

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

LCB File No. R030-20

October 22, 2020

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

AUTHORITY: §§1-6 and 8-26, NRS 422.3964, 433.324 and 439.200; §7, NRS 422.3964, 433.324, 439.150 and 439.200.

A REGULATION relating to tenancy support services; requiring a program to provide tenancy support services to be certified in order to receive certain state or federal money; prescribing the process to apply for certification or recertification; requiring the operator and staff of a program to possess certain qualifications and perform certain duties; requiring a certified program to provide certain services; prescribing procedures relating to the denial, suspension or revocation of certification; providing for the reporting of certain violations of law; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law: (1) defines the term “tenancy support services” to mean services authorized pursuant to federal law that assist a recipient of Medicaid in obtaining and remaining in adequate housing; and (2) requires the Division of Health Care Financing and Policy of the Department of Health and Human Services to provide tenancy support services to the extent authorized by federal law. (NRS 422.3964) Existing law authorizes the State Board of Health to adopt regulations to promote programs relating to mental health, substance use disorders and co-occurring disorders and to protect and promote public health. (NRS 433.324, 439.200) **Sections 2-6** of this regulation define terms related to tenancy support services. **Section 7** of this regulation: (1) provides that a program to provide tenancy support services is not eligible to receive state or federal money for tenancy support services administered by the Department or any division thereof unless the program is certified by the Division of Public and Behavioral Health of the Department; and (2) prescribes the requirements to apply for certification or recertification, including the payment of a \$100 application fee. **Section 8** of this regulation prescribes the process for the review and approval of an application and the issuance of a certificate.

Section 9 of this regulation requires each program to have a designated operator and lists the entities that may serve as an operator. If a program is conducted by a corporation, **section 9** requires the governing body of the corporation to: (1) serve as the operator of the program; (2) adopt written bylaws or policies that set forth any compensation provided to members of the

governing body and define the powers and duties of the governing body; (3) meet at least quarterly; (4) keep written minutes of each meeting; (5) retain the minutes for at least 7 years; and (6) provide the minutes to the Division upon request. **Section 10** of this regulation requires an operator to notify the Division of any anticipated change that is likely to affect the certification of the program.

Section 11 of this regulation requires the operator of a program to develop and maintain a manual of policies and procedures for the program and notify and obtain the approval of the Division before changing those policies and procedures. **Sections 11-14** of this regulation prescribe the required contents of those policies and procedures. **Section 15** of this regulation requires an operator to establish a plan for improving the quality of services provided by the program and ensuring that the integrity of the program is maintained. **Section 16** of this regulation prescribes requirements to ensure the confidentiality of records maintained by a program. **Section 17** of this regulation requires a program to provide certain services. **Section 18** of this regulation requires an operator to: (1) establish a system for maintaining the records of members of the staff of the program; and (2) maintain the confidentiality of the records. **Section 18** also requires an employment contract or other document describing standards of job performance signed by a member of the staff to clearly specify the nature and amount of any service to be provided by the member of the staff.

Section 19 of this regulation requires an operator to maintain certain liability insurance. **Section 20** of this regulation requires an operator to notify the Division of: (1) any incident that may pose an imminent or probable risk of harm to the health or welfare of a client, member of the staff of a program or visitor to the program; or (2) the death of a client during the provision of services. **Section 21** of this regulation prohibits an operator or member of the staff of a program from knowingly providing false information to the Division. **Section 21** also requires the operator of a program and the staff of a program to use information generally accepted in the field of tenancy housing services when performing duties related to the program. **Section 21** additionally requires an operator to supervise the staff of a program. Finally, **section 21** prohibits an operator from allowing a client to grant power of attorney to the operator or a member of the staff. **Section 22** of this regulation requires the operator of a program to designate a manager of the program. **Section 23** of this regulation prescribes the required: (1) qualifications of a supervising member of the staff of a program; and (2) training and competence for a member of the staff of a program.

Section 24 of this regulation prescribes the grounds for the denial, suspension or revocation of certification. **Section 24** also requires the Division to report any known violation of any local, state or federal law, regulation or ordinance by an operator to the appropriate regulatory agencies. **Section 25** of this regulation requires the Division to notify an operator of any intended action to deny, suspend or revoke the certification of the operator. **Section 25** also provides for the immediate termination of the provision of services by an operator if any ground for the denial, suspension or revocation of certification places any person at an imminent or probable risk of harm. **Section 26** of this regulation prescribes the procedure for appealing a decision of the Division concerning the denial, suspension or revocation of certification.

Section 1. Chapter 422 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 26, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 26, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Consultant” means a person who provides expert advice professionally in the area of tenancy support services.*

Sec. 4. *“Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services.*

Sec. 5. *“Program” means a program to provide tenancy support services.*

Sec. 6. *“Tenancy support services” has the meaning ascribed to it in NRS 422.3964.*

Sec. 7. *1. A program is not eligible to receive any state or federal money for tenancy support services administered by the Department of Health and Human Services or any division thereof unless the program is certified by the Division.*

2. To obtain the certification of a program, an operator must:

(a) Have at least 2 years of experience in providing tenancy support services; and

(b) Apply to the Division in the form prescribed by the Division. The application must be accompanied by a nonrefundable application fee of \$100 and must include, without limitation:

(1) Evidence satisfactory to the Division that the program is in compliance with all applicable federal, state and local laws, regulations and ordinances;

(2) A list of each name used by the applicant in the operation of the program or any other business;

(3) A copy of the policies and procedures adopted by the program pursuant to section 11 of this regulation;

(4) Evidence that the program holds the liability insurance required by section 19 of this regulation; and

(5) A letter of support from a Continuum of Care established pursuant to 24 C.F.R. § 578.5 in the geographic area in which the program is located.

3. An application to renew the certification of a program must be submitted to the Division not later than 60 days before its expiration as prescribed by section 8 of this regulation. The application must be in the form prescribed by the Division, must be accompanied by a nonrefundable application fee of \$100 and must include, without limitation:

(a) Evidence satisfactory to the Division that the facility or program is in compliance with all applicable federal, state and local laws, regulations and ordinances;

(b) A list of each name used by the applicant in the operation of the program or any other business;

(c) If the policies and procedures adopted by the program pursuant to section 11 of this regulation have changed since certification or the most recent renewal of certification of the program, as applicable:

(1) A copy of the amended procedures and policies; and

(2) A written explanation describing the changes and stating the reason for the changes, including, without limitation, whether the changes were:

(I) Made as a result of findings of an agency or organization, other than an agency or organization owned or operated by the operator of the program; or

(II) Initiated by the operator or an agency or organization owned or operated by the operator;

(d) Evidence that the program holds the liability insurance required by section 19 of this regulation; and

(e) A letter of support from a Continuum of Care established pursuant to 24 C.F.R. § 578.5 in the geographic area in which the program is located.

4. If the certification of a program expires, the operator of the program may reapply for new certification pursuant to subsection 2 at any time.

Sec. 8. 1. Upon receiving a completed application for the certification of a program or to renew the certification of a program, the Division or its designee shall review the application and determine whether the applicant is eligible for certification or renewal of certification. If the applicant is determined to be eligible, the Division must:

(a) Inspect the program;

(b) Ensure that the program is in compliance with the provisions of sections 2 to 26, inclusive, of this regulation; and

(c) Provide to the applicant a written report of the findings of the inspection.

2. After the inspection of a program pursuant to subsection 1, the Division shall score the applicant in the categories of:

(a) General organizational protocols and operations;

(b) Policy and procedure requirements;

(c) Human resources protocols; and

(d) Protocols and operations concerning the provision of tenancy housing services.

3. *If the applicant receives a score of at least 80 percent in each category and an overall weighted score of at least 90 percent, the Division must issue to the applicant a certificate that is valid for 2 years or renew the certificate of the applicant for 2 years, as applicable.*

4. *If subsection 3 does not apply and the applicant receives a score of at least 75 percent in each category and an overall weighted score of at least 75 percent, the Division must issue to the applicant a certificate that is valid for 1 year or renew the certificate of the applicant for 1 year, as applicable.*

5. *If subsection 3 or 4 does not apply and the applicant receives a score of at least 65 percent in each category and an overall weighted score of at least 65 percent, the Division must issue to the applicant a certificate that is valid for 6 months or renew the certificate of the applicant for 6 months, as applicable.*

6. *If the applicant receives a score of less than 65 percent in any category or an overall weighted score of less than 65 percent, the Division must provide the applicant a report of the score. Not later than 15 days after receiving the report, the applicant shall submit to the Division a plan of correction. The Division shall review the plan of correction and issue or renew, as applicable, or deny certification based on the conclusions of the review.*

7. *A certificate that is issued or renewed pursuant to this section is not transferrable and may not be used by another program.*

Sec. 9. 1. *A program must have a designated operator that is responsible for the operation of the program. The operator may designate another person to carry out the responsibilities of the operator but remains responsible for the actions of any such designee.*

2. *If a program is conducted by a corporation, the governing body of the corporation must serve as the operator of the program. The governing body shall:*

(a) Adopt written bylaws or policies that set forth the amount of any compensation provided to the members of the governing body for serving on the governing body and define the powers and duties of the governing body;

(b) Meet at least quarterly and keep written minutes of each meeting that include, without limitation:

(1) The date and time of the meeting;

(2) The name of each person present at the meeting;

(3) Any decision made by the governing body during the meeting;

(4) Any other action taken by the governing body during the meeting; and

(5) The manner in which any budget was reviewed and approved during the meeting;

and

(c) Retain the minutes of each meeting for at least 7 years and make those minutes available to the Division upon request.

3. If a program is not operated by a corporation, the operator must be:

(a) The owner of a private entity;

(b) The governing body of a nonprofit organization or a person designated in writing by such a governing body; or

(c) A governmental entity.

Sec. 10. 1. *At least 60 days before the change will occur or, if the operator of the program becomes aware of the change less than 60 days before the change will occur, as soon as the operator becomes aware of the change, the operator shall notify the Division of any change to the program which is likely to affect the certification of the program. Such a change*

may include, without limitation, a change to the ownership, staff or location of the program or the termination of the program.

2. Upon receiving notice of a change pursuant to subsection 1, the Division must notify the operator of any effect to the certification of the program and actions the operator may be required to take to maintain the certification.

Sec. 11. *The operator of a program shall:*

1. Develop and maintain a manual of policies and procedures for the program which includes, without limitation, policies and procedures for:

(a) The management and operation of the program in accordance with section 12 of this regulation;

(b) The provision of tenancy support services in accordance with section 13 of this regulation; and

(c) Addressing issues that may threaten the housing of a client or negatively impact the health and safety of a client in accordance with section 14 of this regulation.

2. Comply with the policies and procedures developed pursuant to subsection 1.

3. Notify and obtain the approval of the Division before making any change to the policies and procedures developed pursuant to subsection 1.

4. Provide a copy of the manual developed pursuant to subsection 1 to any person upon request.

Sec. 12. *The policies and procedures developed pursuant to section 11 of this regulation concerning the management and operation of a program must include, without limitation, policies and procedures for:*

1. Accepting and resolving complaints made by clients and staff members;

2. *Allowing a client or staff member to appeal a decision of the operator of the program without reprisal;*
3. *Staffing, including, without limitation, the title, duties and qualifications for each position on the staff of the program;*
4. *Claiming funds and billing clients for services;*
5. *Receiving and recording funds and recording expenditures;*
6. *Preparing financial reports;*
7. *Maintaining information to support any money claimed by the program or charges billed;*
8. *Implementing internal controls to ensure the integrity of financial and accounting information and fiscal audits as necessary;*
9. *Informing a prospective client of any financial responsibility for a service before providing that service;*
10. *Maintaining the financial records of a client, including, without limitation, records of fees charged to the client and payments made by the client; and*
11. *Making the records described in subsection 10 available to the client to whom those records apply upon request.*

Sec. 13. *The policies and procedures adopted pursuant to section 11 of this regulation concerning the provision of tenancy support services must include, without limitation, policies and procedures for:*

1. *Identifying and engaging with underserved persons and connecting such persons with necessary or desired services;*
2. *The referral and intake of clients;*

3. *Delivering services, including, without limitation, services before, during and after the tenant moves into the housing, in accordance with 42 U.S.C. § 1396n(i) and the regulations adopted pursuant thereto and assigning responsibilities relating to the delivery of such services;*

4. *Conducting an assessment of each client that focuses on his or her housing situation and goals;*

5. *Based on the results of the assessment conducted pursuant to subsection 4, setting goals for each client and planning any intervention that may be necessary;*

6. *Preventing a crisis and intervening during a crisis;*

7. *Working with clients who refuse necessary services, as determined based on the assessment conducted pursuant to subsection 4;*

8. *Building and maintaining a positive relationship with property managers, landlords and developers to advocate for the needs of clients;*

9. *Requesting reasonable modifications for a client with a disability;*

10. *Resolving disputes related to housing;*

11. *Preventing eviction and intervening when eviction is imminent or has occurred;*

12. *Assisting clients in determining eligibility for benefits, including, without limitation, Medicaid and benefits related to housing; and*

13. *Linking clients to and coordinating on behalf of clients with providers of services the clients need or desire, including, without limitation, health care, dental and vision services.*

Sec. 14. *The policies and procedures adopted pursuant to section 11 of this regulation to address issues that threaten the housing of or negatively impact the health and safety of a client must include, without limitation, policies and procedures for:*

- 1. Responding to a medical emergency;*
- 2. Contributing to a summary of the social history of a client that is compiled by an approved outside entity;*
- 3. Conducting an assessment of the strengths and weaknesses of the client relating to choosing, obtaining and maintaining housing;*
- 4. Coordinating the process to search for housing for a client;*
- 5. Coordinating and making arrangements for a client to move into housing, including, without limitation, scheduling a time to sign a lease, ensuring that utilities are connected and operational and arranging for a moving service, if necessary;*
- 6. Negotiating with landlords, as appropriate, to facilitate access to housing for a client and prevent eviction;*
- 7. Maintaining any documents required for a client to apply for and receive housing subsidies and certifications;*
- 8. Supporting a client with regard to negotiating the terms of leases and the execution of leases;*
- 9. Coordinating with existing providers of primary care, behavioral health care, dental care, vision care and emergency and urgent care for a client or assisting a client with establishing relationships with new providers of such care; and*
- 10. Developing an individualized housing goal and a crisis prevention plan in accordance with 42 U.S.C. § 1396n(i), the regulations adopted pursuant thereto and the Medicaid Services Manual established by the Division of Health Care Financing and Policy of the Department of Health and Human Services.*

Sec. 15. *The operator of a program shall:*

1. Establish a plan for improving the quality of the services provided by the program and ensuring that the integrity of the program is maintained. The plan must address, without limitation, operational services, human resources, fiscal services and clinical outcome measures.

2. Make a copy of the plan established pursuant to subsection 1 available to the Division at the time of an inspection by the Division of the premises where the program is providing services.

Sec. 16. *The operator of a program shall ensure that:*

1. The program complies with all applicable federal and state law concerning the confidentiality of records and the privacy of clients;

2. Any consent provided by a client to allow the operator or a designee to release information that identifies the client and whether the client has tested seropositive for the human immunodeficiency virus is provided explicitly and on a separate form;

3. Each consultant who has access to the confidential information of clients has signed a confidentiality agreement that complies with the applicable provisions of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160, 162 and 164; and

4. Each confidentiality agreement described in subsection 3 is maintained in the personnel file of the consultant.

Sec. 17. *The operator of a program shall ensure that the program provides services to assist clients with:*

1. Developing skills for daily living related to maintaining a housing unit;

2. Developing skills necessary to assert the rights of the client as a tenant, meet the terms and conditions of a lease agreement and comply with the responsibilities of a tenant,

including, without limitation, the responsibilities of paying rent and utility bills, using appliances safely, maintaining appropriate levels of sound for television and music and ensuring that the behavior of any guests does not jeopardize the lease;

- 3. Using resources in the community;*
- 4. Developing social skills to establish relationships and develop support networks;*
- 5. Establishing a daily routine, including, without limitation, planning social and recreational activities;*
- 6. Recognizing the need for assistance and seeking assistance when needed;*
- 7. Managing symptoms of physical and behavioral health conditions; and*
- 8. Managing finances.*

Sec. 18. 1. *The operator of a program shall establish a system for maintaining the records of members of the staff of the program. The system must maintain the confidentiality and safekeeping of records and must include, without limitation:*

- (a) The application or resume of each member of the staff;*
- (b) Any employment contract signed by a member of the staff;*
- (c) Any document describing standards of job performance that is signed by a member of the staff;*
- (d) A copy of any license, certificate, registration or other credential held by a member of the staff who performs duties for which the license, certificate, registration or other credential is required by law or the policies and procedures developed pursuant to section 11 of this regulation;*
- (e) A document signed by each member of the staff verifying that he or she attended the orientation required by section 23 of this regulation; and*

(f) For each staff member who is not a citizen of the United States, a copy of Form I-9, Employment Eligibility Verification, of the United States Citizenship and Immigration Services of the Department of Homeland Security, which verifies that the member of the staff is lawfully entitled to remain and work in the United States.

2. Any employment contract or other document containing standards of job performance signed by a member of the staff must clearly specify the nature and amount of the service to be provided by the member of the staff.

3. Except as otherwise provided in this subsection, a record of a member of the staff of a program is confidential. Such a record must be made available upon request to:

(a) The member of the staff to whom the record pertains and any person authorized by that member of the staff;

(b) Any person authorized by the policies and procedures adopted pursuant to section 11 of this regulation to access the record; and

(c) Any person inspecting the program in an official capacity.

Sec. 19. The operator of a program shall ensure that the program maintains proper insurance that covers:

1. Liability in an amount sufficient to protect the clients and staff of the program and the visitors to the program. The policy of insurance must, at a minimum, provide coverage for professional liability and, if the operator receives state or federal money for the program and is the governing body of a corporation or of a nonprofit organization, the policy of insurance must include liability insurance for directors and officers of the corporation or nonprofit organization, as applicable. The policy of insurance must provide that notice be given to the Division not later than 30 days after cancellation of the policy or after the operator does not

renew the policy. Upon request, the operator shall make a copy of the policy of insurance available to the Division for review.

2. Liability arising out of the acts or omissions of a consultant while providing a service for the program. The policy of insurance may be provided by the program or the consultant. If the policy of insurance is provided by the consultant, the operator must obtain a copy of the policy and place the copy in the personnel file of the consultant.

Sec. 20. *The operator of a program shall notify the Division not later than 24 hours after:*

1. Any incident that may pose an imminent or probable risk of harm to the health or welfare of a client, member of the staff of the program or visitor to the program; or

2. The death of a client while a member of the staff of the program is providing services to the client, regardless of the location of the death.

Sec. 21. *1 The operator or a member of the staff of a program shall not knowingly provide false information to the Division or a representative of the Division.*

2. The operator and the staff of a program shall use information that is generally accepted in the field of providing tenancy housing services when performing duties related to the program.

3. The operator of a program shall supervise the staff of the program to ensure that a member of the staff does not:

(a) Become impaired in his or her ability to perform services; or

(b) Perform any service that he or she is not authorized to perform under his or her licensure or certification.

4. The operator of a program shall not allow a client to grant a power of attorney to the operator or a member of the staff of the program.

Sec. 22. 1. The operator of a program shall designate a person to be the manager of the program. The manager must:

(a) Have at least 2 years of experience providing tenancy support services and working with persons who are living with chronic health conditions and persons experiencing homelessness;

(b) Have excellent written and verbal communication skills and organizational skills; and

(c) Be trained and have demonstrated competence in:

(1) Methods and processes for providing individualized services related to housing and care management in partnership with the person to whom the services are provided;

(2) Knowledge of providers of housing in the area in which the program operates;

(3) Knowledge of processes for applying for and obtaining housing subsidies;

(4) Documenting the provision of services in accordance with the requirements of 42 U.S.C. § 1396n(i) and the regulations adopted pursuant thereto;

(5) Assessing potential risks to the ability to acquire and maintain housing;

(6) Developing plans to prevent crises;

(7) Conducting interviews as necessary to de-escalate conflict and ensure safety;

(8) Responding to emergent needs in a safe and effective manner; and

(9) Providing services in a trauma-informed manner when appropriate.

2. As used in this section, “trauma-informed manner” means a manner that:

(a) Is informed by knowledge of and responsiveness to the effects of trauma;

(b) Emphasizes physical, psychological and emotional safety for staff and clients; and

(c) Creates opportunities for a client affected by trauma to rebuild a sense of control and empowerment.

Sec. 23. 1. *A member of the staff of a program who is a supervisor must have at least 2 years of experience providing tenancy support services and working with persons who are living with chronic health conditions and persons experiencing homelessness.*

2. The operator of a program shall ensure that:

(a) Each member of the staff of a program who does not have the qualifications described in subsection 1 is under direct supervision at all times; and

(b) Each member of the staff of a program attends an orientation concerning the policies and procedures adopted pursuant to section 11 of this regulation that govern his or her duties.

3. Each member of the staff of a program must have training and demonstrated competence in:

(a) Evidence-based best practices for teaching skills in a manner that utilizes the strengths of clients;

(b) Knowledge and behavior necessary to maintain housing;

(c) Engaging and using motivational interviewing techniques to connect and form relationships with persons who are mistrustful of providers of tenancy support services;

(d) Cognitive behavioral techniques and techniques for changing behavior;

(e) Documenting the provision of services in accordance with the requirements of 42 U.S.C. § 1396n(i) and the regulations adopted pursuant thereto;

(f) Conducting interviews as necessary to de-escalate conflict and ensure safety;

(g) Responding to emergent needs in a safe and effective manner; and

(h) Providing services in a trauma-informed manner, as defined in section 22 of this regulation, when appropriate.

Sec. 24. 1. *Each of the following acts or omissions is a ground for the denial, suspension or revocation of the certification of a program:*

(a) Any misrepresentation of or failure to disclose any material fact in the application for the issuance or renewal of the certification or in any financial record or other document requested by the Division.

(b) A lack of personnel in sufficient numbers or qualifications to provide proper care and support for clients.

(c) Conviction of the operator of the program or any employee or independent contractor of the operator of a crime relevant to any aspect of the provision of tenancy support services.

(d) Any deficiency of the operator of the program relating to the provision of tenancy support services that poses an imminent or probable risk of harm to the health or welfare of any client.

(e) Any fraudulent activity by the operator or an employee or independent contractor of the program, including, without limitation, any fraudulent billing, falsification of records or misuse or misappropriation of the property of a client.

(f) Any refusal to participate in any aspect of a review or investigation by the Division.

(g) The failure or refusal of the operator of the program to implement any action required by the Division to correct a deficiency identified during a review or investigation by the Division.

(h) Abuse, neglect, exploitation or coercion of a client.

(i) Harassing, coercive, intimidating, insulting, abusive or disruptive language or behavior directed at:

(1) An employee of the Division;

(2) An employee or independent contractor of the program, another program or a person or entity providing services other than tenancy support services; or

(3) A client or a family member or guardian of a client.

(j) Exclusion of the operator of the program, an officer or employee of the operator or an independent contractor of the operator who oversees the provision of tenancy support services from participation in Medicare, Medicaid or any other federal health care program pursuant to federal law.

2. The Division shall report any known violation of any local, state or federal law, regulation or ordinance by the operator of a program to the appropriate regulatory agencies which govern the tenancy support services.

Sec. 25. 1. *The Division shall give the operator of a program written notice of any intended action to deny, suspend or revoke the certification of the operator in the manner required by NAC 439.345.*

2. If the denial, suspension or revocation of the certification of the operator of a program is pending and the Division determines that the grounds for the denial, suspension or revocation place any person at an imminent or probable risk of harm, the Division may immediately terminate the provision of tenancy support services by the operator pending a final decision.

Sec. 26. 1. *If the operator of a program is aggrieved by any decision concerning the denial, suspension or revocation of certification, the operator may submit a request for an*

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

2. Except in the case of an immediate termination of the provision of tenancy support services pursuant to section 25 of this regulation, the effective date of a suspension or revocation is stayed upon receipt of a request for an appeal until the hearing officer renders a decision regarding the appeal.