**PROPOSED REGULATION OF THE**

**STATE BOARD OF HEALTH**

**LCB FILE NO. R012-20I**

**The following document is the initial draft regulation proposed by the agency submitted on 01/27/2020**

"Involuntary Medication/ Denial of Rights" recommendation

Authority: NRS 433.324 as amended by Section 1, Subsection 1 of AB85 (2019):
433.324 (1). The State Board of Health shall adopt regulations:
(a) For the care and treatment of persons with mental illness, persons with substance use disorders or persons with co-occurring disorders by all state agencies and facilities, and their referral to private facilities [;] , including, without limitation, regulations governing the procedure for the involuntary administration of medication to persons with mental illness;

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**Section 1**. Chapter 433A of NAC is hereby created by adding thereto the provisions set forth as sections x to x, inclusive, of this regulation.

**Section 2**. As used in sections 2 to 8, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 2 to 5 of this regulation have the meanings ascribed to them in those sections.

**Section 3**. "Public or private mental health facility" means a psychiatric hospital, crisis stabilization center, community triage center, or another similar facility which provides 24-hour care for the diagnosis, care, and treatment of mental illness.

**Section 4**. "Involuntary administration of medication review committee" means the committee who votes to support or deny the request for involuntary administration of medications, and is composed of three individuals, two of whom must be licensed mental health professionals, one of whom must be a psychiatrist and none of whom may be currently involved in the patient's diagnosis or treatment or serve as the medical director or designee who reviews the decision of the committee.

**Section 5**. "Involuntary Administration of Medication" means the administration of psychotropic medications to a person without their consent as prescribed by a provider who is licensed in the state of Nevada to prescribe medications to treat the symptoms of mental illness. The term does not include chemical restraint as defined in NRS 433.5456 or medications administered in an emergency as defined in NRS 433.5466.

**Section 6**. Requirements for involuntary administration of medications process:

1. The person is currently held at a public or private mental health facility pursuant to the filing of a petition for involuntary admission under NRS 433A or is currently under court ordered involuntary admission pursuant to NRS 433A.310.

2. Recommendation of medications and consent process:

a. The treating provider must determine that the patient is gravely disabled or at serious risk of harm to self or others, requiring the administration of psychotropic medications.
b. The treating provider must explain to the patient the nature of his or her condition for which medications are recommended, the risks and benefits of the medications to be prescribed, including possible side effects of the medications and alternative treatments as well as possible outcomes if the condition remains untreated. The patient then must be given the opportunity to provide written informed consent to treatment.
c. This process must be documented in the patient's health record.

3. The patient has not consented to medications as recommended by providers.

**Section 7** Review Process

1. Upon patient's documented refusal to consent to medications, the review process must be initiated.

a. A committee review will be scheduled for at least 24 hours, not including weekends or holidays, after the provider's request for committee review has been initiated.

2. Patient rights during involuntary administration of medication process.
    a. The patient will be provided notice of the following rights to due process at the initiation of the involuntary administration of medication process:
        i. The right to receive notice, no less than 24 hours, not including weekends or holidays, in advance of the committee review, during which time they may not be medicated with psychotropic medications in absence of an emergency.
        ii. The right to be informed of their diagnosis, the factual basis for the diagnosis, and why the treatment team believes medications are necessary.
        iii. The right to be present for the entirety of the proceedings.
        iv. The right to cross-examine any staff or witnesses the committee interviews.
        v. The right to present evidence, including witnesses.
        vi. The right to assistance from an advisor.
        vii. The right to receive a copy of the minutes of the committee meeting.
        viii. The right to object to the review committee's decision to the medical director.
3. The advisor for the committee review will be an individual who meets the following criteria:
    a. The role of the advisor is to assist the patient to communicate their position to the committee. The advisor will not express their own opinion as to the appropriateness of the proposed treatment.

b. The advisor is not involved in the patient's current episode of care;
c. The advisor understands psychiatric issues; and
d. The advisor has received training on the purpose and process of the committee review and the role of the advisor.
e. The advisor will meet with the patient in sufficient time prior to the committee review to prepare for the committee review.

4. The committee review process:
    a. The involuntary administration of medication review committee may approve the use of the psychotropic medications, if the majority, which must include the psychiatrist, finds that the patient is at serious risk of harm to self or others or unable to care for self in the public or private mental health facility.
    b. Unless the patient indicates in writing or through their advisor that they do not intend to participate in the committee review, the proceedings will not commence until the patient has arrived.
    c. Factors the involuntary administration of medication review committee must consider include:
        i. The patient's stated objections, if any, to the medications;
        ii. Whether or not patient completed a psychiatric advanced directive per NRS 449A.600- 645, and if they directed staff to provide care that is consistent with their condition;
        iii. Any and all documents or evidence offered by the patient;
        iv. Any witness testimony offered by the patient or on the patient's behalf;
        v. Whether the patient is at risk of harming themselves, others, or is gravely disabled, without the medications in the facility;
        vi. Whether the patient cannot improve without the medications, or whether the patient would improve but at a significantly slower rate.
        vii. Whether there are less restrictive means that would accomplish the same or similar results;
        viii. The patient's prior experience with the proposed medications; and,
        ix. Other factors deemed relevant by the committee and noted in its decision.
        x. The committee may interview any person it feels may be of assistance in conducting its review and/ or receive any additional documents offered on the behalf of staff or the patient.
    d. A record of the committee review will be maintained either in writing or by recording. Official minutes will be transcribed for record keeping, placed in the patient's health record, and a copy will be provided to the patient.
    e. The decision of the committee will be documented in the patient's health record and will be forwarded to the medical director for review.
5. Review by the medical director:

a. The medical director or designee, who must be a psychiatrist, will review the committee's decision within 24 hours, not to include weekends and holidays, of the committee review. The medical director will consider the following factors:
    i. Whether the proper procedures were followed by the committee.
    ii. Whether the proposed medications are medically appropriate based upon the patient's diagnosis and medical history.
    iii. Any objection that is brought forth by the patient.
    iv. Any other factors or records deemed relevant by the medical director or designee.
    v. The medical director will also review the health record and any other documents that were presented to the committee during the review.
    vi. The medical director may interview any persons deemed to assist in the review and may conduct an independent examination of the patient.
    vii. The medical director or designee provides final approval or overrides the committee's decision through the following actions:
        1. may approve the medications as prescribed;
        2. modify the prescribed medications; or
        3. disapprove of the medications all together.

6. Administration of Medications:
    a. If the medical director or designee confirms that the medications are appropriate and necessary and the patient continues to refuse to consent to treatment, the patient may be medicated without their permission. No medication shall be given until the entire process is carried out.
7. Continuation of Medications:
    a. Medications can continue for 30 days after initial approval by the medical director. In the event that the patient continues to refuse to consent to treatment, a committee review to continue involuntary administration of medications is necessary to continue treatment beyond 30 days. The medications can only continue with either consent from the patient or committee review.

**Section 8**. If a public or private mental health facility does not have a process in place that contains the necessary elements identified in Sec 7 of this regulation, the provider treating the patient will petition the committing court for an order for involuntary administration of medications.