

**PROPOSED REGULATION OF THE
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R090-16

Section 1. Chapter 433 of NAC is hereby amended by adding there to the provision set forth as sections 2 to 31, inclusive of this regulation.

Section 2. *“Certificate” refers to a certificate issued by the Division to a provider of community based living arrangement*

Section 3. *“Community based living arrangement services” means flexible, individualized services provided in the home, for compensation, to a person with mental illness who is served by the Division that are designed and coordinated to assist the person in maximizing the person’s independence, including, without limitation, training and habilitation services.*

Section 4. *“Mental illness” has the meaning ascribed to it in NRS 433.164.*

Section 5. *“Person professionally qualified in the field of psychiatric mental health” has the meaning ascribed to it in NRS 433.209.*

Section 6. *“Provider of “community based living arrangement” means a natural person who, or a partnership, firm, corporation, association, state or local government or agency thereof that, has been issued a provisional certificate or certificate.*

Section 7. *“Provisional certificate” means a temporary certificate issued by the Division pending the issuance of a certificate pursuant to the completion of a quality assurance review.*

Section 8. *“Quality assurance review” means a review of the provision of community based living arrangement services by the holder of a provisional certificate or a provider of community based living arrangement services pursuant to Section 18.*

Section 9. *A provider of community based living arrangements must have a certificate to be eligible to receive payment from the Division for the provision of community based living arrangement services.*

Section 10. *An application for a provisional certificate must be submitted to the Division in which the applicant wishes to provide community based living arrangement services, on a form furnished by the Division, and must include, without limitation:*

1. For a provider of community based living arrangement services who is a natural person:

(a) Three or more letters of reference;

(b) A statement which is signed by the provider and which states that the provider agrees to maintain the confidentiality of any person who receives community based living arrangement services;

(c) Proof that the applicant has successfully completed a course in cardiopulmonary resuscitation according to the guidelines of the American Red Cross or American Heart Association;

(d) Proof that the applicant is currently certified in standard first aid through a course from:

(1) The American Red Cross;

(2) The American Heart Association; or

(3) An equivalent course in standard first aid, if the applicant submits proof that such course meets or exceeds the requirements of the American Red Cross or the American Heart Association;

(e) Written verification, on a form prescribed by the Division, stating that the fingerprints of the applicant were taken and directly forwarded electronically or by another means to the Central Repository for Nevada Records of Criminal History and that the applicant has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the applicant's background and to such other law enforcement agencies as the Division deems necessary;

(f) A copy of the social security card of the applicant;

(g) Proof that the applicant has sufficient working capital to ensure that the applicant would be financially capable of providing community based living arrangement services for a period of at least 3 months; and

(h) Any other information required by the Division.

2. For a provider of community based living arrangement services that is an organization consisting of a partnership, firm, corporation, association, state or local government or agency thereof:

(a) A copy of the business license of the organization;

(b) A copy of the bylaws, articles of incorporation, articles of association, articles of organization, partnership agreement, constitution and any other substantially equivalent documents of the organization, and any amendments thereto;

(c) A list of the members of the governing body of the organization;

(d) If the applicant is an association or a corporation:

(1) The name, title and principal business address of each officer and member of its governing body;

(2) The signature of the chief executive officer or an authorized representative; and

(3) If the applicant is a corporation, the name and address of each person holding more than 10 percent of its stock;

(e) Proof that at least one supervisor, administrator or manager of the provider satisfies the same or similar criteria of a person professionally qualified in the field of psychiatric mental health

(f) For each member of the governing body:

(1) Three or more letters of reference; and

(2) Written verification, on a form prescribed by the Division, stating that the fingerprints of the member of the governing body were taken and directly forwarded electronically or by another means to the Central Repository for Nevada Records of Criminal History and that the member of the governing body has given written permission to the law enforcement agency or other authorized entity taking the fingerprints to submit the fingerprints to the Central Repository for submission to the Federal Bureau of Investigation for a report on the member's background and to such other law enforcement agencies as the Division deems necessary;

(g) Proof that the applicant has sufficient working capital to ensure that the provider is financially capable of providing community based living arrangement services for a period of at least 3 months;

(h) Copies of any policies and procedures of the organization relating to the provision of community based living arrangement services; and

(i) Such other information as may be required by the Division.

Section 11.

- 1. The Division will review each application for a provisional certificate to determine whether the application is complete.*
- 2. If the Division determines that an application for a provisional certificate is incomplete, the Division will notify the applicant that the application is incomplete and authorize the applicant to submit any required information or documentation to complete the application. An applicant shall submit any additional information or documentation not later than 30 calendar days after receipt of the notification provided by the Division. The Division may deny the application if the applicant does not submit any required information or documentation in accordance with this subsection. If the application is denied pursuant to this subsection, the applicant may not resubmit an application for a provisional certificate for at least 12 months after the receipt of notification of the denial of the application required pursuant to Section 14.*

Section 12.

- 1. After the Division has determined that an application for a provisional certificate is complete, the Division will establish a screening panel composed of employees of the Division to interview the applicant and determine whether the applicant is qualified to participate in the training required pursuant to subsection 2.*
- 2. If the screening panel determines that an applicant is qualified to obtain a provisional certificate, the applicant must complete the required 16 hours of training provided by the Division within the first three months concerning the provision of community based living arrangement services.*

3. *Upon successful completion of the training required pursuant to subsection 2, the Division will issue a provisional certificate to the applicant.*

4. *A provisional certificate is valid until the holder of the certificate completes the initial quality assurance review required pursuant to Section 17*

Section 13. 1. *Each of the following acts and omissions constitutes a ground for denial of an application for a provisional certificate:*

(a) *Failure to submit a complete application for a provisional certificate within the time required pursuant to Section 11;*

(b) *The applicant is unable to, or lacks personnel who are sufficient in number or qualifications to, provide proper care for the number and types of intended recipients of community based living arrangement services;*

(c) *The applicant has misrepresented or failed to disclose any material fact in his or her application or in any financial record or other document requested by the Division;*

(d) *The applicant has been convicted of a crime relevant to any aspect of the provision of community based living arrangement services; or*

(e) *The proposed community based living arrangement services to be provided by the applicant have any major deficiency which would preclude compliance with sections 1 to 30 inclusive.*

2. *If an application is denied, the Division will give the applicant a written notice of the denial as set forth in NAC 439.345.*

Section 14. 1. *If the holder of a provisional certificate wishes to obtain a certificate, the holder must comply with the standards for the provision of community based living arrangement services established by the Division pursuant to Section 1 to Section 30 inclusive.*

The Division will determine whether the holder of a provisional certificate has complied with such standards after conducting a quality assurance review.

2. If the Division determines that the holder of a provisional certificate has complied with the standards for the provision of community based living arrangement services, the Division will issue a certificate to the holder of the provisional certificate.

3. The Division may issue a certificate to a provider of community based living arrangement services for any period not to exceed 2 years.

Section 15. *Upon the expiration of a certificate, the Division may renew the certificate of the provider of community based living arrangement services for any period not to exceed 2 years if the Division conducts a quality assurance review and determines that the provider is in compliance with the standards of the Division concerning the provision of community based living arrangement services set forth in Section 1 to Section 30, inclusive.*

Section 16. *A provider of community based living arrangement services must comply with the following standards for the provision of quality care concerning community based living arrangement services:*

1. Compliance with any state or federal statute or regulation required for the Division to receive state or federal funding concerning the provision of community based living arrangement services, including, without limitation, any standards of care set forth in:

(a) The State Plan for Medicaid; and

(b) The Medicaid Services Manual established by the Division of Health Care Financing and Policy of the Department of Health and Human Services;

2. Compliance with any state or federal requirements concerning fiscal management, reporting and employment law;

3. *Conformance to the delivery of services required pursuant to any individual care plan prepared for a person who receives community based living arrangement services;*

4. *Assurance of the health and welfare of persons receiving community based living arrangement services, which must be based upon the self-reporting of persons receiving community based living arrangement services, observations of the members of the staff of the Division, and any other information available to the Division; and*

5. *Establishment of procedures for internal quality assurance.*

Section 17. 1. *The Division will conduct a quality assurance review to determine whether an applicant for a provisional certificate, the holder of a provisional certificate or a provider of community based living arrangement services is in compliance with the standards of the Division concerning the provision of community based living arrangement services set forth Section 1 to Section 30 inclusive.*

2. *The Division may conduct a quality assurance review for cause at any time during the certification of a provider of community based living arrangement services if there is an allegation of abuse, neglect or exploitation or a concern related to the health or welfare of a person who receives community based living arrangement services from the provider.*

3. *In conducting a quality assurance review, the Division may:*

(a) *Obtain any information or otherwise review any aspect of the system of delivery of community based living arrangement services, including, without limitation:*

(1) *Any policies and procedures of the provider of community based living arrangement services;*

(2) *Any personnel or clinical records maintained by the provider of community based living arrangement services;*

(3) Any documentation regarding any administrative or personnel matter;

*(4) Any financial information concerning the provider of community based living arrangement services or the persons receiving community based living arrangement services;
and*

(5) Any information concerning the quality of care provided to all persons living and receiving community based living arrangement services in that home;

(b) Conduct interviews with persons receiving community based living arrangement services, members of the staff of any providers of community based living arrangement services, and members of the family, guardians, friends or advocates of persons receiving community based living arrangement services; and

(c) Observe the services provided to persons receiving community based living arrangement services.

4. If the Division determines pursuant to a quality assurance review that there are any deficiencies in the provision of community based living arrangement services related to the health or welfare of the persons receiving such services, the Division may suspend or deny the issuance of a certificate and request a written plan of correction from the provider of community based living arrangement services or recommend or require changes concerning the provision of community based living arrangement services before issuing, renewing or reinstating a certificate.

5. The Division may impose sanctions upon a provider of community based living arrangement services for:

(a) Any aspect of the provision of community based living arrangement services which poses a probable risk of harm to the health or welfare of a person receiving community based living arrangement services;

(b) Any refusal to participate in any aspect of a quality assurance review; or

(c) The failure or refusal of the provider to implement or maintain any actions requested by the Division to correct a deficiency identified during a quality assurance review.

6. For any sanction imposed pursuant to subsection 4, the Division may, without limitation:

(a) Require the provider of community based living arrangement services to:

(1) Participate in training concerning the provision of community based living arrangement services;

(2) Comply with additional measures of accountability concerning the provision of community based living arrangement services;

(3) Comply with additional measures of review by the Division; or

(4) Comply with additional performance requirements concerning the provision of community based living arrangement services;

(b) Terminate, prohibit or limit any contracts that the Division has with a provider of community based living arrangement services; or

(c) Suspend or reduce a contractual payment owed to a provider of community based living arrangement services.

7. If a provider of community based living arrangement services is aggrieved by any sanctions imposed pursuant to this regulation, the aggrieved provider of community based

services may appeal the decision pursuant to the procedures set forth in NAC 439.300 to 439.395, inclusive.

Section 18. *If the provider of community based living arrangement services is an organization, it shall, in conformance with Section 1 to Section 30, inclusive, establish policies concerning the provision of community based living arrangement services and the welfare of the persons it serves.*

Section 19. *1. A provider of community based living arrangement services shall make arrangements for obtaining services from professionally qualified persons or other specially trained persons as needed to assist in planning, carrying out and reviewing the provision of community based living arrangement services.*

2. Evidence of the use of such services must be on file with the provider community based living arrangement services.

3. The need for such services must be determined initially by an individual support team and be reviewed by the team on a regular basis, at least annually.

Section 20. *A provider of community based living arrangement services shall:*

1. Have a financial plan which ensures that there will be sufficient resources to meet the costs for care of the persons receiving community based living arrangement services from the provider;

2. Maintain adequate financial records; and

3. Submit to the Division any financial report:

(a) Which the Division requests in writing; and

(b) The need for which is explained by the Division.

Section 21.

1. A provider of community based living arrangement services may not provide community based living arrangement services to a person until there has been an assessment of the need for community based living arrangement services for the person, except as otherwise provided in subsection 4.

2. The assessment must be performed or approved by the Division. The assessment must include an interim individualized plan.

3. Following the assessment, if the person is accepted by the provider of community based living arrangement services, the findings of the assessment must be entered into the person's record and maintained with the provider and the Division.

4. In an urgent situation, a provider of community based living arrangement services may accept a person for the provision of community based living arrangement services for a period of not more than 5 working days before the assessment, if the Division approves the acceptance of the person under such urgent circumstances.

Section 22. *A provider of community based living arrangement services shall enter into a written contract for the provision of community based living arrangement services with each person or his or her guardian, if applicable, and the Division.*

Section 23.

1. All members of the direct support staff of a provider of community based living arrangement services must successfully complete a program concerning the administration of medication which is approved by the Division.

2. A person who is receiving community based living arrangement services may have his or her medication administered by:

(a) A provider of health care; or

(b) A member of the direct support staff of a provider of community based living arrangement services who has successfully completed a program concerning the administration of medication which is approved by the Division if:

(1) The member of the direct support staff is a personal assistant authorized to perform administration of medication by a provider of health care pursuant to NRS 629.091;

(2) The person, or his or her guardian, as applicable, provides written authorization for the person to receive medication from a member of the direct support staff of the provider of community based living arrangement services in accordance with NRS 453.375 and 454.213; and

(3) The person submits to a physical examination by his or her provider of health care on an annual basis and the provider of health care determines that the person is medically cleared to receive medication from the member of the direct support staff.

Section 24. *A provider of community based living arrangement services shall keep a separate record regarding each person for whom he or she provides community based living arrangement services. Each such record must include information needed for providing services, for planning and for periodic reevaluation of the needs of the person who is receiving the community based living arrangement services. The record must be available for review by the person who is receiving the community based living arrangement services or his or her guardian, the provider, and the Division.*

Section 25. *1. A provider of community based living arrangement services must retain the original records of each person who receives community based living arrangement services from the provider pursuant to Section 25, or photographic reproductions of such records, for*

at least 3 years after termination of the provision of the community based living arrangement services.

2. All such records must be complete, current and readily available for review by representatives of the Department of Health and Human Services.

Section 26. *1. Any person who receives community based living arrangement services has the same or similar rights which are afforded to mental health consumers pursuant to chapter 433 of NRS, and any regulations adopted pursuant thereto.*

2. A person has the right to file a complaint against a provider of community based living arrangement services with the Division.

Section 27. *Each of the following acts and omissions constitutes a ground for revocation of a provisional certificate or certificate:*

1. A misrepresentation of or failure to disclose any material fact in the application for the provisional certificate or certificate or in any financial record or other document requested by the Division.

2. A lack of personnel in sufficient number or qualifications to provide proper care and support for the persons receiving community based living arrangement services.

3. A provider of community based living arrangement services or any member of the staff of the provider has been convicted of a crime relevant to any aspect of the provision of community based living arrangement services.

4. A provider of community based living arrangement services has any deficiency concerning the provision of community based living arrangement services that may cause imminent risk of harm to the health or welfare of persons receiving community based living arrangement services.

5. *A violation of any requirement set forth in Section 1 to Section 31, inclusive.*

6. *An accumulation or pattern of minor violations of the provisions of Section 1 to Section 31 inclusive, if the violations taken as a whole endanger the health or welfare of any person who is receiving community based living arrangement services.*

7. *Any fraudulent activity by a provider of community based living arrangement services or a member of the staff of the provider, including, without limitation, any fraudulent billing, falsification of records or misuse of the funds of a person who is receiving community based living arrangement services.*

8. *Failure to comply with any obligations set forth in the contract with the person who is receiving community based living arrangement services and the Division.*

Section 28. *The Division will give a provider of community based living arrangement services written notice of any intended action to revoke the certificate of the provider as set forth in NAC 439.345.*

Section 29. *If a revocation of the certificate of a provider of community based living arrangement services is pending and the Division determines that the grounds for the revocation place any person at a probable risk of harm, the Division may immediately terminate the provision of community based living arrangement services by the provider.*

Section 30.

1. *If a provider of community based living arrangement services is aggrieved by a decision of the Division relating to the denial, suspension or revocation of a certificate, the aggrieved provider of community based services may appeal the decision pursuant to the procedures set forth in NAC 439.300 to 439.395, inclusive.*

2. Except in the case of an emergency pursuant to Section 30, the effective date of the revocation is stayed upon receipt of an appeal until the hearing officer renders a decision regarding the appeal.

Section 31. NAC 433.001 is hereby amended to read as follows:

As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 433.003 to 433.013, *and Sections 1 to 31* inclusive, have the meanings ascribed to them in those sections.

Section 32. NAC 433.010 is hereby amended to read as follows:

“Division” ~~{means the Division of Mental Health and Developmental Services of the Department of Health and Human Services}~~ *has the meaning ascribed to it in NRS 433.084.*

Section 33. NAC 433.040 is hereby amended to read as follows:

Each division facility shall use the following definitions to count the number of persons in this state who are adults with a serious mental illness or children with a serious emotional disturbance:

1. “Adult with a serious mental illness” means a person who is at least 18 years old and has been diagnosed within the immediately preceding 12 months as having a mental, behavioral or emotional disorder as defined in ~~{the “Diagnostic and Statistical Manual of Mental Disorders,” as adopted by reference in NAC 433.050}~~ *the manuals identified in subsection 1 of NRS 433.124*, other than an addictive disorder, mental retardation, irreversible dementia or a disorder caused by an abuse of alcohol or drugs, which interferes with or limits one or more major life activities of the adult.

2. “Child with a serious emotional disturbance” means a person who is less than 18 years old and has been diagnosed within the immediately preceding 12 months as having a mental,

behavioral or emotional disorder as defined in ~~the “Diagnostic and Statistical Manual of Mental Disorders,” as adopted by reference in NAC 433.050~~ *the manuals identified in subsection 1 of NRS 433.124*, other than a mental disorder designated as a Code V disorder in the Manual, a developmental disorder or a disorder caused by an abuse of alcohol or drugs, which substantially interferes with or limits the child from developing social, behavioral, cognitive, communicative or adaptive skills or his or her activities relating to family, school or community. The term does not include a child with a disorder which is temporary or is an expected response to stressful events.

~~[NAC 433.005 “Director” defined. (NRS 435.070) “Director” means the director of the service for which a mental health-mental retardation technician performs his or her duties.~~

~~—(Added to NAC by Men. Hygiene & Men. Retardation Div., eff. 7-5-94; A by Div. of Men. Health & Dev. Services by R031-09, 10-27-2009)]~~

~~[NAC 433.050 Adoption of Manual by reference. (NRS 433.324) The Diagnostic and Statistical Manual of Mental Disorders, 4th Edition Revised 1994, published by the American Psychiatric Association, Washington, D.C., and commonly referred to as “DSM,” is hereby adopted by reference. This Manual may be obtained from the American Psychiatric Press, Inc., 1400 K Street, N.W., Washington, D.C. 20005, for the price of \$45, plus \$7.50 for shipping and handling.—(Added to NAC by Comm’n on Men. Health & Men. Retardation, eff. 8-24-88; A by R128-97, 11-14-97)]~~