 426.180 is hereby amended to read as follows:

NAC 426.180 Operating agreement: Purpose; tender of agreement; signature; termination or suspension. (NRS 426.560, 426.670)

1. An operating agreement grants to the operator, for a specified period, the right to use a vending facility and the equipment included with the vending facility.

2. The bureau will offer an operating agreement and all documents relating to the agreement to a person who has been selected to operate a vending facility. The person who is selected must sign the operating agreement before he takes possession of the vending facility.

3. Except as otherwise provided in this subsection, an operating agreement terminates automatically upon expiration of the period specified in the agreement. The bureau may, in accordance with NAC 426.145, ~~[-terminate]~~ *suspend* an operating agreement *for up to 90 days or terminate the agreement* before the expiration of the specified period if the operator fails to comply with the provisions of the operating agreement, chapter 426 of NRS or NAC 426.010 to 426.500, inclusive. ~~[-The bureau may suspend an operating agreement for 90 days if an operator has made continuous clerical errors on reports that he is required to submit to the bureau. The]~~ *If the bureau takes action to suspend the operating agreement, the operator may continue to operate his vending facility during the 90-day period* ~~[-, but shall cooperate with the bureau to improve the reports which he submits.]~~ *if the bureau determines that the operator is actively working with the bureau to implement a corrective plan of action.*

4. If the bureau finds it necessary to suspend an operating agreement for two separate periods of suspension, the bureau may revoke the operator's license. Nothing herein shall be construed to prevent the bureau from terminating the operating agreement for a first offense should circumstances warrant such an action.

NAC 426.230 is hereby amended to read as follows:

NAC 426.230 Money to be set aside from net proceeds; waiver or reduction. ([NRS 426.560, 426.670](#))

1. To provide the money that is necessary for the administration of the program for vending facilities, each operator shall set aside money, to be deposited by the bureau in the business enterprise account for the blind, from the monthly net proceeds of his business in accordance with the following table:

Net Proceeds of Business	Amount to Be Set Aside
\$0 to \$1,100	2 percent of net proceeds
1,101 to 1,350	\$25 plus 5 percent of net proceeds over \$1,100
1,351 to 1,800	\$35 plus 10 percent of net proceeds over \$1,350
1,801 to 2,250	\$80 plus 15 percent of net proceeds over \$1,800
2,251 to 2,800	\$150 plus 20 percent of net proceeds over \$2,250
2,801 to 3,600	\$260 plus 30 percent of net proceeds over \$2,800
3,601 to 5,000	\$500 plus 40 percent of net proceeds over \$3,600
Over \$5,000	\$1,045 plus 50 percent of net proceeds over \$5,000

<i>\$0 to 999</i>	<i>1 percent of net proceeds</i>
<i>1,000 to 1,499</i>	<i>\$15 plus 2 percent of net proceeds</i>
<i>1,500 to 2,099</i>	<i>\$25 plus 5 percent of net proceeds</i>
<i>2,100 to 2,799</i>	<i>\$55 plus 10 percent of net proceeds</i>
<i>2,800 to 3,399</i>	<i>\$125 plus 15 percent of net proceeds</i>
<i>3,400 to 4,499</i>	<i>\$215 plus 20% of net proceeds</i>
<i>4,500 to 5,699</i>	<i>\$435 plus 25% of net proceeds</i>
<i>5,700 to 6,899</i>	<i>\$735 plus 30% of net proceeds</i>
<i>6,900 to 8,999</i>	<i>\$1,095 plus 35 percent of net proceeds</i>
<i>9,000 to 13,999</i>	<i>\$2,000 plus 40 % of net proceeds</i>
<i>14,000 to 19,999</i>	<i>\$4,000 plus 45 percent of net proceeds</i>
<i>Over \$20,000</i>	<i>\$7,000 plus 50 percent of net proceeds</i>

2. The chief, after consultation with the Nevada committee of blind vendors, shall periodically review the table in subsection 1.

3. If the net proceeds are less than zero, the excess of expenses over income may be carried forward for up to the two succeeding months and deducted from those months' net proceeds for the purpose of calculating set aside due. With prior written approval from the bureau, the carry forward period as specified herein, may be extended beyond two succeeding months.

~~3.~~ 4. The chief, after consultation with the Nevada committee of blind vendors, may waive or reduce the amount of money required to be set aside pursuant to subsection 1 for a time prescribed by the chief. If the chief, after consultation with the Nevada committee of blind vendors, decides to waive or reduce this amount of money, the chief shall notify each operator for whom the amount is being waived or reduced on or before the last day of the month for which the amount is waived or reduced.

NAC 426.235 is hereby amended to read as follows:

NAC 426.235 Advancement of money: Purposes; repayment. (NRS 426.560, 426.670)

1. The bureau may advance money to an operator *or a person designated by the bureau as a trainee pursuant to NAC 426.105* from the business enterprise account for the blind to purchase initial stock of merchandise, supplies and equipment that are necessary to begin the operation of a vending facility. The operator *or the person designated by the bureau as a trainee pursuant to NAC 426.105* shall execute a promissory note for the amount to be repaid to the bureau. The repayment must be made in monthly installments, based upon the adjusted net proceeds of the business of the operator in accordance with the following table:

Adjusted Net Proceeds	Installment Required
\$0 to \$1,100	10 percent of the amount
1,101 to 2,000	\$100 plus 15 percent of the adjusted net proceeds over \$1,000
2,001 to 3,000	\$250 plus 20 percent of the adjusted net proceeds over \$2,000
3,001 to 4,000	\$450 plus 30 percent of the adjusted net proceeds over \$3,000
4,001 to 5,000	\$750 plus 40 percent of the adjusted net proceeds over \$4,000
Over \$5,000	\$1,150 plus 50 percent of the adjusted net proceeds over \$5,000

2. The bureau may advance money to an operator *or a person designated by the bureau as a trainee pursuant to NAC 426.105* from the business enterprise account for the blind in exchange for a promissory note to ensure the continued operation of an existing vending facility. Such an advance must be repaid by the operator in accordance with the terms and conditions of the promissory note.

3. As used in this section, “adjusted net proceeds” means the amount of money that remains of the gross income after an operator has deducted the ordinary and necessary expenses of his business and includes, without limitation, the amount of money set aside pursuant to NAC 426.230.

NAC 426.235 is hereby amended to read as follows:

NAC 426.265 Records: Maintenance at facility; availability to bureau; audit; correction. (NRS 426.560, 426.670)

1. Each operator shall maintain the records, correspondence and other documents relating to his business operation ~~[in the area where the vending facility is located]~~ *at a location within the State of Nevada* and make the records available to an authorized representative of the bureau, with or without notice, for inspection, audit or other purpose. Upon issuance of a receipt for records, the operator shall surrender his records to a representative of the bureau for audit. The receipt must specify the date on which the records must be returned to the operator and include the signature of the representative of the bureau who receives the records. After an audit by the bureau, an operator shall, if requested by the bureau, correct the records in accordance with the instructions of the bureau. Each operator shall maintain the records of his business operation for 5 years after the end of the calendar year covered by the records.

2. The bureau may request any records, correspondence or other documents of an operator that are necessary for the operation or management of the vending facility or the performance of the operator~~[-]~~, *including business records of all businesses, including businesses which are*

not part of the vending facility program as set forth in NAC 426.150, et seq., in which the operator or members of the operators immediate family, as that term is defined by NAC 284.5235, have an ownership interest.

NAC 426.383 is hereby amended to read as follows:

NAC 426.383 Retirement income benefit for operators. (NRS 426.560, 426.670, 426.675)

1. The bureau will pay each licensed operator not less than ~~[\$5,000]~~ *\$7,000* annually as a retirement income benefit if:

(a) A majority of the Nevada committee of blind vendors approves the payment; and

(b) The bureau determines that money for the payment is available in the business enterprise account for the blind.

2. The bureau, in consultation with the Nevada committee of blind vendors, will develop policies and procedures to determine:

(a) The eligibility of an operator to receive the retirement income benefit pursuant to this section; and

(b) The amount of money to be paid to an operator who is eligible to receive a retirement income benefit pursuant to this section.

NAC 426.387 is hereby amended to read as follows:

NAC 426.387 Reimbursement of health care costs for operators. (NRS 426.560, 426.670, 426.675)

1. The bureau will make available not less than ~~[\$10,000]~~ *\$12,500* annually for each operator of a vending facility for the purpose of reimbursing each operator for health care costs that are not paid by a third-party insurer if:

(a) A majority of the Nevada committee of blind vendors approves the amount to be made available; and

(b) The legislature appropriates money for such a purpose.

2. The bureau, in consultation with the Nevada committee of blind vendors, will establish policies and procedures relating to:

(a) The eligibility of an operator to receive a reimbursement for health care costs pursuant to this section; and

(b) The process the bureau and such an operator will follow for reimbursement of health care costs pursuant to this section.

NAC 426.395 is hereby amended to read as follows:

NAC 426.395 Mandatory presence of operator at vending facility. (NRS 426.560, 426.670) An operator must be ~~physically present at the vending facility for a minimum of 6 hours per day, unless the operator has received prior approval from the chief to be physically present at the vending facility for fewer than 6 hours per day.]~~ *actively involved in the operation of the assigned vending facility. The nature of the operator's active involvement in the assigned vending facility will be set forth in the provisions of each operator's operating agreement.*

NAC 426.400 is hereby amended to read as follows:

NAC 426.400 Managerial services provided by bureau; performance evaluations. (NRS 426.560, 426.670)

1. The bureau will assist each operator in the efficient and effective management of each vending facility.
2. The bureau will provide to each operator of a vending facility managerial services concerning marketing, merchandising, pricing, maintenance of records, preparing reports, supervising personnel and other business procedures.
3. The bureau will:
 - (a) Evaluate the performance of each operator ~~each quarter~~ **annually** or more frequently if necessary and determine whether any further business training is necessary;
 - (b) Submit to the chief a report of the findings of each evaluation; and
 - (c) Include in each report recommendations for additional business training or other necessary actions

NAC 426.500 is hereby amended to read as follows:

NAC 426.500 Appeal: Judicial review or arbitration. (NRS 426.560, 426.670) A licensee *or the Bureau of Services to the Blind and Visually Impaired*, may appeal the final decision of a hearing officer and request judicial review pursuant to NRS 233B.130 to 233B.150, inclusive., ~~for arbitration pursuant to 34 C.F.R. Part 395.13.~~ *In lieu of requesting an appeal pursuant to NRS 233B.130 to 233B.150, inclusive, the licensee may request arbitration pursuant to 34 C.F.R. Part 395.13 within 20 days after service of the final decision of the hearing officer.*