

LCB File No. R005-06

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

NOTICE OF INTENT TO ACT UPON A REGULATION

**Notice of Hearing for the Adoption and Amendment
of Regulations of the
Office of Disability Services, Department of Health and Human Services**

The Office of Disability Services, Department of Health and Human Services will hold a public hearing at **10:00 a.m. to 1:00 p.m. on the 28th of February 2006 at Legislative Counsel Bureau, Room 3138, 401 So. Carson St., Carson City, NV 89701 and Video-Conferenced from the Grant Sawyer Building, Room 4406, 555 East Washington Street, Las Vegas, NV 89101.** The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to Chapter 426 of the Nevada Administrative Code.

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

1. These regulations are being adopted to comply with Nevada Revised Statutes 426 and Senate Bill 23 passed by the 2005 Legislature relating to the use of a signature stamp as a facsimile signature for persons with a disability who are unable to write their name, and to update the existing regulations related to Personal Assistance Services.
2. The regulations establish standards regarding the use of a signature stamp including the development of a signature stamp, the use and acceptance of a signature stamp and the verification and validity of a signature stamp and the liability to the owner of the stamp and the businesses accepting the stamp.
3. Related to Personal Assistance Services, the proposed regulations will clarify the services available to persons with Traumatic Brain Injury and will expand the array of professionals that can complete assessments of individuals applying for assistance.
4. There is minimal to no economic effect on either the user of signature stamps, other than the actual cost of the stamp, and minimal to no economic effect on the businesses or persons accepting the stamp as a signature as the signature stamp is the facsimile of the individual's signature or mark. The use of the signature stamp is beneficial for a disabled person as it allow the individual to be self-sufficient. There are no adverse effects. Immediate effects will enable persons with disabilities to conduct their own financial and legal affairs. The long-term effect will be the same as the short term.

5. There is minimal to no economic effect on recipients of Personal Assistance Services. The proposed changes will simply clarify the extent and types of services that can be provided to individuals with Traumatic Brain Injury. There are no adverse effects. Immediate effects will enable persons with Traumatic Brain Injury to live more independently and to avoid institutional placement. The long-term effect will be the same as the short term.
6. There is no cost to the Office of Disability Services, Department of Health and Human Services for the enforcement of the regulations.
7. The regulations do not duplicate or overlap other state regulations or federal regulations.
8. The regulation is not required by federal law.
9. There are no fees associated with this regulation.

Persons wishing to comment upon the proposed action of the Office of Disability Services, 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 the Bureau Chief, Office of Disability Services, Department of Human Resources at 3656 Research Way, Suite 32, Carson City, Nevada 89706. Written submissions must be received by the Office of Disability Services on or before February 26, 2006. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Office of Disability Services may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson city, Nevada for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at:

Office of Disability Services
3656 Research Way, Suite 32
Carson City, NV 89706

In all counties in which an office of the agency is not maintained a copy of this notice and the regulations to be adopted will be available 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://hr.state.nv.us/directors/disabilitysvcs/dhr_meetings.htm#Agendas. 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.

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 and incorporate therein its reason for overruling the consideration urged against its adoption.

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

Legislative Counsel Bureau
401 So. Carson St.
Carson City, NV 89701

Grant Sawyer Building
555 East Washington Street
Las Vegas, NV 89101

No. NV. Center for Independent Living
999 Pyramid Way
Sparks, NV 89431

So. NV. Center for Independent Living
6039 El Dora Street Ste: H-8
Las Vegas, NV 89146

Nevada Disability, Advocacy and Law Center
1311 N. McCarran Blvd. Ste: 106
Sparks, NV 89431

<http://hr.state.nv.us/directors/disabilitysvcs/dhr.htm>

e-mail: tbutterworth@dhr.state.nv.us

County Libraries

LCB File No. R005-06

PROPOSED REGULATION OF THE OFFICE OF DISABILITY
SERVICES OF THE DEPARTMENT OF HEALTH
AND HUMAN SERVICES

CHAPTER 426 - FINANCIAL ASSISTANCE TO PHYSICALLY DISABLED PERSONS

426.610	Definitions
426.616	"[Administrator] Bureau Chief" defined
426.635	"Contractor" defined
426.638	"[Division] Office" defined
426.642	"Essential personal care" defined
426.643	"Independent Living Supports" defined
426.645	"Personal care attendant" defined
426.650	"Physical disability" defined
426.660	"Recipient" defined
426.665	"Review team" defined
426.670	Eligibility for assistance; provision of care by [division] Office
426.680	Order of priority for disbursement of assistance
426.690	Scope of essential personal care
426.700	Contracts for services: Duties of contractor
426.710	Auditing and evaluation of contractors; submission of reports and proposed procedural changes.
426.720	Notification of contractor regarding changes in income or needs
426.730	Application for assistance and statement of need for care; notification and date of eligibility; notification of position on list of eligible persons.
426.740	Appeals
426.750	Determination of financial eligibility; formula for determining portion of cost paid by recipient if not exempt; payment of costs by contractor.
426.760	Grounds for termination of care

NAC 426.610 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 426.616 to 426.665, inclusive, have the meanings ascribed to them in those sections.

NAC 426.616 "[Administrator] Bureau Chief" defined. "[Administrator] Bureau Chief" means the [administrator] Bureau Chief of the [division] Office.

NAC 426.635 "Contractor" defined. "Contractor" means any person or governmental or private agency or organization with which the [division] Office enters into a contract pursuant to NAC 426.700.

NAC 426.638 "[Division] Office" defined. "[Division] Office" means the [rehabilitation division of the department of human resources] Office of Disability Services of the Department of Health and Human Services.

NAC 426.642 “Essential personal care” defined. “Essential personal care” means the tasks described in NAC 426.690.

NAC 426.643 “Independent Living Supports” defined. “Independent Living Supports” include, but are not limited to, assisting recipients in developing a comprehensive plan to support their ability to live independently; offering assistance, support or direction in performing daily living tasks; and coordinating with other services and providers on behalf of the recipient.

NAC 426.645 “Personal care attendant” defined. “Personal care attendant” means a person who has the knowledge and skill to provide essential personal care pursuant to this chapter.

NAC 426.650 “Physical disability” defined. “Physical disability” means a condition which:

1. Materially limits;
2. Contributes to materially limiting; or
3. If not corrected, probably will result in materially limiting a person’s activities or ability to function.

NAC 426.660 “Recipient” defined. “Recipient” means a person who receives financial assistance for essential personal care pursuant to this chapter.

NAC 426.665 “Review team” defined. “Review team” means two or more persons appointed by the contractor to perform the duties required by NAC 426.700.

NAC 426.670 Eligibility for assistance; provision of care by [division] Office. (NRS 426.173)

1. To be eligible for financial assistance pursuant to this chapter, a person must:
 - (a) Be a resident of the state;
 - (b) Be physically disabled as diagnosed by a licensed physician;
 - (c) Require assistance in one or more of the areas described in NAC 426.690;
 - (d) Use all other resources in the community that provide essential personal care or financial assistance for essential personal care before requesting financial assistance pursuant to this chapter;
 - (e) Except as otherwise provided in subsection 2, require no more than 35 hours of essential personal care each week from this program to live independently;
 - (f) Be capable of supervising the attendant who provides the care, except that in extraordinary circumstances the review team may designate a responsible person to supervise the attendant on behalf of the otherwise eligible person;
 - (g) Be capable of participating in a plan for independent living; and
 - (h) Be financially eligible pursuant to the provisions of NAC 426.750.
2. Except as otherwise provided in this subsection, the [division] Office may provide not more than 35 hours of essential personal care each week to a recipient. In addition, the [division] Office may, based upon its budget and its determination of need:
 - (a) If a portion of the 35 hours or less of essential personal care that was allocated to a recipient for a week is not used by that recipient in that week, provide temporary:
 - (1) Emergency care to another recipient if his disability is exacerbated or he has a short-term illness that is not related to his disability.

(2) Respite care to relieve a family member who provides care for a person on the waiting list of persons eligible to receive financial assistance pursuant to subsection 1 that is maintained by the ~~[division]~~ *Office*.

(b) Provide 120 hours or less per year of respite care to relieve a family member who provides care for a recipient.

3. The provisions of this section do not prohibit the ~~[division]~~ *Office* from providing 35 hours or less of essential personal care each week for a person who is also receiving services from another program.

NAC 426.680 Order of priority for disbursement of assistance. Financial assistance must be disbursed to eligible persons in the following order of priority:

1. A person who:

(a) Is receiving acute or extended care in an institution but who, with financial assistance provided pursuant to this chapter, is able to function in a setting where he controls and manages his daily activities; or

(b) Is in a setting where he controls and manages his daily activities, but who, without financial assistance provided pursuant to this chapter, will require admission to an institution providing acute or extended care.

2. A person who, without financial assistance provided pursuant to this chapter, is unable to:

(a) Obtain or retain employment;

(b) Begin or continue his education or training; or

(c) Contribute to the community as a volunteer.

3. Any other person who is otherwise eligible.

NAC 426.690 Scope of essential personal care. Essential personal care is limited to assisting a person who is eligible to receive financial assistance pursuant to this chapter in:

1. The elimination of wastes from the body;

2. Dressing and undressing;

3. Bathing and grooming;

4. The preparation and eating of meals;

5. Getting in and out of bed;

6. Repositioning while asleep;

7. The use of prostheses and other medical equipment;

8. Moving about, including, without limitation, assisting a person:

(a) In moving from a wheelchair, bed or other piece of furniture;

(b) With ambulation; and

(c) With exercises to increase the range of motion;

9. Essential laundry; ~~[and]~~

10. *Independent Living Supports for individuals with brain injury, not to exceed 14 hours per week; and*

11. Other minor needs directly related to maintenance of personal hygiene.

NAC 426.700 Contracts for services: Duties of contractor. (NRS 426.173) The ~~[division]~~ *Office* will contract with a contractor who shall:

1. Establish a review team of persons who have personal or professional knowledge of disabilities and an understanding of the concept of independent living. The review team shall:

(a) Determine an applicant's eligibility.

(b) Authorize the number of hours of essential personal care to be provided to an eligible person based upon a written assessment provided by the contractor pursuant to subsection 8.

(c) Obtain medical consultation as needed.

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

~~[(d) Obtain medical consultation as needed.]~~

3~~[2]~~. ~~[(disburse financial assistance)]~~ ***Provide essential personal care [for] to*** eligible persons.

4~~[3]~~. Provide training for personal care attendants and maintain a registry of attendants.

5~~[4]~~. Establish a system for the provision of back-up attendants and emergency care.

6~~[5]~~. Ensure that a personal care attendant who is listed in the registry of attendants has coverage for ~~[(industrial)]~~ ***workers compensation*** insurance.

7~~[6]~~. Establish cooperative agreements with programs providing essential personal care to coordinate interdisciplinary services provided to mutual recipients.

8~~[7]~~. Obtain and review the criminal record, if any, of each personal care attendant.

9~~[8]~~. Provide assessments of recipients. An assessment must:

(a) Be conducted by a licensed ~~[(occupational therapist)]~~ ***medical professional, who is familiar with personal care services and the independent living needs of people with disabilities,*** at the location where the services are offered; and

(b) Include the requirements for completing specific tasks, the time required for completion of the tasks and a statement by the recipient concerning his perspective of his needs for care.

10~~[9]~~. Provide referrals to independent living and other services as appropriate for the needs of recipients.

NAC 426.710 ~~[(Auditing)]~~ *Monitoring* and evaluation of contractors; submission of reports and proposed procedural changes.

1. The ~~[(division)]~~ ***Office*** will conduct ~~[(audits)]~~ ***monitors*** of the management and the financial records of the contractor and will evaluate the contractor's efficiency in administering the provisions of the contract.

2. The contractor shall submit to the ~~[(division)]~~ ***Office***:

(a) Quarterly reports summarizing the activities of programs providing essential personal care on forms provided by the ~~[(division)]~~ ***Office***.

(b) Any proposed procedural changes for review and approval before they are carried out.

(c) Such other reports as the ~~[(division)]~~ ***Office*** requests.

NAC 426.720 Notification of contractor regarding changes in income or needs. (NRS 426.173) A recipient shall notify the contractor of any change in the recipient's:

1. Income, the income of the recipient's spouse, or, if the recipient is a dependent child or adult who has no income and is financially supported by his family, the income of the recipient's family that would affect the recipient's eligibility; and

2. Need for essential personal care.

NAC 426.730 Application for assistance and statement of need for care; notification and date of eligibility; notification of position on list of eligible persons. (NRS 426.173)

1. An applicant for financial assistance must submit to the contractor a completed application and a written statement from a licensed physician, physician assistant or registered nurse certifying the applicant's need for essential personal care.

2. The contractor shall, within 30 days after receiving a completed application, notify the applicant in writing whether he is eligible for financial assistance.

3. If money is available, a person may be eligible to receive financial assistance on the date the review team determines he is eligible.

4. If money is not available, the contractor shall notify the person of his position on the waiting list maintained by the ~~[division]~~ *Office* of persons eligible for financial assistance in the order of their priority.

NAC 426.740 Appeals.

1. An applicant for financial assistance or a recipient who disagrees with a decision of the review team or the contractor may, within 15 working days after he receives notice of the decision, file an appeal with the contractor. The contractor:

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

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

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

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

(b) May require the applicant, recipient or contractor to submit, in writing, additional evidence to support the appeal or the decision; and

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

3. The decision of the ~~[administrator]~~ *Bureau Chief* is a final decision for the purposes of judicial review.

NAC 426.750 Determination of financial eligibility; formula for determining portion of cost paid by recipient if not exempt; payment of costs by contractor. (NRS 426.173)

1. An applicant is not eligible to receive financial assistance pursuant to subsection 1 of NAC 426.670 if his gross monthly income, less the expenses set forth in paragraphs (a) to (d), inclusive, of subsection 2, is more than 800 percent of the federally designated level signifying poverty, divided by 12, for the size of family applicable to the applicant, as determined by the United States Department of Health and Human Services and published annually in the Federal Register.

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

(a) Medicine prescribed for the applicant by a physician;

(b) Medical care provided to the applicant by a doctor, hospital or other medical facility;

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

(d) Health insurance and the benefits thereof, including, without limitation, the payment of premiums and copayments.

As used in this subsection, “medical facility” has the meaning ascribed to it in NRS 449.0151 and includes a facility for the rehabilitation of physically disabled persons.

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

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

where “A” is the recipient’s gross monthly income; “B” is the sum, on a monthly basis, of the recipient’s expenses, if any, set forth in paragraphs (a) to (d), inclusive, of subsection 2; “C” is the amount that equals 200 percent of the federally designated level signifying poverty, divided by 12, for the size of family applicable to the recipient; and “D” is the cost of providing services for essential personal care, on a monthly basis, for that recipient.

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

5. If there are compelling and urgent circumstances, including, without limitation, the circumstance in which payment of any portion of the cost to provide essential personal care to the recipient will cause severe hardship to the recipient, the contractor, with the approval of the ~~administrator~~ *Bureau Chief*, may pay 100 percent of the cost of the essential personal care of a recipient.

NAC 426.760 Grounds for termination of care. Care provided by a personal care attendant to a recipient may be terminated if the recipient:

1. Fails to pay his share of the *cost of care* ~~attendant’s wages~~;
2. Fails to provide documents needed for reevaluation;
3. Willfully defrauds the program; or
4. Fails to comply with the requirements of NAC 426.720.