

The Home Care Employment Standards Board (HCESB) Membership Binder

Updated 5/4/2022

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Acronyms

ADL – Activities of Daily Living

ARPA – American Rescue Plan Act of 2021

BLS – Bureau of Labor Statistics

CAN – Certified Nursing Assistant

CDC – The Centers for Disease Control and Prevention

DETR – Department of Employment, Training, and Rehabilitation

DHCFP – Division of Health Care Financing and Policy

DHHS – Department of Health and Human Services

DPBH – Division of Public and Behavioral Health

EVV – Electronic Visit Verification

FMAP – Federal Medical Assistance Percentage

HCBS Plan – Home and Community Based Services Plan

HCESB – Home Care Employment Standards Board

HCQC – Bureau of Health Care Quality and Compliance

IDD – Intellectual/Developmental Disability

ISO – Intermediary Service Organization

LEP – Local Emphasis Program

NAC – Nevada Administrative Code

NEP – National Emphasis Program

NRS – Nevada Revised Statutes

OSHA – Occupational Safety and Health Administration

PCA – Personal Care Agency

PCAN – Personal Care Association of Nevada

PCS – Personal Care Service

PHI – Public Health Institute

PPE – Personal Protective Equipment

PTO – Paid Time Off

SCATS – Safety, Consultation, and Training Section

SEIU – Service Employees International Union

SLA – Supported Living Arrangements

What to Expect During a Meeting Subject to Nevada Open Meeting Law (OML)

1. Roll Call

- a. After the Chair calls the meeting to order, support staff will take roll call of board members to establish quorum.
 - i. **Quorum:** a simple majority of voting board members. For HCESB, six (6) voting members must be present to have quorum. NRS 241.015.
 - ii. Board members are expected to stay for the duration of the meeting unless otherwise communicated with the Chair and support staff.
 - iii. If quorum is lost at any point during the meeting, no further action may be taken, and the meeting ends.

2. Public Comment

- a. Public comment periods must be offered at every meeting, allowing the general public comment before action is taken and before the conclusion of the meeting. NRS 241.020.
- b. There are two (2) opportunities for public comment during each meeting.
- c. Anyone in attendance has an opportunity to address the Board during the designated public comment periods, and the Board may limit public comment to two (2) minutes per person, by indicating as much on the agenda.
- d. No action may be taken by the Board on a matter raised until the matter is included on an agenda as an item on which action may be taken.

3. Agenda Items

- a. The Chair will announce each agenda item up for discussion. Agenda items may be taken out of order from what is listed at the discretion of the Chair.
- b. Types of agenda items:
 - i. **For Possible Action:** Items in which action listed in the agenda may be taken. Typically approving minutes or suggesting new agenda items for the next meeting. Action may be taken upon a motion by a Board member, but the action must be limited to what has been described on the agenda.
 - ii. **Informational Item:** Non-voting items. As the name suggests, these items are purely for the education of the Board. These items may be used to inform future agenda items where action may be taken, however there may not be a motion under informational agenda items.

4. Motions

- a. The Board follows Robert's Rules of Order, to the greatest extent possible. It is not required under the Open Meeting Law, however it keeps the record clear to the benefit of public transparency.
- b. **Motion:** A proposal for action made by a member of the Board. Must be voted on and approved by the Board to take effect.
- c. Any voting board member may make a motion so long as it is appropriate under the current agenda item.
- d. The Chair must call for a motion before a voting member of the Board makes a motion.

- i. You may notify the Chair of your intent to make a motion at any time during the agenda item, however, must wait for the Chair to call for a motion before officially doing so.
- e. Motions may be “workshopped”, so the language accurately reflects the powers of the Board.
- f. After a motion is made, there may be discussion from members of the Board before voting.
 - i. If you feel you do not have sufficient resources to make an informed decision, make this known during the discussion portion of the motion.

5. Voting

- a. The Chair will call for when a vote is to commence.
- b. If the vote is not unanimous, support staff will take a “roll call” of board members in attendance at the meeting to receive their vote individually.
- c. Options for votes:
 - i. Aye or Yay
 - ii. Nay
 - iii. Abstain
- d. Disclosure
 - i. A Board member must make a disclosure at the time a matter is considered by the Board, of any conflict of interest caused by:
 - 1. A gift or loan;
 - 2. A substantial pecuniary interest;
 - 3. A commitment in a private capacity;
 - 4. Representation of a private client. NRS 281A.420.
 - ii. If a Board member anticipates having a conflict of interest, they are encouraged to speak with the DAG prior to the meeting to determine if disclosure is required.
- e. Abstention
 - i. Abstentions on votes should be limited to the extent they are required by law, arising from a conflict of interest. NRS 281A.420.
 - ii. Though members are permitted to abstain from a vote at any time as they see fit, it is not encouraged, as it is the duty of those on the Board to make decisions.
 - iii. If a Board member anticipates having to abstain as required by law, they are encouraged to speak with the DAG prior to the meeting to determine if abstention is required.
- f. Votes pass by a simple majority of voting members present.
- g. Even if a motion does not pass, the topic can always be brought back for discussion/action on a future agenda item to the extent it is wanted by one or multiple members of the board.

6. Future Agenda Items

- a. Members of the Board may suggest items for future agendas during the meeting or in writing to the Chair and support staff.

Training materials relating to the Open Meeting Law and Ethics in Government provisions are available on the Nevada Attorney General website, at https://ag.nv.gov/Hot_Topics/Training_Materials/

If you have any further questions about OML, please contact Kayla Samuels at k.samuels@health.nv.gov.

From SB340 of Nevada's 81st Regular Session

Sec. 16. 1. A home care employment standards board shall:

(a) Conduct an investigation into matters relating to the wages and working conditions of home care employees in this State and the compliance of home care employers with applicable federal, state and local laws; and

(b) Based on the investigation conducted pursuant to paragraph (a), develop recommendations regarding:

(1) The minimum wage that may be paid to a home care employee in this State; or (2) Safe and healthful working conditions for home care employees.

2. A home care employment standards board shall determine the scope of its investigation conducted pursuant to paragraph (a) of subsection 1 and the specific matters into which it will inquire, which may include, without limitation:

(a) The adequacy of wage rates and other compensation policies of home care employers to ensure the provision of quality services and sufficient levels of recruitment and retention of home care employees;

(b) The sufficiency of levels of recruitment and retention of home care employees;

(c) The adequacy of the role of home care employees in making decisions affecting their wages and working conditions;

(d) The adequacy and enforcement of training requirements for home care employees;

(e) The impact of home care programs, the larger system for long-term care in this State and any efforts to reach the goal of rebalancing long-term care services toward home and community-based services on the wages and working conditions of home care employees;

(f) The impact of systemic racism and economic injustice on home care employees and the adequacy of efforts to alleviate such impact through the development of career paths through partnerships between labor and management and other methods; and

(g) The adequacy of payment practices and policies of the State as such practices and policies relate to the reimbursement of home care employers for the provision of services under a home care program.

Senate Bill No. 340—Senators Neal and Donate

CHAPTER.....

AN ACT relating to employment; requiring the Director of the Department of Health and Human Services to establish a home care employment standards board under certain circumstances; prescribing the membership of a home care employment standards board; requiring such a board to conduct an investigation into certain matters relating to the employment of home care employees; requiring such a board to develop recommendations concerning the minimum wage for home care employees or the working conditions of such employees; authorizing the Director to adopt regulations implementing such recommendations; revising provisions governing the administration and enforcement of provisions governing the minimum wage paid to employees in this State; providing penalties; making appropriations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires an employer to pay an employee a wage of not less than a certain minimum wage. (Nev. Const. Art. 15, § 16; NRS 608.250) Existing law requires the Labor Commissioner to administer and enforce the provisions of existing law governing the minimum wage. (NRS 608.270)

Existing law provides for the establishment of certain programs to provide services to certain elderly persons or persons with disabilities to allow such persons to remain in their homes or in the community. (NRS 422.396, 427A.250-427A.280, 427A.793) **Section 8** of this bill designates such a program, and any similar program established by a state agency or a local government, as a "home care program."

Existing law authorizes an agency licensed as an agency to provide personal care services in the home to provide certain authorized medical services to persons with disabilities and certain nonmedical services related to personal care to elderly persons or persons with disabilities. (NRS 449.1935) Under existing law, certain providers of temporary respite services are not required to be licensed as an agency to provide personal care services in the home. (NRS 449.0021) Existing law authorizes a certified intermediary service organization to provide certain services related to the employment of a personal assistant who is selected by a person with a disability or other responsible person to provide certain nonmedical and authorized medical services to the person with a disability. (NRS 449.4308)

Section 6 of this bill designates an agency to provide personal care services in the home, an intermediary service organization and certain providers of temporary respite services that have entered into a contract with a state agency or a local government to provide certain services under a home care program as "home care employers." **Section 5** of this bill designates a person who is an employee of a home care employer and who provides personal care services, personal assistance or temporary respite services through a home care program as a "home care employee."

Section 13 of this bill requires the Director of the Department of Health and Human Services to establish a home care employment standards board if the

Director determines that it is necessary or upon the petition of 50 or more home care employees. **Section 13** sets forth the membership of such a board, which consists of certain representatives of home care employers and home care employees and certain other persons. **Section 14** of this bill provides that if the Director establishes a home care employment standards board upon the petition of 50 or more home care employees, the Director or his or her designee is required to meet with representatives of the petitioners and discuss certain matters relating to the employment of home care employees. **Section 15** of this bill requires the Director and the Labor Commissioner to conduct an investigation into certain matters relating to the employment of home care employees and present the findings of the investigation to a home care employment standards board at the first meeting of the board.

Section 16 of this bill requires a home care employment standards board to conduct an investigation into certain matters of its choosing related to the wages and working conditions of home care employees and the compliance of home care employers with applicable laws. **Section 16** also requires a home care employment standards board to, based on such an investigation, develop recommendations regarding: (1) the minimum wage that may be paid to a home care employee; or (2) safe and healthful working conditions for home care employees. **Section 16** requires a home care employment standards board to submit to the Director a report with its findings and recommendations not later than 1 year after the date of its first meeting. **Section 16.5** of this bill requires the Director to make any report submitted by a home care employment standards board available on an Internet website maintained by the Director.

Section 17 of this bill authorizes the Director to take certain actions with respect to the report of a home care employment standards board. Under **section 18** of this bill, if the Director approves of a recommendation of such a board, the Director is required to adopt regulations as necessary to: (1) establish the minimum wage recommended by the home care employment standards board as the minimum wage which may be paid by a home care employer to a home care employee in this State; or (2) provide for safe and healthful working conditions for home care employees in accordance with the recommendation of the home care employment standards board. **Section 18** also provides that if the Director establishes a minimum wage for a home care employee, the Director is also authorized to adopt regulations concerning the payment of overtime for such employees. **Section 21** of this bill provides that such regulations prevail over the provisions of existing law governing the payment of overtime generally. (NRS 608.018)

Section 20 of this bill makes it a misdemeanor for a home care employer to take certain actions against a home care employee because the home care employee engages in or is believed to have engaged in certain activities relating to a home care employment standards board.

Section 22 of this bill revises provisions of existing law which authorize an employee to bring a civil action against an employer who pays the employee less than the minimum wage for the purpose of allowing a home care employee to bring such an action against a home care employer who pays the homecare employee less than the minimum wage for a home care employee established by regulation pursuant to **section 18**. (NRS 608.260)

Section 23 of this bill provides for the enforcement of the provisions governing the minimum wage for a home care employee established pursuant to **section 18** in the same manner in which the minimum wage established under existing law is enforced. (NRS 608.270)

Existing law provides that a person who violates the provisions of existing law governing the minimum wage is guilty of a misdemeanor and is subject to an

administrative fine of not more than \$5,000. (NRS 608.290) **Section 24** of this bill applies these same penalties to a person who violates the provisions governing the minimum wage for a home care employee established by the Director pursuant to **section 18**.

Section 25 of this bill authorizes a home care employment standards board or the Labor Commissioner to develop certain recommendations related to the outbreak of the disease identified by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services as COVID-19 and submit such recommendations to the Governor and the Legislature.

Sections 3-12 of this bill define words and terms for the purposes of **sections 2-20** of this bill. **Sections 26 and 27** of this bill make appropriations to the Office of the Labor Commissioner in the Department of Business and Industry and the Division of Public and Behavioral Health of the Department of Health and Human Services, respectively, for personnel, operating and equipment costs to carry out the provisions of this bill.

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

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 608 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. *As used in sections 2 to 20, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Agency to provide personal care services in the home” has the meaning ascribed to it in NRS 449.0021.*

Sec. 4. *“Director” means the Director of the Department of Health and Human Services.*

Sec. 5. 1. *“Home care employee” means a person who provides:*

(a) Personal care services through a home care program as an employee of a home care employer that is an agency to provide personal care services in the home;

(b) Personal assistance through a home care program as a personal assistant for whom a home care employer that is an intermediary service organization is the employer of record; or

(c) Temporary respite services through a home care program as an employee of a home care employer that has entered into a contract with the Aging and Disability Services Division of the Department of Health and Human Services to provide such services.

2. As used in this section, “personal assistant” has the meaning ascribed to it in NRS 449.4308.

Sec. 6. “Home care employer” means:

1. An agency to provide personal care services in the home that has entered into a contract with a state agency or local government to provide personal care services under a home care program;

2. An intermediary service organization that has entered into a contract with a state agency or local government to provide services relating to personal assistance under a home care program; or

3. A person or agency who has entered into a contract with the Aging and Disability Services Division of the Department of Health and Human Services to provide temporary respite services under a home care program.

Sec. 7. “Home care employment standards board” means a board established by the Director pursuant to section 13 or 17 of this act.

Sec. 8. 1. “Home care program” means a program established by a state agency or a local government which provides in the home personal care services, personal assistance or temporary respite services to elderly persons or persons with disabilities.

2. The term includes, without limitation:

(a) Any program established under the State Plan for Medicaid which provides, in the home, the services described in subsection 1.

(b) Any program established pursuant to NRS 427A.250 to 427A.280, inclusive.

(c) The program established pursuant to NRS 422.396.

(d) The program established pursuant to NRS 427A.793.

Sec. 9. “Intermediary service organization” has the meaning ascribed to it in NRS 449.4304.

Sec. 10. “Personal assistance” has the meaning ascribed to it in NRS 449.4308.

Sec. 11. “Personal care services” means the services described in NRS 449.1935.

Sec. 12. “Temporary respite services” has the meaning ascribed to it in NRS 449.0021.

Sec. 13. 1. If the Director determines that it is necessary or upon the petition of 50 or more home care employees, the Director shall establish a home care employment standards board to

conduct an investigation and develop recommendations as provided in section 16 of this act.

2. A home care employment standards board must consist of:

(a) The Director or his or her designee, who serves as Chair and a nonvoting member; and

(b) The following voting members:

(1) The Labor Commissioner;

(2) Three representatives of home care employers, appointed by the Director;

(3) Three representatives of home care employees, appointed by the Director; and

(4) Three persons who receive or are representatives of persons who receive services from a home care employee, appointed by the Director.

3. The Director shall appoint the members of a home care employment standards board pursuant to subparagraphs (2), (3) and (4) of paragraph (b) of subsection 2 after providing public notice and soliciting applications for the appointment of such members.

4. The members of a home care employment standards board serve without compensation.

5. A majority of the voting members of a home care employment standards board constitutes a quorum to transact business, and a majority of a quorum present at any meeting is sufficient to approve any recommendation of such a board.

6. A home care employment standards board shall meet at the times and places specified by a call of the Chair. A home care employment standards board shall meet as often as necessary to accomplish the duties set forth in section 16 of this act, but not less than once each calendar quarter.

Sec. 14. *If the Director establishes a home care employment standards board upon the petition of 50 or more home care employees pursuant to section 13 of this act, the Director or his or her designee shall, not later than 30 days after the receipt of the petition, meet with representatives of the persons who submitted the petition and discuss matters relating to the wages and working conditions of home care employees in this State and the compliance of home care employers with applicable federal, state and local laws.*

Sec. 15. *1. As soon as practicable after the appointment of the members of a home care employment standards board pursuant to section 13 of this act, the Director shall fix a date for the first meeting of the board. If a home care employment*

standards board is established upon the petition of 50 or more home care employees pursuant to section 13 of this act, the first meeting of the board must be held not later than 60 days after the date of the meeting described in section 14 of this act.

2. Before the first meeting of a home care employment standards board, the Director and the Labor Commissioner shall conduct a preliminary investigation into the wages and working conditions of home care employees in this State and the compliance of home care employers with applicable federal, state and local laws. The Director and the Labor Commissioner shall coordinate with the Aging and Disability Services Division of the Department, the Division of Health Care Financing and Policy of the Department and the Division of Public and Behavioral Health of the Department as necessary to complete the investigation.

3. The Director and the Labor Commissioner shall present the results of the preliminary investigation conducted pursuant to subsection 2 to the home care employment standards board at the first meeting of the board.

4. As used in this section, "Department" means the Department of Health and Human Services.

Sec. 16. 1. A home care employment standards board shall:

(a) Conduct an investigation into matters relating to the wages and working conditions of home care employees in this State and the compliance of home care employers with applicable federal, state and local laws; and

(b) Based on the investigation conducted pursuant to paragraph (a), develop recommendations regarding:

(1) The minimum wage that may be paid to a home care employee in this State; or

(2) Safe and healthful working conditions for home care employees.

2. A home care employment standards board shall determine the scope of its investigation conducted pursuant to paragraph (a) of subsection 1 and the specific matters into which it will inquire, which may include, without limitation:

(a) The adequacy of wage rates and other compensation policies of home care employers to ensure the provision of quality services and sufficient levels of recruitment and retention of home care employees;

(b) The sufficiency of levels of recruitment and retention of home care employees;

(c) The adequacy of the role of home care employees in making decisions affecting their wages and working conditions;

(d) The adequacy and enforcement of training requirements for home care employees;

(e) The impact of home care programs, the larger system for long-term care in this State and any efforts to reach the goal of rebalancing long-term care services toward home and community-based services on the wages and working conditions of home care employees;

(f) The impact of systemic racism and economic injustice on home care employees and the adequacy of efforts to alleviate such impact through the development of career paths through partnerships between labor and management and other methods; and

(g) The adequacy of payment practices and policies of the State as such practices and policies relate to the reimbursement of home care employers for the provision of services under a home care program.

3. In conducting the investigation pursuant to paragraph (a) of subsection 1, a home care employment standards board shall have the power to administer oaths, take testimony thereunder and issue subpoenas for the attendance of witnesses and the production of books, papers and any other materials relevant to the investigation.

4. A home care employment standards board may request information relevant to the investigation conducted pursuant to paragraph (a) of subsection 1 directly from any state agency. A state agency that receives a reasonable request for information from a home care employment standards board shall comply with the request as soon as is reasonably practicable after receiving the request.

5. A home care employment standards board may request direct testimony from any state agency at a meeting of the board. The head, or a designee thereof, of a state agency who receives a reasonable request for direct testimony at a meeting of a home care employment standards board shall appear at the meeting and shall comply with the request.

6. Not later than 1 year after the date of the first meeting of a home care employment standards board, the board shall submit to the Director a report of its findings and recommendations.

Sec. 16.5. *The Director shall make any report submitted by a home care employment standards board pursuant to section 16 of this act available on an Internet website maintained by the Director.*

Sec. 17. *Upon receipt of a report submitted by a home care employment standards board pursuant to subsection 6 of section 16 of this act, the Director shall review the findings and each recommendation contained in the report. The Director may:*

- 1. Approve or disapprove any recommendation;*
- 2. Require the home care employment standards board that submitted the report to conduct a new investigation and develop new recommendations in accordance with section 16 of this act; or*
- 3. Establish a new home care employment standards board in the manner provided in section 13 of this act to conduct a new investigation and develop new recommendations in accordance with section 16 of this act.*

Sec. 18. *1. If the Director approves a recommendation contained in a report submitted by a home care employment standards board pursuant to subsection 6 of section 16 of this act, the Director shall adopt regulations necessary to:*

(a) Establish the minimum wage recommended by the home care employment standards board as the minimum wage which may be paid to a home care employee in this State; or

(b) Provide for safe and healthful working conditions for home care employees in accordance with the recommendation of the home care employment standards board.

2. If the Director adopts regulations establishing the minimum wage which may be paid to a home care employee pursuant to paragraph (a) of subsection 1, the Director may also adopt any regulations concerning the payment of overtime to a home care employee which the Director deems appropriate and which are consistent with federal law.

Sec. 19. *If the Director adopts regulations establishing the minimum wage which may be paid to a home care employee pursuant to section 18 of this act:*

1. Each home care employer shall pay to each home care employee of the employer a wage of not less than the minimum wage established by regulation of the Director pursuant to section 18 of this act.

2. It is unlawful for a home care employer to employ, cause to be employed or permit to be employed, or to contract with, cause to be contracted with or permit to be contracted with, any home care employee for a wage less than that established by regulation of the Director pursuant to section 18 of this act.

Sec. 20. *1. It is unlawful for a home care employer in this State to discharge, discipline, discriminate against in any manner*

or deny employment or promotion to, or threaten to take any such action against, a home care employee because:

(a) The home care employee serves as a member of a home care employment standards board;

(b) The home care employee has actively participated in the formation of a home care employment standards board;

(c) The home care employee has testified or is about to testify in an investigation conducted by a home care employment standards board;

(d) The home care employee has engaged in any other activity related to the formation or activities of a home care employment standards board; or

(e) The home care employer believes that the home care employee may engage in any of the activities described in paragraphs (a) to (d), inclusive.

2. A home care employer who violates the provisions of subsection 1 is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000.

Sec. 21. NRS 608.018 is hereby amended to read as follows:

608.018 1. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate less than 1 1/2 times the minimum rate set forth in NRS 608.250 works:

(a) More than 40 hours in any scheduled week of work; or

(b) More than 8 hours in any workday unless by mutual agreement the employee works a scheduled 10 hours per day for 4 calendar days within any scheduled week of work.

2. An employer shall pay 1 1/2 times an employee's regular wage rate whenever an employee who receives compensation for employment at a rate not less than 1 1/2 times the minimum rate set forth in NRS 608.250 works more than 40 hours in any scheduled week of work.

3. The provisions of subsections 1 and 2 do not apply to:

(a) Employees who are not covered by the minimum wage provisions of Section 16 of Article 15 of the Nevada Constitution;

(b) Outside buyers;

(c) Employees in a retail or service business if their regular rate is more than 1 1/2 times the minimum wage, and more than half their compensation for a representative period comes from commissions on goods or services, with the representative period being, to the extent allowed pursuant to federal law, not less than 1 month;

(d) Employees who are employed in bona fide executive, administrative or professional capacities;

(e) Employees covered by collective bargaining agreements which provide otherwise for overtime;

(f) Drivers, drivers' helpers, loaders and mechanics for motor carriers subject to the Motor Carrier Act of 1935, as amended;

(g) Employees of a railroad;

(h) Employees of a carrier by air;

(i) Drivers or drivers' helpers making local deliveries and paid on a trip-rate basis or other delivery payment plan;

(j) Drivers of taxicabs or limousines;

(k) Agricultural employees;

(l) Employees of business enterprises having a gross sales volume of less than \$250,000 per year;

(m) Any salesperson or mechanic primarily engaged in selling or servicing automobiles, trucks or farm equipment;

(n) A mechanic or worker for any hours to which the provisions of subsection 3 or 4 of NRS 338.020 apply;

(o) A domestic worker who resides in the household where he or she works if the domestic worker and his or her employer agree in writing to exempt the domestic worker from the requirements of subsections 1 and 2; and

(p) A domestic service employee who resides in the household where he or she works if the domestic service employee and his or her employer agree in writing to exempt the domestic service employee from the requirements of subsections 1 and 2.

4. *Any regulation of the Director of the Department of Health and Human Services concerning the payment of overtime to a home care employee adopted pursuant to section 18 of this act prevails over the general provisions of this section.*

5. As used in this section ~~["domestic"]~~:

(a) *"Domestic worker"* has the meaning ascribed to it in NRS 613.620.

(b) *"Home care employee" has the meaning ascribed to it in section 5 of this act.*

Sec. 22. NRS 608.260 is hereby amended to read as follows:

608.260 1. If any employer pays any employee a lesser amount than the minimum wage set forth in NRS 608.250 ~~or, if applicable, the minimum wage established by regulation of the Director of the Department of Health and Human Services pursuant to section 18 of this act,~~ the employee may, at any time within 2 years, bring a civil action against the employer. A contract

between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action.

2. If the employee prevails in a civil action brought pursuant to subsection 1:

(a) The employee is entitled to all remedies available under the law or in equity appropriate to remedy the violation by the employer which may include, without limitation, back pay, damages, reinstatement or injunctive relief; and

(b) The court must award the employee reasonable attorney's fees and costs.

Sec. 23. NRS 608.270 is hereby amended to read as follows:

608.270 1. The Labor Commissioner shall:

(a) Administer and enforce the provisions of NRS 608.250 ~~§~~ *and section 18 of this act*;

(b) Adopt any regulations necessary to carry out the duties set forth in paragraph (a); and

(c) Furnish the district attorney of any county or the Attorney General all data and information concerning violations of the provisions of NRS 608.250 ~~§~~ *or section 18 of this act*, occurring in the county coming to the attention of the Labor Commissioner.

2. Each district attorney shall, if a complaint is made to him or her by the Labor Commissioner or by any aggrieved person, prosecute each violation of the provisions of NRS 608.250 *or section 18 of this act* that occurs in the district attorney's county. If any such district attorney fails, neglects or refuses for 20 days to commence a prosecution for a violation of the provisions of NRS 608.250 ~~§~~ *or section 18 of this act*, after being furnished data and information concerning the violation, and diligently to prosecute the same to conclusion, the district attorney is guilty of a misdemeanor, and in addition thereto must be removed from office.

Sec. 24. NRS 608.290 is hereby amended to read as follows:

608.290 1. Any person who violates any provision of NRS 608.250 , *section 18 of this act* or any regulation adopted pursuant thereto is guilty of a misdemeanor.

2. In addition to any other remedy or penalty, the Labor Commissioner may impose against the person an administrative penalty of not more than \$5,000 for each such violation.

Sec. 25. 1. For the period of time that any emergency directive issued by the Governor pursuant to chapter 414 of NRS relating to the outbreak of the disease identified by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services as COVID-19 remains in effect, a home

care employment standards board or, if such a board has not been established by December 1, 2021, the Labor Commissioner, may:

(a) Examine matters relating to COVID-19, including, without limitation, the adequacy of plans relating to the distribution of personal protective equipment to home care employees, the testing of home care employees for COVID-19 and the distribution of vaccines for COVID-19 to home care employees; and

(b) Develop recommendations concerning:

(1) Measures to ensure that plans relating to the distribution of personal protective equipment to home care employees, the testing of home care employees for COVID-19 and the distribution of vaccines for COVID-19 to home care employees are sufficient and equitable;

(2) Effective training requirements for home care employees for COVID-19 response;

(3) Protocols to allow a home care employee to report an outbreak of COVID-19 or any deficiencies relating to personal protective equipment or testing for COVID-19 without fear of retaliation; and

(4) Measures to ensure that the disbursement of federal funds for COVID-19 relief are targeted with the greatest impact.

2. In developing any recommendations pursuant to subsection 1, a home care employment standards board or the Labor Commissioner shall solicit input from home care employers and home care employees.

3. If a home care employment standards board or the Labor Commissioner develops recommendations pursuant to subsection 1, the board or the Labor Commissioner shall prepare a report summarizing such recommendations and submit the report to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the Legislature or, if the Legislature is not in session, to the Legislative Commission.

4. As used in this section:

(a) "Home care employee" has the meaning ascribed to it in section 5 of this act.

(b) "Home care employer" has the meaning ascribed to it in section 6 of this act.

(c) "Home care employment standards board" has the meaning ascribed to it in section 7 of this act.

Sec. 26. 1. There is hereby appropriated from the State General Fund to the Office of the Labor Commissioner in the Department of Business and Industry for personnel, operating and

equipment costs to carry out the provisions of this act the following sums:

For the Fiscal Year 2021-2022	\$71,665
For the Fiscal Year 2022-2023	\$88,469

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 16, 2022, and September 15, 2023, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 16, 2022, and September 15, 2023, respectively.

Sec. 27. 1. There is hereby appropriated from the State General Fund to the Division of Public and Behavioral Health of the Department of Health and Human Services for personnel, operating and equipment costs to carry out the provisions of this act the following sums:

For the Fiscal Year 2021-2022	\$86,609
For the Fiscal Year 2022-2023	\$110,120

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 16, 2022, and September 15, 2023, respectively, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 16, 2022, and September 15, 2023, respectively.

Sec. 28. 1. This section and sections 26 and 27 of this act become effective on July 1, 2021.

2. Sections 1 to 25, inclusive, of this act become effective on October 1, 2021.

FMAP

The Federal Medical Assistance Percentage (FMAP) is a formula set forth in federal statute that is used to determine the federal share of the cost of Medicaid in each state. The state's FMAP is calculated annually and is based on state per capita income in order to be responsive to changes in state economies. The lower the state's per capita income, the higher the state's FMAP, or federal Medicaid matching rate. However, it is important to note that there is typically a lag of three years in necessary data for FMAP changes which can cause fiscal stress for state's facing economic challenges. Small changes in the FMAP rate can also impact the state's Medicaid budget. For example, based on current expenditure levels, a one percentage point decrease in FMAP increases the need for state general funds by approximately \$16 million per year.

FMAP is set on a federal fiscal year (FFY) basis. Nevada's FMAP rate for FFY 2022 is 62.59%. This means that for every state dollar spent on Medicaid services, the state is eligible to receive 63 cents in federal matching funds. The federal government also provides an enhanced federal match for certain populations through two additional FMAP rates. These include:

- **Enhanced CHIP FMAP** - The Enhanced CHIP FMAP is calculated by reducing the state's share of expenditures by 30%. Nevada's Enhanced CHIP FMAP is 73.81% for FFY 2022.
- **New Eligibles FMAP** – To encourage states to implement the Medicaid expansion, the Affordable Care Act (ACA) provides an enhanced FMAP for newly eligible adults. This FMAP is based on the calendar year rather than the federal fiscal year, and was at 100% in 2014 and slowly declined until it reached 90% in the calendar year 2020. The New Eligibles FMAP is currently 90% and will remain at 90% under current federal law

During the Coronavirus Public Health Emergency, the Families First Coronavirus Response Act (FFCRA) increased Nevada's FMAP rate by an additional 6.2 percentage points to 68.79% for FFY 2022. The Enhanced CHIP FMAP increased by 4.34 percentage points as well (78.15%). For New Eligibles, the FMAP remains unchanged at 90% during the PHE. The FFCRA enhanced FMAPs are scheduled to end pending extensions of the PHE.

Figure 6 below shows the FMAP, Enhanced CHIP FMAP, and the New Eligibles FMAP for the quarters between July 2019 and June 2023. The lighter colored columns for the Regular FMAP and Enhanced CHIP FMAP represent the quarters that include the FFCRA FMAP enhancement. As noted above, the enhancement does not apply to the Newly Eligible FMAP.

Figure 6: FMAP Rates by Quarter, July 2019 - June 2023

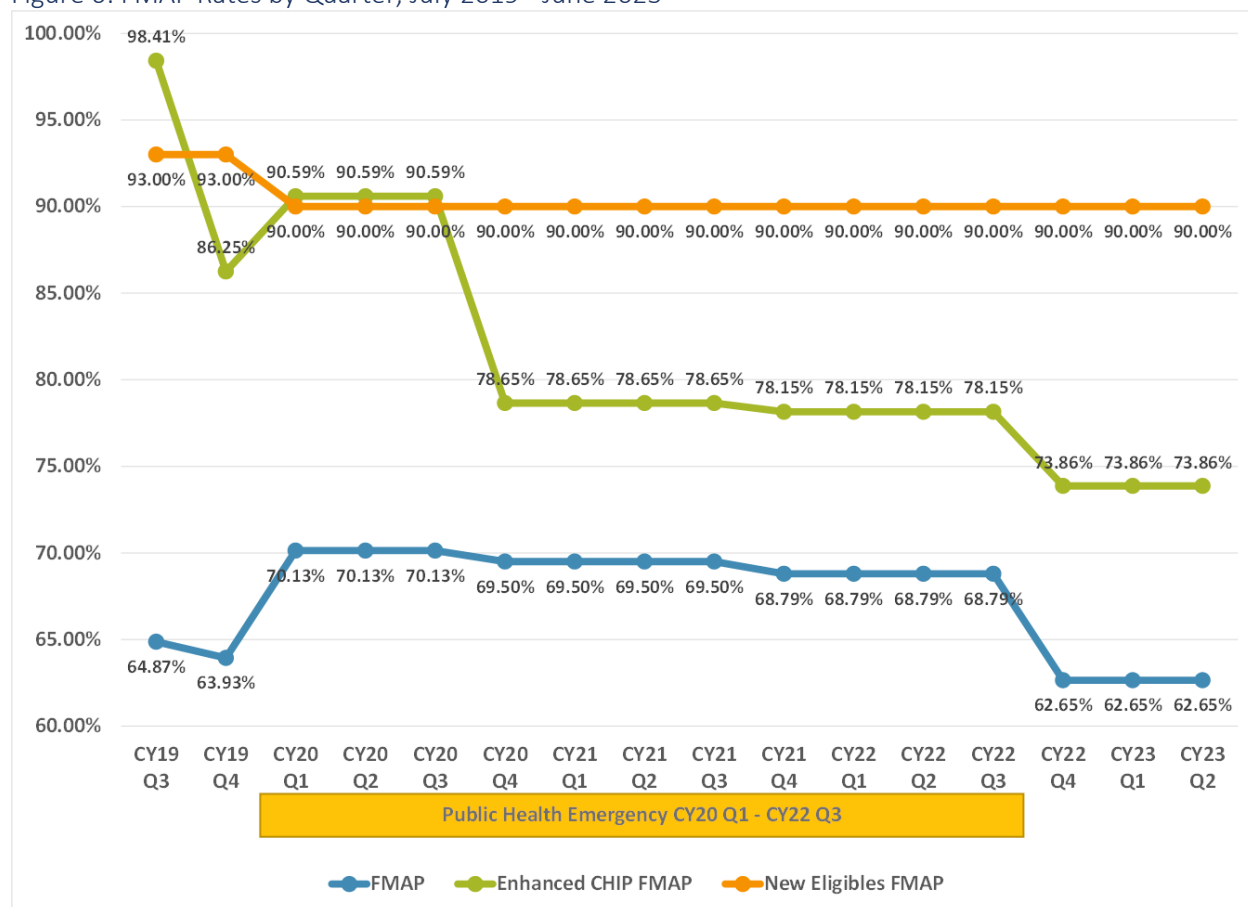


Figure 6 Source: FMAP Recalculation with PHE through September 2022

Enhanced federal funding is also available for specific services:

- Indian Health Services – 100% federal match under Title XIX of the Social Security Act
- Family Planning Services – 90% federal match under Title XIX of the Social Security Act
- Substance Use Disorder (SUD) Services – 80% federal match through the SUPPORT Act Post-Planning Grant
- Mobile Crisis Services - 85% federal match through the Mobile Crisis Planning Grant
- Home and Community Based Services – 10 percentage point increase in federal match from April 2021 through March 2022 through American Rescue Plan Act (ARPA)

Because Nevada’s budget is based on a state fiscal year (July through June) rather than a federal fiscal year (October through September), DHCFP converts the federal fiscal year FMAP into a “blended” rate to use for budgeting purposes. The blended rate takes into account one quarter from the prior federal fiscal year and three quarters from the current federal fiscal year. The blended FMAP for state fiscal year 2022 is 67.42%, including the additional 6.2 percentage points from FFCRA for the first three quarters (July-March 2022). Please see Table 18 in Appendix E for historical data on Nevada’s blended FMAP rate.

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Page 10

State: NEVADA

AMOUNT, DURATION, AND SCOPE OF MEDICAL
AND REMEDIAL CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

25. Home and Community Care for Functionally Disabled Elderly Individuals, as defined, described and limited in Supplement 2 to Attachment 3.1-A, and Appendices A-G to Supplement 2 to Attachment 3.1-A.

 Provided X Not Provided

26. Personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for persons with mental retardation (ICF/MR), or institution for mental disease that are: (1) authorized for an individual in accordance with a service plan approved by the State; (2) provided by an individual who is qualified to provide such services and who is not a member of the individual's family; and (3) furnished in a home or other location.

 X Provided: X State Approved (Not Physician Service Plan Allowed)

 Not Provided: X Services Outside the Home Also Allowed

 X Limitations Described on Attachment

State: NEVADA

Attachment 3.1-A

Page 10a

- 26a. Nevada Medicaid PERSONAL CARE SERVICES (PCS) assist, support, and maintain recipients living independently in their homes and in settings outside the home. These services are to be provided where appropriate, medically necessary, and consistent with program utilization control procedures. Personal Care Services may be an alternative to institutionalization. These services and hours are established based on medical necessity and must be prior authorized by Medicaid and established using a Medicaid defined functional assessment. Personal care services cannot exceed hours determined by a functional assessment conducted by State Medicaid staff or their designee. Services may be reassessed when a significant change in condition or circumstance occurs or annually as specified in policy.

Personal care services include a range of human assistance provided to persons with disabilities and chronic conditions of all ages, which enables them to accomplish tasks they would normally do for themselves if they did not have a disability. Assistance may be in the form of hands-on assistance (actually performing a personal care task for a person) or cuing so that the person performs the task by him/herself. Such assistance most often relates to performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). ADLs include eating, bathing, dressing, toileting, transferring, and maintaining continence. IADLs capture more complex life activities and include light housework, laundry, meal preparation, transportation, and grocery shopping. Personal care services can be provided on a continuing basis or on episodic occasions. Skilled services that may be performed only by a health professional are not considered personal care services.

Personal care services may be provided by any willing and qualified provider through a Provider Agency (PA), Intermediary Service Organization (ISO), or by an Independent Contractor when a PA or ISO is not available in that area of the state. All providers must meet established qualifications of 16 hours of basic training, background checks, and TB testing. Legally responsible individuals (e.g. spouse, legal guardian, parent of minor child, legally responsible stepparent, or foster parent) may not be reimbursed for providing personal care services.

Full Document: <https://dhcfp.nv.gov/uploadedFiles/dhcfpnvgov/content/Resources/AdminSupport/Manuals/MSP/Sec3/2-3.1AttachA.pdf>

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: NEVADAAttachment 4.19-B
Page 4 (Addendum)

1. Net allowable costs are the sum of the net allowable direct costs (Item 2) and indirect costs (Item 3).
 2. The cost-based rate is the net allowable costs (from Item 4) divided by the total forecasted transportation service utilization.
15.
 - a. Services of Religious non-medical Healthcare Institution nurses: NOT PROVIDED.
 - b. Services in Religious non-medical Healthcare Institutions sanatoria: NOT PROVIDED.
 - c. Hospice Services: Reimbursed at the established annual Medicaid rate regardless of billed charges. The agency's rates were set as of October 1, 2008 and are effective for services on or after that date. Rates are adjusted annually each year thereafter in accordance with 42CFR 418.
 - d. Hospice provided in a long-term care facility: Reimbursed 95% of the nursing facility daily rate for room and board provided by the nursing facility or long-term care facility.
 16. Emergency hospital services out-of-state: lower of: a) billed charges, or b) local Medicaid maximums. The agency's rates were set as of July 1, 2005 and are effective for services on or after that date.
 17. Personal care services in recipients' home and setting outside the home: fixed hourly rate established by the State of Nevada legislative body.

For personal care services performed on or after January 1, 2020, fixed hourly rate will be determined by multiplying a factor of 1.033 (equal to 3.3%) times the July 1, 2009 rate.

The Agency's rates for personal care services will be updated on January 1, 2020 to reflect the rate increase, as specified above. All rates are published on the Agency's website at <http://dhcfp.nv.gov/Resources/Rates/FeeSchedules/>.

18. RESERVED

Full Document: <https://dhcfp.nv.gov/uploadedFiles/dhcfpnavgov/content/Resources/AdminSupport/Manuals/MSP/Sec4/5-4.19AttachBPayforMedCare.pdf>

AGENCIES TO PROVIDE PERSONAL CARE SERVICES IN THE HOME

General Provisions

NAC 449.396 Definitions. ([NRS 439.200](#), [449.0302](#), [449.0304](#)) As used in [NAC 449.396](#) to [449.3982](#), inclusive, the words and terms defined in [NAC 449.3961](#) to [449.3968](#), inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008; A by R109-18, 1-30-2019)

NAC 449.3961 “Activities of daily living” defined. ([NRS 449.0302](#)) “Activities of daily living” means the activities listed in [NRS 449.0021](#).

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3962 “Agency” defined. ([NRS 449.0302](#)) “Agency” means an agency to provide personal care services in the home as defined in [NRS 449.0021](#).

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3963 “Attendant” defined. ([NRS 449.0302](#)) “Attendant” means a person who is employed by or retained pursuant to a contract by an agency for the purpose of providing personal care services to a client.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3964 “Client” defined. ([NRS 449.0302](#)) “Client” means an elderly person or a person with a disability who desires the provision of personal care services in the home in which the person lives.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3965 “Personal care services” defined. ([NRS 449.0302](#)) “Personal care services” means the nonmedical services described in [NRS 449.0021](#).

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3966 “Representative of the client” defined. ([NRS 449.0302](#)) “Representative of the client” means the spouse of a client, a parent or stepparent of a client who is a minor, the legal guardian of a client and any other person required by law to provide medical support to a client.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3967 “Service plan” defined. ([NRS 449.0302](#)) “Service plan” means a plan which includes a written description of the needs of a client for personal care services and which specifies the tasks that an attendant is authorized to provide for the client.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3968 “Work station” defined. ([NRS 449.0302](#)) “Work station” means a satellite office of an agency that is established for the sole purposes of providing a location where copies of records may be sent to an agency and providing a location from which an attendant may work to serve a geographic area outside the geographic area in which the attendant normally works.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

Licensing

NAC 449.3972 Location to which license applies; agency to retain proof of liability coverage and compliance with certain statutory provisions. ([NRS 449.0302](#))

1. Except as otherwise provided in this subsection, each license issued to operate an agency is separate and distinct and is issued to a specific person to operate the agency at a specific location. A person may operate an agency at multiple work stations if the agency maintains the records for the clients, attendants, other members of the staff of the agency and operations of the agency at the specific location designated on the license.

2. The name of the person who is designated as responsible for the conduct of the agency must appear on the face of the license.

3. Each agency must retain:

(a) Proof that it is adequately covered against liabilities resulting from claims incurred in the course of operation; and

(b) Proof of compliance with [NRS 449.065](#) and [449.067](#).

4. The proof of liability coverage and compliance with state statute required by subsection 3 must be verified at the time the agency submits its initial application to the Division for a license and upon request by the Division.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

Administration and Personnel

NAC 449.3973 Qualifications and duties of administrator; appointment of designee to act in administrator’s absence. ([NRS 449.0302](#))

1. The administrator of an agency must:

(a) Be at least 18 years of age;

(b) Have a high school diploma or its equivalent;

(c) Be responsible and mature and have the personal qualities which will enable the administrator to understand the problems of elderly persons and persons with disabilities;

(d) Understand the provisions of this chapter and [chapter 449](#) of NRS; and

(e) Demonstrate the ability to read, write, speak and understand the English language.

2. The administrator of an agency shall represent the licensee in the daily operation of the agency and shall appoint a person to exercise his or her authority in the administrator's absence. The responsibilities of an administrator include, without limitation:

- (a) Employing qualified personnel and arranging for their training;
- (b) Ensuring that only trained attendants are providing services to a client of the agency and that such services are provided in accordance with the functional assessment of the client, the service plan established for the client and the policies and procedures of the agency;
- (c) Developing and implementing an accounting and reporting system that reflects the fiscal experience and current financial position of the agency;
- (d) Negotiating for services provided by contract in accordance with legal requirements and established policies of the agency;
- (e) Providing oversight and direction for attendants and other members of the staff of the agency as necessary to ensure that the clients of the agency receive needed services;
- (f) Developing and implementing policies and procedures for the agency, including, without limitation, policies and procedures concerning terminating the personal care services provided to a client;
- (g) Designating one or more employees of the agency to be in charge of the agency during those times when the administrator is absent; and
- (h) Demonstrating to the Division upon request that the agency has sufficient resources and the capability to satisfy the requests of each client of the agency related to the provision of the personal care services described in the service plan to the client.

3. Except as otherwise provided in this subsection and subsection 4 of [NAC 449.3976](#), an employee designated to be in charge of the agency when the administrator is absent must have access to all records kept at the agency. Confidential information may be removed from a file to which an employee designated to be in charge of the agency has access if the confidential information is maintained separately by the administrator.

4. The administrator of an agency shall ensure that:

- (a) The clients of the agency are not abused, neglected or exploited by an attendant or another member of the staff of the agency, or by any person who is visiting the client when an attendant or another member of the staff of the agency is present; and
- (b) Suspected cases of abuse, neglect or exploitation of a client are reported in the manner prescribed in [NRS 200.5093](#) and [632.472](#).

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3974 Maintenance of policies and procedures concerning qualifications, responsibilities and conditions of employment for staff members. ([NRS 449.0302](#)) An agency shall maintain written policies and procedures

concerning the qualifications, responsibilities and conditions of employment for each attendant and other members of the staff of the agency. The written policies and procedures must be reviewed and revised as needed. The written policies and procedures must be made available to the attendants and other members of the staff of the agency upon hire and whenever revisions are made to those policies and procedures.

At a minimum, the policies and procedures must:

1. Provide descriptions of the duties and responsibilities of attendants;
2. Provide descriptions of any activities that attendants are prohibited from engaging in, including, without limitation:
 - (a) Making a long distance telephone call that is personal in nature:
 - (1) On a telephone owned by or provided by a client; or
 - (2) While on duty providing personal care services to a client;
 - (b) Loaning, borrowing or accepting gifts of money or personal items from a client;
 - (c) Accepting or retaining money or gratuities from a client, other than money needed for the purchase of groceries or medication for the client; and
 - (d) Becoming the legal guardian of a client or being named as an attorney-in-fact in a power of attorney executed by the client;
3. Set forth the rights of clients;
4. Set forth any requirements relating to ethics governing attendants and other members of the staff of the agency, including, without limitation, any requirements concerning the confidentiality of client information;
5. Provide for the prevention, control and investigation of infections and communicable diseases;
6. Provide a description of the personal care services that are provided by the agency to clients;
7. Provide a description of the manner in which the agency assigns attendants to provide personal care services to clients and any supervision of those services that will be provided by the agency;
8. Provide for documentation of the needs of each client and the personal care services that are provided to the client;
9. Set forth the emergency responses of the agency to both medical and nonmedical situations;
10. Set forth the roles of the agency and any coordination that the agency will provide with services provided by other community service agencies;
11. Provide for periodic evaluations of the performance of attendants and other members of the staff of the agency;
12. Provide for the maintenance of current personnel records which confirm that the policies and procedures are being followed; and
13. Set forth any other specific information that is necessary based on the needs of any special populations served by the agency.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3975 Attendants: Qualifications; annual training. ([NRS 449.0302](#))

Each attendant of an agency must:

1. Be at least 18 years of age;
2. Be responsible and mature and have the personal qualities which will enable the attendant to understand the problems of elderly persons and persons with disabilities;
3. Understand the provisions of this chapter and [chapter 449](#) of NRS;
4. Demonstrate the ability to read, write, speak and communicate effectively with the clients of the agency;
5. Demonstrate the ability to meet the needs of the clients of the agency; and
6. Receive annually not less than 8 hours of training related to providing for the needs of the clients of the agency.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3976 Attendants: Maintenance of personnel file; evaluation of competency. ([NRS 449.0302](#))

1. A separate personnel file must be kept for each attendant of an agency and must include, without limitation:

- (a) The name, address and telephone number of the attendant;
- (b) The date on which the attendant began working for the agency;
- (c) Documentation that the attendant has had the tests or obtained the certificates required by [NAC 441A.375](#);
- (d) Evidence that the references supplied by the attendant were checked by the agency;
- (e) Evidence of compliance with [NRS 449.123](#) by the administrator of the agency or the person licensed to operate the agency with respect to the attendant;
- (f) Proof that, within 6 months after the attendant began working for the agency, the attendant obtained a certificate in first aid and cardiopulmonary resuscitation issued by the American National Red Cross or an equivalent certificate approved by the Division;
- (g) Proof that the attendant is at least 18 years of age;
- (h) Proof of possession by the attendant of at least the minimum liability insurance coverage required by state law if the attendant will be providing transportation to a client in a motor vehicle; and
- (i) Documentation of all training attended by and performance evaluations of the attendant.

2. The documentation described in paragraph (i) of subsection 1 must include, without limitation, for each training course attended by the attendant:

- (a) A description of the content of the training course;
- (b) The date on which the training course was attended;
- (c) The number of hours of the training course;
- (d) The name and signature of the instructor of the training course; and

(e) A certificate indicating that the training course was successfully completed by the attendant.

3. The administrator or the administrator's designee shall evaluate the competency of an attendant in each competency area required by the agency if the attendant provides written proof of his or her current or previous training in that competency area. After the initial evaluation, any additional training provided to the attendant may be limited to areas in which the attendant needs to improve his or her competency.

4. The administrator may keep the personnel files of the agency in a locked cabinet and may, except as otherwise provided in this subsection, restrict access to this cabinet by attendants and other members of the staff of the agency. The administrator shall make the personnel files, including, without limitation, any electronic files, available for review by the Division upon request.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3977 Attendants: Required knowledge and training. ([NRS 449.0302](#))

1. Each attendant of an agency shall:

(a) Obtain a working knowledge of the provisions of this chapter which govern the licensing of agencies before providing personal care services to the clients of the agency. The agency must provide a copy of those provisions to an attendant before the attendant may provide personal care services to the clients of the agency.

(b) Participate in and complete a training program before independently providing personal care services to the clients of the agency. The training program must include an opportunity for the attendant to receive on-the-job instruction provided to clients of the agency, as long as the administrator of the agency or the administrator's designee provides supervision during this instruction to determine whether the attendant is able to provide personal care services successfully and independently to the client.

(c) Receive training:

(1) In the written documentation of:

- (I) Personal care services provided to the clients of the agency; and
- (II) Verification of time records.

(2) In the rights of clients, including, without limitation, training in methods to protect client confidentiality pursuant to state and federal regulations.

(3) Related to the special needs of elderly persons and persons with disabilities, including, without limitation, training in the sensory, physical and cognitive changes related to the aging process.

(4) Related to communication skills, including, without limitation, active listening, problem solving, conflict resolution and techniques for communicating through alternative modes with persons with communication or sensory impairments.

(5) In first aid and cardiopulmonary resuscitation. A certificate in first aid and cardiopulmonary resuscitation issued by the American National Red Cross or an equivalent certificate will be accepted as proof of that training.

(6) That is specifically related to the personal care services provided by the agency, including, as applicable, training in the following topics:

(I) Duties and responsibilities of attendants and the appropriate techniques for providing personal care services;

(II) Recognizing and responding to emergencies, including, without limitation, fires and medical emergencies;

(III) Dealing with adverse behaviors;

(IV) Nutrition and hydration, including, without limitation, special diets and meal preparation and service;

(V) Bowel and bladder care, including, without limitation, routine care associated with toileting, routine maintenance of an indwelling catheter drainage system such as emptying the bag and positioning, routine care of colostomies such as emptying and changing the bag, signs and symptoms of urinary tract infections, and common bowel problems, including, without limitation, constipation and diarrhea;

(VI) Skin care, including, without limitation, interventions that prevent pressure sores, routine inspections of the skin and reporting skin redness, discoloration or breakdown to the client or a representative of the client and to the administrator of the agency or the administrator's designee;

(VII) Methods and techniques to prevent skin breakdown, contractures and falls;

(VIII) Hand washing and infection control;

(IX) Body mechanics, mobility and transfer techniques, including, without limitation, simple nonprescribed range of motion; and

(X) Maintenance of a clean and safe environment.

2. Each attendant of an agency must be evaluated and determined to be competent by the agency in the required areas of training set forth in paragraph (c) of subsection 1.

3. Each attendant of an agency must have evidence of successful completion of a training program that includes the areas of training set forth in paragraph (c) of subsection 1 within the 12 months immediately preceding the date on which the attendant first begins providing care to a client.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.39775 Attendants: Performance of certain tasks. ([NRS 439.200](#), [449.0302](#), [449.0304](#))

1. An attendant may perform a task described in [NRS 449.0304](#) if the attendant:

(a) Before performing the task, annually thereafter and when any device used for performing the task is changed:

(1) Receives training concerning the task that meets the requirements of subsections 6 and 7; and

(2) Demonstrates an understanding of the task;

(b) Follows the manufacturer's instructions when operating any device used for performing the task;

(c) Performs the task in conformance with the Clinical Laboratory Improvement Amendments of 1988, Public Law 100-578, 42 U.S.C. § 263a, if applicable, and any other applicable federal law or regulation; and

(d) Complies with the requirements of subsection 3 or 4, if applicable.

2. If a person with diabetes who is a client of an agency does not have the physical or mental capacity to perform a blood glucose test on himself or herself and an attendant performs a blood glucose test on the client, the Clinical Laboratory Improvement Amendments of 1988, Public Law 100-578, 42 U.S.C. § 263a, shall be deemed to be applicable for the purposes of paragraph (c) of subsection 1.

3. In addition to satisfying the requirements of subsection 1, an attendant who conducts a blood glucose test must ensure that the device for monitoring blood glucose is not used on more than one person.

4. An attendant may assist a client in the administration of insulin prescribed to the client for his or her diabetes and furnished by a registered pharmacist through an auto-injection device approved by the United States Food and Drug Administration for use in the home in accordance with the requirements of subsection 1 if:

(a) A physician, physician assistant or advanced practice registered nurse has determined that the client's physical and mental condition is stable and following a predictable course; and

(b) The amount of the insulin prescribed to the client is at a maintenance level and does not require a daily assessment, including, without limitation, the use of a sliding scale.

5. An attendant may weigh a client of an agency only if:

(a) The attendant has received training on how to accurately weigh persons that meets the requirements of subsections 6 and 7; and

(b) The client has consented to being weighed by the attendant.

6. The training described in this section must be provided by:

(a) A physician, physician assistant or licensed nurse;

(b) For the training described in paragraph (b) or (c) of subsection 1 of [NRS 449.0304](#), a registered pharmacist; or

(c) An employee of the residential facility who has:

(1) Received training pursuant to paragraph (a) of subsection 1 or paragraph (a) of subsection 5, as applicable, from a physician, a physician assistant, a licensed nurse or, if applicable, a registered pharmacist;

(2) At least 1 year of experience performing the task for which he or she is providing training; and

(3) Demonstrated competency in performing the task for which he or she is providing training.

7. Any training described in this section must include, without limitation:

(a) Instruction concerning how to accurately perform the task for which the attendant is being trained in conformance with nationally recognized infection control guidelines which may include, without limitation, guidelines published by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services;

(b) Instruction concerning how to accurately interpret the information obtained from performing the task; and

(c) A description of any action, including, without limitation, notifying a physician, that must be taken based on such information.

(Added to NAC by Bd. of Health by R109-18, eff. 1-30-2019)

NAC 449.3978 Attendants: Prohibition on provision of certain types of services to clients. ([NRS 439.200](#), [449.0302](#), [449.0304](#))

1. The administrator of an agency shall ensure that each attendant working for the agency is working within the attendant's scope of service and conducts himself or herself in a professional manner. An attendant is prohibited from providing any of the services listed in subsection 2 to a client.

2. The services an attendant must not provide to a client include, without limitation:

(a) Insertion or irrigation of a catheter;

(b) Irrigation of any body cavity, including, without limitation, irrigation of the ear, insertion of an enema or a vaginal douche;

(c) Application of a dressing involving prescription medication or aseptic techniques, including, without limitation, the treatment of moderate or severe conditions of the skin;

(d) Except as authorized by [NAC 449.39775](#), administration of injections of fluids into veins, muscles or the skin;

(e) Except as authorized by [NAC 449.39775](#), administration of medication, including, without limitation, the insertion of rectal suppositories, the application of a prescribed topical lotion for the skin and the administration of drops in the eyes;

(f) Performing physical assessments;

(g) Using specialized feeding techniques;

(h) Performing a digital rectal examination;

(i) Trimming or cutting toenails;

(j) Massage;

(k) Providing specialized services to increase the range of motion of a client;

(l) Providing medical case management, including, without limitation, accompanying a client to the office of a physician to provide medical information to the

physician concerning the client or to receive medical information from the physician concerning the client; and

(m) Any task identified in [chapter 632](#) of NRS and the regulations adopted by the State Board of Nursing as requiring skilled nursing care, except any services that are within the scope and practice of a certified nursing assistant.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008; A by R109-18, 1-30-2019)

Provision of Services

NAC 449.3979 Provision of written disclosure statement to client upon acceptance for services by agency. ([NRS 449.0302](#))

1. When a person is accepted as a client by an agency, the agency shall:

- (a) Provide a written disclosure statement to the client;
- (b) Require the client or a representative of the client to sign the written disclosure statement; and
- (c) Ensure that a copy of the written disclosure statement is incorporated into the record of the client.

2. The written disclosure statement must include a description of and information concerning the personal care services offered by the agency, including, without limitation:

- (a) A statement which is easily understandable to the client indicating that it is not within the scope of the license of the agency to manage the medical and health conditions of clients should the conditions become unstable or unpredictable;
- (b) The qualifications and training requirements for the attendants who provide personal care services to the clients of the agency;
- (c) The charges for the personal care services provided by the agency;
- (d) A description of billing methods, payment systems, due dates for bills for personal care services and the policy for notifying clients of increases in the costs of personal care services provided by the agency;
- (e) The criteria, circumstances or conditions which may result in the termination of personal care services by the agency and the policy for notifying clients of such termination of personal care services;
- (f) Procedures for contacting the administrator of the agency or the administrator's designee during all hours in which personal care services are provided and the on-call policy of the agency; and
- (g) Information concerning the rights of clients and the grievance procedure of the agency.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.398 Rights of clients: Duties of administrator; provision of written description to clients. ([NRS 449.0302](#))

1. The administrator of an agency shall ensure that a client is not prohibited from speaking to any person who advocates for the rights of the clients of the agency.

2. The administrator of an agency shall establish and enforce a procedure to respond to grievances, incidents and complaints concerning the agency in accordance with the written policies and procedures of the agency. The procedure established and enforced by the administrator must include a method for ensuring that the administrator or the administrator's designee is notified of each grievance, incident or complaint. The administrator or his or her designee shall personally investigate the matter in a timely manner. A client who files a grievance or complaint or reports an incident concerning the agency must be notified of the action taken in response to the grievance, complaint or report or must be given a reason why no action was taken.

3. The administrator of an agency shall ensure that the agency is in compliance with [NRS 449A.100](#) to [449A.118](#), inclusive.

4. The agency shall develop a written description of the rights of clients and provide a copy to each client or a representative of the client upon initiation of the service plan established for the client. A signed and dated copy of the receipt of this information by the client or a representative of the client must be maintained in the record of the client.

5. The written description of the rights of clients developed pursuant to subsection 4 must include, without limitation, a statement that each client has the right:

(a) To receive considerate and respectful care that recognizes the inherent worth and dignity of each client;

(b) To participate in the development of the service plan established for the client and to receive an explanation of the personal care services provided pursuant to the service plan and a copy of the service plan;

(c) To receive the telephone number of the Bureau which may be contacted for complaints;

(d) To receive notification of any authority of the Division to examine the records of the client as related to the regulation and evaluation of the agency by the Division;

(e) To receive from the agency, within the limits set by the service plan established for the client and within the program criteria, responses to reasonable requests for assistance; and

(f) To receive information, upon request, concerning the policies and procedures of the agency, including, without limitation, the policies and procedures of the agency relating to charges, reimbursements and determinations concerning service plans.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3981 Initial screening of client and development or acceptance of service plan; requirements before providing personal care to client. ([NRS 449.0302](#))

1. The administrator of an agency or the administrator's designee shall conduct an initial screening to evaluate each prospective client's requests for personal care services and to develop a service plan for the client or to accept a service plan established for the client.

2. The initial screening and the development or acceptance of a service plan must be documented. The documentation must be dated and signed by the person who conducted the initial screening and developed or accepted the service plan.

3. The agency shall complete the following tasks before providing the personal care services outlined in the service plan established for the client and as often as necessary if the service plan is revised:

(a) Evaluate whether the agency has sufficient resources and the capability to satisfy the requests of the client and to provide the client with the personal care services described in the service plan;

(b) Review the service plan with the client, including, without limitation, the schedule for the provision of personal care services to the client, the procedure to follow if an attendant fails to provide personal care services in accordance with the service plan, the hiring and training policies of the agency, the responsibilities of the agency, the procedure for filing a grievance or complaint and any personal care services that an attendant is prohibited from providing pursuant to [NAC 449.3978](#);

(c) Review the procedure to be followed if an attendant does not appear for a scheduled visit and the procedure to be followed if an additional visit from an attendant is required;

(d) Ensure that the personal care services requested by the client are services which assist the client with the activities of daily living; and

(e) Ensure that the agency is coordinating the personal care services that it will be providing to the client with the care and services available to the client from other organizations and persons.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)

NAC 449.3982 Supervisory home visits or telephone calls required to ensure quality of care provided; documentation of evaluation. ([NRS 449.0302](#))

1. The administrator of an agency or the administrator's designee shall conduct supervisory home visits or telephone calls to the home of each client of the agency to ensure that quality personal care services are provided to the client.

2. Each supervisory visit and each telephone call must be documented. The documentation must be dated and signed by the administrator or the administrator's designee. Each supervisory visit and each telephone call must consist of an evaluation of whether:

(a) Appropriate and safe techniques have been used in the provision of personal care services to the client;

(b) The service plan established for the client has been followed;

(c) The service plan established for the client is meeting the personal care needs of the client;

(d) The attendant providing personal care services to the client has received sufficient training relating to the personal care services that the attendant is providing to the client; and

(e) It is necessary for the administrator or the administrator's designee to follow up with the attendant or client concerning any problems in the personal care services being provided to the client or the service plan established for the client that are identified as the result of the supervisory visit or telephone call.

(Added to NAC by Bd. of Health by R182-07, eff. 1-30-2008)