



May 18, 2020

## MEMORANDUM

To: Jon Pennell, Chair  
State Board of Health

From: Lisa Sherych, Secretary  
State Board of Health

Re: Consideration and adoption of proposed regulation amendment(s) to Nevada Administrative Code (NAC) 433, LCB File No. R012-20.

### PURPOSE OF AMENDMENT

Nevada Administrative Code chapter 433 contains regulations regarding mental health programs. The proposed regulation supplements and amendments were generated in efforts to bring both public and private mental health facilities and mental health services into compliance with the legislation passed in 2019. The necessary supplements include the establishment of a procedure for determining whether to involuntarily administer psychotropic medication to a patient at a public or private mental health facility. This amendment has been developed by the Division in consultation with providers and stakeholders from around the state to bring NAC 433A into compliance with the legislation passed in 2019.

### SUMMARY OF CHANGES TO NEVADA ADMINISTRATIVE CODE (NAC)

The proposed regulations currently moving forward accomplish the following:

- a) Psychotropic medication may only be involuntarily administered to a patient if the public or private mental health facility has completed the procedures set forth in sections 9 to 14 of this regulation and a decision has been made to involuntarily administer the medication.
- b) This regulation prescribes the conditions that must be met before a practitioner may request the involuntary administration of psychotropic medication to a patient for whom they are primarily responsible.
- c) The director of a public or private mental health facility must appoint a committee to hold a hearing on the request for the involuntary administration of medication, and an advisor to assist the patient in presenting his or her position to the committee. The regulation also outlines the procedure for the committee's hearings as well as the duties of the advisor to the patient.
- d) The director of the facility or a designated psychiatrist must review the recommendation of the committee and issue a final decision concerning the involuntary administration of psychotropic medication. If the involuntary administration is authorized, the regulation allows for the continuation of



the involuntary administration for not more than 30 days. If the practitioner primarily responsible for treating the patient determines that a continuation of the involuntary administration of psychotropic medication for more than 30 days is required, this section requires the practitioner to submit another request.

#### POSSIBLE OUTCOME IF PROPOSED AMENDMENT IS NOT APPROVED

If the proposed amendments are not approved the Division of Public and Behavioral Health faces not being in compliance with the legislation passed in 2019.

#### APPLICABILITY OF PROPOSED AMENDMENT

These regulations will apply statewide to all public and private mental health facilities.

#### PUBLIC COMMENT RECEIVED

An outline of opportunities for public comment follows:

Pursuant to NRS 233B.0608 (2) (a), No business within the state was identified as meeting the standard of a small business that would be affected by this regulation.

#### **February 6, 2020 – Public Workshop**

A public workshop was held on February 6, 2020.

There were 28 participants between Southern and Northern Nevada.

Summary of testimony:

- Concern was expressed over the use of the procedure outlined in these regulations in lieu of court hearings for the involuntary administration of medication.

DPBH has consulted with the Office of the Attorney General regarding this concern.

#### STAFF RECOMMENDATION

Staff recommends the State Board of Health adopt the proposed regulation amendments to NAC 433A, LCB File No. R012-20.

#### PRESENTER

Stephen Wood, Health Program Specialist

Enclosures



**NOTICE OF PUBLIC HEARING**

Intent to Adopt Regulations  
(LCB File No. R011-20, R12-20, and R13-20)

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 433 and 433A of Nevada Administrative Code (NAC). This public hearing is to be held in conjunction with the State Board of Health meeting on June 5, 2020. The NAC 433 and 433A regulation changes will be heard in the order placed on the State Board of Health agenda.

The State Board of Health will be conducted via videoconference beginning at 9:00 a.m. on Friday, June 05, 2020 at the following locations:

Division of Public and Behavioral Health 4150 Technology Way Room 303 Carson City, NV 89076	Grant Sawyer Building 555 E. Washington Ave. Room 1400 Las Vegas, NV 89101
---	--

This meeting may be conducted without physical locations and the notices in the libraries are not currently available in accordance with Governor Sisolak’s Declaration of Emergency Directive 006 which can be found at the end of this notice.

The proposed addition/change of regulations to NAC 433A in LCB File No. R11- 20 (with errata) include provisions for:

- The proposed amendment to (NAC 433A) Section 2, 3, and 4 of this regulation provide definitions for “Hospital” and “Public or private mental health facility.”
- The proposed amendment to (NAC 433A) Section 5 defines “emergency services and care.”
- The proposed amendment to (NAC 433A) Section 6 of this this regulation requires a physician, physician assistant, or advanced practice registered nurse who completes the medical examination to attest on the form for admission to a mental health facility whether the person has a medical condition, other than a psychiatric condition, which requires immediate treatment. This section also requires certain testing for a person alleged to be in a mental health crisis as part of the medical examination. Section 6 also requires an employee or independent contractor of the receiving public or private mental health facility who is not informed about the results of the medical examination to contact the physician, physician assistant, or advanced practice registered nurse who conducted the examination.
- The proposed amendment to (NAC 433A) Section 7 prescribes the types of facilities that that a person alleged to be in a mental health crisis can be admitted to if the medical examination determines that they have a medical condition, other than a psychiatric condition, that requires immediate treatment.

- The proposed amendment to (NAC 433A) Section 8 requires the director of a public or private mental health facility or hospital to report certain information, and requires them to submit a quarterly summary concerning admissions to the facility or hospital to each regional behavioral health policy board.

The proposed addition/change of regulations to NAC 433 in LCB File No. R12- 20 include provisions for:

- The proposed amendment to (NAC 433A) Section 3 of this regulation provides the definition for "Director."
- The proposed amendment to (NAC 433A) Section 4 of this regulation provides the definition for "Practitioner."
- The proposed amendment to (NAC 433A) Section 5 of this regulation provides the definition of "Public or private mental health facility."
- The proposed amendment to (NAC 433A) Section 6 of this regulation provides the definition of "Working hours."
- The proposed amendment to (NAC 433A) Section 7 of this regulation states that this regulation does not apply to the use of chemical restraint, as defined in NRS 433.5456, or to the involuntary administration of psychotropic medication in an emergency, as defined in NRS 433.5466.
- The proposed amendment to (NAC 433A) Section 8 of this regulation states that a public or private mental health facility that has not established the procedures required in sections 9 to 14 cannot administer psychotropic medication without the consent of the patient unless the patient has been admitted to the facility involuntarily by court order and the practitioner obtains from the court that ordered the involuntary admission an order to administer the medication to the patient.
- The proposed amendment to (NAC 433A) Section 9 of this regulation states that psychotropic medication may only be involuntarily administered to a patient if the public or private mental health facility has completed the procedures set forth in sections 9 to 14 of this regulation and a decision has been made to involuntarily administer the medication.
- The proposed amendment to (NAC 433A) Section 10 of this regulation prescribes the conditions that must be met before a practitioner may request the involuntary administration of psychotropic medication to a patient for whom they are primarily responsible.
- The proposed amendment to (NAC 433A) Section 11 of this regulation requires the director of the public or private mental health facility to appoint a committee to hold a hearing on the request for the involuntary administration of medication, and an advisor to assist the patient in presenting his or her position to the committee.
- The proposed amendment to (NAC 433A) Section 12 of this regulation prescribes the duties of the advisor.
- The proposed amendment to (NAC 433A) Section 13 of this regulation prescribes the procedure for the committee hearing and requires the committee to forward its written recommendation to the director of the facility.

- The proposed amendment to (NAC 433A) Section 14 of this regulation requires the director of the facility or a designated psychiatrist to review the recommendation of the committee and issue a final decision concerning the involuntary administration of psychotropic medication. If the involuntary administration is authorized, this section allows for the continuation of the involuntary administration for not more than 30 days. If the practitioner primarily responsible for treating the patient determines that a continuation of the involuntary administration of psychotropic medication for more than 30 days is required, this section requires the practitioner to submit another request.

The proposed addition/change of regulations to NAC 433 in LCB File No. R13- 20 (with errata) include provisions for:

- The proposed amendment to (NAC 433) Section 2 of this regulation provides the definition for "provider."
- The proposed amendment to (NAC 433) Section 3 of this regulation prescribes the requirements for the issuance or renewal of a license and the term of the license.
- The proposed amendment to (NAC 433) Section 4 of this regulation requires the licensee to develop and maintain certain operational policies.
- The proposed amendment to (NAC 433) Section 5 of this regulation prescribes the required training for certain employees of a provider of nonemergency secure behavioral health transport services.
- The proposed amendment to (NAC 433) Section 6 of this regulation requires a provider to obtain a criminal background check on any employee who serves on a vehicle that transports patients.
- The proposed amendment to (NAC 433) Section 7 of this regulation prohibits an employee who has been convicted of certain crimes from serving on a vehicle that transports patients. This section also prescribes the process by which an employee may seek to correct information acquired by the provider through a criminal background investigation.
- The proposed amendment to (NAC 433) Section 8 of this regulation requires a provider to hold certain liability insurance.
- The proposed amendment to (NAC 433) Section 9 of this regulation prescribes the requirements of the layout, equipment, maintenance, and staffing of a vehicle used for nonemergency secure behavioral health transport services.
- The proposed amendment to (NAC 433) Section 10 of this regulation requires the Division of Public and Behavioral Health to inspect each vehicle used for nonemergency secure behavioral health transport services.
- The proposed amendment to (NAC 433) Section 11 of this regulation prescribes the authorized uses of nonemergency secure behavioral health transport services.
- The proposed amendment to (NAC 433) Section 12 of this regulation requires a provider of nonemergency secure behavioral health transport services to maintain certain documentation and to submit a quarterly report to the Division of Public and Behavioral Health.

- The proposed amendment to (NAC 433) Section 13 of this regulation authorizes the Division of Public and Behavioral Health to deny, suspend, or revoke a license for a violation of federal or state law or regulations relating to the provision of nonemergency secure behavioral health transport services.
  - The proposed amendment to (NAC 433) Section 14 of this regulation prescribes the fees for initial application for a license, renewal, and late renewal of a license and the inspection and reinspection of a vehicle.
1. Anticipated effects on the business which NAC 433 and 433A regulates:
    - A. *Adverse effects*: The agency concludes the proposed regulations will produce a negligible impact on small businesses.
    - B. *Beneficial*: Clearly defines what is expected of the regulated community.
    - C. *Immediate*: The stated adverse and beneficial effects would be immediate impacts as soon as the proposed regulations become effective.
    - D. *Long-term*: The long-term impacts would be the same as the immediate impacts as it is not be expected that the impacts would go away.
  2. Anticipated effects on the public:
    - A. *Adverse*: None anticipated.
    - B. *Beneficial*: Increased public health and safety.
    - C. *Immediate*: Increased public health and safety.
    - D. *Long-term*: Increased public health and safety.
  3. There is no estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulations. Enforcement of the proposed regulations will be incorporated into current administrative, registration, licensing and inspection processes.
  4. The amendment to NAC 433, R13-20, Section 14 of this regulation establishes a fee for the initial application for a license, renewal, late renewal, inspection of a vehicle, and reinspection of a vehicle.
  5. The proposed regulations do not overlap or duplicate any other Nevada state regulations.
  6. Per NRS 233B.0608(3), The Division of Public and Behavioral Health prepared and distributed a Small Business Impact Questionnaire (SBIQ) to all community stakeholders, J-1 participants, and licensed facilities in the State. The responses received were analyzed and used to generate the Small Business Impact Statement (SBIS) which was approved by the Administrator on January 21, 2020.



7. Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence in excess of two typed, 8-1/2" x 11" pages must submit the material to the Board's Secretary, Lisa Sherych, to be received no later than Friday, May 06, 2020 at the following address:

Secretary, State Board of Health  
Division of Public and Behavioral  
Health 4150 Technology Way, Suite  
300  
Carson City, NV  
89706

Written comments, testimony, or documentary evidence in excess of two typed pages will not be accepted at the time of the hearing. The purpose of this requirement is to allow Board members adequate time to review the documents.

A copy of the notice and proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours:

Division of Public and Behavioral  
Health 4150 Technology Way, Suite  
300 Carson City, NV 89706

Division of Public and Behavioral  
Health 4220 S. Maryland Parkway,  
Bldg. D, Suite 810  
Las Vegas, NV 89119

Nevada State Library and  
Archives 100 N. Stewart Street  
Carson City, NV 89701

Copies may be obtained via mail by calling the Bureau of Behavioral Health Wellness and Prevention at (775) 684-4190 in Carson City.

A copy of the regulations and this notice can also be found on-line by going to:

<https://dph.nv.gov/Programs/ClinicalSAPTA/dta/Statutes/SAPTAStatutes/>

<https://www.leg.state.nv.us/Register/2020Register/R011-20P.pdf>  
(Regulations Only)

<https://www.leg.state.nv.us/Register/2020Register/R012-20P.pdf>  
(Regulations Only)

<https://www.leg.state.nv.us/Register/2020Register/R013-20P.pdf>  
(Regulations Only)

<https://www.leg.state.nv.us/App/Notice/A/>

**In accordance with Nevada Governor Sisolak's Declaration of Emergency Directive 006 the meeting may be done without physical locations and notices in the libraries and other locations are not currently available.**

- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 3: The requirements contained in NRS 241.020 (4) (a) that public notice agendas be posted at physical locations within the State of Nevada are suspended.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 4: Public bodies must still comply with requirements in NRS 241.020 (4)(b) and NRS 241.020 (4)(c) that public notice agendas be posted to Nevada's notice website and the public body's website, if it maintains one along with providing a copy to any person who has requested one via U.S. mail or electronic mail.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 5: The requirement contained in NRS 241.020 (3)(c) that physical locations be available for the public to receive supporting material for public meetings is suspended.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 6: If a public body holds a meeting and does not provide a physical location where supporting material is available to the public, the public body must provide on its public notice agenda the name and contact information for the person designated by the public body from whom a member of the public may request supporting material electronically and must post supporting material to the public body's website, if it maintains one.

Per NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

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

**LCB File No. R012-20**

April 17, 2020

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

AUTHORITY: §§1-14, NRS 433.324.

A REGULATION relating to mental health; establishing a procedure for determining whether to involuntarily administer psychotropic medication to a patient at a public or private mental health facility; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the State Board of Health to adopt regulations governing the procedure for the involuntary administration of medication to patients at a mental health facility. (NRS 433.324) **Sections 8-14** of this regulation prescribe such a procedure for the involuntary administration of psychotropic medication, and **section 7** of this regulation provides that this procedure does not apply to medications administered as a chemical restraint or in the case of an emergency. **Sections 8 and 9** of this regulation prohibit the involuntary administration of psychotropic medication to a patient at a public or private mental health facility unless: (1) the director of the facility or his or her designee requires the involuntary administration of the medication after following a prescribed procedure; or (2) if the facility has not established the prescribed procedure and the patient has been admitted to the facility on an involuntary court-ordered admission, the practitioner who is primarily responsible for treating the patient has obtained a court order for the involuntary administration of the medication.

**Section 10** of this regulation prescribes the conditions that must be met before a practitioner who is primarily responsible for the treatment of a patient may request to involuntarily administer psychotropic medication to the patient. If such a request is made, **section 11** of this regulation requires the director of the facility or his or her designee to appoint: (1) a committee to hold a hearing on the request; and (2) an advisor to assist the patient in presenting his or her position at the committee. **Section 12** of this regulation prescribes the duties of the advisor. **Section 13** of this regulation prescribes the procedure for the hearing and requires the committee to forward its written recommendation to the director of the mental health facility. **Section 14** of this regulation requires the director or a psychiatrist designated by the director to review the recommendation of the committee and issue a final decision concerning the involuntary administration of psychotropic medication to the patient. If the director or his or her designee orders the involuntary administration of psychotropic medication, **section 14** authorizes the continuation of the involuntary administration of the medication for not more than 30 days. If the

practitioner who is primarily responsible for treating the patient determines that it is necessary to continue administering the medication to the patient for more than 30 days and the patient refuses to consent to continued administration of the medication, **section 14** requires the practitioner to submit another request for the involuntary administration of psychotropic medication to the patient.

**Section 1.** Chapter 433 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 14, inclusive, of this regulation.

**Sec. 2.** *As used in sections 2 to 14, 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.** *“Director” means:*

- 1. The medical director of a division facility; or*
- 2. The person in charge of the provision of care to patients at any other public or private mental health facility.*

**Sec. 4.** *“Practitioner” means a physician, physician assistant or advanced practice registered nurse.*

**Sec. 5.** *“Public or private mental health facility” means:*

- 1. A community triage center, as defined in NRS 449.0031;*
- 2. A psychiatric hospital, as defined in NRS 449.0165, including, without limitation, a psychiatric hospital endorsed as a crisis stabilization center pursuant to NRS 449.0915; or*
- 3. Any other facility for the diagnosis, care and treatment of mental illness which provides 24-hour care.*

**Sec. 6.** *“Working hours” means hours of operation during the week and excludes any hours on Saturday, Sunday or a holiday.*

**Sec. 7.** *The provisions of sections 2 to 14, inclusive, of this regulation do not apply to:*

- 1. The use of a chemical restraint, as defined in NRS 433.5456; or*
- 2. The involuntary administration of psychotropic medication in an emergency, as defined in NRS 433.5466.*

*Sec. 8. If a public or private mental health facility has not established the procedures set forth in sections 9 to 14, inclusive, of this regulation, psychotropic medication must not be administered to the patient without consent of the patient unless:*

- 1. The patient has been admitted to the facility involuntarily by court order pursuant to NRS 433A.200 to 433A.330, inclusive; and*
- 2. The practitioner obtains from the court that ordered the involuntary admission of the patient an order to involuntarily administer the medication to the patient.*

*Sec. 9. Psychotropic medication may only be administered to a patient at a public or private mental health facility that has established the procedures set forth in sections 9 to 14, inclusive, of this regulation, without the consent of the patient after the procedures have been completed and a decision has been made to involuntarily administer the medication pursuant to section 14 of this regulation.*

*Sec. 10. To initiate the procedures set forth in sections 9 to 14, inclusive, of this regulation for the involuntary administration of psychotropic medication to a patient at a public or private mental health facility that has established such procedures, the practitioner who is primarily responsible for treating the patient must submit to the director of the facility a request to involuntarily administer psychotropic medication to the patient. Such a request may be made by the practitioner if:*

*1. The patient is currently admitted to the public or private mental health facility under an emergency admission pursuant to NRS 433A.150 or an involuntary court-ordered admission pursuant to NRS 433A.200;*

*2. The practitioner:*

*(a) Determines that the patient presents a substantial likelihood of serious harm to himself or herself or others, as determined pursuant to NRS 433A.0195, or is unable to care for himself or herself without the administration of the medication; and*

*(b) Explains to the patient the nature of the condition for which the psychotropic medication is necessary, the basis for the diagnosis of the condition, the benefits and risks of using the medication including, without limitation, possible side effects from use, any alternative treatment and the potential outcome if the condition remains untreated;*

*3. The patient refuses to provide informed written consent to the administration of the psychotropic medication after receiving the explanation described in paragraph (b); and*

*4. The practitioner documents in the medical record of the patient that the provisions of subsections 1, 2 and 3 were satisfied.*

**Sec. 11. 1. Upon receiving a request from a practitioner pursuant to section 10 of this regulation to involuntarily administer psychotropic medication to a patient, the director of a public or private mental health facility or his or her designee shall:**

*(a) Appoint a committee consisting of three members, at least two of whom are professionally knowledgeable in the field of psychiatric mental health and at least one of whom is a licensed psychiatrist. A person must not be appointed to serve as a member of the committee if the person is:*

*(1) Involved in the diagnosis or care of the patient;*

*(2) The director of the facility; or*

*(3) Designated by the director to review the decision of the committee pursuant to section 14 of this regulation.*

*(b) Appoint an advisor to perform the duties prescribed by section 12 of this regulation.*

*The advisor must be a person who:*

*(1) Is not currently involved in the care of the patient;*

*(2) Understands psychiatric issues; and*

*(3) Has received training on the procedures set forth in sections 9 to 14, inclusive, of this regulation and understands the role of the advisor.*

*2. A committee appointed pursuant to subsection 1 shall schedule a hearing to review the request from a practitioner pursuant to section 10 of this regulation to involuntarily administer psychotropic medication to a patient. The hearing must be held not less than 24 working hours after the receipt of the request. The committee shall notify the patient and his or her advisor not less than 24 hours before the hearing of the date and time of the hearing.*

**Sec. 12.** *An advisor appointed pursuant to section 11 of this act:*

*1. Shall meet with the patient before the hearing held pursuant to section 11 of this regulation to assist the patient in preparing for the hearing.*

*2. Shall assist the patient to present his or her position concerning the administration of medication to the committee at the hearing.*

*3. Shall not present his or her personal opinion concerning the appropriateness of the proposed treatment.*

**Sec. 13.** *1. A patient who is the subject of a hearing held pursuant to section 11 of this regulation must be allowed to be present during the entire hearing. Unless the patient has*

*indicated in writing or through his or her advisor that he or she will not participate in the hearing, the hearing must not begin until the patient is present.*

*2. At the hearing, the patient must be allowed to:*

*(a) Cross-examine any person interviewed by the committee; and*

*(b) Present evidence and witnesses to the committee.*

*3. The committee conducting the hearing may interview any person or request any document it deems necessary to assist the committee in making its determination.*

*4. The committee conducting the hearing shall:*

*(a) Keep a written, audio or audiovisual record of the hearing;*

*(b) Prepare a written decision upon the conclusion of the hearing;*

*(c) Transcribe minutes of the hearing;*

*(d) Place a copy of the minutes and the written decision of the committee in the medical record of the patient; and*

*(e) Provide a copy of the minutes and its written decision to the patient.*

*5. Upon conclusion of the hearing, the committee may recommend approving the request to involuntarily administer psychotropic medication to the patient only if the member of the committee who is a psychiatrist and at least one other member determine that the patient presents a substantial likelihood of serious harm to himself or herself or others, as determined pursuant to NRS 433A.0195, or is unable to care for himself or herself without the administration of the medication. In making that recommendation, the committee must consider:*

*(a) Any stated objections of the patient to the administration of the medication;*



*(b) If the patient has completed an advance directive for psychiatric care pursuant to NRS 449A.600 to 449A.645, any relevant instructions contained in that advanced directive;*

*(c) Any documents or evidence offered by the patient, including, without limitation, the testimony of any witness;*

*(d) Whether the condition of the patient is likely to improve if the medication is not administered to the patient and, if so, whether such improvement would be significantly slower than had the medication been administered;*

*(e) Whether there is a less invasive means to accomplish the same or similar results to those achieved by administration of the medication;*

*(f) Any prior experience of the patient with taking the medication; and*

*(g) Any additional factor deemed relevant by the committee. Any such additional factor must be described in the written decision of the committee.*

*6. The committee shall forward its written recommendation to the director of the public or private mental health facility for review pursuant to section 14 of this regulation.*

*Sec. 14. 1. The director of a public or private mental health facility or a psychiatrist designated by the director shall conduct a review of a recommendation to approve or deny a request for the involuntary administration of psychotropic medication made by a committee pursuant to section 13 of this regulation not later than 24 working hours after receiving the recommendation. In reviewing the recommendation, the director must consider, without limitation, the medical record of the patient and any other document reviewed by the committee. The director may also:*

*(a) Interview any person whom the director or his or her designee believes may have relevant information; and*

- (b) Conduct an examination of the patient.*
- 2. During the review conducted by the director or his or her designee, the director or his or her designee shall consider:*
- (a) Whether the committee followed the proper procedures;*
- (b) Whether the proposed psychotropic medication is medically appropriate for the patient based on the diagnosis and medical history of the patient;*
- (c) Any stated objections of the patient to the administration of the medication; and*
- (d) Any other factor deemed relevant.*
- 3. After conducting a review pursuant to this section, the director or his or her designee may:*
- (a) Require the involuntary administration of psychotropic medication to the patient in the manner requested by the practitioner with the primary responsibility for treating the patient;*
- (b) Require the involuntary administration of psychotropic medication to the patient in the manner determined appropriate by the director or his or her designee; or*
- (c) Prohibit the involuntary administration of psychotropic medication to the patient.*
- 4. If the director or his or her designee requires the involuntary administration of psychotropic medication to a patient pursuant to subsection 3, the medication may be administered involuntarily to the patient for not more than 30 days. If the practitioner who is primarily responsible for treating the patient determines that it is necessary to continue administering medication to the patient for more than 30 days, the practitioner must request the consent of the patient. If the patient refuses to provide consent to continued administration*

*of the medication, the practitioner must submit another request to involuntarily administer psychotropic medication pursuant to section 10 of this regulation.*



## NOTICE OF PUBLIC WORKSHOP

NOTICE IS HEREBY GIVEN that the Division of Public and Behavioral Health will hold a public workshop to consider amendments to Nevada Administrative Code (NAC) Chapter 433A.

The workshop will be conducted via videoconference beginning at 9:00 AM on Thursday, February 6, 2020, at the following locations:

Division of Public and Behavioral Health 4150 Technology Way, Suite 300, Room 303 Carson City, NV 89706	Division of Public and Behavioral Health Bureau of Health Care Quality and Compliance 4220 South Maryland Parkway, Suite 810, Building D, Large Conference Room Las Vegas, NV 89119
--	--

These workshops will be conducted in accordance with NRS 241.020, Nevada's Open Meeting Law.

### **AGENDA**

1. Introduction of workshop process
2. Public comment on proposed amendments to Nevada Administrative Code Chapter 433A
3. Public Comment

The proposed changes will revise Chapter 433A of the Nevada Administrative Code and are being proposed in accordance with AB66 and AB85 passed during the 80<sup>th</sup> Session of the Nevada Legislature.

The proposed regulations provide provisions for the following:

- 1) Regulations governing mental health crisis hold data collection (attached).
- 2) Regulations governing behavioral health transportation services (attached).
- 3) Regulations governing medical examinations required for admission to a public or private mental health facility (attached).
- 4) Regulations governing the involuntary administration of medication in a public or private mental health facility (attached).

Members of the public may make oral comments at this meeting. Any proposed changes to draft regulations should be submitted in writing. Persons wishing to submit written testimony or documentary evidence may submit the material to Stephen Wood at the following address:

Division of Public and Behavioral Health  
4126 Technology Way, Ste. 200  
Carson City, NV 89706  
775-684-4185 (FAX)  
swood@health.nv.gov (email)

Members of the public who require special accommodations or assistance at the workshops are required to notify Stephen Wood in writing to the Division of Public and Behavioral Health, 4126 Technology Way, Suite 200, Carson City, Nevada, 89706, by calling 775-684-5974, or by sending an email to [swood@health.nv.gov](mailto:swood@health.nv.gov) at least five (5) working days prior to the date of the public workshop.

You may contact Stephen Wood by calling 775-684-5974 for further information on the proposed regulations or how to obtain copies of the supporting documents.

A copy of the notice and the proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours:

Division of Public and Behavioral Health  
4126 Technology Way, Ste. 200  
Carson City, NV 89706

Health Care Quality and Compliance  
4220 South Maryland Parkway, Suite 810, Building D  
Las Vegas, NV 89119

A copy of the regulations and small business impact statement can be found on the Division of Public and Behavioral Health's web page:

<http://dpbh.nv.gov/Programs/ClinicalSAPTA/dta/Statutes/SAPTAStatutes/>

A copy of the public workshop notice can also be found at Nevada Legislature's web page:

<https://www.leg.state.nv.us/App/Notice/A/>

A copy of this notice has been posted at the following locations:

1. Division of Public and Behavioral Health, 4150 Technology Way, First Floor Lobby, Carson City
2. Nevada State Library and Archives, 100 Stewart Street, Carson City
3. Legislative Building, 401 S. Carson Street, Carson City
4. Grant Sawyer Building, 555 E. Washington Avenue, Las Vegas
5. Washoe County District Health Department, 9<sup>TH</sup> and Wells, Reno
6. Bureau of Behavioral Health Wellness and Prevention, 4126 Technology Way, Suite 200, Carson City
7. Department of Health and Human Services, 4126 Technology Way, Suite 100, Carson City
8. Health Care Quality and Compliance, 4220 South Maryland Pkwy, Suite 810, Building D, Las Vegas

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 684-4190 in Carson City or (702) 486-6515, ext. 0, in Las Vegas.

Per NRS 233B.064(2), upon adoption of any regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

Mental Health Crisis Hold (Emergency Admission) Data collection recommendation

**Authority:**

NRS 433A as amended by Section 1, Subsection 5 of AB85 (2019):

I. **433A.** Each public or private mental health facility and hospital in this State shall, in the manner and time prescribed by regulation of the State Board of Health, report to the Division:

- (a) The number of applications for emergency admission received by the mental health facility or hospital pursuant to NRS 433A.160 during the immediately preceding quarter; and
- (b) Any other information prescribed by regulation of the State Board of Health.

Proposed Regulation of the State Board of Health

LCB FILE NO. RXXX-19I

Section 1. Chapter 433A of NAC is hereby created by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

***Sec. 2. As used in sections 2 to 7, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 2 through 7 of this regulation have the meanings ascribed to them in those sections.***

***Sec 3. "Hospital" means an establishment for the diagnosis, care, and treatment of human illness including care available 24 hours each day from persons licensed to practice professional nursing who are under the direction of a physician, services of a medical laboratory, and medical radiological, dietary, and pharmaceutical services as defined in NRS449.012.***

***Sec 4. "Public or private mental health facility" means a psychiatric hospital, crisis stabilization center, community triage center, or another similar facility which provides 24-hour care for the diagnosis, care, and treatment of mental illness"***

***Sec 5. The director or their designee of a public or private mental health facility or hospital must, within 48 hours of receiving or placing an individual under an application for emergency admission pursuant to NRS 433A, provide electronically into the systems approved by the Division of Public and Behavioral Health the following information:***

- ***Date and time the application for emergency admission was initiated***

- **Date and time the individual named in the application for emergency admission arrived at public or private mental health facility or hospital**
- **How the individual named in the application for emergency admission arrived at the hospital including:**
  - **Walked in**
  - **Was transported by:**
    - **A clinician, accredited agent, non-emergency secured behavioral health transport, emergency services, Family Member, Law Enforcement, Legal Guardian, or other.**
- **Payer Source which may include the following options:**
  - **Medicaid fee for service, Medicaid managed care, Medicare, Other (If other, please specify), payer/insurance, Private, Uninsured**
- **Patient gender which may include: male, female, X**
- **Patient age**

**Sec 6. Within 48 hours of discharge of an individual from a public or private mental health facility or hospital who is under an application for emergency admission or is placed under emergency admission pursuant to NRS 433A, the Director of that facility or designee, must provide electronically into the systems approved by the Division of Public and Behavioral Health the following information, if applicable:**

- **Date and time of hospital discharge**
- **Disposition of application for emergency admission including:**
  - **Application for emergency admission expired**
  - **Decertified by physician**
  - **Released to parent or guardian**
- **Public or private mental health hospitals referred to**
- **Date and time of Referral**
- **Disposition of referral: accepted or denied**
- **If denied, reason for denial including:**
  - **diagnosis mismatch, gender incapability, gender mismatch, insurance not accepted, no bed available, no transportation, previous service ineffective, resident incapability, unable to accommodate needs, waiting list, or other reason.**
- **Disposition of the emergency admission including:**
  - **Conversion to voluntary status**
  - **Date and time of petition filed pursuant to 433A.200 with the courts**
  - **Court decision on petition filed pursuant to 433A.200**
    - **Court order denying petition**
    - **Court ordered involuntary admission**



- ***Court continuance***
- ***Conversion to voluntary status when petition filed pursuant to 433A.200 is declined***
- ***Re- application for emergency admission based on new evidence within 24 hours of court dismissal filed pursuant to 433A.200***

***Sec 7. Quarterly, the Division shall provide to each regional behavioral health board a summary of the application for emergency admissions and emergency admissions data collected.***

NRS433A.160 Regulations Recommendation for Accredited Agents

**Authority:**

- I. NRS433A.160 as amended by Section 10, Subsection 1 of AB66 (2019):  
NRS 433 The State Board of Health shall adopt regulations providing for the licensure and regulations of providers of nonemergency secure behavioral health transport services by the Division.
- II. NRS433A.160 as amended by Section 11, Subsection 5 of AB85 (2019):  
NRS433A.165 (8). The State Board of Health shall adopt regulations governing the manner in which:
  - a) A person may apply to become an accredited agent of the Division; and
  - b) Accredited agents of the Division will be monitors and disciplined for professional misconduct

**Proposed Regulation of the State Board of Health**

**LCB FILE NO. RXXX-19I**

Section 1. Chapter 433A of NAC is hereby created by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

***Sec. 2. As used in sections 2 to 9, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 2 through 13 of this regulation have the meanings ascribed to them in those sections.***

***Sec. 3. "Accredited agent of the Division" means any person authorized by the Division to transport persons alleged to be a person in a mental health crisis to a mental health facility or hospital pursuant to NRS 433A.160.***

***Sec 4. "Behavioral health transportation services" means non-emergency secure behavioral health transport services pursuant to NRS 433 (Section 10 of AB66).***

***Sec 5. "Behavioral health condition" means an episode of behavioral health crisis as evidenced by extreme emotional distress that includes but is not limited to an acute episode of mental illness and/ or suicidal thoughts and/ or behavior that may co-occur with substance use and other disorders.***

***Sec 6. "Non-emergency secure behavioral health transport services" means the use of a motor vehicle, other than an ambulance, as defined in NRS 450B.040, or other emergency response vehicle, that is specifically designed, equipped and staffed to transport a person alleged to be in a mental health crisis or other behavioral health condition in a manner that:***

**Sec 7. Non-emergency secure behavioral health transport services may be used for the following transports:**

- a) *Facility-to-facility transport between facilities including but not limited to hospitals, public or private mental health facilities, and medical facilities.*
- b) *Transport to and from a facility arranged by individuals authorized by 433A.160 to arrange for transportation.*

**Sec. 8. The Division may authorize non-emergency secure behavioral health transport services and accredited agents to transport persons alleged to be in a mental health crisis to a public or private mental health facility or hospital pursuant to NRS 433A.160, and persons experiencing a behavioral health condition who are seeking voluntary admission to a public or private mental health facility or hospital pursuant to NRS 433A.140 .**

**Sec. 9.**

1. *To be eligible as an accredited agent of the Division the applicant must be able to provide behavioral health transportation services.*
2. *The Division will provide letters of “accredited agent status” to entities that meet the requirements within this section that will be valid for a period of two-years.*
3. *Accredited agents will be re-evaluated every two-years.*
4.  *Holders of an ambulance permit under NRS 450B are not subject to this regulation and may provide behavioral health transportation services.*

**Sec. 10. An accredited agent who is providing behavioral health transportation services, must meet the following requirements:**

1. *Provide operational policies and procedures including:*
  - a) *A description of how the accredited agent non-emergency secure transport will interface with hospitals, emergency patient receiving facilities, licensed mental health facilities, and other licensed or designated EMS providers,*
  - b) *A description of location(s) for stationing vehicle(s), equipment and supplies.*
  - c) *A written policy that describes how patients who require an ambulance will be refused for transport,*
  - d) *A written description of the service area for coordination with other licensed and designated providers,*
  - e) *A plan that explains the initial and recertification training required of employees*

- f) *A plan for staff to obtain required training,*
  - g) *A written policy that includes patients who are unable to pay for transport, and*
  - h) *A written protocol to activate 911 if an emergency medical situation arises,*
  - i) *Listing of every vehicle that will be utilized by the company as a behavioral health transportation vehicle by license plate number and Vehicle Identification Number,*
2. *Maintain documentation and records of and, upon request of the Division, provide:*
- a) *The names of staff members directly providing behavioral health transportation*
  - b) *Evidence of background checks as defined by NRS449.123 for staff directly providing behavioral health transportation*
  - c) *Evidence of driver's licenses for staff directly providing behavioral health transportation Staff obtaining required training and/or recertification*
  - d) *A copy of the certificate of insurance, or if seeking application provide proof of the ability to obtain insurance, from an insurance company authorized to write liability coverage in Nevada or through a self-insurance program to respond to damages due to operation of a vehicle in these minimum amounts;*
    - 1. *(i) liability insurance in the amount of \$1,000,000 for each individual claim, and*
    - 2. *(ii) liability insurance in the amount of \$1,000,000 for property damage from any one occurrence.*
3. *Ensure that staff directly providing behavioral health transportation and supportive services obtain, at minimum, the following training requirements for:*
- i. *4 hours of initial evidence informed and/ or evidence-based de-escalation training followed by annual recertification as prescribed by the training and;*
  - ii. *8 hours of initial evidence informed and/ or evidence based behavioral health training, including suicide prevention and intervention, opioid overdose prevention, and mental health and substance use awareness training and;*
  - iii. *Healthcare Provider cardiopulmonary resuscitation certification for employees driving or riding within a transport vehicle.*

4. *Provide a driver and an attendant, not to be seated in the passenger compartment of the vehicle, during the transport of the patient, while the patient is in the vehicle.*

**Sec. 11. Each vehicle designated to provide non-emergency secure behavioral health transport services:**

1. *Allows for observation of the person being transported; and*
2. *Prevents the person being transported from escaping from the vehicle or accessing the driver or the means of controlling the vehicle*  
*NRS433A.160 as amended by Section 10, Subsection 1 of AB66.*
3. *Must be maintained in safe operating condition, including its engine, body and other operating parts and equipment. The Division shall periodically, at least every 12 months, require the holder of an accredited agency letter to certify that the holder has had each vehicle under his or her control inspected by a State authorized garage that has found it to be in safe operating condition. The holder shall mail a copy of the certificate to the Division with each application for the renewal of a permit or upon request of the Division.*
4. *Shall have a driver's compartment separated from the passenger compartment in such a way that communication is not hindered and that the passenger is prohibited from accessing the driver or any of the operating components of the vehicle,*
5. *May have space in the passenger compartment for a gurney or stretcher adequate to allow for the head of the gurney or stretcher to be elevated to patient's comfort level if being used during transfer,*
6. *Shall have two or more traditional vehicle seats in the passenger compartment with appropriate seat belt restraints,*
7. *Shall be designed so that the interior of the passenger compartment is free of any exposed sharp edges or projections,*
8. *Shall be designed so that all doors will be locked and unable to open in the passenger compartment while the vehicle is in motion,*
9. *Shall be designed so that all windows in the passenger compartment will not open to allow sufficient space for a person to escape the vehicle. Additionally, windows should be of a material or covered by a material which allows the passenger to see out, while obscuring the view of anyone into the compartment from the outside.*
10. *Must be equipped with the following supplies:*
  - a) *a First Aid Kit*
  - b) *a fire extinguisher rated 2A:10BC or greater*
  - c) *a body fluid clean up kit*

- d) *Radio that connects the driver to a company dispatch center or a cell phone capable of dialing 9-1-1 to summon assistance.*

**Sec. 12. Each accredited agent shall submit a quarterly report to the Division which must include information concerning the behavioral health transportation services including, without limitation:**

- a) *The total number of transports*
- b) *The pick-up and drop off location (including county and/ or facility)*
- c) *The requesting entity*
- d) *The response time from request to patient pick up*
- e) *Patient's insurance type and status if known*
- f) *Any escapes, injuries, or other problems that occur during a transport*

**Sec. 13. The Division shall charge and collect nonrefundable fees to operate a non-emergency secure behavioral health transport service and for the accreditation of an agent in accordance with the following schedule:**

- 1. *Fees to operate a non-emergency secure behavioral health transport service are set as follows:*
  - a.) *Initial application for a permit \$900*
  - b.) *Renewal of a permit \$120*
  - C.) *Late renewal of a permit will incur an additional fee of \$70.00*
  - d.) *Inspection of new or additional vehicles \$23.00*
  - e.) *For the reinspection of a vehicle \$75.00*
- 2. *Fees for the accreditation of an agent:*
  - a.) *Initial accreditation \$24.00*
  - b.) *Renewal of an accreditation \$24.00*
  - C.) *Late renewal of an accreditation will incur an additional fee of \$50.00*

NRS433A.165 Regulations Recommendation

**Authority:** NRS433A.165 as amended by Section 12, Subsection 8 of AB85 (2019): NRS433A.165 (8). The State Board of Health shall adopt regulations to carry out the provisions of this section, including, without limitation, regulations that:

- (a) Define “emergency services or care” as that term is used in this section;
- (b) Prescribe a procedure to ensure that an examination is performed pursuant to paragraph (a) of subsection 1; and
- (c) Prescribe the type of medical facility that a person may be admitted to pursuant to subparagraph (2) of paragraph (b) of subsection 1.

**Proposed Regulation of the State Board of Health**

**LCB FILE NO. RXXX-19I**

Section 1. Chapter 433A of NAC is hereby created by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

***Sec. 2. As used in sections 2 to 7, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 2 and 7 of this regulation have the meanings ascribed to them in those sections.***

***Sec. 3. “Emergency services or care” means the provision of medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to occur.***

***Sec. 4. “Medical condition, other than a psychiatric condition, which requires immediate treatment” means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.***

***Sec. 5. “Examination” means a medical examination by a licensed physician or physician assistant licensed pursuant to chapter 630 or 633 of NRS or an advanced practice registered nurse licensed pursuant to NRS632.237, to determine whether or not the person has a medical condition other than a psychiatric condition which requires immediate treatment. This examination includes an assessment of symptoms of intoxication or withdrawal including a quantitative measure for blood alcohol level if indicated.***

***Sec. 6. (1.) No person alleged to be a person in a mental health crisis may be admitted to a public or private mental health facility pursuant to NRS433A.160, without an examination of the person being completed.***

**(2.) Upon completion of the examination, the examining practitioner will sign the medical examination section of the forms for admission pursuant to NRS433A.130 attesting to whether or not the person has a medical condition other than a psychiatric condition, which requires immediate treatment.**

**(3.) For transfers from an inpatient medical acute hospital or emergency department to a public or private mental health facility, the public or private mental health facility may request the following based upon their admission criteria:**

- a) A pregnancy test in any female of childbearing age, unless the test is medically inappropriate**
- b) A urine drug screen (UDS)**

**(4.) If a person alleged to be in a mental health crisis has a medical condition other than a psychiatric condition, which requires immediate treatment that will take longer than 72 hours to resolve,**

- a) The examining provider shall file a petition with the district court, on the first business day after determining such medical treatment is necessary.**
- b) The petition must include without limitation:**
  - 1. The medical condition of the person**
  - 2. The purpose of continuing medical treatment of the person**
  - 3. A copy of the application for emergency admission of the person (Section 1 of the mental health crisis packet)**
  - 4. A signed certificate (Section 3 of the mental health crisis packet).**
- c) Seven days after filing such a petition and every 7 days thereafter the examining provider shall file with the clerk of the district court an update of the medical condition and treatment of the person.**

**(5.) No public or private mental health facility may deny an emergency admission on the basis that the results of a UDS are pending, if in the opinion of the examining practitioner, the person is not in need of emergency services or care due to intoxication or withdrawal.**

**(6.) No public or private mental health facility may deny an emergency admission on the basis of a medical examination once the medical examination section of the forms for admission has been signed indicating the person does not have a medical condition, other than a psychiatric condition, that requires treatment. Completion of the medical examination does not guarantee the acceptance of a person in a mental health crisis by a public or private mental health facility if criteria for admission specific to that facility are not met. If the public or private mental health facility has additional questions or concerns, the accepting physician must consult with the examining practitioner.**



**Sec. 7. Pursuant to NRS433A.165, the type of medical facility that a person who is in mental health crisis, and is not in need of emergency services or care may be admitted to:**

- a public or a private mental health facility**
- a psychiatric hospital or a distinct unit of a hospital that provides acute long-term care to persons in a mental health crisis.**

“Involuntary Medication/ Denial of Rights” recommendation

Authority: NRS 433.324 as amended by Section 1, Subsection 1 of AB85 (2019):  
433.324 (1). The State Board of Health shall adopt regulations:

(a) For the care and treatment of persons with mental illness, persons with substance use disorders or persons with co-occurring disorders by all state agencies and facilities, and their referral to private facilities [;] , including, without limitation, regulations governing the procedure for the involuntary administration of medication to persons with mental illness;

Proposed Regulation of the State Board of Health

LCB FILE NO. RXXX-19I

**Section 1.** Chapter 433A of NAC is hereby created by adding thereto the provisions set forth as sections x to x, inclusive, of this regulation.

**Section 2.** As used in sections 2 to 8, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 2 to 5 of this regulation have the meanings ascribed to them in those sections.

**Section 3.** “Public or private mental health facility” means a psychiatric hospital, crisis stabilization center, community triage center, or another similar facility which provides 24-hour care for the diagnosis, care, and treatment of mental illness.

**Section 4.** “Involuntary administration of medication review committee” means the committee who votes to support or deny the request for involuntary administration of medications, and is composed of three individuals, two of whom must be licensed mental health professionals, one of whom must be a psychiatrist and none of whom may be currently involved in the patient’s diagnosis or treatment or serve as the medical director or designee who reviews the decision of the committee.

**Section 5.** “Involuntary Administration of Medication” means the administration of psychotropic medications to a person without their consent as prescribed by a provider who is licensed in the state of Nevada to prescribe medications to treat the symptoms of mental illness. The term does not include chemical restraint as defined in NRS 433.5456 or medications administered in an emergency as defined in NRS 433.5466.

**Section 6.** Requirements for involuntary administration of medications process:

1. The person is currently held at a public or private mental health facility pursuant to the filing of a petition for involuntary admission under NRS

433A or is currently under court ordered involuntary admission pursuant to NRS 433A.310.

2. Recommendation of medications and consent process:
  - a. The treating provider must determine that the patient is gravely disabled or at serious risk of harm to self or others, requiring the administration of psychotropic medications.
  - b. The treating provider must explain to the patient the nature of his or her condition for which medications are recommended, the risks and benefits of the medications to be prescribed, including possible side effects of the medications and alternative treatments as well as possible outcomes if the condition remains untreated. The patient then must be given the opportunity to provide written informed consent to treatment.
  - c. This process must be documented in the patient's health record.
3. The patient has not consented to medications as recommended by providers.

### **Section 7 Review Process**

1. Upon patient's documented refusal to consent to medications, the review process must be initiated.
  - a. A committee review will be scheduled for at least 24 hours, not including weekends or holidays, after the provider's request for committee review has been initiated.
2. Patient rights during involuntary administration of medication process.
  - a. The patient will be provided notice of the following rights to due process at the initiation of the involuntary administration of medication process:
    - i. The right to receive notice, no less than 24 hours, not including weekends or holidays, in advance of the committee review, during which time they may not be medicated with psychotropic medications in absence of an emergency.
    - ii. The right to be informed of their diagnosis, the factual basis for the diagnosis, and why the treatment team believes medications are necessary.
    - iii. The right to be present for the entirety of the proceedings.

- iv. The right to cross-examine any staff or witnesses the committee interviews.
  - v. The right to present evidence, including witnesses.
  - vi. The right to assistance from an advisor.
  - vii. The right to receive a copy of the minutes of the committee meeting.
  - viii. The right to object to the review committee's decision to the medical director.
3. The advisor for the committee review will be an individual who meets the following criteria:
- a. The role of the advisor is to assist the patient to communicate their position to the committee. The advisor will not express their own opinion as to the appropriateness of the proposed treatment.
  - b. The advisor is not involved in the patient's current episode of care;
  - c. The advisor understands psychiatric issues; and
  - d. The advisor has received training on the purpose and process of the committee review and the role of the advisor.
  - e. The advisor will meet with the patient in sufficient time prior to the committee review to prepare for the committee review.
4. The committee review process:
- a. The involuntary administration of medication review committee may approve the use of the psychotropic medications, if the majority, which must include the psychiatrist, finds that the patient is at serious risk of harm to self or others or unable to care for self in the public or private mental health facility.
  - b. Unless the patient indicates in writing or through their advisor that they do not intend to participate in the committee review, the proceedings will not commence until the patient has arrived.
  - c. Factors the involuntary administration of medication review committee must consider include:
    - i. The patient's stated objections, if any, to the medications;
    - ii. Whether or not patient completed a psychiatric advanced directive per NRS 449A.600- 645, and if they directed staff to provide care that is consistent with their condition;
    - iii. Any and all documents or evidence offered by the patient;
    - iv. Any witness testimony offered by the patient or on the patient's behalf;
    - v. Whether the patient is at risk of harming themselves, others, or is gravely disabled, without the medications in the facility;

- vi. Whether the patient cannot improve without the medications, or whether the patient would improve but at a significantly slower rate.
  - vii. Whether there are less restrictive means that would accomplish the same or similar results;
  - viii. The patient's prior experience with the proposed medications; and,
  - ix. Other factors deemed relevant by the committee and noted in its decision.
  - x. The committee may interview any person it feels may be of assistance in conducting its review and/ or receive any additional documents offered on the behalf of staff or the patient.
- d. A record of the committee review will be maintained either in writing or by recording. Official minutes will be transcribed for record keeping, placed in the patient's health record, and a copy will be provided to the patient.
  - e. The decision of the committee will be documented in the patient's health record and will be forwarded to the medical director for review.
5. Review by the medical director:
- a. The medical director or designee, who must be a psychiatrist, will review the committee's decision within 24 hours, not to include weekends and holidays, of the committee review. The medical director will consider the following factors:
    - i. Whether the proper procedures were followed by the committee.
    - ii. Whether the proposed medications are medically appropriate based upon the patient's diagnosis and medical history.
    - iii. Any objection that is brought forth by the patient.
    - iv. Any other factors or records deemed relevant by the medical director or designee.
    - v. The medical director will also review the health record and any other documents that were presented to the committee during the review.
    - vi. The medical director may interview any persons deemed to assist in the review and may conduct an independent examination of the patient.
    - vii. The medical director or designee provides final approval or overrides the committee's decision through the following actions:
      - 1. may approve the medications as prescribed;

2. modify the prescribed medications; or
3. disapprove of the medications all together.

6. Administration of Medications:

- a. If the medical director or designee confirms that the medications are appropriate and necessary and the patient continues to refuse to consent to treatment, the patient may be medicated without their permission. No medication shall be given until the entire process is carried out.

7. Continuation of Medications:

- a. Medications can continue for 30 days after initial approval by the medical director. In the event that the patient continues to refuse to consent to treatment, a committee review to continue involuntary administration of medications is necessary to continue treatment beyond 30 days. The medications can only continue with either consent from the patient or committee review.

**Section 8.** If a public or private mental health facility does not have a process in place that contains the necessary elements identified in Sec 7 of this regulation, the provider treating the patient will petition the committing court for an order for involuntary administration of medications.

## SMALL BUSINESS IMPACT STATEMENT 2020

### PROPOSED AMENDMENTS TO NAC 433A

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments should have no adverse effect upon a small business or the formation, operation or expansion of a small business in Nevada.

A small business is defined in Nevada Revised Statutes NRS 233B as a "business conducted for profit which employs fewer than 150 full-time or part-time employees."

This small business impact statement is made pursuant to NRS 233B.0608 (3) and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business in sections 1, 2, 3, and 4 below and provides the reasons for the conclusions of the agency in section 8 below followed by the certification by the person responsible for the agency.

#### **Background**

The regulation recommendations addressed in by this statement are a result of the passage of AB66 and AB85 of the 80<sup>th</sup> Session of the Nevada Legislature in 2019. There are four recommendations in total regarding four topics related to the statute changes to NRS433 and NRS433A made by AB66 and AB85. The topics are as follows: 1. mental health crisis hold data collection, 2. behavioral health transportation services, 3. medical examinations required for admission to a public or private mental health facility, and 4. involuntary administration of medication in a public or private mental health facility.

There was only one small business, Guardian Transportation, that was identified that could potentially be impacted by the implementation of these regulations. A small business impact questionnaire was sent to Guardian Transportation. Guardian Transportation returned the questionnaire to the Division indicating that there is no economic or indirect impact on their business as a result of these regulations.

Anyone who wishes to obtain a copy of the small business impact statement may contact Stephen Wood at Nevada Division of Public and Behavioral Health, 4126 Technology Way, Carson City, NV 89706.

Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health has requested input from Guardian Transportation. A Small Business Impact Questionnaire was sent to Guardian Transportation along with a copy of the proposed regulation changes, on January 6, 2020. The questions on the questionnaire were:

- 1) How many employees are currently employed by your business?
- 2) Will a specific regulation have an adverse economic effect upon your business?
- 3) Will the regulation(s) have any beneficial effect upon your business?

- 4) Do you anticipate any indirect adverse effects upon your business?
- 5) Do you anticipate any indirect beneficial effects upon your business?

**Summary of Response**

<b>Summary Of Comments Received</b> (1 response was received out of 1 small business impact questionnaire distributed)			
<b>Will a specific regulation have an adverse economic effect upon your business?</b>	<b>Will the regulation (s) have any beneficial effect upon your business?</b>	<b>Do you anticipate any indirect adverse effects upon your business?</b>	<b>Do you anticipate any indirect beneficial effects upon your business?</b>
No	No	No	No

<b>Number of Respondents out 1</b>	<b>Adverse economic effect?</b>	<b>Beneficial effect?</b>	<b>Indirect adverse effects?</b>	<b>Indirect beneficial effects?</b>
1	None	None	None	None

**No analysis was required since no effect on small business was identified.**

The Division of Public and Behavioral Health has held several opportunities to provide input and comments regarding the proposed regulations, including the economic impact the proposed regulations may have on small business. Workshops will be held on February 6, 2020 allowing for further input regarding the proposed regulations and how they will impact small business. These comments will be taken into consideration for possible further revisions to the regulations to reduce the economic impact on facilities.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Stephen Wood at the Division of Public and Behavioral Health at:

Division of Public and Behavioral Health  
 4126 Technology Way, Suite 200  
 Carson City, NV 89706  
 Stephen Wood  
 Phone: 775-901-2937  
 Email: [swood@health.nv.gov](mailto:swood@health.nv.gov)



**Certification by Person Responsible for the Agency**

I, Lisa Sherych, Administrator of the Division of Public and Behavioral Health certify to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and the information contained in this statement was prepared properly

Signature



Date: 1/21/2020

