

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

LCB File No. R134-18

July 20, 2018

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

AUTHORITY: §§1-12, 18-22 and 25, NRS 433.324 and 433.609; §13, NRS 433.324, 433.607, 433.609 and 439.150; §§14 and 15, NRS 433.324, 433.607 and 433.609; §16, NRS 433.324, 433.607, 433.609 and 433.613; §17, NRS 433.324, 433.607, 433.609, 433.613 and 439.150; §§23 and 24, NRS 433.324, 433.609 and 433.613.

A REGULATION relating to community-based living arrangement services; establishing standards for the provision of such services in facilities; requiring certain persons to undergo a criminal background check; requiring certain employees or independent contractors of a provider of services to complete training concerning cardiopulmonary resuscitation and first aid; revising provisions governing required training for an applicant for the issuance of a provisional certificate; requiring an application fee for the issuance of a provisional certificate to provide community-based living arrangement services or the renewal of a certificate to provide such services; revising the required contents of an application for the issuance of a provisional certificate; requiring the Division of Public and Behavioral Health of the Department of Health and Human Services to inspect a facility before issuing a provisional certificate to the operator of the facility; requiring a provider to be in substantial compliance with certain provisions; revising provisions governing quality assurance reviews and plans of correction; requiring a provider take certain actions relating to employees and the living environments of recipients of services; clarifying that the Division is not required to be a party to certain contracts; requiring a provider to keep records regarding recipients of services in a secure location on the premises of a facility, if applicable; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Health to adopt regulations governing community-based living arrangement services, which are defined 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 or any other entity; and (2) designed and coordinated to assist the person in maximizing the person's independence. (NRS 433.605, 433.609)

Section 2 of this regulation defines the term “facility” to mean a home operated by a provider in which services are provided. **Sections 6-11** of this regulation establish standards of operation for facilities. **Section 6:** (1) requires a facility to be owned or leased by its operator; (2) prohibits a facility from having more than 6 residents; and (3) requires the operator of a facility to maintain compliance with all applicable building codes, zoning requirements and business licensing requirements. **Section 7** establishes requirements concerning bedrooms at a facility. **Section 8** requires a provider who operates a facility to furnish common areas and provide a dining area and kitchen for the use of residents. **Section 8** also establishes standards governing food storage. **Section 9** prescribes requirements relating to bathrooms, waste disposal and the maintenance of the premises of a facility. **Section 10** establishes standards governing fire safety at a facility. **Section 11:** (1) prescribes requirements concerning visitors at a facility; and (2) prohibits a provider from allowing a minor child of the provider or an employee thereof to be present at the facility when services are provided.

Existing regulations require each applicant for a provisional certificate to provide community-based living arrangement services or, if the applicant is not a natural person, a member of the governing body of an applicant, to undergo a background check. (NAC 433.330) Existing regulations also provide for the denial of an application or the revocation of a provisional certificate or certificate if a provider or employee or independent contractor of a provider is convicted of certain crimes relevant to the provision of services. (NAC 433.339, 433.384) **Section 4** of this regulation requires an employee or independent contractor of an applicant or any adult who will be present during the provision of services to also undergo a criminal background check. **Sections 15 and 25** of this regulation allow the Division to deny an application or revoke a certificate or provisional certificate if an adult who will be present during the provision of services is convicted of such a crime.

Existing regulations require an applicant for a provisional certificate to provide community-based living arrangement services to submit an application to the Division. Existing regulations require each such applicant who is a natural person to submit as part of that application proof that he or she has received certain training in cardiopulmonary resuscitation and first aid. (NAC 433.330) **Section 5** of this regulation also requires each employee or independent contractor of a provider who provides services to have completed such training. **Section 13** of this regulation requires an application for a provisional certificate to be accompanied by a nonrefundable fee of \$100. **Section 17** of this regulation requires an applicant for the renewal of a certificate to submit an application, which must also be accompanied by a nonrefundable fee of \$100.

Existing regulations require an application for a provisional certificate to include proof that the applicant has sufficient working capital to provide services for at least 3 months without compensation. (NAC 433.330) **Section 13** revises this requirement to instead require an applicant to attest that he or she has sufficient working capital to effectively provide services and, if the applicant proposes to operate a facility, to operate the facility. **Section 13** additionally clarifies that certain documents may be signed using an electronic signature.

Existing regulations require an applicant for a provisional certificate or each employee of the applicant who will oversee the provision of services to complete 16 hours of training provided by the Division concerning the provision of services. After the completion of that

training, the Division is required to issue a provisional certificate to the applicant. (NAC 433.336) **Section 14** of this regulation: (1) requires that training to be completed between the date on which the application is submitted and 3 months after that date; and (2) authorizes an applicant or employee of the applicant to complete training offered by an entity other than the Division if the training is approved by the Division. **Section 14** also requires the inspection of any facility operated by an applicant and the correction of violations before the issuance of a provisional certificate.

Existing regulations require the holder of a provisional certificate or certificate to comply with provisions of regulations governing community-based living arrangement services (NAC 433.339, 433.342, 433.345, 433.351, 433.384) **Sections 15, 16, 17, 19 and 25** of this regulation instead require substantial compliance with all provisions of chapter 433 of NAC and chapter 433 of NRS.

Existing regulations require the Division to conduct a quality assurance review upon the request of the holder of a provisional certificate within 6 months after the issuance of the provisional certificate. (NAC 433.342) **Section 16** removes the requirement that a holder request a quality assurance review and instead requires the Division to conduct such a review within 12 months of the issuance of a provisional certificate.

Section 18 of this regulation requires a provider of services to: (1) monitor the living environments of persons receiving services; (2) establish policies to immediately assist such persons in repairing unsafe or unhealthy environmental conditions or in finding an alternative residence; (3) develop and implement policies concerning the hiring of persons who will provide services; (4) maintain a personnel file for each such employee; and (5) ensure that each such employee is capable of and qualified to carry out his or her responsibilities and able to communicate effectively with each person to whom he or she provides services.

Existing regulations require a provider to 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. (NAC 433.363) **Section 20** of this regulation clarifies that: (1) the entity providing services is only required to be a party to a contract if the provider is providing services for the Division; and (2) if the provider is providing services for an entity other than the Division, that entity must be a party to such a written contract. **Section 21** of this regulation requires a provider of services to keep records regarding persons for whom services are provided in a secure location which, if the provider operates a facility, must be on the premises of the facility. **Section 22** of this regulation requires a complaint filed with the Division against a provider to be in the form prescribed by the Division.

Existing regulations: (1) require the Division to conduct a quality assurance review before issuing a provisional certificate or renewing a certificate; and (2) authorize the Division to conduct a quality assurance review upon a complaint of abuse, neglect or exploitation of a recipient of services or a concern relating to the health or welfare of a recipient of services. (NAC 433.378) **Section 23** of this regulation instead authorizes the Division to conduct a quality assurance review at any time during the certification of a provider. In addition, **section 23** provides that the Division will conduct a quality assurance review of each provider who operates

a facility at least annually, which must include an inspection of the facility. **Section 23** also clarifies that the Division is authorized to inspect any premises operated by a provider as part of a quality assurance review. Finally, **section 23** requires the Division, after conducting a quality assurance review, to make a report of violations available to a provider.

Existing regulations authorize the Division, after determining pursuant to a quality assurance review that there are deficiencies in the provision of services by a provider relating to the health or welfare of a recipient of services, to require the provider to prepare and submit a written plan of correction. (NAC 433.381) **Section 24** of this regulation requires such a plan to be submitted within 10 days after the report of violations is made available to the provider. **Section 24** also authorizes the Division to require a provider to resubmit a plan of correction or develop a mandatory directed plan of correction for the provider.

Section 1. Chapter 433 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this regulation.

Sec. 2. *“Facility” means a home operated by a provider in which services are provided.*

Sec. 3. *“Resident” means a person who resides at and receives services from a facility.*

Sec. 4. 1. *Except as otherwise provided in subsection 2, within 10 days after hiring a new employee, entering into a contract with an independent contractor or determining that an adult who is not a recipient of services, including, without limitation, an adult child of the applicant or an adult child of an employee or independent contractor thereof, will be present during the provision of services and every 5 years thereafter, a provider shall:*

(a) Obtain from the employee, independent contractor or other adult 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, independent contractor or other adult to determine whether the person has been convicted of any crime listed in NAC 433.339.

2. Upon receiving information from the Central Repository for Nevada Records of Criminal History pursuant to subsection 1, or evidence from any other source, that an employee, independent contractor or any other adult who is not a recipient of services and who will be present during the provision of services has been convicted of a crime listed in NRS NAC 433.339, the provider shall terminate the employment or contract of that person or prohibit that adult from being present during the provision of services after allowing the person time to correct the information as required pursuant to subsection 3.

3. If an employee, independent contractor or other adult believes that the information provided by the Central Repository for Nevada Records of Criminal History is incorrect, the employee, independent contractor or other adult may immediately inform the provider. The provider that is so informed shall give the employee, independent contractor or other adult a reasonable amount of time of not less than 30 days to correct the information received from the Central Repository before terminating the employment or contract of the person or prohibiting the person from being present during the provision of services pursuant to subsection 2.

Sec. 5. *Each employee or independent contractor of a provider who provides services must:*

1. Be currently certified in standard first aid through a course from the American Red Cross or American Heart Association or their successor organizations or, if the applicant submits proof that the course meets or exceeds the requirements of the American Red Cross or the American Heart Association or their successor organizations, an equivalent course in standard first aid; and

2. Have successfully completed a course in cardiopulmonary resuscitation according to the guidelines of the American Red Cross or American Heart Association or their successor organizations.

Sec. 6. 1. *A facility must be owned or leased by the provider who operates the facility.*

2. A provider who operates a facility shall ensure that the facility:

(a) Has no more than 6 residents; and

(b) Remains in compliance with all applicable state and local building codes, zoning requirements and business licensing requirements.

Sec. 7. 1. *A provider shall not authorize a resident to share a room in a facility with more than one other resident. A bedroom that is occupied by:*

(a) One resident must have at least 80 square feet of floor space.

(b) Two residents must have at least 120 square feet of floor space.

2. A provider who operates a facility shall provide for each resident a separate bed that is at least 36 inches wide and has a comfortable and clean mattress, at least two sets of clean sheets, at least one blanket, at least one pillow and at least one bedspread.

3. A provider who operates a facility shall not:

(a) Use a bedroom for any other purpose; or

(b) Use any of the following as a bedroom for a resident:

(1) A hallway, stairway, unfinished attic, garage, storage area, shed or similar area; or

(2) A room that can only be reached by passing through a bedroom occupied by another

resident.

Sec. 8. 1. *A provider who operates a facility shall:*

(a) Furnish each common area with comfortable furniture.

(b) Provide a dining area with a sufficient number of tables and chairs to provide seating for the number of residents for which the facility is certified. The tables and chairs must be sturdy, of proper height for dining and have surfaces that are easily cleaned.

(c) Provide a kitchen that allows for the sanitary preparation of food and is furnished with equipment that is clean and in good working condition.

(d) Ensure that all perishable food is refrigerated at a temperature of 41 degrees Fahrenheit or less, all frozen food is kept at a temperature of 0 degrees Fahrenheit or less and all stored foods have not expired.

(e) Ensure that food is not stored for longer than the length of time recommended by the United States Department of Health and Human Services in “Storage Times for the Refrigerator and Freezer,” which is hereby adopted by reference. This chart may be obtained:

(1) From the United States Department of Health and Human Services for free at 200 Independence Avenue, S.W., Washington, D.C. 20201, and at the Internet address <https://www.foodsafety.gov/keep/charts/storagetimes.html>; or

(2) Under the circumstances described in subsection 4, on an Internet website maintained by the Division.

2. Except as otherwise provided in this section, the most current version of the guidelines adopted by reference pursuant to paragraph (e) of subsection 1 which is published will be deemed to be adopted by reference.

3. If the Division determines that an update of or revision to the guidelines adopted by reference pursuant to paragraph (e) of subsection 1 are not appropriate for use in the State of Nevada, the Division will present this determination to the State Board of Health and the update or revision, as applicable, will not be adopted.

4. If the guidelines adopted by reference pursuant to paragraph (e) of subsection 1 cease to exist, the last version of the guidelines that was published shall be deemed to be the current version.

Sec. 9. *A provider who operates a facility shall ensure that:*

1. The facility has a safe and sufficient supply of water, adequate drainage and an adequate system for the disposal of sewage.

2. Each faucet for a sink, tub, shower or other similar fixture is operable with hot and cold running water.

3. Each toilet is operational.

4. Each container used to store garbage outside of the facility is kept reasonably clean and covered to prevent rodents from entering the container.

5. Each container used to store garbage in the kitchen is covered with a lid or kept in an enclosed cupboard that is clean and prevents infestation by rodents and insects.

6. The premises of the facility are free of:

(a) Offensive odors, insects, rodents and accumulation of dirt, garbage or other refuse; and

(b) Hazards, including, without limitation, obstacles that impede the free movement of residents inside and outside of the facility.

7. Each window in the facility that is capable of being opened and each door that is left open to provide ventilation is screened to prevent insects from entering the facility.

8. The facility has sufficient electrical lighting to ensure the comfort and safety of residents.

9. The temperature of the facility does not exceed 82 degrees Fahrenheit or drop below 68 degrees Fahrenheit.

10. The facility remains in compliance with all applicable federal, state and local laws, regulations and ordinances concerning sanitation, safety and accessibility for persons with disabilities.

Sec. 10. *A provider who operates a facility shall ensure that:*

1. Portable multipurpose class ABC fire extinguishers are installed throughout the facility at the direction of the governmental entity that has jurisdiction over fire safety at the facility.

2. Each portable fire extinguisher available at a facility is inspected, recharged and tagged at least once each year by a person certified by the State Fire Marshal to conduct such inspections.

3. Each exit is maintained free of obstructions.

4. Smoke detectors are installed at the facility at the direction of the governmental entity that has jurisdiction over fire safety at the facility and maintained operational.

5. Smoking does not occur in the facility or within 25 feet of the facility.

6. An extinguishing receptacle approved by the governmental entity that has jurisdiction over fire safety at the facility is placed in each area on the premises of the facility where smoking is allowed.

Sec. 11. *1. A provider who operates a facility:*

(a) Shall maintain a policy concerning visitation by family, friends or acquaintances of residents and employees who enter the facility.

(b) Shall not allow a minor child of the provider or an employee of the provider to be present at the facility when services are provided.

2. A child of a resident may visit the resident in accordance with the policy maintained pursuant to subsection 1 and the individualized plan prepared pursuant to NAC 433.360 for the resident.

Sec. 12. NAC 433.300 is hereby amended to read as follows:

433.300 As used in NAC 433.300 to 433.393, inclusive, *and sections 2 to 11, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 433.303 to 433.324, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 13. NAC 433.330 is hereby amended to read as follows:

433.330 An application for a provisional certificate must be submitted to the Division on a form furnished by the Division *accompanied by a nonrefundable fee of \$100* 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~~ *A copy of a form of government issued identification, which may include, without limitation, a passport, identification card or driver's license;*

(h) *An attestation* that the applicant has sufficient working capital to *effectively* provide services ~~for at least 3 months without compensation;~~

~~(h)~~ *and, if the applicant proposes to provide services in a facility, operate the facility;*

(i) If applicable, a copy of the applicant's state business license 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 license; and

~~(j)~~ (j) 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 license 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 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) 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;

(g) ~~{Proof}~~ *An attestation* that the applicant has sufficient working capital to *effectively* provide services ~~{for at least 3 months without compensation;}~~ *and, if the applicant proposes to provide services in a facility, operate the facility;*

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

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

3. *As used in this section:*

(a) *“Electronic signature” means a user name attached to or logically associated with a record and executed or adopted by a person with the intent to sign an electronic application or other document.*

(b) *“Signature” includes, without limitation, an electronic signature.*

Sec. 14. NAC 433.336 is hereby amended to read as follows:

433.336 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~~ *An applicant for a provisional certificate* must complete 16 hours of training *approved or* provided by the Division concerning the provision of services. The training must be completed *after the application is submitted but* not later than 3 months after ~~{the}~~ *that* 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~~ **1**, the Division shall ~~issue~~ :

(a) If the applicant proposes to provide services in a facility, inspect the facility and issue a report describing any violations of the provisions of this chapter or chapter 433 of NRS found during the inspection. If the report describes a violation, the Division may require the applicant to submit a plan of correction. The Division shall issue a provisional certificate:

(1) If the Division requires the applicant to submit a plan of correction, upon approval by the Division of the plan of correction.

(2) If the Division does not require the applicant to submit a plan of correction, upon issuance of the report.

(b) If the applicant does not propose to provide services in a facility, issue a provisional certificate to the applicant.

4. A provisional certificate is valid until the Division completes the initial quality assurance review required by NAC 433.342.

Sec. 15. NAC 433.339 is hereby amended to read as follows:

433.339 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 NAC 433.333.

(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 ~~for~~, an independent contractor of the applicant who oversees the provision of services *or an adult who will be present during 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 federal law.

(f) The existence of any major deficiency in the proposed services to be provided by the applicant which would preclude compliance with ~~NAC 433.300 to 433.393, inclusive.~~ *any provision of this chapter or chapter 433 of NRS.*

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. 16. NAC 433.342 is hereby amended to read as follows:

433.342 1. Within ~~6~~ *12* months after the issuance of a provisional certificate, ~~the holder of the provisional certificate shall request~~ the Division ~~to~~ *shall* conduct a quality assurance review as provided in NAC 433.378. 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~~ **substantial** compliance with the ~~standards for the provision of services set forth in NAC 433.300 to 433.393, inclusive,~~ **provisions of this chapter and chapter 433 of NRS**, 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~~ **the Division** 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~~ **substantial** 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~~ **substantial** compliance with the ~~standards described in subsection 1,~~ **provisions of this chapter and chapter 433 of NRS**, 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. 17. NAC 433.345 is hereby amended to read as follows:

433.345 ~~Upon~~ **Not less than 45 days before the** expiration of a certificate, the **holder of the certificate must apply to the Division for renewal in the form prescribed by the Division, accompanied by a nonrefundable fee of \$100. 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 NAC 433.378 and~~ determines that the ~~provider~~ **holder of the certificate**

is in *substantial* compliance with the ~~standards for the provision of services set forth in NAC 433.300 to 433.393, inclusive.~~ *provisions of this chapter and chapter 433 of NRS.*

Sec. 18. NAC 433.348 is hereby amended to read as follows:

433.348 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 NAC 433.360 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.

8. Monitor the living environment of persons receiving services from the provider and establish policies to immediately assist such persons who are living in unsafe or unhealthy environmental conditions to correct those conditions or in find alternative residences.

9. Develop and implement policies concerning the hiring of persons who will provide services.

10. Maintain a personnel file for each employee or independent contractor who provides services. A personnel file must contain, without limitation:

(a) Information concerning the job duties, essential functions, physical capabilities and language proficiency of the employee or contractor; and

(b) Proof that the employee or independent contractor is in compliance with the requirements of section 5 of this regulation, if applicable.

11. Ensure that each employee or independent contractor who provides services is capable of:

(a) Carrying out the responsibilities established in the individualized plan established pursuant to NAC 433.360 for each person to whom the employee or independent contractor provides services and properly qualified by training and experience to do so; and

(b) Communicating effectively with each person to whom the employee or independent contractor provides services.

Sec. 19. NAC 433.351 is hereby amended to read as follows:

433.351 If a provider is a governmental entity or an organization, it shall, in conformance with ~~NAC 433.300 to 433.393, inclusive,~~ *the provisions of this chapter and chapter 433 of NRS*, establish policies and procedures for the provision of services and the welfare of the persons it serves.

Sec. 20. NAC 433.363 is hereby amended to read as follows:

433.363 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 *, if the person is being served by the Division or another entity for which the provider is providing services,* the Division ~~{}~~ *or other entity*. 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. 21. NAC 433.369 is hereby amended to read as follows:

433.369 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}~~ :

- 1. Kept in a secure location, which, if the provider operates a facility, must be on the premises of the facility; and*
- 2. Made available* for review by the person who is receiving services or his or her guardian, if applicable, and the Division.

Sec. 22. NAC 433.375 is hereby amended to read as follows:

433.375 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 ~~{}~~ *in the form prescribed by the Division.*

Sec. 23. NAC 433.378 is hereby amended to read as follows:

433.378 1. The Division:

(a) ~~{Shall conduct a quality assurance review upon a request made pursuant to NAC 433.342 and before renewing a certificate pursuant to NAC 433.345; and~~

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

(b) Shall conduct a quality assurance review of each provider that operates a facility at least once each year during the certification of a provider. A quality assurance review conducted pursuant to this paragraph must include, without limitation, an inspection of the facility.

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 ~~{}~~; and

(d) Inspect any facility or other premises operated by the provider to determine compliance with the provisions of this chapter and chapter 433 of NRS.

3. After completing a quality assurance review, the Division shall make available to the provider a report that describes each violation. The provider shall correct any violation described in the report.

Sec. 24. NAC 433.381 is hereby amended to read as follows:

433.381 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. If the Division requires a provider to prepare and submit to the Division a written plan of correction, the provider shall do so not later than 10 days after the report of violations is made available to the provider pursuant to subsection 3 of NAC 433.378. Failure to do so constitutes a separate violation for which the Division may deny, suspend or revoke the provisional certificate or certificate of the provider or impose any sanction listed in subsection 5.

3. If the Division determines that a written plan of correction is unacceptable, the Division may:

(a) Require the provider to resubmit the written plan of correction; or

(b) Develop a mandatory directed plan of correction for the provider.

4. The Division may impose any sanction described in subsection ~~431~~ 5 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 ~~f~~.

~~—3.1~~ , *including, without limitation, failure to submit a timely plan of correction, if required.*

5. As a sanction imposed pursuant to subsection ~~42.1~~ 4, 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. 25. NAC 433.384 is hereby amended to read as follows:

433.384 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 ~~for~~, any employee or independent contractor of the provider *or any adult present during the provision of services* of a crime ~~relevant to any aspect of the provision of services.~~ *listed in NAC 433.339.*
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 ~~NAC 433.300 to 433.393, inclusive.~~ *this chapter or chapter 433 of NRS.*
6. Any accumulation or pattern of minor violations of the provisions of ~~NAC 433.300 to 433.393, inclusive.~~ *this chapter or chapter 433 of NRS,* 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 NAC 433.363.
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 federal law.