

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

LCB FILE NO. R016-201

**The following document is the initial draft regulation proposed
by the agency submitted on 02/03/2020**

PROPOSED REGULATIONS OF THE STATE BOARD OF HEALTH

EXPLANATION – Matter in *italics* is proposed regulatory language.

Matter between brackets ~~*fomitted material*~~ is material to be omitted.

AUTHORITY: NRS 449.0302, NRS 449.101, NRS 449.103, and NRS 449.104.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth in sections 2 to 22:

Sec. 2. *As used in sections 3 to 22, inclusive, of this regulation, the words and terms defined in section 3, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Department” means the Nevada Department of Health and Human Services.*

Sec. 4. 1. *A facility must submit, in a format prescribed by the Division, within 90 days of adoption of these regulations or within 90 days of licensure the cultural competency training course or program that the facility conducts that has been approved by the Department Director or designee pursuant to section 4. The cultural competency course or program submitted pursuant to this section must address all the residents and patients identified in subsection 1 of NRS 449.103 which can be achieved with one or more courses or programs approved pursuant to section 4.*

2. Except as otherwise provided in subsection 3 or 4, a facility or person choosing to submit its own cultural competency course or program for approval by the Department Director or designee, shall submit the course or program within the required timeframes pursuant to subsection 1 of this section and sections 8 and 9, as applicable, and must, for each course or program provided in any format, that includes, without limitation:

- a. The syllabus for the course;*
- b. The resume of the instructor including education, training and experience in providing cultural competency training;*
- c. If a facility, the name of the facility, the address and email address of the facility, the facility license number and the name and contact information of the person who can be reached to discuss the application or if a person, the name of the person, the address and email address of the person and the name and contact information of the person who can be reached to discuss the application ;*
- d. The content of the information that will be provided to course or program participants which must meet the cultural competency course or program standards set forth by the Division, including, but not limited to definitions of words to be used, subjects that must be covered by the course or program, other subjects that may be provided in addition to the subjects that must be covered, the criteria that must be addressed by each subject, and the criteria to be used to evaluate the qualifications of the instructor outlined in the resume pursuant to subsection b, or any other criteria deemed appropriate by the Division. The*

Division may develop one or more standards to meet the needs of different health care facilities as it deems necessary;

- e. A sign in sheet with the date(s) of the course or program and printed name and signature of each course or program participant;*
- f. A written evaluation of the content, instructor and presentation of the course that will be completed by each course or program participant; and*
- g. A document provided to each participant for self-evaluation or reflection of each individual course participants perspective on the content of the course.*
- h. The Division will assign a course number to each approved course or program.*

3. The Department Director or designee may approve a cultural competency course or program provided by a nationally recognized organization, as determined by the Department Director or desingee, a governmental agency, or a university or college accredited in the District of Columbia, state or territory of the United States, without submitting the information pursuant to subsection 2, as long as the course or program provides proof of completion.

4. An application for approval of a course or program pursuant to subsection 3, must be submitted, in a manner prescribed by the Division, noting the name of the course, the organization giving the course, a link to the course or program, the course or program URL if the course is provided online or access to a training system if the course is provided through a training system, or a syllabus of the course if not provided online, and any other information required by the Division for the Department Director or designee to make a determination as to whether the course or program is to be approved in accordance with subsection 2 of NRS 449.103.

5. All cultural competency courses or programs approved pursuant to this section may be completed online, through a facility's training system, or in person.

Sec. 5. *The Division shall make available the cultural competency course or program standards developed pursuant to section 4(d) on the Division's website which must be used by a facility or person who choses to submit a course or program pursuant to subsection 2 of section 4.*

Sec. 6. *The Director of the Department or designee may approve any application submitted pursuant to section 4. Any application submitted to the Division must be reviewed within 60 days of receipt of the application. After the review has been completed the Director of the Department or designee shall notify the applicant, within 5 working days of completing the review, if the application was approved and if not approved what needs to be submitted in order for it to be approved. The applicant shall have 45 days to submit the required information needed to approve the cultural competency course or program.*

Sec. 7. 1. *The Division shall establish a Cultural Competency Advisory Group.*

2. The Advisory Group consists of the following seven members appointed by the Board of Health.

(a) Five people who each have a minimum of three years of experience providing cultural competency courses or programs including developing a course or program and presenting the materials in person or in an electronic format to businesses, schools, or government agencies or

is an employee or contractor of an accredited Nevada college or university who deals with diversity issues, or combination thereof.

(b) Two people who represent the Department, one of which is an employee or contractor of the Bureau of Health Care Quality and Compliance.

3. The term of each member of the Advisory Group is 4 years. A member may be reappointed no more than two times.

4. If a vacancy occurs in the membership of the Advisory Group, the Board of Health will appoint a qualified person to fill the vacancy.

5. The Advisory Group shall meet every other year to review the standards set forth in section 4 (d) to determine if the standards need to be revised or may meet as otherwise called by the Chair, or upon the request of the Director of the Department or designee or Administrator of the Division or designee; and

6. To provide recommended changes of the standards to the Division.

7. To the extent practicable and allowed by law, the Advisory Group shall conduct its meetings by telephone, videoconference or other electronic means.

8. The members of the Advisory Group shall select a Chair from among its members every two years. The Advisory Group may re-elect the same chair.

9. A majority of the members of the Advisory Group constitutes a quorum for the transaction of business. A member shall be deemed present at a meeting if the member is available to participate at the meeting by telephone, videoconference or other electronic means.

10. The Advisory Group may facilitate the development of materials which may be used to educate the public concerning cultural competency and diversity based on the standards developed pursuant to section 4(d).

11. The Advisory Group may review the cultural competency course or program applications submitted pursuant to section 4 and provide recommendations to the Division based on the standards developed pursuant to section 4 (d).

12. The Advisory Group serves without compensation except that an employee of the Department, Division or other government agency which is a member of the advisory group may receive their regular salary when participating as part of their job duties.

Sec. 8. *If the Division revises the standards based on the recommendations of the Cultural Competency Advisory Group pursuant to section 7, subsection 6, the Division shall notify, via email address on file with the Division, all approved cultural competency course and program providers of the change. If the person does not have a way to communicate electronically with the Division they must notify the Division in writing of such, in which case another means of communication may be established. The notified cultural competency course and program providers shall have 45 days to submit evidence that the program or course continues to meet the revised standards or submits a revised course or program for approval. If the course or program provider does not submit the required evidence or a revised course or program for approval pursuant to this section, the course or program will no longer be considered approved. The facility has 6 months from such time that the facility was notified that the course or program no longer meets the current standards of the Division pursuant to section 9 to provide evidence to the Division, in a manner prescribed by the Division, of the approved course or program being conducted in accordance to the revised standards pursuant to this section and the course or program number assigned pursuant to subsection 2 (h) of section 4. The facility's currently approved program will continue to be deemed approved for 6 months from such time that the facility was notified that the course or program no longer meets the current standards of the*

Division pursuant to section 9 or until evidence has been provided to the Division that the facility is conducting its training by a course or program that has been approved to meet the revised standards pursuant to section 8 and the course and program assigned number pursuant so subsection 2(h) of section 4, whichever comes first.

Sec. 9. 1. *The Division shall review each revised course or program resubmitted pursuant to section 8, and if the Division finds that the course or program is found not to meet the current standards of the Division, the Division shall notify the course or program provider and the facility that the course or program no longer meets the current standards of the Division set forth in section 4 (d) and of the information required to bring the course or program back into compliance. The course or program provider will then have 45 days to:*

a) Submit a revised cultural competency course or program to the Division for approval by the Director of the Department or designee pursuant to section 4 that meets the current standards of the Division.

b) If a revised cultural competency course or program is not submitted to the Division pursuant to this section within 45 days, then the course or program will be removed from the list of approved cultural competency courses or programs maintained by the Division.

c) The facility will have up to 6 months to provide notification to the Division of the approved course or program being conducted in accordance to the revised standards pursuant to section 8 and the course or program number assigned pursuant to subsection 2 (h) of section 4 pursuant to section 8.

2. Each course and program provider and facility notified pursuant to this section shall be deemed notified if the notification was sent to the electronic address or mailing address on record with the Division seven days from the date of the notification.

Sec. 10. *A cultural competency course or program cannot be provided unless the course or program has been approved by the Director of the Department or designee.*

Sec. 11. *Each agent or employee of a facility who provides care to a patient or resident of the facility, must complete a cultural competency course or program approved by the Director of the Department or designee pursuant to section 4 within 30 business days of hire and annually after hire. The facility must keep documented proof in the agent's or employee's personnel file of completion of the course or program.*

Sec. 12. 1. *A facility shall post the statement required by subsection 2(b) of NRS 449.101 and notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the Division along with the contact information for the Division, to meet the following minimum posting requirements:*

(a) States the name of the facility;

(b) Is not less than 8.5 inches in height and 11 inches in width, with margins not greater than 0.5 inch on any side; and

(c) Is written using a single typeface in not less than 22-point type.

2. A facility shall post the statement required by subsection 2(b) of NRS 449.101 and notice that a patient or resident who has experienced prohibited discrimination may file a complaint with

the Division along with the contact information for the Division in each public entrance of the facility, waiting rooms and public dining areas.

Sec. 13. *A facility shall provide each patient or resident a written notice upon admission of the statement required by subsection 2(b) of NRS 449.101 and notice that a patient or resident, as applicable, who has experienced prohibited discrimination may file a complaint with the Division along with the contact information for the Division.*

Sec. 14. *Upon admission of a patient or resident, the facility shall obtain written permission of the patient or resident or the authorized representative of the patient or resident, in order to obtain express permission of the patient or resident pursuant to subsection 2 of NRS 449.102. The patient or resident may refuse to give permission pursuant to this section.*

Sec. 15. 1. *A facility shall provide each patient or resident a written notice upon admission that a patient or resident who has experienced prohibited discrimination may file a complaint or grievance with the facility. This notice shall include the facility's process and timing to address complaints and the contact information of the Division should the patient or resident chose to file a complaint with the State.*

2. The facility shall maintain a written policy concerning the manner in which complaints or grievances filed pursuant to subsection 1 from residents or patients will be documented and resolved and a log which lists all complaints and grievances filed by residents or patients and the interventions taken to resolve the complaint or provide a reason why no action was taken.

Sec. 16. *A facility shall:*

a. Develop policies to ensure that a patient or resident is addressed by their preferred name and pronoun and in accordance with their gender identity or expression;

b. Adapt electronic records and any paper records the facility has, to reflect the gender identities or expressions of patients or residents with diverse gender identities or expressions, including, without limitation:

(1) If the facility is a medical facility, adapting health records, including electronic and paper records, to meet the medical needs of patients or residents with diverse sexual orientations and gender identities or expressions, including, without limitation, integrating information concerning sexual orientation and gender identity or expression into electronic systems for maintaining health records; and

(2) If the facility is a facility for the dependent or other residential facility, adapting electronic records and any paper records the facility has, to include:

(a) The preferred name and pronoun and gender identity or expression of a resident.

(3) The medical facility records adapted pursuant to subparagraph (1) of paragraph (b) of this section must include the:

a) Preferred name;

b) Pronoun as identified by patients or residents to be included as demographic information;

c) Gender identity;

d) Gender assigned at birth;

e) Sexual Orientation which notes whether a patient or resident is:

- (1) Lesbian;
 - (2) Gay;
 - (3) Straight/Heterosexual;
 - (4) Bisexual;
 - (5) Queer; or
 - (6) Something else.
- f) *If the gender assigned at birth is different than the declared gender identity, a medical facility shall obtain an Organ Inventory to include:*
- (1) *Organs present at birth or expected at birth;*
 - (2) *Organs hormonally enhanced or developed; and*
 - (3) *Organs surgically removed, enhanced or constructed.*
- g) *If the gender assigned at birth is different than the declared gender identity, a medical facility shall have a means to maintain an inventory of a patient's medical gender transition history and current anatomy.*
- h) *A medical facility shall have a means to maintain chart integrity when interfacing with insurance, for example, legal name and legal sex.*

Sec. 17. *The specific types of discrimination prohibited, in accordance with subsection 1 (e) of NRS 449.0302, includes:*

- a. *Discrimination in which a person is not treated with dignity based wholly or partially on the actual or perceived race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status of the patient or resident.*
- b. *Indirect discrimination which may or may not be intentional by applying policies that are applied uniformly and in a nondiscriminatory manner.*
- c. *Discrimination by association in which an individual is discriminated against because the other individual's they associate with are of a different race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status of the patient or resident.*
- d. *Harassment or bullying, of any kind, of an individual because they are of a certain race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or because of the human immunodeficiency virus status of the patient or resident.*

Sec. 18. 1. *A facility shall:*

- a. *Report if an older person or a vulnerable person has been abused, neglected, exploited, isolated or abandoned in accordance with the provisions of NRS 200.5092 to NRS 200.5095; and*
- b. *Report if a child has been abused or neglected in accordance with NRS 432B.220.*

Sec. 19. *A facility shall:*

- 1) Offer language assistance to individuals who have limited English proficiency or other communication needs, at no cost to them, to facilitate timely access to all health care and services.
- 2) Inform all individuals of the availability of language assistance services clearly and in their preferred language, verbally and in writing.
- 3) Ensure the competence of individuals providing language assistance, recognizing that the use of untrained individuals or minors as interpreters should be avoided.
- 4) Provide easy-to-understand print and multimedia materials and signage in the languages commonly used by the populations in the service area.

Sec. 20. A facility administrator shall ensure compliance with the provisions of NRS 449.101 to NRS 449.104.

Sec. 21. A facility shall adopt and maintain policies and procedures for the transfer and discharge of patients or residents of the facility which do not discriminate against a patient based on the source of payment for the services provided.

Sec. 22. A facility shall make available to the Division, upon request, any documentation required for the Division to determine compliance with sections 5 to 22.

Sec. 23. NAC 449.0034 is hereby amended to read as follows:

“Facility” means a medical facility, facility for the dependent, *an employment agency that contracts with persons to provide certain nonmedical services, a facility which is otherwise required by regulations adopted by the Board pursuant to NRS 449.0303 to be licensed, ~~home for individual residential care~~* or referral agency.

Sec. 24. NAC 449.365 is hereby amended to read as follows:

1. An obstetric department of a hospital shall provide services for labor, delivery, newborn care and recovery care, and shall maintain the areas in which these services are provided in a safe and clean manner.
2. The obstetric department must be equipped with those items needed to provide obstetrical care and emergency procedures in life-threatening situations to a *[mother] pregnant patient, postpartum patient* or *[her] the patient’s* baby.

Sec. 25. NAC 449.3655 is hereby amended to read as follows:

1. No person may be transferred or discharged from an obstetric department of a hospital unless:
 - (a) The transfer or discharge is appropriate based on a risk assessment of the patient;
 - (b) A physician determines that the patient is not in active labor; or
 - (c) A physician determines that the medical needs of the patient exceed the capability of the obstetric department.
2. The criteria for the transfer of a patient must be in writing and included in the manual for policies and procedures of the obstetric department.
3. A patient in the obstetric department may be transferred only to a hospital capable of providing a higher level of obstetrical and neonatal care and for which there are written documents which verify that the receiving hospital agrees to accept emergency patients without regard to their ability to pay.

4. The obstetric department shall establish written protocols for the discharge of patients from the hospital, which include, without limitation:

(a) The provision of instructions to the *[mother]patient* regarding the care and feeding of *[her] the patient's* newborn;

(b) Plans for the examination of the *[mother]patient* and newborn after discharge;

(c) The provision of instructions to the *[mother] patient* regarding the availability of consultation services by telephone or home visit, as needed or requested by the *[mother]patient*; and

(d) The criteria and conditions under which a patient or newborn should be considered for transfer. Such a determination must be made by a qualified member of the medical staff and the criteria and conditions must be included in the written policies and procedures of clinical practices for the obstetric department. The written policies must be reviewed periodically by a qualified member of the medical staff and a review of all such transfers must be included in the quality improvement program established pursuant to [NAC 449.3152](#).

Sec. 26. NAC 449.39524 is hereby amended to read as follows:

1. An intermediary service organization shall ensure that a person with a disability who receives services from the intermediary service organization or, as applicable, other responsible person acting on *[his-or-her] their* behalf:

(a) Has the right to select the personal assistant of *[his-or-her] their* choice;

(b) Has the right to choose community-based care or institutional care;

(c) Receives services from the intermediary service organization *which are in compliance with NRS 449.101 to NRS 449.104. [without regard to race, color, creed, national origin, sex or disability]*;

(d) Is treated with respect, receives recognition of *[his-or-her] their* individuality and is free from physical, verbal or psychological abuse;

(e) Is allowed to make informed decisions regarding the care of the person with a disability and to participate in the development of a plan of care;

(f) Receives a description of advance directives, as defined in [NRS 449A.703](#), and information on how to obtain an advance directive;

(g) Has the right to appeal any termination, reduction or suspension of services by the intermediary service organization and to receive a written explanation of decisions of the intermediary service organization relating to the provision of services;

(h) Receives confidential treatment of personal, medical and financial information;

(i) Has access to any records maintained by the intermediary service organization relating to the care of the person with a disability;

(j) Is informed of the primary contact person for the intermediary service organization, the person with whom a grievance may be filed with the intermediary service organization and the process to follow when filing a grievance with the intermediary service organization; and

(k) Receives timely responses to a concern expressed to the intermediary service organization regarding the provision of services by the intermediary service organization.

2. Each person with a disability who receives services from the intermediary service organization or, as applicable, other responsible person acting on *[his-or-her] their* behalf must be provided with a written list of the rights set forth in subsection 1.

DRAFTING NOTE FOR LEGISLATIVE COUNSEL BUREAU

Through the entirety of Nevada Administrative Code Chapter 449, please replace all references to “he”, “she”, “her”, “his”, “himself” or “herself” to “they”, “their” or “them”, as applicable.

Through the entirety of Nevada Administrative Code Chapter 449, please replace all references to “maternal patient” to “pregnant patient”, “maternal” to “pregnant patient”, “maternal client(s)” to “pregnant client(s)”.

OMITTED REGULATIONS

~~[NAC 449.153 is hereby amended to read as follows:~~

- ~~1. No facility may deny treatment to a prospective client on the grounds of race, color, age, disability, or national origin.~~
- ~~2. No resident may be segregated, given separate treatment, restricted in the employment of any advantage or privilege enjoyed by others under the program or provided with any aid, treatment, services or other benefits which are different or provided in a different manner from that provided to others under the program, on the grounds of race, color, age, disability, or national origin.]~~

~~[NAC 449.15369 is hereby amended to read as follows:~~

- ~~— 1. No facility that accepts a person for treatment for whom all or part of the payment for treatment is made from the money of the Division of Welfare and Supportive Services or any other agency funded in whole or in part by federal money may deny treatment to a prospective client on the grounds of race, color, national origin, age, gender or disability.~~
- ~~— 2. No client may be segregated, given separate treatment, restricted in the employment of any advantage or privilege enjoyed by others under the program or provided with any aid, treatment, services or other benefits which are different or provided in a different manner from that provided to others under the program on the grounds of race, color, national origin, age, gender or disability.~~
- ~~— 3. Employment practices of a facility, including, without limitation, hiring, firing, the rate of remuneration, assignments or work hours, may not be based on race, color, national origin, age, gender or disability.]~~

~~[NAC 449.269 is hereby amended to read as follows:~~

- ~~1. A resident of a residential facility shall not be segregated or restricted in the enjoyment of any advantage or privilege enjoyed by other residents, or provided with any assistance, service or other benefit which is different or provided in a different manner from that provided to other residents, on the ground of race, color, religion, national origin or disability.~~
- ~~— 2. The facility’s policy regarding nondiscrimination must be posted in a public area of the facility.]~~

~~[NAC 449.355 is hereby amended to read as follows:~~

~~A hospital shall not discriminate in the admission of, or the provision of services to, a person on the basis of his or her race, color, religion, national origin, age, gender, disability or ability to pay.~~

~~[NAC 449.4083 is hereby amended to read as follows:~~

- ~~1. A client shall not be segregated or restricted in the enjoyment of any advantage or privilege enjoyed by other clients or provided with any assistance, service or other benefit which is different~~

~~or provided in a different manner from that provided to others on the ground of race, color or national origin.~~

~~—2.—The facility's policy regarding nondiscrimination must be posted in a public area of the facility.]~~

~~[NAC 449.413 is hereby amended to read as follows:~~

~~A psychiatric residential treatment facility shall not discriminate in the admission of, or the provision of services to, a person on the basis of his or her race, color, religion, national origin, ancestry, age, gender, disability, sexual orientation or gender identity or expression.]~~

~~[NAC 449.731 is hereby amended to read as follows:~~

~~No facility accepting a person for resident care, for whom all or part of the payment for care is made from funds of the Division of Welfare and Supportive Services or any other agency funded in whole or part by federal funds, may deny admission to a prospective resident on the grounds of race, color or national origin. No resident may be segregated, given separate treatment, restricted in the enjoyment of any advantage or privilege enjoyed by others under the program or provided with any aid, care services or other benefits which are different or provided in a different manner from that provided to others under the program, on the grounds of race, color or national origin. Employment practices, including, but not limited to, hiring, discharge, rate of remuneration, assignments or work hours scheduled, may not be based on discriminatory grounds.]~~

~~[NAC 449.74375 is hereby amended to read as follows:~~

~~—1.—No facility that accepts a person for treatment for whom all or part of the payment for treatment is made from federal or state money may deny treatment to a prospective patient on the grounds of race, color, national origin, age, gender or disability.~~

~~—2.—No patient may be segregated, given separate treatment, restricted in the employment of any advantage or privilege enjoyed by others under the program or provided with any aid, treatment, services or other benefits which are different or provided in a different manner from that provided to others under the program on the grounds of race, color, national origin, age, gender or disability.~~

~~3.—Employment practices of a facility, including, without limitation, hiring, firing, the rate of remuneration, assignments or work hours, may not be based on race, color, national origin, age, gender or disability.]~~

~~[NAC 449.74455 is hereby amended to read as follows:~~

~~—1.—A patient in a facility for skilled nursing shall not be segregated or restricted in the enjoyment of an advantage or privilege enjoyed by other patients, or provided with any assistance, service or other benefit which is different or provided in a different manner from that provided to other patients, on the ground of race, color, religion, national origin or disability.~~

~~—2.—A facility for skilled nursing shall adopt and maintain policies and procedures for the transfer and discharge of, and the provision of services to, patients in the facility which do not discriminate against a patient based on the source of payment for the services provided.]~~