

LCB File No. R143-01

**PROPOSED REGULATION OF THE
DEPARTMENT OF HUMAN RESOURCES**

**NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON PROPOSED
REGULATIONS**

The Nevada State Department Of Human Resources, 505 E. King Street, Room 600, Carson City, Nevada, 89701, 775-684-4000, is proposing the Adoption of regulations pertaining to Chapter 439 of the Nevada Administrative Code (“NAC”) as needed to implement the Senior Rx program, codified in Nevada Revised Statutes 439.635 through 439.690. A workshop has been set for 10:00 a.m., October 31, 2001, at the following locations:

1. State of Nevada Legislative Counsel Bureau, at 401 South Carson Street, Room 2135, Carson City, and
2. Grant Sawyer State Office Building, 555 East Washington Avenue, Room V4401, Las Vegas.

The sites will be connected through video conferencing.

The purpose of the workshop is to solicit comments from interested persons on the following general topics pertaining to the Senior Rx program that may be addressed in the proposed regulations:

1. Application;
2. Open Enrollment Period
3. Notice of Decision on Eligibility;
4. Applicant Hearing Rights on Eligibility;
5. Disenrollment;
6. Relief on Appeal;
7. Enrollee Cooperation;
8. Collections;
9. Confidentiality and Release of Records.

Reasonable efforts will be made to assist and accommodate physically handicapped persons attending the meeting. Please call Jane Smedes at 775-684-4001 by October 26, 2001 so that arrangements may be made.

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting Jane Smedes at Nevada State Department of Human Resources, 505 E. King Street, Room 600, Carson City, Nevada, 89701, 775-684-4001. A reasonable fee may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations. It has been posted at the following locations:

Director's Office of DHR, 505 E. King Street, Main Lobby and Room 600, Carson City, Nevada.

Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 1001, Las Vegas, Nevada.

Nevada State Library, 100 Stewart Street, Carson City, Nevada.

Clark County Public Library, 833 Las Vegas Blvd., Las Vegas, Nevada.

Washoe County Library, 301 S. Center Street, Reno, Nevada.

Division for Aging Services, 340 N. 11th Street, #203, Las Vegas, Nevada.

Division for Aging Services, 445 Apple Street, #104, Reno, Nevada.

Division for Aging Services, 850 Elm Street, Elko, Nevada.

Division for Aging Services, 3416 Goni Road, #132, Carson City, Nevada.

At the main branch of the public libraries in all counties not mentioned above.

Date:

PROPOSED REGULATION OF THE DEPARTMENT OF HUMAN RESOURCES

NOTICE OF INTENT TO ACT UPON A REGULATION

NOTICE OF HEARING FOR THE ADOPTION OF REGULATIONS OF THE DEPARTMENT OF HUMAN RESOURCES

The Nevada Department of Human Resources, State of Nevada (the "Department") will hold a public hearing at 10:00 a.m. on November 16, 2001, at the Legislative Counsel Bureau 401 South Carson Street, Room 2135, Carson City and video conferenced to the Grant Sawyer State Building, 555 East Washington Avenue, Room V4406, Las Vegas. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulations that pertain to Nevada Revised Statutes 439.635 – 439.690.

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

1. The need for and the purpose of the proposed regulations and/or amendments is to establish regulations as required by statute and which set forth the nature and requirements of formal and informal procedures of the Department regarding the Senior Rx program.
2. The entire text of the regulations of the Senior Rx program of the Nevada Department of Human Resources which is proposed to be adopted by the Department is attached hereto as Attachment "A."
3. The proposed regulations are expected to have both an immediate and long term beneficial health and economic impact on low-income Nevada seniors, by subsidizing an insurance product for them which provides coverage for prescription drugs and pharmaceutical services. The immediate estimated economic effect would be a maximum allowable subsidy of \$1,279.68 per month per enrollee, totaling about \$7.7 million in state fiscal year 2003. The immediate and long-term economic health impact cannot be specifically estimated but the program aims to improve the health and well-being of the program's enrollees, thereby improving the general quality of life for all Nevada's citizens.
4. The estimated cost to the agency for enforcement of these regulations pursuant to statute is capped by 2 percent of the estimated available amount each fiscal year: for state fiscal year 2002, approximately \$246,909.

Persons wishing to comment upon the proposed action of the Department of Human Resources may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Human Resources, 505 E. King Street, Room 600, Carson City, Nevada 89701. Written submissions must be received by the Department of Human Resources on or before November 13, 2001. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Department of Human Resources may proceed immediately to act upon any written submissions.

Reasonable efforts will be made to assist and accommodate physically handicapped persons attending the meeting. Please call Jane Smedes at 775-684-4001 by November 13, 2001 so that arrangements may be made.

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 will be available at the main branch of the public library in each county 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.

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 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:

Director's Office of DHR, 505 E. King Street, Main Lobby and Room 600, Carson City, Nevada.

Grant Sawyer State Office Building, 555 E. Washington Avenue, Room 1001, Las Vegas, Nevada.

Nevada State Library, 100 Stewart Street, Carson City, Nevada.

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**PROPOSED REGULATION OF THE
DEPARTMENT OF HUMAN RESOURCES**

October 2001

Explanation: Matter in italics is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

Authority: NRS 439.655(3) and (4).

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to **35**, inclusive, of this regulation.

Sec. 2. *Sections 2 to 35, inclusive, of this regulation, may be referred to as the senior prescription program.*

Sec. 3. As used in sections 2 to **35**, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections **4** to **14**, inclusive, of this regulation have the meanings ascribed to them in those sections.

Sec. 4. “Applicant” means a person who

1. Applies to the department to receive a subsidy ~~[toward]~~ *for* the cost of such a policy payable by the department pursuant to NRS 439.670; *and*

2. Has ~~[purchased or will purchase]~~ *enrolled in* a policy of health insurance from a contractor.

Sec. 5. “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.

Sec. 6. *“Current Income” means income received in the month of application.*

1. If current income is inadequate to make an accurate projection, a longer period of time, up to 3 months, may be used.

2. If income fluctuates month-to-month, it may be averaged over a 12-month period.

Sec. 7. “Department” means the department of human resources.

Sec. 8. “Enrollee” means a person who:

1. Applied to the department to receive a subsidy ~~toward~~ *for* the cost of such a policy that is payable by the department pursuant to NRS 439.470;

2. The department has determined is eligible to receive such a subsidy pursuant to NRS 439.65; and

3. ~~Purchased~~ *Is enrolled* in a policy of health insurance from a contractor.

Sec. 9. “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 to preside at a hearing conducted pursuant to sections *21* to *28*, inclusive of this regulation.

Sec. 10.

1. “Household income” has the meaning ascribed to it in NRS 439.640.

2. *Income which is not legally available to the household may be deemed inaccessible and will not be included in the determination of eligibility for a subsidy. Determinations will be made by the Department of Human Resources.*

Sec. 11. “Income” has the meaning ascribed to it in NRS 439.645.

Sec. 12. “Open enrollment” means a ~~[30-day]~~ period prescribed by the department during *which an application for subsidy may be filed.*

Sec. 13. “Senior citizen” has the meaning ascribed to it in NRS 439.650.

Sec. 14. “Subsidy” means the amount of money that the department will pay to a contractor on behalf of a senior citizen who meets the criteria for receiving a subsidy set forth in NRS 439.665 toward the cost of a policy of health insurance that the senior citizen ~~[purchased from]~~ *is enrolled in through* the contractor.

Sec. 15.

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.

(a) The department may waive the eligibility requirement regarding household income upon written request of the applicant if the circumstances of the applicant’s household have changed as a result of:

(I) Illness, as certified by a licensed physician;

(II) Disability, as certified by a licensed physician; or

(III) Extreme financial hardship based on a significant reduction of income,

when considering the applicant’s current financial circumstances.

Waiver requests will be reviewed on a case-by-case basis.

(b) An applicant who requests such a waiver shall include with that request all medical and financial documents that support his request.

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. Each year in which there is money available for such subsidies in the fund for a healthy Nevada, the department will designate at least one period of open enrollment.

4. An application shall be deemed received by the department on the date that the completed application is received by the department.

Sec. 17.

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 on behalf of the applicant; and

(b) That within 60 days after the date of the notice, the applicant must ~~purchase~~ *be enrolled in* a policy of health insurance from a contractor to remain eligible to receive the subsidy.

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 section 19 of this regulation; and

(c) The procedures for a hearing before the department as set forth in sections *21 to 28*, inclusive, of this regulation.

4. In addition to the requirements set forth in subsection 5, if the application is denied because there is insufficient money available in the fund for a healthy Nevada to pay a subsidy,

the notice must state that the applicant has been placed on a waiting list in the order of priority described in section 18 of this regulation.

5. Within ~~{50}~~ 30 days after ~~{the end of a period of open enrollment}~~ *approval of an application*, the department will provide to the contractor the names of the applicants whose applications were approved ~~{during that period of open enrollment}~~. Within the limit on time set forth in the contract entered into with the department pursuant to NRS 439.665, the contractor shall provide written notice to the department of the ~~{purchase of}~~ *enrollment in* a policy of health insurance from the contractor by an applicant whose application was approved.

Sec. 18.

1. The department will rank the applicants whose applications are approved based on their household income. *If the In the event the number of applicants exceeds the funding available for subsidies in the fund for a healthy Nevada, the department will rank the applicants whose applications are approved based on the date the application is received and the~~{#}~~ applicant's 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.

1. *Exceptions to the ranking criteria may be granted if a qualifying hardship is substantiated. Persons with qualifying hardships will receive priority over other applicants. A qualifying hardship will include:*

- (a) The total cost of prescriptions for the household exceeds 50% of monthly income;*
- (b) Failure to grant the applicant priority will place the applicant's life in imminent danger, as substantiated by a licensed physician; or*

(c) Any other hardship deemed as a qualifying hardship by the department.

Sec. 19.

1. If an applicant whose application was approved fails to ~~purchase~~ *submit an enrollment form for* a policy of health insurance from a contractor within 60 days after the date of a notice of approval provided pursuant to section 17 of this regulation, the department will provide written notice to the applicant of its intent to terminate his eligibility to receive a subsidy. The notice must be provided within 70 days after the date of the notice of approval provided pursuant to section 17 of this regulation and must state that the applicant is not eligible to receive a subsidy unless the applicant:

(a) Requests a hearing in the manner set forth in section 21 of this regulation;

(b) Submits proof to the department before the date scheduled for the hearing that he has ~~purchase~~ *been enrolled in* a policy of health insurance from a contractor; or

(c) Establishes good cause for failing to ~~purchase~~ *be enrolled in* such a policy of health insurance.

2. If an applicant fails to take any of the actions listed in subsection 1, the applicant is not eligible to receive a subsidy. The department will send written notice to that effect to the applicant. The notice must also state that the applicant:

(a) Is no longer eligible to be placed on the waiting list; and

(b) Must reapply during a period of open enrollment if he wishes to be eligible to receive a subsidy in the future.

3. If an applicant is not eligible to receive a subsidy pursuant to subsection 2, the department will grant a subsidy to an applicant on the waiting list in the order of priority described in section 16 of this regulation. If, at any time, the department determines that there is

money available for paying a subsidy in the fund for a healthy Nevada, the department may grant a subsidy to an applicant on the waiting list in the order of priority described in section **18** of this regulation. If the department grants a subsidy pursuant to this subsection, it will provide written notice to the applicant as set forth in section **17** of this regulation.

Sec. 20. 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.

Sec. 21.

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.

Sec. 22.

1. The department will deny a request for a hearing received pursuant to section **21** of this regulation 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 in the fund for a healthy Nevada;

(c) The sole issue being contested is an issue that relates to a determination of the coverage of the policy of health insurance ~~[purchased by an]~~ *the* enrollee *is covered under* 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 time limit set forth in section *21* of this regulation.

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.

Sec. 23. All testimony to be considered in a hearing must be taken under oath. Except as otherwise provided in section *26* of this regulation, 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.

Sec. 24.

1. Except as otherwise provided in section *26* of this regulation, 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.

Sec. 25.

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 section 24 of this regulation, 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.

Sec. 26.

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 other location approved in advance of the hearing by the hearing officer at which a department representative* ~~[which has an agreement with the department that provides, without limitation, that a person designated by the state agency]~~ will:

(a) Be available *at the prearranged location* to answer the telephone call the hearing officer places ~~[to the state agency]~~ to begin the hearing;

(b) Administer the oath required pursuant to section 23 of this regulation 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.

Sec. 27.

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 section 24 of this regulation, after the hearing; and

(d) The decision of the hearing officer.

Sec. 28.

1. The hearing officer presiding over a hearing conducted pursuant to sections 21 to 28, inclusive, of this regulation 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.

Sec. 29.

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 state agencies.

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 information.

Sec. 30.

1. If an enrollee wishes to discontinue receiving a 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 reasonable 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 section **31** of this regulation 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 has failed to ~~[pay, in a timely manner, the premiums on]~~ **maintain enrollment in** a policy of health insurance ~~[that he purchased from]~~ **through** a contractor;

(b) The enrollee is eligible for Medicaid;

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

(d) The enrollee knowingly provided incorrect information on the application that he filed with the department pursuant to section **16** of this regulation and failed to correct the information within a reasonable time as determined by the department.

4. If the department reasonably believes that an enrollee is ineligible to continue to receive a subsidy based upon the circumstances set forth in paragraph (a) of subsection 3, the notice provided to the enrollee must state that the contractor may terminate coverage as provided in the policy of health insurance the enrollee ~~[purchased by]~~ **is covered under** regardless of whether the enrollee requests a hearing before the department.

5. The department will deem an enrollee to be ineligible to continue 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.

Sec. 31. 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 continue to receive a subsidy. The notice must inform the enrollee:

1. Of the reason that the enrollee is ineligible to continue to receive a subsidy;
2. Of the procedures set forth in section **21** of this regulation 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
4. That if he wishes to continue the coverage provided by the policy of health insurance ~~he purchased from~~ *through* a contractor, he must pay to the contractor, in a timely manner, the entire premium established by the contractor.

Sec. 32.

~~[H.]~~ If a hearing officer overturns a decision of the department to deny *or terminate* a subsidy ~~for that an enrollee is ineligible to continue to receive a subsidy~~, the department will pay:

(a) The amount of the subsidy due the contractor 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 reimburse the individual, upon receipt of proof of payment, for any premium they have paid directly to the contractor.* ~~[if the applicant or enrollee had:~~

~~—————(1) Purchased a policy of health insurance from the contractor as of the date that the applicant or enrollee appealed the decision of the department; and (1) Paid all the premiums due the contractor as of the date that the decision of the hearing officer was issued.~~

~~—————(b) The amount of the subsidy due the contractor from the date the applicant purchases a policy of health insurance from a contractor upon receipt of proof that the applicant has purchased the policy if the applicant had failed to purchase such a policy as of the date that the applicant appealed the decision of the department denied or terminated the subsidy.]~~

2. The provisions of this section apply regardless of whether the department appeals the decision of the hearing officer.

Sec. 33.

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 enrollee to receive a subsidy. If the applicant or enrollee fails to cooperate, the department will deny the application or will deem the enrollee ineligible to continue to receive a subsidy.

2. An enrollee shall update the information contained in the application filed with the department pursuant to section **16** of this regulation 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 Medicaid; or
- (g) Eligibility for supplemental security income,

by notifying the department in writing within 20 days after the information becomes available to him.

Sec. 34.

1. 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 a 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 provisions of Sec. 34, 1 (c) will only apply if the debt amount exceeds one hundred dollars.*

3. 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.

4. 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.

(3 & 4 renumbered from 2 & 3)

Sec. 35. The records of the department relating to an applicant or enrollee are confidential, and may only be released to:

- 1. A person who has received authorization to obtain the records from the applicant or enrollee that is in writing and signed by the applicant or enrollee;
- 2. A person who is authorized to obtain the records pursuant to an order of a court of competent jurisdiction; or
- 3. An employee of the department or contractor who needs the records for purposes relating to the administration of NRS 439.635 to 439.690, inclusive.