ADOPTED REGULATION OF THE

STATE BOARD OF HEALTH

LCB File No. R133-18

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

AUTHORITY: §§1-15, NRS 439.200 and 449.0302.

A REGULATION relating to health care; requiring a CARA Plan of Care to be established for an infant affected by prenatal substance abuse in a medical facility; requiring the Division of Public and Behavioral Health of the Department of Health and Human Services to take certain actions regarding the CARA Plan of Care; requiring certain hospitals to be primarily engaged in providing inpatient services and accredited as meeting the prerequisite conditions for participation in Medicare; clarifying which patients are considered inpatients; requiring a hospital to submit to the Division proof of compliance with certain requirements concerning the provision of care and the transfer of patients; prescribing certain requirements relating to the referral of a patient for outpatient services or the transfer of a patient to another facility; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

As a condition to receiving certain grants, the federal Comprehensive Addiction and Recovery Act of 2016 (CARA) requires a state to require the development of a plan of care for an infant born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder. (42 U.S.C. § 5106a(b)(2)(B)(iii)) **Sections 2-6** of this regulation define terms used in provisions relating to CARA Plans of Care. **Section 7** of this regulation requires a provider of health care who delivers or provides services to an infant born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder in a medical facility to establish a CARA Plan of Care for the infant and prescribes the required contents of a CARA Plan of Care. **Section 7** also requires a medical facility to provide a copy of the CARA Plan of Care to the parents or legal guardian of the infant and the Division of Public and Behavioral Health of the Department of Health and Human Services. **Section 8** of this regulation requires the Division to: (1) monitor the implementation of each CARA Plan of Care to ensure that the infant and his or her family are receiving appropriate services; and (2) provide a copy of a CARA Plan of Care to an agency which provides child welfare services upon request. Additionally, **section 8** provides for the confidentiality and safe maintenance of a CARA Plan of Care and any associated information.

Existing federal law requires a hospital that participates in Medicare to be primarily engaged in providing certain services to inpatients. (42 U.S.C. §1395x(e)) **Section 9** of this

regulation: (1) requires a hospital, with certain exceptions, to be primarily engaged in providing those services to inpatients; and (2) prescribes the manner in which the Division must determine whether a hospital is primarily engaged in providing those services to inpatients.

Existing federal regulations: (1) require a hospital to meet certain conditions in order to participate in Medicare; and (2) provide for the accreditation by a national accrediting organization of hospitals that meet those conditions. (42 C.F.R. §§ 488.3, 488.4) **Section 10** of this regulation requires a hospital, with certain exceptions, to be accredited by such an organization. **Section 10** also requires a hospital that is accredited, regardless of whether the hospital is required to be accredited, to: (1) submit to the Division proof of such accreditation at prescribed times; and (2) notify the Division if the hospital ceases to be accredited.

Section 12 of this regulation amends the definition of the term "inpatient" to mean a person who is admitted to a hospital for purposes of diagnosis or treatment and who: (1) is expected, at the time of admission, to receive care or occupy a bed at the hospital at midnight on at least 2 consecutive days; or (2) actually receives care or occupies a bed at the hospital at midnight on at least 2 consecutive days. **Section 13** of this regulation makes a conforming change.

Existing regulations require a hospital to develop and carry out policies and procedures to ensure that emergency services and medical care are provided in accordance with certain federal and state requirements. Existing regulations also require a hospital that does not have its own long-term facility to have transfer agreements with long-term facilities. (NAC 449.331) **Section 14** of this regulation requires a hospital to submit with each application for initial licensure or renewal of a license an attestation under penalty of perjury that the hospital is in compliance with those requirements.

Existing regulations require a hospital that refers a patient for outpatient services or transfers a patient to another facility to share necessary medical information about the patient with the receiving service or facility. (NAC 449.332) **Section 15** of this regulation requires such a hospital to also share necessary administrative information with the receiving service or other facility or make necessary administrative and medical information available to the receiving service or other facility. **Section 15** also requires a hospital that refers a patient for outpatient services or transfers a patient to another facility to provide for the security of and accountability for the personal effects of the patient.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. ***As used in sections 2 to 8, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.***

Sec. 3. *"CARA Plan of Care" means a plan that is established pursuant to section 7 of this regulation for the care of an infant who has a fetal alcohol spectrum disorder, has been affected by prenatal substance abuse or is experiencing symptoms of withdrawal from a substance as a result of exposure to the substance in utero.*

Sec. 4. *"Infant" means a child who is less than 1 year of age.*

Sec. 5. *"Medical facility" means a hospital or an obstetric center.*

Sec. 6. *"Provider of health care" has the meaning ascribed to it in NRS 629.031.*

Sec. 7. *1. A provider of health care who delivers or provides medical services to an infant in a medical facility and who, in his or her professional capacity, knows or has reasonable cause to believe that the infant was born with a fetal alcohol spectrum disorder, is affected by prenatal substance abuse or is experiencing symptoms of withdrawal from a substance as a result of exposure to the substance in utero, shall ensure that a CARA Plan of Care is established for the infant before the infant is discharged from the medical facility.*

2. A CARA Plan of Care must be completed using the form prescribed by the Division and include, without limitation:

(a) Measures to ensure the immediate safety of the infant;

(b) Measures to address the needs of the infant and his or her family or caregiver for substance abuse treatment and health care;

(c) Measures to ensure that the infant and his or her family or caregiver receive any necessary services, including, without limitation, referrals to appropriate providers of such services; and

(d) Any other information necessary to ensure that the needs of the infant are met.

3. When an infant is discharged from a medical facility, the medical facility shall provide a copy of any CARA Plan of Care established pursuant to subsection 1 to:

(a) Each parent or legal guardian of the infant to whom the CARA Plan of Care pertains, or both, if applicable; and

(b) The Division, within 24 hours after the discharge.

Sec. 8. *1. The Division shall:*

(a) Monitor, in accordance with 42 U.S.C. § 5106a(b)(2)(B)(iii)(II), the implementation of each CARA Plan of Care that it receives pursuant to section 7 of this regulation to ensure that the infant to whom the CARA Plan of Care pertains and his or her family or caregiver are receiving appropriate services; and

(b) Provide a copy of a CARA Plan of Care in the possession of the Division to an agency which provides child welfare services upon request.

2. Except as otherwise provided in this section and NRS 239.0115, each CARA Plan of Care in the possession of the Division or an agency which provides child welfare services and any information associated with such a CARA Plan of Care is confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

3. The Division and an agency which provides child welfare services shall ensure that each CARA Plan of Care in the possession of the Division or the agency which provides child welfare services, as applicable, and any information associated with such a CARA Plan of Care is:

(a) Adequately protected from fire, theft, loss, destruction, other hazards and unauthorized access; and

(b) Stored in a manner that protects the security and confidentiality of the information.

4. As used in this section, "agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

Sec. 9. *1. A hospital must be primarily engaged in providing the services described in 42 U.S.C. § 1395x(e)(1) to inpatients, unless the hospital:*

(a) Is a psychiatric hospital or rural hospital;

(b) Has been certified as a critical access hospital by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 1395i-4(e); or

(c) Contains a distinct part skilled nursing facility or nursing facility, as defined in 42 C.F.R. § 483.5.

2. Except as otherwise provided in subsections 3 and 4, the Division shall determine whether a hospital meets the requirements of subsection 1 based on a totality of the circumstances.

3. Except as otherwise provided in subsection 4, the Division shall deem a hospital to be in compliance with subsection 1 if the hospital:

(a) Has 20 or fewer inpatient beds;

(b) Has been licensed and operating for less than 12 months; and

(c) Contains a number of inpatient beds that is equal to or greater than the capacity for patients in the emergency room at the hospital.

4. The provisions of subsection 3 do not apply to a hospital that was initially licensed on or before the effective date of this regulation and has been licensed continually after that date.

5. The Division shall determine that a hospital does not meet the requirements of subsection 1 if the hospital did not maintain:

(a) A minimum average daily census of at least two inpatients, as determined pursuant to subsection 6; and

(b) An average length of stay of at least 2 days during the 12 months immediately preceding the date on which the Division evaluates the hospital, as determined pursuant to subsection 6.

6. For the purposes of this section:

(a) Average daily census must be calculated by dividing the sum for the evaluation period of the number of inpatients in the hospital at midnight of each day of the evaluation period by the number of days in the evaluation period.

(b) Average length of stay must be calculated by dividing the total number of inpatient hospital days in an evaluation period by the number of discharges from the hospital in the evaluation period. As used in this paragraph, "inpatient hospital day" means:

(1) The day on which a patient is admitted to a hospital;

(2) The day on which a patient is discharged from a hospital, including, without limitation, the day on which a patient dies; and

(3) Each day after the day on which a patient is admitted to a hospital and before the patient is discharged.

Sec. 10. *1. A hospital must be accredited by an approved national accrediting organization unless the hospital:*

(a) Is a psychiatric hospital or rural hospital;

(b) Has been certified as a critical access hospital by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 1395i-4(e);

(c) Contains a distinct part skilled nursing facility or a nursing facility, as defined in 42 C.F.R. § 483.5;

(d) Is a hospital described in 42 U.S.C. § 1395ww(d)(1)(B)(iv) and accepts payment through Medicare;

(e) Is owned by this State or a political subdivision thereof;

(f) Is licensed only for rehabilitation beds; or

(g) Was initially licensed before the effective date of this regulation and has been licensed continually after that date.

2. A hospital that is required to comply with the requirements of subsection 1 shall submit to the Division proof of such compliance:

(a) Not later than 12 months after obtaining an initial license; and

(b) With each application for renewal submitted pursuant to NAC 449.0116.

3. A hospital that is not required to comply with the requirements of subsection 1 but is accredited by an approved national accrediting organization shall submit to the Division proof of such accreditation with each application for renewal.

4. If a hospital that is accredited by an approved national accrediting organization ceases to be so accredited, the hospital must immediately notify the Division.

5. As used in this section, "approved national accrediting organization" means a national accrediting organization, as defined in 42 C.F.R. § 488.1, that has been approved by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services pursuant to 42 C.F.R. § 488.5.

Sec. 11. NAC 449.279 is hereby amended to read as follows:

449.279 As used in NAC 449.279 to 449.394, inclusive, ***and sections 9 and 10 of this regulation,*** unless the context otherwise requires, the words and terms defined in NAC 449.285 to 449.300, inclusive, have the meanings ascribed to them in those sections.

Sec. 12. NAC 449.289 is hereby amended to read as follows:

449.289 "Inpatient" means a person who has been formally admitted into a hospital for diagnosis or treatment ~~[.]~~ ***and:***

1. Is expected, at the time of admission, to receive care or occupy a bed at the hospital at midnight on at least 2 consecutive days; or

2. Actually receives care or occupies a bed at the hospital at midnight on at least 2 consecutive days.

Sec. 13. NAC 449.297 is hereby amended to read as follows:

449.297 "Outpatient" means a person who has been registered or accepted for care in a hospital but who ~~[has not been formally admitted as]~~ ***is not*** an inpatient ***.*** ~~[, and who does not remain in the hospital for more than 48 hours.]~~

Sec. 14. NAC 449.331 is hereby amended to read as follows:

449.331 1. A hospital shall develop and carry out policies and procedures to ensure that emergency services and medical care are provided in accordance with NRS 439B.410 and 450B.790 and 42 C.F.R. § 489.24 and to ensure compliance with the provisions of NRS 450B.795.

2. All general hospitals not having their own long-term facility shall have transfer agreements with long-term care facilities. Transfer agreements between facilities must be in writing and on file at each facility concerned. The agreements must provide for:

(a) The transfer of patients between facilities whenever the need for transfer is medically determined; and

(b) The exchange of appropriate medical and administrative information between facilities.

3. In addition to the application required by NAC 449.011 or 449.0116, as applicable, a hospital applying for initial licensure or the renewal of its license shall submit to the Division an attestation under penalty of perjury that the hospital is in compliance with the requirements of this section.

Sec. 15. NAC 449.332 is hereby amended to read as follows:

449.332 1. A hospital shall:

(a) Have a process for discharge planning that applies to all inpatients; and

(b) Develop and carry out policies and procedures regarding the process for discharge planning.

2. The process for discharge planning must include the participation of registered nurses, social workers or other personnel qualified, through education or experience, to perform discharge planning.

3. A hospital shall, at the earliest possible stage of hospitalization, identify each patient who is likely to suffer adverse health consequences upon discharge if the patient does not receive adequate discharge planning. The hospital shall provide for an evaluation of the needs related to discharge planning of each patient so identified.

4. An evaluation of the needs of a patient relating to discharge planning must include, without limitation, consideration of:

(a) The needs of the patient for postoperative services and the availability of those services;

(b) The capacity of the patient for self-care; and

(c) The possibility of returning the patient to a previous care setting or making another appropriate placement of the patient after discharge.

5. If the evaluation of a patient relating to discharge planning indicates a need for a discharge plan, a discharge plan must be developed under the supervision of a registered nurse, social worker or other person qualified to perform discharge planning.

6. An evaluation of a patient relating to discharge planning and a discharge plan for the patient may be requested by the patient, a physician, a member of the family of the patient or the guardian of the patient, if any.

7. If a hospital finds that a patient does not need a discharge plan, the attending physician may still request a discharge plan for the patient. If the attending physician makes such a request, the physician shall collaborate as much as necessary with the hospital staff in the development of the discharge plan.

8. Activities related to discharge planning must be conducted in a manner that does not contribute to delays in the discharge of the patient.

9. The evaluation of the needs of a patient relating to discharge planning and the discharge plan for the patient, if any, must be documented in his or her medical record.

10. The discharge plan must be discussed with the patient or the person acting on behalf of the patient.

11. The patient, members of the family of the patient and any other person involved in caring for the patient must be provided with such information as is necessary to prepare them for the posthospital care of the patient.

12. If, during the course of a patient's hospitalization, factors arise that may affect the needs of the patient relating to his or her continuing care or current discharge plan, the needs of the patient must be reassessed and the plan, if any, must be adjusted accordingly.

13. A hospital shall arrange for the initial implementation of the discharge plans of its patients.

14. If identified in a discharge plan, referral of a patient to outpatient services or transfer of the patient to another facility must be accomplished in a manner that meets the identified needs of the patient, including ~~[the sharing of]~~ ***, without limitation:***

(a) Upon the referral or transfer, necessary ***sharing of administrative and*** medical information about the patient with the receiving service or ***other*** facility ~~[.]~~ ***or making such information available to the service or other facility; and***

(b) Providing for the security of and accountability for the personal effects of the patient.