

**PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R090-16

August 3, 2016

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

AUTHORITY: §§1-35, NRS 433.324.

A REGULATION relating to mental health; requiring a person or governmental entity to have a provisional certificate or certificate issued by the Division of Public and Behavioral Health of the Department of Health and Human Services to be eligible to provide community-based living arrangement services; prescribing procedures to apply for a provisional certificate and obtain a certificate; prescribing procedures by which the Division may review the provision of services, impose sanctions and issue, renew, deny or revoke a provisional certificate or certificate; imposing certain requirements governing the operation of a provider of services; providing a recipient of services with certain rights; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Health to adopt regulations for the care and treatment of persons with mental illness. (NRS 433.324) This regulation establishes a regulatory scheme for the provision of community-based living arrangement services, which are defined in **section 4** of this regulation as flexible, individualized services that are: (1) provided in the home, for compensation, to a person with a mental illness who is served by the Division of Public and Behavioral Health of the Department of Health and Human Services; and (2) designed and coordinated to assist the person in maximizing the person's independence.

Section 13 of this regulation requires a person or governmental entity to hold a provisional certificate or certificate issued by the Division to provide community-based living arrangement services or receive payment from the Division for the provision of such services. **Section 14** of this regulation prescribes the required contents of an application for a provisional certificate. **Sections 15 and 16** of this regulation prescribe the required procedures for the review of such an application and the issuance of a provisional certificate. **Section 17** of this regulation lists grounds for the denial of an application for a provisional certificate.

Section 18 of this regulation: (1) prescribes the process, including mandatory quality assurance review, through which a holder of a provisional certificate is required to obtain a certificate; and (2) requires the Division to revoke the provisional certificate of a provider who has not obtained a certificate within 1 year after the issuance of the provisional certificate. **Section 19** of this regulation authorizes the Division to renew a certificate for a period not to

exceed 2 years if the Division conducts a quality assurance review and determines that the holder of the certificate is in compliance with the requirements of this regulation concerning the provision of services. **Section 21** of this regulation: (1) authorizes the Division to conduct a quality assurance review for certain purposes; and (2) prescribes the actions that the Division may take when conducting a quality assurance review. **Section 22** of this regulation prescribes the sanctions the Division may impose if it determines pursuant to a quality assurance review that there are certain deficiencies in the provision of services.

Sections 20 and 23-28 of this regulation set forth certain standards with which a provider of community-based living arrangement services must comply. **Sections 24, 25, 29 and 30** of this regulation require a provider of services to maintain certain records. **Section 26** of this regulation requires the Division to: (1) conduct or approve an assessment of a person's need for services before a provider may provide such services; and (2) establish an individualized plan detailing the services that will be provided to the person. **Section 31** of this regulation: (1) provides certain rights to a recipient of services; and (2) authorizes any person to file a complaint with the Division against a provider of services.

Section 32 of this regulation prescribes grounds for revocation of a provisional certificate or certificate. **Section 33** of this regulation requires the Division to give written notice of any intended action to revoke a provisional certificate or certificate. **Section 34** of this regulation authorizes the Division to terminate the provision of services immediately if it determines that a person is at imminent or probable risk of harm. **Section 35** of this regulation authorizes a provider of services who is aggrieved by a sanction imposed by the Division or a decision concerning the denial, suspension or revocation of a provisional certificate or certificate to appeal the sanction to the Administrator of the Division.

Section 1. Chapter 433 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 35, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 35, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Certificate” means a certificate to provide community-based living arrangement services that is issued pursuant to section 18 of this regulation.*

Sec. 4. *“Community-based living arrangement services” means flexible, individualized services that are:*

1. Provided in the home, for compensation, to a person with a mental illness who is served by the Division; and

2. Designed and coordinated to assist the person in maximizing his or her independence.

Sec. 5. "Individual support team" means a team of persons, other than a provider, who provide health care and perform other duties for the benefit of a person with a mental illness.

Sec. 6. "Individualized plan" means a plan prescribing the services that will be provided to a person with mental illness, the frequency with which the services will be provided and the manner in which those services will be provided.

Sec. 7. "Mental illness" has the meaning ascribed to it in NRS 433.164.

Sec. 8. "Person professionally qualified in the field of psychiatric mental health" has the meaning ascribed to it in NRS 433.209.

Sec. 9. "Provider" means a natural person or a partnership, firm, corporation, association, state or local government or agency thereof that is issued a provisional certificate or certificate.

Sec. 10. "Provisional certificate" means a temporary certificate to provide services that is issued pursuant to section 16 of this regulation.

Sec. 11. "Quality assurance review" means a review of the provision of services conducted by the Division as provided in section 21 of this regulation.

Sec. 12. "Services" means community-based living arrangement services.

Sec. 13. A person or governmental entity must hold a provisional certificate or certificate to provide services or receive payment from the Division for services.

Sec. 14. An application for a provisional certificate must be submitted to the Division on a form furnished by the Division and must include:

1. For an applicant who is a natural person:

(a) Three or more letters of professional reference;

(b) A certification, signed by the applicant, that the applicant will maintain the confidentiality of information relating to any person who receives 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 the American Red Cross or American Heart Association or, if the applicant submits proof that the course meets or exceeds the requirements of the American Red Cross or the American Heart Association, an equivalent course in standard first aid;

(e) Written verification, on a form prescribed by the Division, that the fingerprints of the applicant were taken and forwarded electronically or by another means directly 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 and to such other law enforcement agencies as the Division deems necessary for reports on the applicant's background to the Division and the applicant;

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

(g) Proof that the applicant has sufficient working capital to provide services for at least 3 months without compensation;

(h) If applicable, a copy of the applicant's state business registration and a copy of the current business license issued for the applicant's business by the county, city or town in

which the applicant's business is located or written verification that the applicant is exempt from any requirement to obtain a business registration or license; and

(i) Any other information required by the Division.

2. For an applicant other than a natural person:

(a) If applicable, a copy of the state business registration of the organization and a copy of the current business license issued for the applicant's business by the county, city or town in which the applicant's business is located or written verification that the applicant is exempt from any requirement to obtain a business registration or license;

(b) The federal tax identification number of the organization;

(c) 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 applicant, and any amendments thereto;

(d) A list of the members of the governing body of the applicant;

(e) 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;

(f) Proof that at least one supervisor, administrator or manager of the applicant is a person professionally qualified in the field of psychiatric mental health;

(g) For each member of the governing body:

(1) Three or more letters of professional reference; and

(2) Written verification, on a form prescribed by the Division, that the fingerprints of the member of the governing body were taken and forwarded electronically or by another means directly 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 and to such other law enforcement agencies as the Division deems necessary for reports on the member's background to the Division and the applicant;

(h) Proof that the applicant has sufficient working capital to provide services for at least 3 months without compensation;

(i) Copies of any policies and procedures of the applicant relating to the provision of services; and

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

Sec. 15. 1. *The Division shall 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 shall notify the applicant that the application is incomplete and authorize the applicant to submit any required information or documentation to complete the application. The applicant must submit any additional information or documentation not later than 30 calendar days after receipt of the notice. 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 receipt of the notice of the denial given pursuant to section 17 of this regulation.

Sec. 16. 1. *If the Division determines that an application for a provisional certificate is complete, the Division shall 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 by subsection 2.*

2. Except as otherwise provided in this subsection, if the screening panel determines that an applicant is qualified to obtain a provisional certificate, the applicant must complete 16 hours of training provided by the Division concerning the provision of services. The training must be completed not later than 3 months after the date on which the screening panel makes its determination. If the applicant is not a natural person, each officer or employee of the applicant who will oversee the provision of services by the applicant must complete the training required by this subsection.

3. Upon successful completion of the training required by subsection 2, the Division shall issue a provisional certificate to the applicant.

4. A provisional certificate is valid until the Division completes the initial quality assurance review required by section 18 of this regulation.

Sec. 17. 1. *Each of the following constitutes a ground for denial of an application for a provisional certificate:*

(a) Failure by the applicant to submit a complete application for a provisional certificate within the time required by section 15 of this regulation.

(b) Inability of the applicant to provide proper care for the number and types of intended recipients of services.

(c) Misrepresentation or failure by the applicant to disclose any material fact in the application submitted to the Division or in any financial record or other document requested by the Division.

(d) Conviction of the applicant, an officer or employee of the applicant or an independent contractor of the applicant who oversees the provision of services of a crime relevant to any aspect of the provision of services, including, without limitation:

- (1) Murder, voluntary manslaughter or mayhem;*
- (2) Assault or battery with intent to kill or to commit sexual assault or mayhem;*
- (3) Sexual assault, statutory sexual seduction, incest or lewdness or indecent exposure that is punished as a felony, or any other sexually related felony;*
- (4) A felony involving domestic violence;*
- (5) A misdemeanor involving domestic violence, within the immediately preceding 7 years;*
- (6) A misdemeanor involving assault or battery, within the immediately preceding 7 years;*
- (7) Abuse or neglect of a child or contributory delinquency;*
- (8) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS, within the immediately preceding 7 years;*
- (9) Abuse, neglect, exploitation, isolation or abandonment of an older person or vulnerable person, including, without limitation, a violation of any provision of NRS 200.5091 to 200.50995, inclusive, or a law of any other jurisdiction that prohibits the same or similar conduct;*

(10) A violation of any law relating to the State Plan for Medicaid or a law of any other jurisdiction that prohibits the same or similar conduct, within the immediately preceding 7 years;

(11) A violation of any provision of NRS 422.450 to 422.590, inclusive;

(12) A criminal offense under the laws governing Medicaid or Medicare, within the immediately preceding 7 years;

(13) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property, within the immediately preceding 7 years;

(14) Any felony involving the use or threatened use of force or violence against the victim or the use of a firearm or other deadly weapon; or

(15) An attempt or conspiracy to commit any of the offenses listed in this paragraph, within the immediately preceding 7 years.

(e) Exclusion of the applicant, an officer or employee of the applicant or an independent contractor of the applicant who oversees the provision of services from participation in Medicare, Medicaid or any other federal health care program pursuant to 42 C.F.R. § 1003.105.

(f) The existence of any major deficiency in the proposed services to be provided by the applicant which would preclude compliance with sections 2 to 35, inclusive, of this regulation.

2. If an application is denied, the Division shall give the applicant a written notice of the denial in the manner provided by NAC 439.345.

Sec. 18. 1. Within 6 months after the issuance of a provisional certificate, the holder of the provisional certificate shall request the Division to conduct a quality assurance review as provided in section 21 of this regulation. If no timely request is made or the Division

determines as the result of the quality assurance review that the holder of the provisional certificate is not in full compliance with the standards for the provision of services set forth in sections 2 to 35, inclusive, of this regulation, the Division may revoke or extend the term of the provisional certificate. The Division may extend the term of the provisional certificate for any period not to exceed 6 months.

2. If the Division extends the term of a provisional certificate pursuant to subsection 1, the holder of the provisional certificate shall, before the expiration of the extended term, request the Division to conduct another quality assurance review. If no timely request is made or the Division determines as the result of the quality assurance review that the holder of the provisional certificate is not in full compliance with the standards described in subsection 1, the Division shall revoke the provisional certificate.

3. If the Division determines as the result of a quality assurance review conducted pursuant to subsection 1 or 2 that the holder of a provisional certificate is in full compliance with the standards described in subsection 1, the Division shall issue a certificate to the holder of the provisional certificate. The Division may issue a certificate to a provider for any period not to exceed 2 years.

Sec. 19. *Upon the expiration of a certificate, the Division may renew the certificate of the provider for any period not to exceed 2 years if the Division conducts a quality assurance review as provided in section 21 of this regulation and determines that the provider is in compliance with the standards for the provision of services set forth in sections 2 to 35, inclusive, of this regulation.*

Sec. 20. *A provider shall:*

1. Comply with any state or federal statute or regulation as required for the Division to receive state or federal money for the provision of services, including, without limitation, any standard 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. Comply with all applicable state or federal requirements concerning fiscal management, reporting and employment.

3. Comply with the individualized plan prepared pursuant to section 26 of this regulation for each person who receives services.

4. Assure the health and welfare of persons receiving services. Any assessment by the Division of a provider's compliance with the requirements of this subsection must be based upon the self-reporting of persons receiving services from the provider, the observations of members of the staff of the Division and any other information available to the Division.

5. Establish internal procedures for quality assurance.

6. Promptly report to the Division any change in the officers or ownership of the provider.

7. Cooperate with any investigation by the Division.

Sec. 21. 1. The Division:

(a) Shall conduct a quality assurance review upon a request made pursuant to section 18 of this regulation and before renewing a certificate pursuant to section 19 of this regulation; and

(b) May conduct a quality assurance review at any time during the certification of a provider if there is an allegation of abuse, neglect or exploitation or a concern related to the health or welfare of a person who receives services from the provider.

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

(a) Obtain any information or otherwise review any aspect of the provider's system of delivery of services, including, without limitation, any:

(1) Policies and procedures of the provider;

(2) Personnel or clinical records maintained by the provider;

(3) Documentation regarding any administrative or personnel matter directly related to the health and welfare of any person who is receiving services;

(4) Financial information concerning the provider or any person receiving services;
and

(5) Information concerning the quality of care provided to any person receiving services;

(b) Interview or otherwise solicit information from any person receiving services, any employee or independent contractor of any provider or any other agency with knowledge of any person receiving services, and any member of the family or any guardian, friend or advocate of any person receiving services; and

(c) Observe the services provided to any person receiving services.

Sec. 22. 1. *If the Division determines pursuant to a quality assurance review that there are any deficiencies in the provision of services by a provider related to the health or welfare of a person receiving such services, the Division may:*

(a) Deny, suspend or revoke the provisional certificate or certificate of the provider;

(b) Require the provider to prepare and submit to the Division a written plan of correction, which must be approved by the Division; or

(c) Require changes concerning the provision of services by the provider before the Division issues, renews or reinstates a provisional certificate or certificate.

2. The Division may impose any sanction described in subsection 3 upon a provider for:

(a) Any aspect of the provision of services by the provider which poses a probable risk of harm to the health or welfare of a person receiving services;

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

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

3. As a sanction imposed pursuant to subsection 2, the Division may, without limitation:

(a) Require the provider to:

(1) Participate in training concerning the provision of services;

(2) Comply with additional measures of accountability concerning the provision of services;

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

(4) Comply with additional performance requirements concerning the provision of services;

(b) Terminate or amend any contract that the Division has with the provider; or

(c) Suspend or reduce any payment otherwise owed by the Division to the provider.

Sec. 23. If a provider is a governmental entity or an organization, it shall, in conformance with sections 2 to 35, inclusive, of this regulation, establish policies and procedures for the provision of services and the welfare of the persons it serves.

Sec. 24. 1. A provider shall make arrangements for obtaining services from persons professionally qualified in the field of psychiatric mental health or other specially trained persons, as needed, to assist in planning, carrying out and reviewing the provision of services. Evidence of any use of such services must be on file with the provider.

2. The need for such services must be determined initially by the individual support team established pursuant to section 26 of this regulation for the person receiving services and be reviewed by the team on a regular basis, at least annually.

Sec. 25. A provider shall:

1. Develop and maintain a financial plan which ensures that there are sufficient resources to meet the costs for care of the persons receiving services from the provider;

2. Maintain financial records adequate to determine whether the provider meets all the requirements of sections 2 to 35, inclusive, of this regulation related to finances; 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.

Sec. 26. 1. Except as otherwise provided in subsection 4, a provider may not provide services to a person until there has been an assessment of the need for services for the person.

2. The assessment must be performed or approved by the Division. As part of the assessment, the Division or other entity that performs the assessment must establish an interim individualized plan.

3. *Following the assessment, if the person is accepted by the provider:*

(a) The findings of the assessment must be maintained by the Division and entered into the person's record kept and maintained by the provider as provided in section 29 of this regulation; and

(b) The Division shall establish an individual support team for the person and, in collaboration with the individual support team, establish a permanent individualized plan.

4. *In an urgent situation and with the approval of the Division, a provider may accept a person for the provision of services for a period of not more than 5 working days before an assessment is performed.*

Sec. 27. *A provider shall enter into a written contract for the provision of services with each person who will receive services or his or her parent or guardian, if applicable, and the Division. The contract must prescribe the services that will be provided to the person and the payment that the provider will receive from the Division for those services.*

Sec. 28. 1. *Each member of the direct support staff of a provider must successfully complete a program, approved by the Division, concerning the administration of medication.*

2. *A person who is receiving 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 the provider if:

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

(2) The person or his or her parent or guardian, as applicable, provides written authorization to receive medication from a member of the direct support staff of the provider 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.

3. As used in this section, “provider of health care” has the meaning ascribed to it in NRS 629.031.

Sec. 29. A provider shall keep a separate record regarding each person for whom services are provided. Each such record must include the information needed for providing services, to substantiate billing and for the planning and periodic reevaluation of the needs of the person who is receiving services. The record must be available for review by the person who is receiving services or his or her guardian, if applicable, and the Division.

Sec. 30. 1. A provider shall retain the original records of each person who receives services from the provider as provided in section 29 of this regulation, or photographic reproductions of such records, for at least 3 years after the provider ceases to provide services to the person.

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

Sec. 31. 1. Any person who receives services has the same rights that are afforded to a consumer by chapter 433 of NRS and any regulations adopted pursuant thereto.

2. A person has the right to file a complaint with the Division against a provider.

Sec. 32. Each of the following acts and omissions is a ground for revocation of a provisional certificate or certificate:

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

2. A lack of personnel in sufficient numbers or qualifications to provide proper care and support for the persons receiving services.

3. Conviction of the provider or any employee or independent contractor of the provider of a crime relevant to any aspect of the provision of services.

4. Any deficiency of the provider relating to the provision of services that poses an imminent or probable risk of harm to the health or welfare of any person receiving services.

5. Any violation of any requirement set forth in sections 2 to 35, inclusive, of this regulation.

6. Any accumulation or pattern of minor violations of the provisions of sections 2 to 35, inclusive, of this regulation, if the violations taken as a whole endanger the health or welfare of any person who is receiving services.

7. Any fraudulent activity by the provider or an employee or independent contractor of the provider, including, without limitation, any fraudulent billing, falsification of records or misuse or misappropriation of the property of a person who is receiving services.

8. Failure to comply with any obligation set forth in the contract entered into pursuant to section 27 of this regulation.

9. Any refusal to participate in any aspect of a quality assurance review or any other review or investigation by the Division.

10. The failure or refusal of the provider to implement or maintain any action required by the Division to correct a deficiency identified during a quality assurance review or any other review or investigation by the Division.

11. Abuse, neglect, exploitation or coercion of a person who is receiving services.

12. Harassing, coercive, intimidating, insulting, abusive or disruptive language or behavior directed at an employee of the Division, an employee or independent contractor of the provider, another provider or a person or entity providing services other than community-based living arrangement services, a person who is receiving services or a family member or guardian of such a person.

13. Exclusion of the provider, an officer or employee of the provider or an independent contractor of the provider who oversees the provision of services from participation in Medicare, Medicaid or any other federal health care program pursuant to 42 C.F.R. § 1003.105.

Sec. 33. The Division shall give a provider written notice of any intended action to revoke the provisional certificate or certificate of the provider as prescribed by NAC 439.345.

Sec. 34. If a revocation of the provisional certificate or the certificate of a provider is pending and the Division determines that the grounds for the revocation place any person at an imminent or probable risk of harm, the Division may immediately terminate the provision of services by the provider.

Sec. 35. 1. If a provider is aggrieved by any sanction imposed pursuant to section 22 of this regulation or any decision concerning the denial, suspension or revocation of a provisional certificate or certificate, the provider may submit a request for an appeal to the

Administrator of the Division pursuant to the procedures set forth in NAC 439.300 to 439.395, inclusive.

2. Except in the case of an immediate termination of the provision of services pursuant to section 34 of this regulation, the effective date of a revocation is stayed upon receipt of a request for appeal until the hearing officer renders a decision regarding the appeal.