

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

LCB FILE NO. R121-201

**The following document is the initial draft regulation proposed
by the agency submitted on 06/30/2020**

PROPOSED REGULATION OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

AUTHORITY: NRS 439B.685

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to x, inclusive of these regulations.

Section 2. *As used in in section 2 to 7, inclusive, of this regulation and NAC 439.730 through and including NAC 439.749, the words and terms are defines as follows:*

1. *“Department” means the Department of Health and Human Services.*
2. *“Director” means the Director of the Department.*
3. *“Manufacturer” has the meaning ascribed in NRS 439B.605*
4. *“Pharmacy” has the meaning ascribed in NRS 439B.610.*
5. *“Pharmacy benefit manager” has the meaning ascribed in NRS 439B.615*

Section 3.

1. *The Director shall appoint three permanent employees to act as hearing officers. The hearing officers shall perform their duties in addition to their regularly assigned duties.*

2. *Upon receipt of a request for an appeal to be heard by a hearing officer, the Director shall assign the appeal to the next hearing officer in the rotation unless that hearing officer has a conflict of interest or is otherwise disqualified from hearing the appeal.*

Section 4

1. *if the Department intends to impose and administrative penalty under NRS 439B.695, the Department shall notify the pharmacy, manufacturer, pharmacy benefit manager, non-profit organization or pharmaceutical sales representative of the proposed penalty, in writing, at least 15 business days before the effective date of the imposition of the penalty. The notice must include, without limitation:*

- (a) *A citation of the statutory and regulatory authority for the penalty;*
- (b) *The facts on which the penalty is based;*
- (c) *A description of any circumstances that the Department considered in taking the penalty;*
- (d) *Instructions for responding to the notice, including, without limitation, a statement of the right to any internal informal procedures for appeal, the right to a hearing, the period during which a hearing must be requested and the consequences of waiving a hearing; and*
- (e) *The effective date of the penalty.*

2. *The Department shall serve the notice by mailing to last known address and e-mail to the last known e-mail address of the pharmacy, manufacturer, pharmacy benefit manager, non-profit organization or pharmaceutical representative.*

Section 5

1. *All requests for an appeal must be addressed to the Director and submitted within 15 business days of the date of the notice described in section 4.*
2. *Hearings on appeals must be open to the public. Upon the motion of a party, the hearing officer, in his or her discretion, may exclude from the hearing room any witnesses in the matter not at the time under examination except a party or parties to the proceeding or his or her counsel.*
3. *The hearing officer shall determine the evidence upon the allegations as set forth by the Department in the notice of intent to impose the administrative penalty described in section 4.*
4. *The technical rules of evidence do not apply. All testimony and exhibits offered must be relevant and bear upon the matter in contention. Any testimony or exhibits considered by the hearing officer as not meeting this criterion may properly be excluded. The hearing officer shall also consider the objection of either side to the introduction of evidence, whether oral testimony or exhibit. Competence and relevance are the primary test in ruling on such objections.*
5. *The hearing officer shall base his or her decision on the weight of the evidence presented at the hearing. Findings of fact, conclusions of law and decisions must be based on a preponderance of the evidence.*
6. *At the beginning of his or her testimony, each witness who has not previously testified in the hearing shall be required to state his or her name and business, employment or position.*
7. *Any letter, paper or object offered in evidence must be properly authenticated and, if received, must be marked by the hearing reporter with a distinguishing number or letter, such as "Department's Exhibit 1" or "Appellant's Exhibit A."*
8. *Testimony may be presented in statement or question and answer form.*
9. *Good cause appearing, hearings may be continued beyond the period originally scheduled or recessed until a future date agreeable to the hearing officer and the parties.*
10. *Witnesses may be subpoenaed by either party to the hearing and shall receive the fees and mileage allowed a witness in a civil case.*
11. *A record of the proceedings must be kept but need not be transcribed unless the decision is appealed or a transcript is requested by an interested party, who shall bear the cost of transcription.*

Section 6

1. *If a party fails to appear at a hearing scheduled by the hearing officer and no continuance has been granted, the hearing officer may hear the evidence and proceed to consider the matter and dispose of it on the basis of the evidence before the hearing officer. If the appellant fails to appear at the hearing and fails to reply to the notice, the allegations in the notice of intent to impose administrative penalty are presumed to be true.*
2. *With the approval of the hearing officer, the parties may stipulate as to any fact at issue, either by a written stipulation introduced in evidence as an exhibit or by oral statements shown upon the record. Any such stipulation is binding upon all parties so stipulating and may be regarded by the hearing officer as evidence at the hearing.*
3. *The hearing officer may, before or during a hearing, upon a proper showing, grant a continuance for submission of additional proof or other reasonable purpose.*

Section 7

1. An order or decision with separately stated findings of fact and conclusions of law will be rendered by the hearing officer after the completion of the hearing.

2. A proceeding stands submitted for decision by the hearing officer after the taking of evidence, the filing of briefs or the presentation of such oral or written arguments as may have been allowed by the hearing officer.

3. The decision of a hearing officer made pursuant to the procedures set forth in section 3 to section 7, inclusive, is a final decision in a contested case. Any person aggrieved by such a decision is entitled to judicial review of the decision pursuant to NRS 233B.130