

Presentation for Nurse staffing  
January 8, 2004

Members of the Committee, Madam Chair, Good afternoon,  
**I am Diane Allen**, an RN and Health Facility Surveyor Supervisor at the Bureau of Licensure and Certification, Nevada State Health Division, Department of Human Resources.

Jeannie Anspach, an RN and Health Facility Surveyor Supervisor will also be presenting information to you today.

Thank you for the opportunity to present the current Nevada Revised Statutes, Nevada Administrative Codes and Code of Federal Regulations that apply to nurse staffing in Medical facilities in Nevada.

In the handouts provided we have listed the Nevada Revised Statutes and Nevada Administrative Codes that apply to other staffing requirements than nursing service. We will not be reviewing these with you today but provided them for your review. If you have questions on these staffing requirements after review, we would be glad to address those in the future or through email.

At the beginning of your handout you will find a list of Health facilities licensed by the bureau. However, keeping in line with the objectives of the committee we will focus only on the top list which is labeled "Medical Facility." This list is the facilities that have requirements for "organized nursing services" or a requirement for a nurse to be present.

The bureau's role, as it relates to most of the medical facilities has two major focuses:

- State Licensure and
- Medicare / Medicaid certification

As you are aware, the Centers for Medicare and Medicaid Services, more commonly known as CMS is part of the federal government's Health and Human Services Department.

- The Bureau does Medicare Medicaid surveys or is the Field agent for CMS through a State/Federal agreement. This agreement is through Section 1864 of the Social Security Act.

The first facility type to be discussed is Hospitals.

Currently the bureau licenses 47 hospitals. Of these hospitals:

- 17 are Acute hospitals
- 2 are Long term care acute
- 11 are Rehabilitation hospitals
- 7 are Psychiatric hospitals
- 10 are rural hospitals

EXHIBIT **I** Committee Name **HealthCareDelivery** Document consists of **9 Pages**.  
☒ Entire document provided.  
☐ Due to size limitations, pages \_\_\_\_\_ provided. A copy of the complete document is available through the Research Library (775/684-6827) or e-mail [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).

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Of which 5 of these are Critical Access Hospitals. (Critical Access Hospitals are a special Medicare designation facility with their own set of Code of Federal Regulations).

Of the 47 hospitals, 33 are Joint Commission Accredited.

All hospitals must meet the same licensing Nevada Administrative Codes.

In your handout you will find the section marked Hospitals.

In this facility type and all facility types:

- The Nevada Administrative Codes or NACS regarding nurse staffing and any Nevada Revised Statutes or NRSs are listed first
- Then the Medicare Code of Federal Regulations or CFRs addressing nurse staffing and
- At the end, of each facility type, the NACs addressing other staffing categories in the facility type is provided

The hospital regulations had a major revision in 1999. Before this the regulations had not been updated since the 60s. This process took 4 years and included working with providers, occupational boards, advocacy groups, unions representing staff in the facilities, associations and interested individuals. A total of seven public workshops were held. The State Board of Health adopted the final revision in September of 1999.

Nurse to patient ratios were discussed at that time. However, the State Board of Health adopted regulations that required staffing based on a system that each individual hospital develops based on the patients needs as assessed by a Registered Nurse.

The State Board of Health felt that each hospital's administrative staff knew the key components of staffing for their individual facility. These components as established by the American Nurses Association includes:

- Number of patients
- Levels of intensity of the patients for whom care is being provided, (*this is where the assessment process come in deciding the number of patients*)
- Architecture and geography of the environment, as well as available technology
- Level of preparation and experience of the nurses on a particular unit.

In a number of the regulations addressing staffing one will also identify that the level of experience or education is addressed or skills required to care for that particular type of patient.

In your handout under Hospitals and under

- NAC 449.361. Nursing Service Section 4 (area in bold type) is the section addressing staffing based on acuity rather than numbers of patients. This section reads *(4) A hospital shall have a system for determining the nursing needs of each*

*patient. The system must include an assessment made by a registered nurse of the needs of each patient and the provision of staffing based on those assessments.*

- The word “system” in this regulation would mean a policy and procedure that nursing administrative staff implement.

Based on staff reviews, the bureau have seen some significant changes in the hospitals “systems” or procedures for staffing since these regulations were adopted. Hospitals have formed committees that work on this staffing system with direct clinical staff from all shifts involved, management and administration. One hospital, and there may be more than I personally am aware of, has a monthly meeting with the aforementioned members to address and improve the system.

The bureau has also seen failures in developing a good system and this has been addressed with the individual facilities. If the facilities are not in compliance with the regulation a statement of deficiency is issued. The facility must return it with a plan of correction. If appropriate, legal council may recommend a higher level of sanction to be imposed based on the deficient practice.

I have also included Section NAC 449.3624 Assessment of patients, so one can identify how often the patient assessment takes place. This assessment of patients is one of the skills an RN is taught in the educational process and from the assessment an appropriate individual plan of care is developed by the RN. Academic training does not enable an RN to care for a certain number of patients per nurse. Academic training prepares you to be able to conduct assessments of patients and develop plans of care for patients. From that point, the number of patients per staff is assigned by nursing administration based on those assessments and plans of care.

When adopting regulations in 1999 for nurse staffing for licensed hospitals in Nevada, the State Board of Health took into consideration access to care. A number of Clark County’s hospitals were already on Emergency room divert much of the time. A few hospitals in the North were starting to experience ER divert situations.

The health division had documented evidence of patients waiting in the Emergency Rooms for beds on the nursing units, some up to 1-2 days in Clark County. Today the emergency room divert situation continues to exist even with the increase in hospitals and bed capacity in Clark County. Establishing nurse to patient ratios in 1999 and having a documented nurse shortage may have caused the closure of nursing units, thereby intensifying the divert problem.

In the NACS addressing nursing services for hospitals, for example under Section 449.361 Number (3) it states: *The nursing service shall have a sufficient number of licensed registered nurses, licensed practical nurses and other personnel to provide nursing care to all patients as needed. A sufficient number of registered nurses and other members of the nursing staff must be on duty at all time to ensure that proper care is provided to each patient.*

The word sufficient in “regulatory” language speaks to quantity but also to quality. When one reviews the Code of Federal Regulations addressing staffing the word sufficient is used throughout the regulatory language. It has been tested in courts and upheld when insufficient staffing has been identified.

In the sections for specialized departments, for example, Intensive Care and Obstetrics, the State Board of Health chose to adopt qualifications rather than specific numbers; again giving the nursing administrative staff who are familiar with the patients and staff level of expertise, the ability to assign the number of patients per nurse.

In NAC 449.885 , Surgical services under subsection (4), some discussion was held to allow an RN to circulate in more than one operating room for small surgical procedures. However, the State Board of Health adopted the regulation that an RN could only circulate in one operating room. If the facility could not meet this regulation, it would not endanger the patient because the facility could cancel “elective” cases. It would be an inconvenience to the patient and the physician; but it would not restrict a patient who requires emergent acute care services from access to those services.

### ***NACS but not to be read***

#### **NAC 449.361. Nursing Service**

- (1) A hospital shall have a well-organized plan that provides for 24-hour nursing services. The nursing services must be furnished or supervised by a registered nurse.
- (2) The governing body and the hospital shall ensure that the nursing services provided at the hospital are provided in accordance with all applicable federal and state laws and regulations.
- (3) The nursing service shall have a sufficient number of licensed registered nurses, licensed practical nurses and other personnel to provide nursing care to all patients as needed. A sufficient number of registered nurses and other members of the nursing staff must be on duty at all time to ensure that proper care is provided to each patient. A person who is not a registered nurse may be assigned to care for a patient, if:
  - (a) The extent of care provided by the person is consistent with his education and experience and is within his scope of practice; and
  - (b) The person is supervised by a registered nurse while providing that care.
- (4) A hospital shall have a system for determining the nursing needs of each patient. The system must include an assessment made by a registered nurse of the needs of each patient and the provision of staffing based on those assessments.
- (5) The plan for providing nursing services must include a plan of administrative authority and a delineation of responsibilities for patient care.
- (6) A hospital shall ensure that the nursing staff develops and keeps current a plan for nursing care for each inpatient.
- (7) The nursing services must be under the direct supervision of a chief administrative nurse. The chief administrative nurse must be knowledgeable, skilled and competent in clinical practice and nursing management. The chief administrative nurse shall direct and supervise the nursing services in compliance with chapter 632 of NRS and nationally recognized standards for organized nursing service.
- (8) The chief administrative nurse shall define the policies, procedures and standards relating to the provision of nursing services and shall ensure that the members of the nursing staff carry out those policies, procedures and standards. The policies, procedures and standards must be documented and accessible to each member of the nursing staff in written or electronic form. The chief administrative nurse must

approve each element of the policies , procedures and standards before the element may be used or put into effect.

NAC 449.3622 Appropriate care of patients.

1. Each patient must receive, and the hospital shall provide or arrange for, individualized care, treatment and rehabilitation based on the assessment of the patient that is appropriate to the needs of the patient and the severity of the disease, condition, impairment or disability from which the patient is suffering.
2. The governing body shall ensure that each person's role in providing care to a patient is determined by:
  - (a) The professional skills, competence and credentials of the person providing care;
  - (b) The care or rehabilitation to be provided to the patient;
  - (c) The policies of the hospital; and
  - (d) The relevant required licensure or certification, regulation, privileges, scope of practice and job description of the person.

NAC 449.3624 Assessment of patients.

1. To provide a patient with the appropriate care at the time that the care is needed, the needs of the patient must be assessed continually by qualified hospital personnel throughout the patient's contact with the hospital. The assessment must be comprehensive and accurate as related to the condition of the patient.
2. Each patient must be reassessed according to hospital policy:
  - (a) When there is a significant change in his condition;
  - (b) When there is a significant change in his diagnosis; or
  - (c) To determine his response to the care that he is receiving.
3. The hospital shall ensure that the hospital staff develop and keep current a plan of care for each inpatient based on the assessed needs of the inpatient.

NAC 449.364. Obstetric Services

- (1). If a hospital provides obstetric services, the obstetric services must be provided through an obstetric department which is well organized and sufficiently staffed to ensure the health and safety of the patients.
- (4) A hospital shall ensure that the obstetric department has adequate staffing and equipment, including, with limitation:
  - (a) A sufficient number of registered nurses, trained in perinatal care of a maternal patient and in newborn care, who are on duty at all times to ensure that proper care is provided to each patient;
  - (e) Sufficient personnel on the premises and immediately available for each delivery of a newborn who;
    - (1) Are trained and experienced in performing cardiopulmonary resuscitation on adults and newborns; and
    - (2) Have successfully completed the Neonatal Resuscitation Program endorsed by the American Academy of Pediatrics and the American Heart Association.

NAC 449.370 Outpatient service

- (3) A hospital which provides outpatient services shall;
  - (b). Have sufficient numbers of professional and nonprofessional personnel available to provide the outpatient services; and
  - (c). Ensure that nursing services provided in the outpatient unit are provided under the direction of a registered nurse.

NAC 449.371. Intensive Care Units

- (5) Whenever a patient is present in the intensive care unit, a registered nurse, with training and experience in intensive care nursing, shall supervise the nursing care and nursing management of the intensive care service.
- (6) All licensed nurses working in an intensive care unit must:
  - (a) Have training and experience in intensive care nursing; or
  - (b) Work under the direct supervision of a registered nurse who has training and experience in intensive care nursing.

(7) The hospital shall establish a system for determining the nursing needs of each patient in the intensive care unit that includes an assessment made by a registered nurse trained in critical care of the patients' needs and the provision of staffing based on that assessment.

(8). The hospital shall follow the written policies for the plans for nurse staffing, which are dependent upon the acuity level of the patients in the intensive care unit, to ensure that the needs of the patients are met.

NAC 449.385. Surgical Services

(2). The operating rooms must be supervised by an experienced registered nurse or doctor of medicine or osteopathy.

(3). A licensed practical nurse or a surgical or operating room technician may act as a scrub nurse or scrub technician only under the direct supervision of a registered nurse.

(4). Circulating duties in an operating room must be performed by a qualified registered nurse, who shall not perform circulating duties in more than one operating room at a time.

NAC 449.394 Psychiatric services

5. All nursing services provided with regard to the provision of psychiatric care must be provided under the direction of a registered nurse.

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\*\*\*\**It should be noted that when a hospital has a special designation on its license defined in NRS 449.087 License: Amendment required for addition of certain services, the hospital must meet further NACs adopted by the State Board of Health. These NACs reflect current standards of care. These designations include*

- (a) The intensive care of newborns*
- (b) The treatment of burns*
- (c) The transplant of organs*
- (d) The performance of open-heart surgery*
- (e) A center for the treatment of trauma.*

*These regulations are not addressed in this handout.*

In summary:

The health division believes the current Nevada Administrative Codes addressing nurse staffing and adopted by the State Board of Health protect the public's health.

Now to go on and address the Medicare regulations for nurse staffing for hospitals. These are in your handout.

Centers for Medicare and Medicaid Services has not changed their staffing Code of Federal Regulations for a number of years, although it was addressed in congress. When looking at the nursing shortage and the issues addressed as a result of lack of staff, Congress did pass a bill to establish funding for additional nursing students to hopefully decrease this severe national nurse shortage

The Medicare regulations state *in CFR §482.23 Nursing services and I am only quoting a part of this regulation* *The director of the nursing service must be a license registered nurse. He or she is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.*

Under B *Staffing and delivery of care.* The regulation states:  
*The nursing service must have adequate numbers of licensed nurses, licensed practical nurses and other personnel to provide nursing care to all patients as needed.*

All hospitals must meet the NACs and Medicare CFRs regardless if they are JCAHO accredited or not. The bureau receives a huge majority of its complaints regarding lack of appropriate staffing or care or services in JCAHO facilities. It appears the number of complaints are linked to the size of a facility and not whether the facility is joint commission accredited.

### Skilled Nursing Facilities

There are 42 free-standing or distinct part skilled nursing facilities in Nevada.

All of the skilled nursing facilities are both state licensed and Medicare certified. Most of them are also Medicaid certified.

The skilled nursing facility NACs also had a major revision in 1999. These regulations mirrored the federal regulations for the most part.

In these regulations under NAC 449.74517 Nursing services Subsection 4 it states *(4) A registered nurse must be on duty at a facility for skilled nursing for at least 8 consecutive hours per day, 7 days a week.*

Because of the increased acuity of our skilled nursing residents, the skilled nursing facility administrative staff has wisely chosen to staff the facility with an RN 24 hours 7 days a week except for a very few facilities, or a very days in a year

I have also provided the executive summary for the Centers for Medicare and Medicaid Services (CMS) study on “Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes.”

This study and report to Congress was to examine the analytic justification for establishing minimum nurse staffing ratios for nursing homes. This report was mandated by Public Law 101-508 in the summer of 2000. In its entirety it is 3 volumes.

It can be provided to the members of the committee in its entirety if requested.

The attachment to the summary is very interesting. It outlines the number of states (as of June 2000)

- That had adopted hours of nursing care per patient day (28 states)
- Staff members per resident ratio (11 states) and
- The requirement for an RN to be on duty 24 hours 7 days a week (7 states).

Nevada was included in the number of states who had adopted hours per day. This was a Medicaid standard for payment not an NAC. This ended in September 2003 when the Medicaid chapter 500 became effective. Effective July 2003 a new reimbursement methodology was adopted. That reimbursement methodology monitors the amount of money that facilities pay for nursing services.

At the next revision of regulations the bureau would like to include in the draft for public comment, the requirement that an RN be onsite 24 hours 7 days a week. Based on the bureau's annual surveys, staffing in skilled nursing facilities remains a significant problem to recruit and retain nursing services, not only for RNs but also LPNs and Certified Nursing Assistants.

Also included in your packets is a letter from Centers for Medicare and Medicaid services. It states as a result of the Benefits Improvement and Protection Act of 2000, more commonly known as (BIPA), a requirement was established that all nursing facilities must post the number of licensed and unlicensed nursing staff directly responsible for resident care. This posting went into effect January 1, 2003.

The bureau has not identified any increase in nurse staffing as a result of the federal requirement to post the staffing on each shift in a public place.

### Intermediate Care Facilities

There are two types of Intermediate Care Facilities licensed in Nevada.

- Nursing facilities
- Intermediate Care Facilities for the Mentally Retarded

Intermediate care nursing facilities provide residential care to patients that do not require skilled nursing services. We have 2 in Nevada, both in Clark County. These NACs are in the early process of being updated as they have not had a major revision since 1975.

These facilities are Medicaid Certified. They must meet the same Code of Federal Regulations that skilled nursing facilities meet and are surveyed by the bureau on an annual basis.

The intermediate care facilities for mentally retarded, the second type that falls under this state license type has extensive federal regulations just pertaining to this type. This facility is surveyed on an annual basis. The state owned large facilities have an RN on 24 hours 7 days a week. The small residential ones have an RN "on call" 24 hour /7 days a week but all medications are administered by licensed nursing staff. There are 19 facilities that are licensed ICF/MR by the bureau.



### Independent Centers for Emergency Medical Care

There are 2 licensed Independent Center for Emergency Care. Both of these facilities are located in Douglas County and are owned by hospitals. These facilities are fully equipped Emergency Rooms and provide an acute care level of services to this area.

This facility type has an NRS addressing nurse staffing. NRS 449.034 states “*An independent center to provide emergency medical care shall not be operated unless a physician and registered nurse are on the premises.*”

These two facilities are not individually Medicare certified but meet the Hospital CFRs for certification. Thus staffing would need to meet the Hospitals CFRs for Emergency Rooms/Services.

### Rural Health Clinics

There are six rural health clinics licensed in Nevada. There currently are no NACs for rural health clinics but they are licensed and certified under the Code of Federal Regulations.

In these clinics, a physician assistant or nurse practitioner must be available to furnish patient care services at least 60 percent of the time the clinic operates. There must also be a physician on staff but not always onsite.

### Obstetric Center

There currently are no licensed Obstetric Centers. I have provided you with the NACs for this facility type.

There is no Medicaid certification process for reimbursement for these facilities.

That concludes my part of the presentation, I would be glad to address questions at this point or at the conclusion of Jeanne’s presentation.  
*Jeannie Anspach to present next section*