

**PROPOSED REGULATION OF THE
DIVISION OF CHILD AND FAMILY SERVICES OF
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R122-18

August 6, 2018

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

AUTHORITY: §§1-3, NRS 433B.325.

A REGULATION relating to mental health; establishing factors for a court to consider before committing a child to certain facilities; requiring certain facilities to adopt a policy to ensure that each child committed to the facility by a court order is treated in accordance with the gender identity or expression of the child; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Division of Child and Family Services of the Department of Health and Human Services to adopt regulations establishing factors for a court to consider before committing a child with emotional disturbance to a treatment facility or other facility of the Division to ensure that each such child is placed in a manner that is appropriate for the gender identity or expression of the child. (NRS 433B.325) **Section 2** of this regulation prescribes these factors.

Existing law requires a treatment facility or any other facility operated by the Division to treat each child committed to the facility by a court order in accordance with the child's gender identity or expression. (NRS 433B.325) **Section 3** of this regulation requires a treatment facility or other facility operated by the Division to adopt a policy to ensure that each child committed to the facility by a court order is so treated.

Section 1. Chapter 433B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *Before committing a child with emotional disturbance to a treatment facility or other division facility, a court shall consider, without limitation:*

- 1. The gender identity or expression of the child;*
- 2. Whether the facility has adopted the policy required by section 3 of this regulation;*
- 3. The ability of the facility to meet the needs of the child;*
- 4. Any information provided to the court pursuant to subsection 4 of NRS 432B.6077;*

and

- 5. Any recommendations concerning the appropriate environment for the child from:*
 - (a) Psychologists, psychiatrists or other physicians who have evaluated the child; and*
 - (b) Clinical social workers, other professionals and adult caretakers who have interacted with the child.*

Sec. 3. *Each treatment facility or other division facility into which a child may be committed by a court order shall adopt a policy to ensure that each child who is committed to the facility by a court order is treated in all respects in accordance with the child's gender identity or expression. The policy must include, without limitation:*

- 1. A procedure that the facility will use to determine the sexual orientation and gender identity or expression of the child. Such a determination must be based on self-reporting from the child that is conducted in a respectful and developmentally appropriate manner.*

- 2. A procedure for responding to the gender identity or expression of the child while the child is committed to the facility, including, without limitation, determination of housing assignments and placement within the facility with consideration for the wishes of the child and any recommendations concerning the treatment of the child.*

3. *The rights of each child to be free from bullying, harassment and abuse because of sexual orientation or gender identity or expression.*

4. *A requirement that the staff of the facility must communicate effectively and professionally with and about each child, regardless of the sexual orientation or gender identity or expression of the child.*

5. *Measures to detect and protect each child from bullying, harassment or abuse and neglect.*

6. *The identification of resources necessary for the staff of the facility to support the sexual orientation and gender identity or expression of each child committed to the facility and measures to ensure that members of the staff have access to those resources.*

7. *Prohibitions on:*

(a) *Members of the staff of the facility examining the genital area of a child solely to determine the gender of the child;*

(b) *Members of the staff of the facility using language, behavior or gesture that may put a child at risk of bullying, harassment or abuse or neglect; and*

(c) *Placing a child in isolation or another restrictive setting because of the sexual orientation or gender identity or expression of the child or to keep the child safe from victimization.*

8. *As used in this section:*

(a) *“Abuse” has the meaning ascribed to it in NRS 433B.340.*

(b) *“Gender identity or expression” has the meaning ascribed to it in NRS 424.0145.*

(c) *“Neglect” has the meaning ascribed to it in NRS 433B.340.*