

**PROPOSED REGULATION OF THE ADMINISTRATOR OF THE
AGING AND DISABILITY SERVICES DIVISION OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R144-16

August 3, 2016

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

AUTHORITY: §§1-36, NRS 435.333.

A REGULATION relating to services for persons with intellectual disabilities; replacing the term “mental retardation” with “intellectual disability”; prohibiting a provider of supported living arrangement services from employing or entering into a contract with certain persons; requiring a provider of supported living arrangement services to keep certain records; revising provisions concerning deficiencies in the provision of supported living arrangement services; revising provisions concerning applications for and renewal of provisional certificates and certificates authorizing a person to provide supported living arrangement services; requiring a provider of supported living arrangement services to comply with certain requirements concerning the provision of supported living arrangement services; revising provisions concerning the revocation of a provisional certificate or a certificate; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Administrator of the Aging and Disability Services Division of the Department of Health and Human Services to adopt regulations governing supported living arrangement services. (NRS 435.333) **Section 5** of this regulation requires a provider of supported living arrangement services to obtain certain information, including a criminal background check, concerning employees of the provider. **Section 6** of this regulation prohibits a provider of supported living arrangement services from hiring an employee or contracting with an independent contractor if the employee or independent contractor has committed certain crimes or has been excluded from participation in federal health programs.

Sections 7, 29 and 30 of this regulation require a provider of supported living arrangement services to maintain certain records.

Existing regulations provide that the Division may impose sanctions against a provider of supported living arrangement services for certain acts. (NAC 435.524) **Section 8** of this regulation adds additional sanctions that the Division may impose.

Existing regulations require a provider of supported living arrangement services to have a certificate to be eligible to receive payment from the Division for the provision of supported living arrangement services. (NAC 435.510) To obtain a certificate, an applicant must first obtain a provisional certificate. The Division may issue a certificate to a provider of supported living arrangement services that has a provisional certificate after conducting a quality assurance review of the provider. (NAC 435.521) **Sections 13 and 18** of this regulation clarify that a provisional certificate is issued to a new provider of supported living arrangement services pending the issuance of a certificate pursuant to the successful completion of the initial quality assurance review. **Section 15** of this regulation provides that a provider of supported living arrangement services who has a provisional certificate is eligible to receive payment from the Division for the provision of supported living arrangement services. **Section 16** of this regulation revises the requirements for an application for a provisional certificate.

Existing regulations require a provider of supported living arrangement services to enter into a written contract with each person or his or her parent or guardian, if applicable, and the Division before providing supported living arrangement services to the person pursuant to a provisional certificate. (NAC 435.565) **Sections 18 and 36** of this regulation: (1) remove the requirement that the person who is receiving supported living arrangement services or his or her parent or guardian be a party to this agreement; (2) require the agreement to conform with the individual support plan prepared for the person; and (3) provide that the regional center with jurisdiction over the provider will review the provision of supported living arrangement services each year.

Section 19 of this regulation provides that the Division may deny an application for a provisional certificate if the applicant, an officer of the applicant or certain employees of the applicant have been convicted of certain crimes. **Section 20** of this regulation provides that a holder of a provisional certificate who wishes to obtain a certificate must comply with certain laws and regulations, the written provider agreement between the provider of supported living arrangement services and the Division and the written service authorizations received from the appropriate regional center. **Section 20** also authorizes the Division to issue a certificate for any period not to exceed 3 years. **Section 21** of this regulation provides that the Division may renew a certificate for a period not to exceed 3 years if the applicant complies with certain laws and regulations, the provider agreement and the service authorizations.

Section 22 of this regulation adds certain items to the list of standards for the provision of quality care concerning supported living arrangement services that a provider of supported living arrangement services is required to observe. **Section 23** of this regulation provides that the Division or a regional center: (1) is required to conduct a quality assurance review to determine whether the holder of a provisional certificate or a certificate complies with certain requirements; (2) may take certain actions in conducting a quality assurance review; and (3) is authorized to conduct a quality assurance review at any time. **Section 24** of this regulation requires the policies of a provider of supported living arrangement services that is an organization to meet certain requirements. **Section 25** of this regulation requires a provider of supported living arrangement services to: (1) ensure adequate development and implementation of individual support plans, training of the provider and coordination and monitoring of supported living arrangement services; and (2) obtain oversight services and any other services necessary to assist in program

development and planning, carrying out and monitoring the provision of supported living arrangement services. **Section 27** of this regulation revises certain requirements that must be met by a provider of supported living arrangement services before or soon after the commencement of the provision of supported living arrangement services.

Existing regulations prohibit certain members of the direct support staff of a provider of supported living arrangement services from administering any substance which is categorized as a controlled substance in schedule II or any opioid agonist medication. (NAC 435.675) **Section 28** of this regulation removes that prohibition and instead prohibits such persons from administering any medication required to be administered by injection except for auto-injectable epinephrine.

Section 31 of this regulation provides that a person may file a complaint against a provider of supported living arrangement services with the regional center from the region in which the services are provided. **Section 32** of this regulation adds items to the list of acts or omissions that constitute a ground for the revocation of a provisional certificate or a certificate. **Section 35** of this regulation provides that, in addition to the Administrator of the Division, the Administrator's designee can also consider an appeal of the revocation of a provisional certificate or a certificate.

Section 1. Chapter 435 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 8, inclusive, of this regulation.

Sec. 2. *“Intellectual disability” has the meaning ascribed to it in NRS 435.007.*

Sec. 3. *“Persons with related conditions” has the meaning ascribed to it in NRS 435.007.*

Sec. 4. *“Written service authorization” means a document issued by a regional center authorizing a provider of supported living arrangement services to provide supported living arrangement services pursuant to an individual support plan.*

Sec. 5. 1. *Before hiring an employee or entering into a contract with an independent contractor, a provider of supported living arrangement services must:*

(a) Obtain a written statement from the prospective employee or independent contractor stating whether he or she has been convicted of any crime listed in NAC 435.520;

(b) Obtain proof that the prospective employee or independent contractor holds any required registration, license, permit or certificate; and

(c) Determine whether the prospective employee or independent contractor has been excluded from participation in Medicare, Medicaid and other federal health care programs pursuant to 42 C.F.R. § 1003.105.

2. Within 10 days after hiring an employee or entering into a contract with an independent contractor, and every 5 years thereafter, a provider of supported living arrangement services must:

(a) Obtain from the employee or independent contractor one set of fingerprints and a written authorization to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(b) Submit to the Central Repository for Nevada Records of Criminal History the fingerprints obtained pursuant to paragraph (a) to obtain information on the background and personal history of each employee or independent contractor to determine whether the person has been convicted of any crime listed in NAC 435.520.

Sec. 6. 1. Upon receiving information from the Central Repository for Nevada Records of Criminal History pursuant to section 5 of this regulation, or evidence from any other source, that an employee or independent contractor has been convicted of a crime listed in NAC 435.520 or has been excluded from participation in Medicare, Medicaid and other federal health care programs pursuant to 42 C.F.R. § 1003.105, the provider of supported living arrangement services shall terminate the employment or contract of that person after allowing the person time to correct the information as required pursuant to subsection 2.

2. If an employee or independent contractor believes that the information is incorrect, the employee or independent contractor may immediately inform the provider of supported living arrangement services. A provider that is so informed shall give the employee or independent

contractor a reasonable amount of time of not less than 30 days to correct the information before terminating the employment or contract of the person pursuant to subsection 1.

Sec. 7. 1. A provider of supported living arrangement services shall maintain:

(a) Evidence of use of the services described in subsection 2 of NAC 435.535;

(b) Evidence of compliance with chapters 616A to 616D, inclusive, of NRS; and

(c) A separate personnel file for each employee and independent contractor of the

provider. The personnel file must include, without limitation:

(1) Evidence that the employee or independent contractor has obtained any license, certificate or registration, and possesses the experience and qualifications, required for the position held by that person;

(2) Evidence that the provider of supported living arrangement services has complied with sections 5 and 6 of this regulation with regard to the employee or independent contractor, including, without limitation:

(I) A copy of the fingerprints that were submitted to the Central Repository for Nevada Records of Criminal History or proof of electronic fingerprint submission and a copy of the written authorization that was provided by the employee or independent contractor;

(II) Proof that the fingerprints of the employee or independent contractor were submitted to the Central Repository; and

(III) Any other documentation of the information collected or received pursuant to section 5 of this regulation; and

(3) An acknowledgment that has been signed by the employee or independent contractor indicating that he or she has:

(a) Received and understands the policies and procedures of the provider; and

(b) Received the training required pursuant to NAC 435.535.

2. The records maintained pursuant to subsection 1 must be made available for inspection by the Division at any reasonable time, and copies thereof must be furnished to the Division upon request.

Sec. 8. 1. If the Division or a regional center determines pursuant to a quality assurance review that there are any deficiencies in the provision of supported living arrangement services related to the health or welfare of persons receiving such services, the Division may suspend or deny the issuance of a certificate and request a written plan of improvement from the provider of supported living arrangement services or recommend or require changes concerning the provision of supported living arrangement services before issuing, renewing or reinstating a certificate. The provider shall develop a plan of improvement for each deficiency and submit the plan to the Division for approval within 15 days after receipt of the statement of deficiencies.

2. The Division may impose sanctions upon a provider of supported living arrangement services for:

(a) Any deficiency concerning the provision of supported living arrangement services that may cause imminent risk of harm or which poses a probable risk of harm to the health or welfare of persons receiving supported living arrangement services;

(b) A lack of personnel who are sufficient in number or qualifications to provide adequate support and services for persons receiving supported living arrangement services;

(c) Any refusal to participate in any aspect of a quality assurance review or any other review or investigation by the Division or a regional center; or

(d) The failure or refusal of the provider to implement or maintain any actions required by the Division or a regional center to correct a deficiency identified during a quality assurance review or any other review or investigation by the Division or a regional center.

3. For any sanction imposed pursuant to subsection 2, the Division may, without limitation:

(a) Place the provider of supported living arrangement services on probation for a specified time with conditions that the Division considers appropriate;

(b) Require the provider of supported living arrangement services to:

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

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

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

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

(c) Terminate, prohibit or limit any contracts that the Division or a regional center has with the provider of supported living arrangement services; or

(d) Suspend or reduce a contractual payment owed to the provider of supported living arrangement services.

4. The Division may suspend or reduce a contractual payment owed to a provider of supported living arrangement services pursuant to subsection 3 or require a provider to reimburse the Division, in whole or in part, for a contractual payment paid to the provider if the provider:

- (a) Fails to provide or keep records of supported living arrangement services;*
- (b) Falsifies documents; or*
- (c) Is negligent and the Division pays for the provision of supported living arrangement services or support to a person who is receiving supported living arrangement services due to the negligence of the provider.*

5. A provider of supported living arrangement services may appeal any sanction imposed pursuant to this section by submitting to the Division a written request of appeal within 15 calendar days after the date of receipt of the notification of any sanction imposed by the Division. The Administrator or a designee thereof will review the findings and submit a written decision within 30 calendar days after the written request of appeal is submitted to the Division. The decision of the Administrator or a designee thereof on the appeal is a final decision.

Sec. 9. NAC 435.500 is hereby amended to read as follows:

435.500 1. It is the policy of the ~~{Division}~~ *Administrator* to establish such standards for supported living arrangement services ~~{furnished}~~ *provided* to persons with ~~{mental-retardation}~~ *intellectual disabilities* or persons with ~~{a}~~ related ~~{condition}~~ *conditions* within the community ~~{as}~~ *that* will ensure that their basic and specialized needs are fulfilled.

2. NAC 435.500 to 435.740, inclusive, *and sections 2 to 8, inclusive, of this regulation* reflect the desire of the ~~{Division}~~ *Administrator* to ensure that supported living arrangement services are provided in accordance with ~~{modern-concepts-of}~~ *the best practices for* care, protection, supervision, guidance and training.

3. NAC 435.500 to 435.740, inclusive, *and sections 2 to 8, inclusive, of this regulation* do not preclude any person who is seeking supported living arrangement services, or any person or

agency which is making referrals or will be paying for such services, from requiring higher standards or additional services not in conflict with NAC 435.500 to 435.740, inclusive, *and sections 2 to 8, inclusive, of this regulation* as a condition of the provision of supported living arrangement services, referral or payment of a specified rate.

Sec. 10. NAC 435.505 is hereby amended to read as follows:

435.505 As used in NAC 435.500 to 435.740, inclusive, *and sections 2 to 8, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 435.5054 to 435.5086, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 11. NAC 435.5058 is hereby amended to read as follows:

435.5058 “Guardian” means a person who has qualified as the guardian of a person with ~~mental retardation~~ *an intellectual disability* or a person with a related condition pursuant to testamentary or judicial appointment.

Sec. 12. NAC 435.5062 is hereby amended to read as follows:

435.5062 “Parent” means the natural or adoptive parent of a person with ~~mental retardation~~ *an intellectual disability* or a person with a related condition who is less than 18 years of age.

Sec. 13. NAC 435.5074 is hereby amended to read as follows:

435.5074 “Provisional certificate” means a temporary certificate issued by the Division *to a new provider of supported living arrangement services* pending the issuance of a certificate pursuant to the *successful* completion of ~~+~~ *an initial* quality assurance review.

Sec. 14. NAC 435.5082 is hereby amended to read as follows:

435.5082 “Regional center” means a facility of the Division which provides services for persons with ~~mental retardation~~ *intellectual disabilities* and persons with related conditions for a designated geographic location in the State and includes any of the following:

1. The Desert Regional Center;
2. The Sierra Regional Center; and
3. The Rural Regional Center.

Sec. 15. NAC 435.510 is hereby amended to read as follows:

435.510 A provider of supported living arrangement services must have a *provisional certificate or a* certificate to be eligible to receive payment from the Division for the provision of supported living arrangement services.

Sec. 16. NAC 435.515 is hereby amended to read as follows:

435.515 ~~Am~~ *A completed* application for a provisional certificate must be submitted to the Division, ~~and to each regional center in which the applicant wishes to provide supported living arrangement services,~~ on a form furnished by the Division, and must include, without limitation:

1. For a provider of supported living arrangement services who is a natural person:
 - (a) *Proof that the applicant is 18 years of age or older;*
 - (b) Three or more letters of *professional* 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 supported living arrangement services;~~
 - (c) Proof that the applicant has successfully completed a *classroom* 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}~~ *A course from the* American Red Cross;
- (2) ~~{The}~~ *A course from 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 supported living arrangement services for a period of at least 3 months ~~{; and}~~

~~—(h)}~~ *without compensation;*

(g) Proof that the applicant satisfies the same or similar criteria of a qualified intellectual disability professional set forth in 42 C.F.R. § 483.430 or has obtained a waiver of the criteria from the applicable regional center;

(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;

(i) Proof of industrial insurance in compliance with chapters 616A to 616D, inclusive, of NRS or an affidavit stating that the applicant has elected not to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS pursuant to NRS 616B.659; and

(j) Any other information required by the Division.

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

(a) ~~[(A)]~~ If applicable, a copy of the state business ~~license~~ registration of the organization ~~;~~ ~~—(b)]~~ and a copy of the current business license issued for the applicant's business by the county, city or town in which the organization is located or written verification that the organization 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 organization, and any amendments thereto;

~~[(e)]~~ *(d) A list of the members of the governing body of the organization ~~;~~ ~~—(d)]~~ which includes the terms of office of those members;*

(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; *and*

(2) The signature of the chief executive officer or an authorized representative; ~~and~~
~~—(3)—~~ *(f)* If the applicant is a corporation, the name and address of each person holding more than 10 percent of its stock;

~~(e)~~ *(g)* Proof that at least one supervisor, administrator or manager of the provider satisfies the same or similar criteria of a qualified ~~mental retardation~~ *intellectual disability* professional set forth in 42 C.F.R. § 483.430 ~~;~~

~~(f)~~ *or has obtained a waiver from the applicable regional center;*

(h) For each ~~member of the governing body~~ *officer or other person who oversees the provision of supported living arrangement services:*

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

(2) Written verification, on a form prescribed by the Division, stating that the fingerprints of the ~~member of the governing body~~ *officer or other person* 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~~ *officer or other person* 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 *of the officer or other person* and to such other law enforcement agencies as the Division deems necessary;

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

~~—(h)~~ *without compensation;*

(j) Copies of any policies and procedures of the organization relating to the provision of supported living arrangement services; ~~and~~

~~—(i)~~ (k) *Proof that the applicant has an office independent of the location where supported living arrangement services are provided;*

(l) *Proof of industrial insurance in compliance with chapters 616A to 616D, inclusive, of NRS;* and

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

Sec. 17. NAC 435.517 is hereby amended to read as follows:

435.517 1. The Division ~~{will}~~ *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 ~~{will}~~ *must* 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 NAC 435.520.

Sec. 18. NAC 435.518 is hereby amended to read as follows:

435.518 1. After the Division has determined that an application for a provisional certificate is complete, the Division ~~{will}~~ *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 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 training provided by the Division concerning the provision of supported 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.]~~ *2. Upon successful completion of the interview, the Division shall:*

(a) If applicable, schedule an inspection of the physical site at which the applicant will provide supported living arrangement services; or

(b) If the Division does not schedule an inspection described in paragraph (a), schedule the applicant for training concerning the provision of supported living arrangement services.

3. If the Division conducts an inspection of the physical site pursuant to subsection 2, the Division must, upon approval of the physical site, schedule the applicant for training concerning the provision of supported living arrangement services.

4. The Division shall issue a provisional certificate to the applicant upon:

(a) Successful completion of the training described in subsection 2 or 3;

(b) Receipt of all reports on the background of an applicant, officer or other person required pursuant to NAC 435.515;

(c) If applicable, approval of the physical site at which the applicant will provide supported living arrangement services; and

(d) The provider of supported living arrangement services:

(1) Entering into a written provider agreement with the Division which sets forth specific requirements concerning the provision of supported living arrangement services; and

(2) Receiving a written service authorization from the applicable regional center for each person who will receive supported living arrangement services from the provider. The written service authorization must conform with any individual support plan developed with and agreed to by the person who will receive supported living arrangement services or his or her parent or guardian.

5. After the provider of supported living arrangement services enters into the written provider agreement and receives the written service authorization, the provider must provide each person receiving supported living arrangement services with the level of supervision required pursuant to his or her written service authorization to ensure the health and welfare needs of the person are met.

6. A provisional certificate is valid until the ~~holder of the certificate~~ Division or applicable regional center completes the initial quality assurance review . ~~required pursuant to NAC 435.524.~~

Sec. 19. NAC 435.520 is hereby amended to read as follows:

435.520 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 NAC 435.517;

(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 supported living arrangement services;~~

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

~~(d)~~ (c) The applicant, *an officer or employee of the applicant or an independent contractor of the applicant who oversees the provision of supported living arrangement services* has been convicted of a crime relevant to any aspect of the provision of supported living arrangement services ~~to~~

~~—(e)~~ , *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, lewdness or indecent exposure, or any other sexually related crime that is punished as a felony;*
- (4) Prostitution, solicitation, lewdness or indecent exposure, or any other sexually related crime that is punished as a misdemeanor, within the immediately preceding 7 years;*
- (5) A crime involving domestic violence that is punished as a felony;*
- (6) A crime involving domestic violence that is punished as a misdemeanor, within the immediately preceding 7 years;*
- (7) A crime involving assault or battery that is punished as a misdemeanor, within the immediately preceding 7 years;*
- (8) Abuse or neglect of a child or contributory delinquency;*
- (9) 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;*

(10) Abuse, neglect, exploitation, isolation or abandonment of older persons or vulnerable persons, 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;

(11) A violation of any provision of 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;

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

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

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

(15) Any other 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

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

(d) The physical site at which the applicant will provide supported living arrangement services, if applicable, was not approved by the Division pursuant to NAC 435.518;

*(e) The proposed supported living arrangement services to be provided by the applicant have any major deficiency which would preclude compliance with NAC 435.500 to 435.740, inclusive **H**, and sections 2 to 8, inclusive, of this regulation; or*

(f) The applicant, an officer or employee of the applicant or an independent contractor of the applicant who oversees the provision of supported living arrangement services has been

excluded from participation in Medicare, Medicaid and other federal health care programs pursuant to 42 C.F.R. § 1003.105.

2. If an application is denied ~~the~~ :

(a) *The* Division ~~will~~ **must** give the applicant a written notice of the denial ~~it~~ ; *and*

(b) *The applicant may not reapply for a provisional certificate within 12 months after the receipt of the written notice.*

Sec. 20. NAC 435.521 is hereby amended to read as follows:

435.521 1. If the holder of a provisional certificate wishes to obtain a certificate, the holder must comply with the ~~standards for the provision of supported living arrangement services established by the Division pursuant to chapter 435 of NRS and NAC 435.500 to 435.740, inclusive.~~ **requirements of:**

(a) *Chapter 435 of NRS concerning the provision of supported living arrangement services;*

(b) *NAC 435.500 to 435.740, inclusive, and sections 2 to 8, inclusive, of this regulation;*
and

(c) *The written provider agreement entered into and the written service authorizations received pursuant to NAC 435.518.*

2. The Division ~~will~~ **shall** determine whether the holder of a provisional certificate has complied with ~~such standards~~ **the requirements described in subsection 1** after conducting a quality assurance review.

~~2.~~ If the Division determines that the holder of a provisional certificate has complied with ~~the standards~~ **those requirements** for the provision of supported living arrangement services ~~it~~ **the** :

(a) *The* Division ~~will~~ **must** issue a certificate to the holder of the provisional certificate ~~H~~ ;
and

(b) *The written provider agreement entered into and the written service authorizations received pursuant to NAC 435.518 will continue in effect in accordance with the terms of the agreement and authorizations.*

3. ~~The~~ *Except as otherwise provided in subsection 3 of NAC 435.522, the* Division may issue a certificate to a provider of supported living arrangement services for any period not to exceed ~~2~~ **3** years. *The Division shall base the length of the period of validity of the certificate on the best interests of the public.*

Sec. 21. NAC 435.522 is hereby amended to read as follows:

435.522 **1.** Upon the expiration of a certificate, the Division may renew the certificate of the provider of supported living arrangement services for any period not to exceed ~~2~~ **3** 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 supported living arrangement services set forth in chapter 435 of NRS and NAC 435.500 to 435.740, inclusive.~~
requirements of:

(a) *Chapter 435 of NRS concerning the provision of supported living arrangement services;*

(b) *NAC 435.500 to 435.740, inclusive, and sections 2 to 8, inclusive, of this regulation;*
and

(c) *The written provider agreement entered into and the written service authorizations received pursuant to NAC 435.518.*

2. The Division shall base the length of the period of validity of the renewal on the best interests of the public.

3. The certificate remains in effect pending the completion of the renewal process, including, without limitation, the quality assurance review and determination of compliance with the requirements described in subsection 1.

Sec. 22. NAC 435.523 is hereby amended to read as follows:

435.523 A provider of supported living arrangement services must comply with the following standards for the provision of quality care concerning supported 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 supported living arrangement services, including, without limitation, any standards of care set forth in:

(a) The State Plan for Medicaid;

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

(c) The home and community-based services waiver granted pursuant to 42 U.S.C. § 1396n by the Secretary of the United States 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 support plan ~~prepared for~~ *developed with* a person who ~~receives~~ *is receiving* supported living arrangement services;

4. Assurance of the health and welfare of persons receiving supported living arrangement services ; ~~[- which must be based upon the self-reporting of persons receiving supported living arrangement services, observations of the members of the staff of the Division or a regional center, and any other information available to the Division or a regional center; and]~~

5. Establishment of procedures for internal quality assurance ~~[-]~~ ;

6. *Compliance with the requirements of:*

(a) Chapter 435 of NRS concerning the provision of supported living arrangement services;

(b) NAC 435.500 to 435.740, inclusive, and sections 2 to 8, inclusive, of this regulation; and

(c) The written provider agreement entered into and the written service authorizations received pursuant to NAC 435.518;

7. *Prompt reporting of any change in the officers or ownership of the provider of supported living arrangement services to the applicable regional center; and*

8. *Cooperation with any investigation by the Division or a regional center.*

Sec. 23. NAC 435.524 is hereby amended to read as follows:

435.524 1. The Division or *a* regional center ~~[- will]~~ *shall* conduct a quality assurance review to determine whether ~~[- an applicant for a provisional certificate,]~~ the holder of a provisional certificate or ~~[- a provider of supported living arrangement services]~~ *a certificate* is in compliance with the ~~[- standards of the Division or regional center concerning the provision of supported living arrangement services set forth in chapter 435 of NRS and NAC 435.500 to 435.740, inclusive.]~~ *requirements of:*

(a) Chapter 435 of NRS concerning the provision of supported living arrangement services;

(b) NAC 435.500 to 435.740, inclusive, and sections 2 to 8, inclusive, of this regulation; and

(c) The written provider agreement entered into and the written service authorizations received pursuant to NAC 435.518.

2. In conducting a quality assurance review, the Division or *a* regional center may:

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

(1) Any policies and procedures of the provider of supported living arrangement services;

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

(3) Any documentation regarding any administrative or personnel matter ~~{}~~ *directly related to the health and welfare of any person who is receiving supported living arrangement services;*

(4) Any financial information concerning the provider of supported living arrangement services or ~~{the}~~ persons receiving supported living arrangement services; and

(5) Any information concerning the quality of ~~{care}~~ *support* provided to persons receiving supported living arrangement services;

(b) Conduct interviews with *or solicit feedback from* persons receiving supported living arrangement services, ~~{members of the staff}~~ *employees and independent contractors* of any providers of supported living arrangement services ~~{}~~ *or other agencies that provide services to*

persons receiving supported living arrangement services and members of the family, guardians, friends or advocates of persons receiving supported living arrangement services; and

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

~~3. If the Division or regional center determines pursuant to a quality assurance review that there are any deficiencies in the provision of supported 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 supported living arrangement services or recommend or require changes concerning the provision of supported living arrangement services before issuing, renewing or reinstating a certificate.~~

~~4. The Division or regional center may impose sanctions upon a provider of supported living arrangement services for:~~

~~(a) Any aspect of the provision of supported living arrangement services which poses a probable risk of harm to the health or welfare of a person receiving supported 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 or a regional center to correct a deficiency identified during a quality assurance review.~~

~~5. For any sanction imposed pursuant to subsection 4, the Division may, without limitation:~~

~~(a) Require the provider of supported living arrangement services to:~~

~~(1) Participate in training concerning the provision of supported living arrangement services;~~

~~—(2) Comply with additional measures of accountability concerning the provision of supported living arrangement services;~~

~~—(3) Comply with additional measures of review by the Division or regional center; or~~

~~—(4) Comply with additional performance requirements concerning the provision of supported living arrangement services;~~

~~—(b) Terminate, prohibit or limit any contracts that the Division or a regional center has with a provider of supported living arrangement services; or~~

~~—(c) Suspend or reduce a contractual payment owed to a provider of supported living arrangement services.~~

~~—6. A provider of supported living arrangement services may appeal any sanction imposed pursuant to this section by submitting to the Division a written request of appeal within 15 calendar days after the date of receipt of the notification of any sanction imposed by the Division or a regional center. The Division will review the findings and submit a written decision within 30 calendar days after receipt of the written request of appeal. The decision of the Division is a final decision.~~

~~—7.} The Division or a regional center may conduct a quality assurance review **{for cause}** at any time . ~~{during the certification of a provider of supported 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 supported living arrangement services from the provider.}~~~~

Sec. 24. NAC 435.525 is hereby amended to read as follows:

435.525 If the provider of supported living arrangement services is an organization, it ~~{shall,}~~ **must**, in conformance with NAC 435.500 to 435.740, inclusive , **and sections 2 to 8,**

inclusive, of this regulation, establish policies concerning the provision of supported living arrangement services and the welfare of the persons it serves ~~+~~ *that satisfy the requirements of:*

- 1. Chapter 435 of NRS concerning the provision of supported living arrangement services;*
- 2. NAC 435.500 to 435.740, inclusive, and sections 2 to 8, inclusive, of this regulation;*
and
- 3. The written provider agreement entered into and the written service authorizations received pursuant to NAC 435.518.*

Sec. 25. NAC 435.535 is hereby amended to read as follows:

435.535 1. A provider of supported living arrangement services shall *ensure adequate:*

- (a) Development and implementation of individual support plans for persons receiving supported living arrangement services;*
- (b) Training of the provider if the provider is a natural person and the employees and independent contractors of the provider;*
- (c) Coordination of the provision of supported living arrangement services between multiple providers of supported living arrangement services to the same person who is receiving supported living arrangement services and between providers of supported living arrangement services and the persons described in paragraph (b) of subsection 2; and*
- (d) Monitoring of the provision of supported living arrangement services.*

2. A provider of supported living arrangement services shall make arrangements for obtaining services from ~~professionally~~ :

(a) Qualified persons, with sufficient experience as determined by the Division, to provide oversight to the provider to ensure that the provider is complying with the requirements of subsection 1; and

(b) Professionally qualified ~~{persons}~~ or other specially trained persons , including, without limitation, nurses, behavior specialists and dietitians, as needed to assist in program development and planning, carrying out and ~~{reviewing}~~ monitoring the provision of supported living arrangement services.

~~{2. Evidence of the use of such services must be on file with the provider of supported living arrangement services.}~~

3. The need for ~~{such}~~ *the* services *described in subsection 2* must be determined initially by an individual support team and be reviewed by the team on a regular basis, ~~{at least}~~ *but not less frequently than* annually.

Sec. 26. NAC 435.540 is hereby amended to read as follows:

435.540 A provider of supported living arrangement services shall:

1. Have a financial plan which ensures that there will be sufficient resources to meet the costs for ~~{care}~~ *training and support* of ~~{the}~~ persons receiving supported 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.

Sec. 27. NAC 435.555 is hereby amended to read as follows:

435.555 1. A provider of supported living arrangement services may not provide supported living arrangement services to a person until there has been an ~~assessment~~ *evaluation* of the *capacity of the provider to meet the ~~need for supported living arrangement services for~~ needs* of the person ~~for support~~, except as otherwise provided in subsection 4.

2. ~~The assessment must be performed or approved by the Division.~~ The ~~assessment~~ *evaluation* must include an interim ~~individualized~~ plan ~~for habilitation to support the needs of the person relating to health and welfare.~~

3. ~~Following the assessment, if the person is accepted by the provider of supported living arrangement services, the findings of the assessment must be entered into the person's record and maintained with the provider and the Division.~~ *Not later than 30 days after a provider of supported living arrangement services begins providing supported living arrangement services to a person, the provider shall complete an assessment for the purpose of developing an individualized plan for habilitation for the person. The assessment must describe the interests and skills of the person who is receiving supported living arrangement services and recommend a level of supervision for the person.*

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

Sec. 28. NAC 435.675 is hereby amended to read as follows:

435.675 1. A member of the direct support staff of a provider of supported living arrangement services may administer medication to persons receiving supported living

arrangement services if the member has successfully completed a program concerning the administration of medication which is approved by the Division.

2. A person who is receiving supported 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 supported 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 administers the medication according to the instructions of a provider of health care;

(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 of supported 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.

3. A member of the direct support staff of a provider of supported living arrangement services who has successfully completed a program concerning the administration of medication which is approved by the Division:

(a) May administer medication pursuant to this section;

(b) Must refer a person who is receiving supported living arrangement services to a provider of health care if:

(1) The medical condition of the person changes or the person develops a new or additional medical condition;

(2) The medication prescribed by the ~~{provider of health care}~~ *person authorized to prescribe medication* does not accomplish the objectives of the medication, as identified by the provider of health care, after the medication has been administered according to the prescription;

(3) Any emergency situation develops; or

(4) The provider of health care of the person instructs the member of the direct support staff to refer the person to the provider of health care; ~~{and}~~

(c) Shall not administer:

(1) Any medication to a person who has been admitted to a medical facility;

(2) Any medication which requires dose titration or an assessment of the needs of the person who is receiving supported living arrangement services concerning the medication;

(3) Any ~~{substance which is categorized as a controlled substance in schedule II by the Office of Diversion Control of the Drug Enforcement Administration of the United States Department of Justice pursuant to 21 C.F.R. § 1308.12;~~

~~— (4) Any opioid agonist medication;~~

~~— (5) } medication required to be administered by injection, except as otherwise provided in paragraph (d);~~

(4) Any extended release medication which must be crushed, cut or otherwise altered before the administration of the medication; or

~~{(6)}~~ (5) Any nutrition or medication which is prescribed by a provider of health care to be administered enterally ~~{;}~~ *and*

(d) May administer auto-injectable epinephrine for acute or emergent anaphylactic response if prescribed by a provider of health care and the member of the direct support staff has documentation that he or she has been trained in the use of auto-injectable epinephrine and monitoring persons who have received auto-injectable epinephrine for side effects.

4. As used in this section:

(a) “Direct support staff” means any member of the staff of a provider of supported living arrangement services who works directly with a person with ~~mental retardation~~ *an intellectual disability* or a person with a related condition to provide supported living arrangement services.

(b) *“Person authorized to prescribe medication” means:*

(1) A physician, dentist or podiatric physician who holds a license to practice his or her profession in this State;

(2) A hospital, pharmacy or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this State;

(3) An advanced practice registered nurse who has been authorized to prescribe controlled substances, poisons, dangerous drugs and devices;

(4) A physician assistant who:

(I) Holds a license issued by the Board of Medical Examiners; and

(II) Is authorized by the Board of Medical Examiners to possess, administer, prescribe or dispense controlled substances, poisons, dangerous drugs or devices under the supervision of a physician as required by chapter 630 of NRS;

(5) A physician assistant who:

(I) Holds a license issued by the State Board of Osteopathic Medicine; and

(II) Is authorized by the State Board of Osteopathic Medicine to possess, administer, prescribe or dispense controlled substances, poisons, dangerous drugs or devices under the supervision of an osteopathic physician as required by chapter 633 of NRS; or

(6) An optometrist who is certified by the Nevada State Board of Optometry to prescribe and administer therapeutic pharmaceutical agents pursuant to NRS 636.288, when the optometrist prescribes or administers therapeutic pharmaceutical agents within the scope of his or her certification.

(c) “Provider of health care” means:

- (1) A physician licensed pursuant to chapter 630, 630A or 633 of NRS;
- (2) A dentist licensed pursuant to chapter 631 of NRS;
- (3) A registered nurse licensed pursuant to chapter 632 of NRS;
- (4) An advanced ~~practitioner of nursing~~ *practice registered nurse* certified pursuant to chapter 632 of NRS;
- (5) A physician assistant licensed pursuant to chapter 630 of NRS; or
- (6) An osteopathic physician assistant certified pursuant to chapter 633 of NRS.

Sec. 29. NAC 435.695 is hereby amended to read as follows:

435.695 A provider of supported living arrangement services shall keep a separate record regarding each person for whom ~~he or she~~ *the provider* provides supported living arrangement services. Each such record must include *the* information needed for providing *supported living arrangement* services, *for substantiating billing*, for planning and for periodic reevaluation of the needs of the person who is receiving ~~the~~ supported living arrangement services. The record must be available for review by the person who is receiving ~~the~~ supported living arrangement services ~~, the provider~~ and the Division ~~+~~ *or a regional center.*

Sec. 30. NAC 435.705 is hereby amended to read as follows:

435.705 1. A provider of supported living arrangement services must retain ~~the~~ :

(a) The original records of each person who ~~receives~~ *is receiving* supported living arrangement services from the provider pursuant to NAC 435.695, or photographic reproductions of such records, for at least ~~3~~ *6* years after termination of the provision of the supported living arrangement services ~~H~~ ; *and*

(b) Administrative and fiscal records as provided in the written provider agreement entered into and the written service authorizations received pursuant to NAC 435.518.

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

Sec. 31. NAC 435.711 is hereby amended to read as follows:

435.711 1. ~~Any person who receives supported 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 supported living arrangement services with the ~~coordinator of supported living arrangement services of the~~ regional center from the region in which the services are provided.

~~3.—A coordinator of supported living arrangement services who receives a complaint pursuant to subsection 2 shall process the complaint.~~

~~4.~~ *2.* If the regional center is unable to resolve the complaint to the satisfaction of the complainant, the complainant may forward the complaint to the Administrator or a designee thereof. The Administrator ~~shall~~ *will* review the complaint and render a decision concerning the complaint within 30 calendar days after receipt of the complaint.

3. The decision of the Administrator *rendered pursuant to this section* is a final decision.

Sec. 32. NAC 435.725 is hereby amended to read as follows:

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

1. A misrepresentation of or failure to disclose any material fact in the application for the provisional certificate or *the* certificate or in any financial record or other document requested by the Division ~~{}~~ *or a regional center*.

2. A lack of personnel in sufficient number or qualifications to provide proper ~~{care}~~ *training* and support for ~~{the}~~ persons receiving supported living arrangement services.

3. ~~{A provider of supported 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 supported living arrangement services.}~~

~~{4.}~~ A provider of supported living arrangement services has any deficiency concerning the provision of supported living arrangement services that may cause imminent risk of harm *or which poses a probable risk of harm* to the health or welfare of persons receiving supported living arrangement services.

~~{5.}~~ 4. A violation of any requirement set forth in NAC 435.500 to 435.740, inclusive ~~{}~~ *, and sections 2 to 8, inclusive, of this regulation.*

5. An accumulation or pattern of minor violations of the provisions of NAC 435.500 to 435.740, inclusive, *and sections 2 to 8, inclusive, of this regulation*, if the violations taken as a whole endanger the health or welfare of any person who is receiving supported living arrangement services.

~~{7.}~~ 6. Any fraudulent activity by a provider of supported living arrangement services or ~~{a member of the staff}~~ *an employee or independent contractor* of the provider, including, without limitation, any fraudulent billing, falsification of records or misuse of the funds of a person who is receiving supported living arrangement services.

~~{8.}~~ 7. Failure to comply with any obligations *or with the policies and procedures of the Division* set forth in the ~~{contract with the person who is receiving supported living arrangement services and the Division.}~~ *written provider agreement entered into and the written service authorizations received pursuant to NAC 435.518.*

8. *Any refusal to participate in any aspect of a quality assurance review or any other review or investigation by the Division or a regional center.*

9. *The failure or refusal of the provider of supported living arrangement services to implement or maintain any actions required by the Division or a regional center to correct a deficiency identified during a quality assurance review or any other review or investigation by the Division or a regional center.*

10. *The failure or refusal of a provider of supported living arrangement services to return an adequate plan of improvement within 15 days after receiving a statement of deficiencies as required pursuant to section 8 of this regulation.*

11. *Misappropriation of the property of a person who is receiving supported living arrangement services.*

12. *Abuse, neglect, exploitation or coercion of a person who is receiving supported living arrangement services.*

13. *Harassing, coercive, intimidating, insulting, abusive or disruptive language or behavior directed at an employee of a regional center, an employee or independent contractor*

of a provider of supported living arrangement services, another provider of supported living arrangement services or other services, a person who is receiving supported living arrangement services or a family member or guardian of such a person.

14. The provider of supported living arrangement services, an officer or employee of the provider or an independent contractor of the provider who oversees the provision of supported living arrangement services is excluded from participation in Medicare, Medicaid and other federal health care programs pursuant to 42 C.F.R. § 1003.105.

Sec. 33. NAC 435.730 is hereby amended to read as follows:

435.730 The Division ~~{will}~~ **shall** give a provider of supported living arrangement services written notice of any intended action to revoke the *provisional certificate or the* certificate of the provider. The notice ~~{will}~~ **must** be ~~{given by personal service upon the provider or}~~ sent **by certified mail** to the *address of the* provider *on file with the Division* at least 30 calendar days before the action is taken.

Sec. 34. NAC 435.735 is hereby amended to read as follows:

435.735 If a revocation of the *provisional certificate or the* certificate of a provider of supported living arrangement services is pending and the Division determines that the grounds for the revocation place any person at ~~{a}~~ **an imminent or** probable risk of harm, the Division may immediately terminate the provision of supported living arrangement services by the provider.

Sec. 35. NAC 435.740 is hereby amended to read as follows:

435.740 1. To be afforded a hearing on an intended revocation of a *provisional certificate or a* certificate, the provider of supported living arrangement services must, within 15 ~~{working}~~

calendar days after receiving notice of the intent to revoke, file with the Division a written request for a hearing.

2. When a decision to revoke a *provisional certificate or a* certificate is rendered by the Division, the provider of supported living arrangement services may appeal that decision to the Administrator *or a designee thereof* if the provider files with the Division a written notice of appeal within 15 ~~working~~ *calendar* days after receiving notice of the decision of the Division.

3. The Administrator *or a designee thereof* will consider an appeal and render his or her decision on the appeal within 30 calendar days after a notice of the appeal is filed with the Division.

4. The decision of the Administrator or the person designated by him or her concerning an appeal filed pursuant to this section is a final decision for the purposes of judicial review.

Sec. 36. NAC 435.565 is hereby repealed.

TEXT OF REPEALED SECTION

435.565 Written contract for provision of services. (NRS 435.333) A provider of supported living arrangement services shall enter into a written contract for the provision of supported living arrangement services with each person or his or her parent or guardian, if applicable, and the Division.