

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

**LCB File No. R016-12**

June 12, 2012

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

AUTHORITY: §§1-21 and 23-26, NRS 427A.793; §22, NRS 427A.793 and 427A.795.

A REGULATION relating to persons with disabilities; revising provisions relating to the program to provide persons with physical disabilities with essential personal care services; revising provisions relating to administrative review of certain actions relating to an applicant for or a recipient of financial assistance; and providing other matters properly relating thereto.

**Section 1.** Chapter 427A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this regulation.

**Sec. 2. 1.** *An applicant for financial assistance is entitled to an administrative review if his or her application is denied.*

*2. A recipient is entitled to an administrative review if:*

*(a) The recipient's financial assistance is terminated;*

*(b) The recipient's financial assistance is reduced without his or her concurrence;*

*(c) The recipient has not been given a choice between community home-based care and institutional care; or*

*(d) The recipient has a grievance concerning the delivery, quality, duration or scope of his or her financial assistance.*

**Sec. 3. 1.** *An applicant for financial assistance or a recipient or his or her designated representative may request an administrative review by:*

*(a) Signing, dating and returning to the office of the Division responsible for the region in which the applicant or recipient resides the letter notifying the applicant or recipient of the action to be taken by the Division; or*

*(b) Submitting a written request to the office of the Division responsible for the region in which the applicant or recipient resides.*

*2. Except as otherwise provided in subsection 4, the request for an administrative review must be received in the regional office of the Division within 15 days after the date of the letter notifying the applicant or recipient or his or her designated representative of the action to be taken. The date of the letter shall be deemed the first day of the 15-day period.*

*3. If the 15th day falls on a holiday or weekend, the time for submitting a request will be extended to the next working day.*

*4. The Division will not accept a request for an administrative review received after the time specified in subsection 2 unless the applicant or recipient or his or her designated representative demonstrates good cause for the failure to comply with the deadline.*

*5. The Administrator or a person designated by the Administrator will review any requests to waive the deadline for good cause and will make a determination within 10 days after the receipt of the request.*

*6. If the Administrator or a person designated by the Administrator determines that the applicant or recipient or his or her designated representative has demonstrated good cause for the failure to comply with the 15-day deadline, he or she will schedule an administrative review for the applicant or recipient.*

*7. If the Administrator or a person designated by the Administrator determines that the applicant or recipient or his or her designated representative has not demonstrated good cause for the failure to comply with the 15-day deadline, he or she will notify the applicant or recipient or his or her designated representative that the request for an administrative review is denied.*

*Sec. 4. 1. Within 10 days after the Division receives a request for an administrative review, the program manager of the region in which the applicant for financial assistance or recipient resides shall contact the applicant or recipient or his or her designated representative to schedule a conference with a member of the staff of the Division to attempt to resolve the matter without the necessity of an administrative review.*

*2. The program manager shall:*

*(a) Preside at the conference; and*

*(b) Complete a report on the outcome of the conference.*

*3. The conference does not affect the right of the applicant or recipient to an administrative review.*

*Sec. 5. 1. If, after the conference is held, the applicant for financial assistance or recipient wishes to continue with the administrative review, the Administrator will appoint a review team made up of two or more members from the Subcommittee on Personal Assistance for Persons with Severe Functional Disabilities of the Nevada Commission on Services for Persons with Disabilities and one member of the staff of the Division. Within 15 days after the appointment, the review team must establish a date, time and location for the review.*

*2. The Division will mail a notice of the date, time and location of the administrative review to the applicant or recipient or his or her designated representative at least 10 working*

*days before the date scheduled for the review, unless the applicant or recipient or his or her designated representative requests a review in a shorter period.*

*3. If requested by the Division or by the applicant or recipient or his or her designated representative, the review team may postpone an administrative review for good cause. If the review team determines that a postponement is warranted, the review team must reschedule the administrative review for a date which is not later than 15 days after the original date for the review.*

*4. The applicant or recipient or his or her designated representative is entitled to withdraw the request for an administrative review any time before the review team renders a decision. The withdrawal must be in writing, dated and signed by the applicant or recipient or his or her designated representative and mailed or delivered to the regional office of the Division which received the request for the administrative review. If an applicant or a recipient or his or her designated representative indicates verbally a desire to withdraw a request for an administrative review, the Division will instruct him or her to submit a written withdrawal.*

*5. The review team shall cancel the administrative review if the applicant or recipient or his or her designated representative fails to appear for the scheduled administrative review after receiving proper notification. The review team shall notify the applicant or recipient or his or her designated representative within 1 working day after the failure to appear that the administrative review will be considered cancelled unless the applicant or recipient or his or her designated representative can demonstrate good cause for failing to appear. The applicant or recipient or his or her designated representative must submit the reasons for failing to appear within 10 days after the date of the letter notifying the applicant or recipient or his or*

*her designated representative of the cancellation if the applicant or recipient or his or her designated representative wishes to continue the administrative review. The Administrator will determine whether good cause has been demonstrated for failing to appear.*

**Sec. 6. 1.** *A recipient is entitled to receive financial assistance while an administrative review of a termination of that financial assistance is pending, if funding is available, unless the recipient or his or her designated representative requests in writing that the financial assistance be discontinued.*

*2. If financial assistance is continued and the decision to terminate that financial assistance is upheld, the recipient may be required to repay the amount of any financial assistance provided after the date on which that financial assistance was originally scheduled to be terminated.*

**Sec. 7.** *An applicant for financial assistance or a recipient is entitled to represent himself or herself or to be represented by another person, including a legal representative, at the administrative review. The Division will inform the applicant or recipient or his or her designated representative of this right:*

- 1. At the time he or she applies for financial assistance; and*
- 2. In a letter notifying the recipient of the action of the Division that is subject to administrative review.*

**Sec. 8. 1.** *A review team shall request the member of the staff of the Division who made the decision that is the subject of the contested action of the Division to attend the administrative review.*

*2. If that member of the staff is unable to attend the review:*

*(a) The supervisor for the region in which the applicant for financial assistance or recipient resides must serve as the representative of the Division.*

*(b) That member of the staff must provide the review team with a report that contains:*

*(1) A summary of the factors on which the contested action of the Division is based; and*

*(2) All applicable laws, regulations and policies of the Division.*

*3. The review team shall cause the report it receives pursuant to paragraph (b) of subsection 2 to be read into the record and entered into evidence during the administrative review.*

**Sec. 9. 1.** *An applicant for financial assistance or a recipient or his or her designated representative is entitled to receive:*

*(a) Before the administrative review, a photocopy of all documents and records that will be used in the administrative review. The Division will provide those photocopies at no charge.*

*(b) From the Division, photocopies of additional relevant information that will not be used at the administrative review upon payment of a charge not to exceed the actual cost to the Division of producing the photocopies.*

*2. During the review, the Division will provide the applicant or recipient or his or her designated representative with a photocopy of all documents presented by the Division at the administrative review.*

**Sec. 10. 1.** *A review team shall:*

*(a) Conduct the administrative review in an informal manner; and*

*(b) Ensure that all relevant issues are considered during the administrative review.*

*2. The review team may cause the removal from the administrative review of any person who:*

- (a) Uses disrespectful language;*
- (b) Engages in contemptuous conduct; or*
- (c) Refuses to comply with the directions of the review team.*

**Sec. 11. 1.** *A review team shall record the administrative review with an audiotape recorder.*

*2. The review team's audiotape recorder is the only recording device that may be allowed at the administrative review.*

**Sec. 12. 1.** *A review team shall keep a case record of each administrative review that it conducts which contains:*

- (a) All correspondence that the review team has received regarding the subject matter of the administrative review;*
- (b) All exhibits presented and accepted during the administrative review; and*
- (c) A narrative log of all contacts that the review team has had with the applicant for financial assistance or recipient or his or her designated representative, members of the staff of the Division or legal counsel for any of the participants in the administrative review.*

*2. The case record established by the review team constitutes the official record of the hearing.*

*3. After the review team has rendered a decision, the review team shall submit the case record and the audiotape recording to the office of the Division in Carson City. That office shall retain the case record and the audiotape recording for:*

- (a) Four years after the date of the decision; or*
  - (b) Until the resolution of a judicial review of the decision,*
- ↳ whichever occurs later.*

**Sec. 13. 1. At the beginning of the administrative review, the review team shall:**

*(a) Introduce each member of the review team;*

*(b) Announce the date and time;*

*(c) State the name of the person requesting the administrative review;*

*(d) State the reason for the administrative review;*

*(e) Cause each person present to introduce himself or herself and to state the person's purpose in attending the administrative review; and*

*(f) Advise those present that the administrative review is being recorded by an audiotape recorder.*

*2. The representative of the Division shall state the basis of the contested action taken by the Division. If the member of the staff of the Division who made the decision that is the subject of the contested action of the Division is not present, the report prepared by that member of the staff pursuant to paragraph (b) of subsection 2 of section 8 of this regulation must be read into the record.*

*3. The review team shall allow the applicant for financial assistance or recipient or his or her designated representative to make a statement concerning the grievance and to present supporting evidence.*

*4. The review team shall collect, number and log all relevant evidence.*

*5. The review team, the applicant or recipient or his or her designated representative or the representative of the Division may request that evidence which is not available at the administrative review be submitted. If such a request is made, the review team may:*

*(a) Continue the administrative review and order further investigation or request a party to produce the additional evidence; or*

*(b) Close the administrative review but hold the record open to permit submission of any additional evidence.*

*↳ If additional evidence is submitted, the review team shall provide each party with the opportunity to examine that evidence.*

*6. If the review team determines after the administrative review is closed that the record is unclear or insufficient to make a decision, the review team may contact the applicant or recipient or his or her designated representative or the representative of the Division for clarification or additional information. Any material submitted after the close of the review must be made available to all participants in the administrative review and each shall have the opportunity for rebuttal. The review team may reopen the administrative review if the nature of the additional information or the rebuttal thereof makes further consideration necessary.*

*7. Before closing the review, the review team shall advise those present that:*

*(a) The review team will base its decision on the case record and the testimony and evidence presented at the administrative review;*

*(b) The review team will render a decision within 15 days after the date of the administrative review;*

*(c) The review team will inform the applicant or recipient or his or her designated representative by mail of the decision; and*

*(d) The applicant or recipient or his or her designated representative may appeal the decision of the review team to the Administrator.*

**Sec. 14. 1. The decision of a review team must:**

*(a) Be based on the evidence and information presented at the administrative review and any additional information submitted pursuant to subsection 6 of section 13 of this regulation;*

*(b) Comply with the regulations of the Division that were in effect at the time the Division took the contested action;*

*(c) Contain a summary of the findings of fact;*

*(d) Identify supporting evidence and regulations;*

*(e) Respond to any reasonable arguments of the applicant for financial assistance or recipient or his or her designated representative; and*

*(f) Be submitted in writing to the Administrator with the case record and all exhibits presented during the administrative review.*

*2. In issuing a decision, the review team shall not consider changes in physical or social factors that occur after the close of the administrative review.*

**Sec. 15. 1.** *The review team shall mail the written decision to the applicant for financial assistance or recipient or his or her designated representative within 15 days after the close of the administrative review. In addition to the written decision, the review team shall notify the applicant or recipient or his or her designated representative by mail of:*

*(a) The right to appeal the decision of the review team to the Administrator; and*

*(b) The process to request an appeal to the Administrator.*

*2. A request for an appeal to the Administrator must be received by the Administrator within 10 days after the date of the decision.*

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

**Sec. 16. 1.** *The review team shall summarize the proceedings in a written report using the following format:*

*A. INTRODUCTION—The date, time and place of the administrative review and the name of each person present at the administrative review.*

*B. NATURE OF CASE—Overview of the issues presented during the administrative review.*

*C. FINDINGS OF FACT—The facts of the case as determined by the review team.*

*D. CONCLUSIONS OF LAW—The laws, regulations, procedural rules and policies which support the findings and decision of the review team.*

*E. DECISION—The decision to either uphold or overrule the action of the Division.*

*2. The review team shall submit the written report to the Administrator with the case record.*

**Sec. 17.** NAC 427A.675 is hereby amended to read as follows:

427A.675 As used in NAC 427A.675 to 427A.770, inclusive, *and sections 2 to 16, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 427A.680 to 427A.720, inclusive, have the meanings ascribed to them in those sections.

**Sec. 18.** NAC 427A.705 is hereby amended to read as follows:

427A.705 “Personal care attendant” means a person who has the knowledge and skill to provide essential personal care pursuant to NAC 427A.675 to 427A.770, inclusive ~~[ ]~~, *and sections 2 to 16, inclusive, of this regulation.*

**Sec. 19.** NAC 427A.710 is hereby amended to read as follows:

427A.710 “Recipient” means a person who receives financial assistance for essential personal care pursuant to NAC 427A.675 to 427A.770, inclusive ~~[ ]~~, *and sections 2 to 16, inclusive, of this regulation.*

**Sec. 20.** NAC 427A.725 is hereby amended to read as follows:

427A.725 1. To be eligible for financial assistance pursuant to NAC 427A.675 to 427A.770, inclusive, *and sections 2 to 16, inclusive, of this regulation*, a person must:

- (a) Be a resident of the State;
- (b) Be diagnosed as a person with a physical disability by a licensed physician;
- (c) Require assistance ~~[in one or more of the areas described in]~~ *as determined pursuant to subsection 1 of NAC ~~[427A.735;]~~ 427A.730;*
- (d) Use all other resources in the community that provide essential personal care or financial assistance for essential personal care before requesting financial assistance pursuant to NAC 427A.675 to 427A.770, inclusive ~~[;]~~, *and sections 2 to 16, inclusive, of this regulation;*
- (e) Except as otherwise provided in subsection 2, require not more than 35 hours of essential personal care each week from this program to live independently;
- (f) Be capable of supervising the attendant who provides the care, except that in extraordinary circumstances the Division may designate a responsible person to supervise the attendant on behalf of the otherwise eligible person;
- (g) Be capable of participating in a plan for independent living; and
- (h) Be financially eligible pursuant to the provisions of NAC 427A.765.

2. Except as otherwise provided in this subsection, the Division may provide not more than 35 hours of essential personal care each week to a recipient. In addition, the Division may, based upon its budget and its determination of need:

- (a) If a portion of the 35 hours or less of essential personal care that was allocated to a recipient for a week is not used by that recipient in that week, provide temporary:

(1) Emergency care to another recipient if his or her disability is exacerbated or he or she has a short-term illness that is not related to the disability.

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

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

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

**Sec. 21.** NAC 427A.730 is hereby amended to read as follows:

427A.730 **1.** Financial assistance ~~[must]~~ **may** be provided to ~~[eligible persons in the following order of priority:~~

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

~~—2.— A person who is receiving acute or extended care in an institutional setting but who, with financial assistance provided pursuant to NAC 427A.675 to 427A.770, inclusive, would be able to function in a setting where the person controls and manages his or her daily activities.~~

~~—3.— A] **an eligible** person [:~~

~~—(a) Who requires assistance with bathing, toileting and eating; or~~

~~—(b) Who has] **who:**~~

**(a) Has** a traumatic brain injury [:

~~—4.— A person who requires] ; **or**~~

(b) *Requires* assistance with at least two of the following tasks:

~~[(a)]~~ (1) Bathing . ~~[(b)]~~

~~[(b)]~~ (2) Toileting . ~~[(c)]~~

~~[(c)]~~ (3) Eating.

2. *The program manager shall give priority in the provision of financial assistance to an eligible person who:*

(a) *Has a condition that is terminal and is not expected to live for more than 1 year;*

(b) *Receives acute or extended care in an institutional setting but who, with financial assistance provided pursuant to NAC 427A.675 to 427A.770, inclusive, and sections 2 to 16, inclusive, of this regulation, would be able to function in a setting in which the person controls and manages his or her daily activities; or*

(c) *Is experiencing a crisis as determined by the program manager due to an unanticipated change in the circumstances of the eligible person.*

**Sec. 22.** NAC 427A.735 is hereby amended to read as follows:

427A.735 Essential personal care is limited to assisting a person who is eligible to receive financial assistance pursuant to NAC 427A.675 to 427A.770, inclusive ~~[(c)]~~, *and sections 2 to 16, inclusive, of this regulation:*

1. In the elimination of wastes from the body;
2. In dressing and undressing;
3. In bathing and grooming;
4. In the preparation and eating of meals;
5. In getting in and out of bed;
6. In repositioning while asleep;

7. In the use of prostheses and other medical equipment;
8. In 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. In essential laundry;
10. *In light housekeeping*;

*11.* With support services for independent living if the person has an injury to the brain and those services do not exceed 14 hours per week; and

~~11.~~ *12.* In other minor needs directly related to maintenance of personal hygiene.

**Sec. 23.** NAC 427A.740 is hereby amended to read as follows:

427A.740 The program manager shall:

1. Reevaluate a recipient's eligibility every 12 months and when his or her need for essential personal care changes.
2. Coordinate the provision of essential personal care to eligible persons.
3. Provide assessments of recipients. An assessment must:
  - (a) Be conducted by a licensed ~~medical~~ professional who is familiar with essential personal care and the independent living needs of persons with physical disabilities;
  - (b) Whenever possible, be conducted at the location where the services are offered; and
  - (c) Include the requirements for completing specific tasks, the time required for completion of the tasks and a statement by the recipient concerning the recipient's perspective of his or her needs for care.

4. Provide referrals to independent living and other services as appropriate for the needs of recipients.

**Sec. 24.** NAC 427A.743 is hereby amended to read as follows:

427A.743 The Division may enter into a contract with a contractor to provide essential personal care and other services pursuant to NAC 427A.675 to 427A.770, inclusive ~~[H]~~, *and sections 2 to 16, inclusive, of this regulation.*

**Sec. 25.** NAC 427A.765 is hereby amended to read as follows:

427A.765 1. An applicant is not eligible to receive financial assistance pursuant to subsection 1 of NAC 427A.725, if his or her 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, *one-half of* the gross monthly income of the applicant *earned through employment, any additional gross monthly income of the applicant* and the *gross monthly income of the* applicant's spouse ~~[, or, if the applicant is a dependent child or adult who has no income and is financially supported by the applicant's family, the gross monthly income of the applicant's family,]~~ must be counted. From the total must be deducted any amount paid directly by the applicant or the applicant's spouse ~~[or, if the applicant is a dependent child or adult who has no income and is financially supported by his or her family, by the applicant's family,]~~ that is not reimbursed by any other source for:

(a) Medicine prescribed for the applicant or the applicant's spouse *or dependent child* by a physician ; ~~[or, if the applicant is a dependent child or adult who has no income and is~~

~~financially supported by his or her family, medicine prescribed for the applicant and each member of the applicant's family;]~~

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

(c) Special equipment, services or supplies to help the applicant *or any other member of the household who also has a disability* do what a person who is not disabled can do; and

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

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

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

the total cost to provide essential personal care to the recipient according to the following formula:

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

↪ where “A” is the recipient’s gross monthly income; “B” is the sum, on a monthly basis, of the recipient’s and his or her spouse’s expenses and, if applicable, the expenses of the recipient’s family, set forth in paragraphs (a) to (d), inclusive, of subsection 2; “C” is the amount that equals ~~200~~ 300 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~~ 20 percent of the amount that equals the difference between A and the sum of B and C.

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

**Sec. 26.** NAC 427A.760 is hereby repealed.

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**TEXT OF REPEALED SECTION**

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**427A.760 Appeal of decision regarding eligibility. (NRS 427A.793)**

1. An applicant for financial assistance or a recipient who disagrees with a decision regarding eligibility may, within 15 working days after receiving notice of the decision, file an appeal with the program manager. The program manager:

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

(b) Shall render his or her decision in writing within 30 days after receiving the appeal.

2. The applicant or recipient may appeal the decision of the program manager to the Administrator by filing a notice of appeal within 15 working days after receiving notice of the decision of the program manager. The Administrator:

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

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

(c) Will render his or her decision in writing within 30 days after receiving the notice of the appeal.

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