



July 27, 2020

To: Jon Pennell, DVM, 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) 449, "Medical Facilities and Other Related Entities", LCB File No. R016-20.

PURPOSE OF AMENDMENT

The main purpose of the amendment is to bring the regulations into compliance with NRS 449.101, NRS 449.103 and NRS 449.104 which were adopted as a result of the 2019 legislative session by setting forth specific types of prohibited discrimination; prohibiting certain facilities from discriminating against a patient or resident of the facility based on the source of payment for services provided; requiring certain facilities to post certain notices and information and to provide written copies of certain statements, notices and information to patients or residents of the facilities; requiring the statements, notices and information that a facility posts to meet certain posting requirements; clarifying how a patient or resident or authorized representative of a patient or resident provides express permission in certain situations; requiring certain facilities to provide cultural competency training through a course or program approved by the Director of the Department of Health and Human Services; establishing procedures for obtaining approval for such a course or program; requiring certain facilities to ensure that a patient or resident is addressed by their preferred name and pronoun in accordance with their gender identity and to adapt the records of the patient or resident to reflect diverse gender identities and expressions; requiring certain statements, notices and information be provided in English and certain other languages; and requiring certain facilities to designate a representative of the facility to ensure compliance with discrimination and cultural competency statutes and regulations.

SUMMARY OF CHANGES TO NEVADA ADMINISTRATIVE CODE (NAC)

The Board of Health last revised regulations related to the prohibition of discrimination in NAC Chapter 449 in 2014.

The proposed regulations bring NAC Chapter 449 into compliance with NRS 449.101, 103 and 104 by:

- Specifying the types of prohibited discrimination including: (1) discrimination that results in a person not being treated with dignity; (2) indirect discrimination that may or may not be intentional and which results from the uniform application of policies in a nondiscriminatory manner; (3) discrimination which is based wholly or partially on the discriminated person associating with certain other persons; and (4) harassment or bullying of any kind of a person.
- Prohibiting a facility from discriminating against a patient or resident based on the source of payment for the services provided.
- Requiring impacted facilities to post prominently in the facility and on any Internet website used to market the facility: (1) notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the Division of Public and Behavioral Health of the Department of Health and Human Services; and (2) the contact information for the Division.

- Setting forth the specific requirements with which a statement, notice and information posted by a facility must comply, including: (1) how large the letters and the physical copy of the statement, notice and information must be; and (2) where such a statement, notice and information must be posted.
- Requiring a medical facility, facility for the dependent or certain other licensed facilities to provide a patient or resident, upon admission : (1) a written copy of the statement, notice and information required by existing law and section 9 of the proposed regulations; and (2) a written notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the facility in addition to the complaint that may be filed with the Division.
- Requiring a facility to: (1) develop and adopt a written policy on how a complaint filed with the facility is documented, investigated and resolved; and (2) maintain a log that lists certain information.
- Clarifying that to provide express permission, a patient or resident or the authorized representative of the patient or resident must provide such permission in writing.
- Imposing the requirement that a facility conduct training relating specifically to cultural competency for any agent or employee of the facility who provides care to a patient or resident of the facility and that the course or program provided be approved by the Director of the Department or his or her designee.
- Requiring a facility to submit to the Department the course or program through which a facility will provide the cultural competency training.
- Requiring the health records that a medical facility keeps include certain information and requires the medical facility to develop a procedure to ensure the information of a patient or resident accurately reflects the diverse gender identities or expressions of patients or residents when interacting with insurance providers.
- Requiring the statements, notices and information that are provided to patients or residents concerning prohibited discrimination be in English and in any other language the Department determines is appropriate based on the demographic characteristics of this State. In addition to these languages, the proposed regulations authorize a facility to provide the statements, notices and information in any foreign language the facility may desire.
- Requires a facility to make reasonable accommodations for patients or residents who: (1) do not read or speak English or any other language in which the statements, notices and information are written; and (2) have certain communication impairments.
- Requires a facility to designate a representative of the facility who is responsible for ensuring that the facility complies with the provisions of existing law and this regulation.

POSSIBLE OUTCOME IF PROPOSED AMENDMENT IS NOT APPROVED

If the proposed amendments are not approved, the Board of Health would not be in compliance with NRS 449.101, NRS 449.103 and NRS 449.104.

APPLICABILITY OF PROPOSED AMENDMENT

These regulations will apply statewide to all medical facilities, facilities for the dependent and facilities which are otherwise required by regulations adopted by the Board pursuant to NRS 449.0303 to be licensed.

PUBLIC COMMENT RECEIVED

An outline of opportunities for public comment follows:

Pursuant to NRS 233B.0608 (2) (a), the Division of Public and Behavioral Health requested input from medical facilities, facilities for the dependent and facilities which are otherwise required by regulations adopted by the

Board pursuant to NRS 449.0303 to be licensed. A Small Business Impact Questionnaire was sent to these facilities along with information on how to obtain a copy of the proposed regulations on November 13, 2019. These were also posted on the Division’s website.

Below is a summary of the responses to the questionnaire.

Will a specific regulation have an adverse economic effect upon your business?	Will the regulation(s) have any beneficial effect upon your business?	Do you anticipate any indirect adverse effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?
Yes – 18 No – 14	Yes – 7 No – 23	Yes – 18 No – 11	Yes – 7 No – 20
<p>Comments* – The bullets below summarize major points from respondent comments.</p> <ul style="list-style-type: none"> -Length of training (more than 1 hour is extreme strain) -Changes to computer system -Proposed regs state “almost nothing” about curriculum. -Need free, online training -Changes to computer tracking -Possible daily fines for noncompliance -Requirement for experienced, qualified instructor 	<p>Comments* - Some beneficial effects included:</p> <ul style="list-style-type: none"> - “Home health staff and field staff will be considerate to all different cultures we take care at home.” - “We have an extremely diverse workforce in our city. It is important for team building and better caregiving to teach this information to the employees.” 	<p>Comments* – The bullets below summarize major points from respondent comments*.</p> <ul style="list-style-type: none"> -Increased reporting -Cost passed to residents. -Overhead costs -Time spent on processes vs. resident care -Adding significant costs for training -Penalties (for noncompliance) -Increase in cost for onboarding of new employees 	<p>Comments* – Some indirect beneficial effects included:</p> <ul style="list-style-type: none"> - “Better trained team members with awareness of a variety of areas is always helpful. It comes down to time involvement and content/follow up required- and how that is balanced with other regulations and priorities.” - “Helps my field staff how to handle different culture of patients.” - “I think as humans within this world, it is important to offer education on how to live and enjoy people’s differences and various cultures and religions.”

*To review all comments submitted please reference Attachment: Cultural Competency Proposed Regulations Small Business Impact Questionnaire Responses.

January 29, 2020 – Public Workshop

A public workshop was held via videoconference on Wednesday, January 29, 2020 at 10 a.m. at the following locations:

Division of Public and Behavioral Health
Bureau of Health Care Quality and Compliance
727 Fairview Drive, Suite E
Carson City, NV 89701

Division of Public and Behavioral Health
Bureau of Health Care Quality and Compliance
4220 South Maryland Parkway,
Suite 810, Building D
Las Vegas, NV 89119

Division of Health Care Financing and Policy
1010 Ruby Vista Drive #103, Elko,
NV 89801

Below is a summary of the feedback provided during the public workshop.

A total of thirty-eight (38) individuals signed the public workshop sign in sheets. Of those two individuals noted they were opposed, and one person noted they were in support. The remaining individuals did not indicate whether they were in support or opposed to the proposed regulations.

The public workshop notice was posted on the LCB website and distributed to impacted facilities on or before January 13, 2020.

- GENERAL COMMENTS
 - Can existing regulations be fixed instead of rewriting them?
 - Deadlines specified in the regulations are too tight – they should be extended so facilities can meet the standards.
 - Annual review needs a longer time period to respond...not enough time to be thorough.
 - Changing “maternal” to “pregnant may be appropriate but is beyond the scope of the bills”.
 - Reference to Indirect Discrimination is not in the bills, is vague, and not understood, so should be omitted. LTC (long term care) provider is not responsible.
 - “Agent” should be clarified. It doesn’t include most physicians.
- TRAINING
 - The draft regulation doesn’t distinguish between courses from the training division, a private group, or in house to the facility.
 - The state needs to offer a standard program and allow the facility to modify.
 - The State needs to create an online program offered at no cost to the facility (multiple comments).
 - Section 5 – course content – inclusion of ‘self-reflection’ is unusual. Long term care provider is not responsible. Providing the document should be sufficient and should not be required.
 - Training pulls the caregiver away from provider care – regulations should be minimal to meet statutory requirement but nothing more.
 - The curriculum advisory group (CCAG) doesn’t include a member from a facility.
 - CCAG is not authorized by the bills, though may need to be considered/no statutory requirement/no health care facility involvement.
- MEDICAL RECORDS
 - Altering historical medical records is dangerous, and the H&P (History and Physical) process during intake should cover necessary issues.

The proposed regulations were revised based on feedback during the regulation development process as well as from LCB. The major changes included:

- 1) Adding the course materials that must be included in a course or program.
- 2) Removing the establishment of a Cultural Competency Advisory Group.
- 3) Limiting the scope of the organ inventory a medical facility is required to obtain, only if the gender identity or expression of the patient or resident is different than the gender identify or expression of the patient or resident that was assigned at birth.
- 4) Allows a facility to develop and adopt a written policy on how a complaint with the facility is filed pursuant to section 11 of the proposed regulations and removed prescriptive language, allowing facilities flexibility in developing a policy tailored to each individual facility.
- 5) Revised the requirements related to providing statements, notices and information required by the regulations to be in other languages as the Department determines is appropriate based on the

demographics of Nevada. It also requires facilities to make reasonable accommodations in providing statements, notices and information, pursuant to the proposed regulations, for patients or resident who are unable to read, are blind or visually impaired, have communication impairments, or do not read or speak English or any other language in which the statements, notices and information are written. The purpose of these changes is to accommodate these patients and residents, while limiting the impact to facilities.

In conclusion, the regulations were revised in a manner that reflected much, although not all of the feedback provided by industry, in a manner that continues to meet the intent of the statutes while reducing the negative impact to facilities.

STAFF RECOMMENDATION

Staff recommends the State Board of Health adopt the proposed regulation amendments to Nevada Administrative Code (NAC) 449, "Medical Facilities and Other Related Entities", LCB File No. R016-20.

PRESENTER

Leticia Metherell, Health Bureau Chief

Enclosures



NOTICE OF PUBLIC HEARING

Intent to Adopt Regulations

LCB File No. R016-20

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 449 of Nevada Administrative Code (NAC), Medical Facilities and Other Related Entities, LCB File No. R016-20. This public hearing is to be held in conjunction with the State Board of Health meeting on September 4, 2020.

The State Board of Health will be conducted via teleconference only beginning at 9:00 AM on September 4, 2020.

Phone: 1-669-900-6833
(Access code: 775-684-5906)

Pursuant to Governor Sisolak's March 22, 2020, Declaration of Emergency Directive 006, the requirement contained in NRS 241.023(1)(b) that there be a physical location is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). Accordingly, all members of the public must participate by using the teleconference number provided in this notice.

The proposed changes to NAC Chapter 449 include the following major provisions:

- Specifies the types of prohibited discrimination including: (1) discrimination that results in a person not being treated with dignity; (2) indirect discrimination that may or may not be intentional and which results from the uniform application of policies in a nondiscriminatory manner; (3) discrimination which is based wholly or partially on the discriminated person associating with certain other persons; and (4) harassment or bullying of any kind of a person.
- Prohibits a facility from discriminating against a patient or resident based on the source of payment for the services provided.
- Requires impacted facilities to post prominently in the facility and on any Internet website used to market the facility: (1) notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the Division of Public and Behavioral Health of the Department of Health and Human Services; and (2) the contact information for the Division.
- Sets forth the specific requirements with which a statement, notice and information posted by a facility must comply, including: (1) how large the letters and the physical copy of the statement, notice and information must be; and (2) where such a statement, notice and information must be posted.
- Requires a medical facility, facility for the dependent or certain other licensed facilities to provide a patient or resident, upon admission : (1) a written copy of the statement, notice and information required by existing law and section 9 of the proposed regulations; and (2) a written notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the facility in addition to the complaint that may be filed with the Division.
- Requires a facility to: (1) develop and adopt a written policy on how a complaint filed with the facility is documented, investigated and resolved; and (2) maintain a log that lists certain information.
- Clarifies that to provide express permission, a patient or resident or the authorized representative of the patient or resident must provide such permission in writing.

- Imposes the requirement that a facility conduct training relating specifically to cultural competency for any agent or employee of the facility who provides care to a patient or resident of the facility and that the course or program provided be approved by the Director of the Department or his or her designee.
- Requires a facility to submit to the Department the course or program through which a facility will provide the cultural competency training.
- Requires: (1) the health records that a medical facility keeps include certain information; and (2) the medical facility to develop a procedure to ensure the information of a patient or resident accurately reflects the diverse gender identities or expressions of patients or residents when interacting with insurance providers.
- Requires the statements, notices and information that are provided to patients or residents concerning prohibited discrimination be in English and in any other language the Department determines is appropriate based on the demographic characteristics of this State. In addition to these languages, the proposed regulations authorize a facility to provide the statements, notices and information in any foreign language the facility may desire.
- Requires a facility to make reasonable accommodations for patients or residents who: (1) do not read or speak English or any other language in which the statements, notices and information are written; and (2) have certain communication impairments.
- Requires a facility to designate a representative of the facility who is responsible for ensuring that the facility complies with the provisions of existing law and this regulation.

1. Anticipated effects on the business which NAC Chapter 449 regulates:

A. Adverse effects: NRS 449.104 requires the Board of Health to adopt regulations requiring facilities noted in the bill to adapt electronic records to reflect the gender identities or expressions of patients or residents with diverse gender identities or expressions, and if the facility is a medical facility, adapting health records to meet the medical needs of patients or residents. In addition, NRS 449.103, requires facilities noted in the bill to conduct cultural competency training. Although the Division does recognize that there may be a direct adverse financial effect to certain facilities, the proposed regulations carry out the provisions of NRS 449.0302, and NRS 449.101 to NRS 449.104 while taking measures to reduce the financial impact of the proposed regulations on small businesses.

B. Beneficial: Although some respondents included beneficial effects on their business, it was not clear that these would result in direct economic beneficial effects. The proposed regulations may result in indirect beneficial effects. Responses to the small business impact questionnaire included that teaching the information in the regulations is important for team building and better caregiving and that better trained team members with awareness of a variety of areas is always helpful.

According to the Georgetown University, McCourt School of Public Policy, Health Policy Institute:

“A culturally competent health care system can help improve health outcomes and quality of care, and can contribute to the elimination of racial and ethnic health disparities. Examples of strategies to move the health care system towards these goals include providing relevant training on cultural competence and cross-cultural issues to health professionals and creating policies that reduce administrative and linguistic barriers to patient care.”

“People with chronic conditions require more health services, therefore increasing their interaction with the health care system. If the providers, organizations, and systems are not working together to provide culturally competent care, patients are at higher risk of having negative health consequences, receiving poor quality care, or being dissatisfied with their care.”

According to internal analysis, improved patient satisfaction through better interactions with staff may lead to improved public relations and a larger customer base. Cultural competency training, stricter anti-discrimination requirements, and adapting health records to meet the medical needs of patients may mitigate risk from poor patient care (including possible abuse or neglect) that may reduce potential for lawsuits and associated financial loss.

- C. *Immediate:* Facilities would need to take action, upon passage of the regulations, to prohibit discrimination and provide cultural competency training to agents or employees being contracted or hired, to help agents and employees to more effectively treat patients or care for residents and better understand individuals who have different cultural backgrounds. Immediate adverse effects may include increased costs to provide the initial cultural competency trainings.
- D. *Long-term:* Long-term beneficial benefits include better health outcomes, improved quality of care and increased patient satisfaction for all patients. Long-term adverse effects may include increased cost and resources to provide the annual cultural competency training.

2. Anticipated effects on the public:

- A. *Adverse:* No adverse effects to the public are anticipated.
- B. *Beneficial:* The beneficial effects on the public may include better health outcomes, improved quality of care and increased patient satisfaction for all patients.
- C. *Immediate:* Immediate beneficial benefits include moving facilities towards providing care that more effectively treats patients with an improved understanding of cultural background which may improve public health and safety. There are no anticipated immediate adverse effects on the public.
- D. *Long-term:* Long-term beneficial benefits include better health outcomes, improved quality of care and increased patient satisfaction for all patients. There are no anticipated long-term adverse effects anticipated to the public.

3. The estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulation.

These proposed regulations will not add any costs to the current regulatory enforcement activities conducted by HCQC. The facilities impacted by the new laws are already licensed and inspected by HCQC and these new training and posting/patient notification requirements can be incorporated into HCQC's current workload.

Overlapping or duplicate Nevada state regulations addressing discrimination in health care facilities are omitted in the proposed regulation in order to ensure consistency in carrying out the statutory requirements for all impacted health care facilities and to avoid the potential for regulations that may conflict with each other.

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 August 20, 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:

Nevada Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, NV 89701

Nevada Division of Public and Behavioral Health
4220 S. Maryland Parkway, Suite 100, Building A
Las Vegas, NV 89119

A copy of the regulations and small business impact statement can be found on-line by going to:
http://dpbh.nv.gov/Reg/HealthFacilities/State_of_Nevada_Health_Facility_Regulation_Public_Workshops/

A copy of the public hearing notice can also be found at Nevada Legislature's web page:
<https://www.leg.state.nv.us/App/Notice/A/>

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 684-1030 in Carson City or (702) 486-6515 in Las Vegas.

If the public library is open during the COVID-19 pandemic, copies may be obtained from one of the public libraries listed below:

Carson City Library
900 North Roop Street
Carson City, NV 89702

Churchill County Library
553 South Main Street
Fallon, NV 89406

White Pine County Library
950 Campton Street
Ely, NV 89301-1965

Clark County District Library
1401 East Flamingo Road
Las Vegas, NV 89119

Douglas County Library
1625 Library Lane
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County Library
Corner of Crook and 4th Street
Goldfield, NV 89013-0484

Eureka Branch Library
80 South Monroe Street
Eureka, NV 89316-0283

Henderson District Public Library
280 South Green Valley Parkway
Henderson, NV 89012

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445-3095

Lander County Library
625 South Broad Street
Battle Mountain, NV 89820-0141

Lincoln County Library

Lyon County Library

93 Maine Street
Pioche, NV 89043-0330

Mineral County Library
110 1st Street
Hawthorne, NV 89415-1390

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419-0781

Tonopah Public Library
167 Central Street
Tonopah, NV 89049-0449

20tNevin Way
Yerington, NV 89447-2399

Pahrump Library District
701 East Street
Pahrump, NV 89041-0578

Storey County Library
95 South R Street
Virginia City, NV 89440-0014

Washoe County Library
301 South Center Street
Reno, NV 89505-2151

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.

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 449 related to cultural competency in compliance with Senate Bills 364 and 470 of the 2019 session.

The workshop will be conducted via videoconference beginning at 10 a.m. on Wednesday, January 29, 2020 at the following locations:

Division of Public and Behavioral Health Bureau of Health Care Quality and Compliance 727 Fairview Drive, Suite E Carson City, NV 89701	Division of Public and Behavioral Health Bureau of Health Care Quality and Compliance 4220 South Maryland Parkway, Suite 810, Building D Las Vegas, NV 89119	Division of Health Care Financing and Policy 1010 Ruby Vista Drive #103, Elko, NV 89801
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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 449 related to cultural competency in compliance with Senate Bills 364 and 470 of the 2019 session.
3. Public Comment

The proposed changes will revise Chapter 449 of the Nevada Administrative Code and bring the regulations into compliance with Senate Bills 364 and 470 of the 2019 legislative session.

The proposed regulations provide provisions for the following:

- 1) Outlines the requirements to be included in a cultural competency course or program application to be submitted to the Division and process for approval.
- 2) Requires the Division to make available the cultural competency course or program standards on the Division's website.
- 2) Allows for the approval of cultural competency courses or programs provided by a nationally recognized organization, a governmental agency, or an accredited college or university, as long as the course or program provides a proof of completion.
- 3) Requires the Division to establish a Cultural Competency Advisory Group whose main purpose is to meet every other year to review the cultural competency course or program standards to determine if the standards require revision. It does allow for more frequent meetings as otherwise called by the Chair of the Cultural Competency Advisory Group, upon request of the Director of the Department or Administrator of the Division or their designees.
- 4) Outlines the process for approval of revised cultural competency courses or programs.
- 5) Requires each agent or employee of a facility who provides care to a patient or resident of a facility to complete an approved cultural competency course or program within 30 business days of hire and annually after hire.

- 6) Outlines the minimum posting requirements for a facility to post the prohibited discrimination statement required by Senate Bill 364 of the 2019 legislative session and for patients or residents who have experienced prohibited discrimination to file a complaint with the Division. It also requires a health care facility to provide such notice in writing to each patient or resident upon admission.
- 7) Outlines the facility complaint/grievance process to take when a patient or resident who has experienced prohibited discrimination files a complaint or grievance with the facility.
- 8) Requires a facility to develop policies to ensure patients or residents are addressed by their preferred name and pronoun and in accordance with their gender identity or expression and to adapt electronic records and any paper records the facility has, to reflect gender identities or expressions of patients or residents with diverse gender identities or expressions and outlines the information to be included in their adapted records.
- 9) Outlines the specific types of prohibited discrimination.
- 10) Requires a facility to report older person, vulnerable person, or child abuse or neglect in accordance with statutory requirements.
- 11) Requires a facility to demonstrate the ability to read, write, speak and communicate effectively with patients or residents residing in their facility.
- 12) Requires a facility to adopt and maintain policies and procedures for transfer and discharge of patients or residents that do not discriminate against a patient based on the source of payment for services provided.
- 13) Requires facilities to make available to the Division, upon request, any documentation required for the Division to determine compliance with the proposed regulations.
- 14) Amends existing regulatory language in NAC Chapter 449 to remove references such as, “he”, “she”, “her”, “his”, “himself”, “herself”, “maternal”, and “maternal patient” with words such as “they”, “their”, “them”, “pregnant patient/client”, as applicable.
- 15) Omits several regulations in NAC Chapter 449 relating to the prohibition of discrimination so that the regulations are in compliance and consistent with the prohibition of discrimination requirements of Senate Bills 364 and 470.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence may submit the material to Leticia Metherell, Health Program Manager III at the following address:

Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, NV 89701
775-684-1073 (FAX)
lmetherell@health.nv.gov (E-mail)

Members of the public who require special accommodations or assistance at the workshops are required to notify Leticia Metherell, Health Program Manager III, in writing to the Division of Public and Behavioral Health, 727 Fairview Drive, Suite E, Carson City, Nevada, 89701, or by calling (775) 684-1030 at least five (5) working days prior to the date of the public workshop.

You may contact Leticia Metherell, Health Program Manager III, as noted above, for further information on the proposed regulations.

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
727 Fairview Drive, Suite E
Carson City, NV

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

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

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/Reg/HealthFacilities/State_of_Nevada_Health_Facility_Regulation_Public_Workshops

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/>

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 684-1030 in Carson City or (702) 486-6515 in Las Vegas.

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, 9TH and Wells, Reno

Copies may also be obtained from any of the public libraries listed below:

Carson City Library
900 North Roop Street
Carson City, NV 89702

Churchill County Library
553 South Main Street
Fallon, NV 89406

Clark County District Library
833 Las Vegas Boulevard North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County Library
Corner of Crook and 4th Street
Goldfield, NV 89013-0484

Eureka Branch Library

Henderson District Public Library

210 South Monroe Street
Eureka, NV 89316-0283

280 South Water Street
Henderson, NV 89105

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445-3095

Lander County Library
625 South Broad Street
Battle Mountain, NV 89820-0141

Lincoln County Library
93 Maine Street
Pioche, NV 89043-0330

Lyon County Library
20th Nevada Way
Yerington, NV 89447-2399

Mineral County Library
110 1st Street
Hawthorne, NV 89415-1390

Pahrump Library District
701 East Street
Pahrump, NV 89041-0578

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419-0781

Storey County Library
95 South R Street
Virginia City, NV 89440-0014

Tonopah Public Library
167 Central Street
Tonopah, NV 89049-0449

Washoe County Library
301 South Center Street
Reno, NV 89505-2151

White Pine County Library
950 Campton Street
Ely, NV 89301-1965

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.

**REVISED SMALL BUSINESS IMPACT STATEMENT, 2020
PROPOSED AMENDMENTS TO NAC 449**

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments to the Nevada Administrative Code (NAC) maybe have a financial impact 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

1) The proposed regulations bring the Board of Health into compliance with NRS 449.0302, and NRS 449.101 to NRS 449.104. The proposed regulations address cultural competency training and the prohibition of discrimination in health care facilities licensed by DPBH. If adopted, it is anticipated that health care workers in DPBH-licensed health care facilities will be able to more effectively treat/care for patients/residents by taking required cultural competency training, so they may better understand patients or residents who have different cultural backgrounds. In addition, the proposed regulations outline the specific types of prohibited discrimination, as required by subsection 1 (e) of NRS 449.0302, helping health care facilities to better understand the different types of prohibited discrimination.

Pursuant to NRS 233B.0608 (2)(a), DPBH has requested input from all licensed health facilities in Nevada with 150 or fewer employees, and from subscribers to two opt-in email lists of persons who are interested in information relative to the aforementioned health facilities.

A web-based Small Business Impact Questionnaire and a copy of proposed regulations were sent on Nov. 13, 2019, to:

- Email addresses associated with all currently licensed Nevada health facilities (1,903 addresses)
- Medical facilities listserv (approx. 510 email addresses)
- Nonmedical facilities listserv (approx. 414 email addresses)

The questions 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 Responses

Out of approximately 2,827 small-business impact questionnaires distributed, 58 responses were recorded as received. (Responses to all questions are not mandatory, so the overall number recorded responses do not necessarily correlate to the number of responses to any given question.)

Will a specific regulation have an adverse economic effect upon your business?	Will the regulation(s) have any beneficial effect upon your business?	Do you anticipate any indirect adverse effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?
Yes – 18 No – 14	Yes – 7 Not– 23	Yes – 18 Not– 11	Yes – 7 Not– 20
Comments* – The bullets below summarize major points from respondent comments. -Length of training (more than 1 hour is extreme strain) -Changes to computer system -Proposed regs state “almost nothing” about curriculum. -Need free, online training -Changes to computer tracking -Possible daily fmes for noncompliance -Requirement for experienced, qualified instructor	Comments* - Some beneficial effects included: - “Home health staff and field staff will be considerate to all different cultures we take care at home.” - “We have an extremely diverse workforce in our city. It is important for team building and better caregiving to teach this information to the employees.”	Comments* – The bullets below summarize major points from respondent comments*. -Increased reporting -Cost passed to residents. -Overhead costs -Time spent on processes vs. resident care -Adding significant costs for training -Penalties (for noncompliance) -Increase in cost for onboarding of new employees	Comments* – Some indirect beneficial effects included: - “Better trained team members with awareness of a variety of areas is always helpful. It comes down to time involvement and content/follow up required- and how that is balanced with other regulations and priorities.” - “Helps my field staff how to handle different culture of patients.” - “I think as humans within this world, it is important to offer education on how to live and enjoy peoples differences and various cultures and religions.”

*To review all comments submitted please reference Attachment: Cultural Competency Proposed Regulations Small Business Impact Questionnaire Responses.

2) Describe the manner in which the analysis was conducted.

An online survey was disseminated via email on Nov. 13, 2019, and on Nov. 30, 2019, the survey was closed, and responses analyzed by staff of the Bureau of Health Care Quality and Compliance (HCQC), the agency in charge of health facility licensing under Nevada Revised Statutes Chapter 449. An HCQC inspector and the HCQC education and information officer met to discuss the responses, and then a meeting was held with these HCQC staff members plus an HCQC health facilities manager and with subject matter experts. The language of NRS 449.0302, NRS 449.101 to NRS 449.104 and regulations also were consulted in making modifications to the proposed regulations as indicated later in this document. Additional outreach to explain the implications of the bills and subsequent regulations was done at several Advisory Council meetings conducted through HCQC. Those meetings included:

1. The Adult Day Care Advisory Council Meeting held on 11/21/19;
2. The Assisted Living Advisory Council Meeting held on 1/16/20; and
3. The Palliative Care and Quality of Life Advisory Council held on 1/23/20.

On January 29th, 2020, a Public Workshop was conducted to hear from representatives of licensed health care facilities, facility organizations and any members of the public that were interested in participating in the workshop. The Las Vegas location was attended by 23 people, the Carson City location consisted of 15 people, and no one attended the location provided in Elko. The feedback from these meetings was analyzed and the proposed regulations were further modified to reduce the impact on small businesses. For details on the modifications made to reduce the impact on small business please refer to number 4.

3) The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation both adverse and beneficial effects and both direct and indirect effects.

Direct beneficial effects: Although some respondents included beneficial effects on their business as noted in the table on page 2, it was not clear that these would result in direct economic beneficial effects.

Indirect beneficial effects: The proposed regulations may result in indirect beneficial effects. Responses to the small business impact questionnaire included that teaching the information in the regulations is important for team building and better caregiving and that better trained team members with awareness of a variety of areas is always helpful.

According to the Georgetown University, McCourt School of Public Policy, Health Policy Institute:

“A culturally competent health care system can help improve health outcomes and quality of care, and can contribute to the elimination of racial and ethnic health disparities. Examples of strategies to move the health care system towards these goals include providing relevant training on cultural competence and cross-cultural issues to health professionals and creating policies that reduce administrative and linguistic barriers to patient care.”

“People with chronic conditions require more health services, therefore increasing their interaction with the health care system. If the providers, organizations, and systems are not working together to provide culturally competent care, patients are at higher risk of having negative health consequences, receiving poor quality care, or being dissatisfied with their care.”

According to internal analysis, improved patient satisfaction through better interactions with staff may lead to improved public relations and a larger customer base. Cultural competency training, stricter anti-discrimination requirements, and adapting health records to meet the medical needs of patients may mitigate risk from poor patient care (including possible abuse or neglect) that may reduce potential for lawsuits and associated financial loss.

Direct adverse effects: NRS 449.104 requires the Board of Health to adopt regulations requiring facilities noted in the bill to adapt electronic records to reflect the gender identities or expressions of patients or residents with diverse gender identities or expressions, and if the facility is a medical facility, adapting health records to meet the medical needs of patients or residents. In addition, NRS 449.103, requires facilities noted in the bill to conduct cultural competency training. Although the Division does recognize that there may be a direct adverse financial effect to certain facilities, the proposed regulations carry out the provisions of NRS 449.0302, and NRS 449.101 to NRS 449.104 while taking measures to reduce the financial impact of the

proposed regulations on small businesses. Please refer to question number 4 for a description of the measures taken to reduce the financial impact on small business.

Indirect adverse effects: Possible monetary sanctions for noncompliance with training and posting requirements. In most instances, facilities will be required to submit and implement a plan of correction to come into compliance without the imposition of monetary penalties; therefore, the overall impact on small business is expected to be minimal.

Time taken to participate in training that takes away from patient care: HCQC staff estimate training staff for each individual employee to be no more than 3 hours per year.

4) Provide a description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The Division implemented several methods to reduce the impact of the proposed regulations and still be able to carry out the provisions of NRS 449.0302, and NRS 449.101 to NRS 449.104 including:

- Allowing health facilities to use training that is already developed to meet training requirements: Based on concerns about cost to produce a training, language below was added to the proposed regulations giving DPBH the ability to review and approve trainings created by certain outside entities to be used by Nevada health facilities to comply with the new law and clarified that the trainings could be provided online, through a facility's training system, or in person.
 - *The Department Director or designee may approve a cultural competency course or program provided by a nationally recognized organization, as determined by the Department Director or designee, a governmental agency, or a university or college accredited in the District of Columbia, state or territory of the United States, without submitting the information pursuant to subsection 2, as long as the course or program provides proof of completion.*
 - *All cultural competency courses or programs approved pursuant to this section may be completed online, through a facility's training system, or in person.*

In addition, the proposed regulations allow the Director of the Department or designee to approve cultural competency training applications from persons that are not health care facilities and allows cultural competency courses or programs submitted by a facility to include courses or programs that are already approved by the Director of the Department or designee.

The flexibility allowed in the above regulations allow facilities options to help reduce the financial burden by not requiring each facility to have to develop its own cultural competency training but instead may utilize other trainings that have already been approved.

- Length of training: DPBH/DHHS recognizes that health facility staff must be paid for the time spent in training, however to achieve the intent of the new laws DPBH/DHHS also recognizes that training could take a relatively significant amount of time (possibly several hours). To balance the needs of the content with the facility's ability to save staff costs, a duration for the training was not mandated in the proposed regulations to allow facilities to balance these factors. Regarding costs borne by

businesses associated with these regulations, DPBH/DHHS recognizes that facilities will incur certain labor costs in order to fulfill training requirements, however the ability to provide more equitable health care delivery is expected to create better health outcomes and a decrease in ancillary expenses.

- Sanctions: The proposed regulations do not specifically address sanctions for noncompliance, and HCQC will treat noncompliance similarly to other training requirements with a low likelihood of monetary penalties. No monetary penalties are imposed on small businesses that have a severity level 1 (administrative-type violations) or severity level 2 violations (indirectly threaten the health, safety, rights, security, welfare or well-being of a recipient; potential for harm, as yet unrealized, exists) and that do not affect more than half (50%) of the facility's population. Monetary penalties are either not imposed or rarely imposed for severity level 2 violations that affect more than 50% of a facility's population because the payment of this monetary penalty must be suspended if the facility has corrected the deficiencies within the time specified in the approved plan of correction. This leaves a very small percentage of all health facilities (2% to 4%) receiving a monetary penalty for more severe violations at a severity level 3 or 4. Severity level 3 violations directly or indirectly threaten the health, safety, rights, security, welfare or well-being of one or more recipients. The severity level 4 violation creates a condition or incident that has resulted in or can be predicted with substantial probability to result in death or serious harm to a recipient.
 - In addition, facilities are authorized to request to use all or a portion of an initial monetary penalty to correct the deficiency for which the penalty was imposed, in lieu of paying the penalty. HCQC is authorized to approve such a request if the deficiency results from the facility's first violation of a provision of law or regulation, which would be the case here initially because the laws/regulations are brand new. Although it is recognized that this still may present a burden for some facilities who did not budget for the items to be corrected or for this previously non-existent training, it still reduces the burden by not having to pay both the fine and use monies to correct a deficiency if needed, and the monies would stay with the facility to correct violations, therefore helping a facility come back into compliance.
- For facilities for the dependent or other residential facilities, many of which are small businesses, the proposed regulations only require the minimum requirement of NRS 449.104, relating to the adoption of electronic records and any paper records to include the preferred name and pronoun and gender identity or expression of a resident, and does not request any other information although allowed by the bill, which limits the impact only to what is required by the bill.

On January 29th, 2020, a Public Workshop was conducted. Below is a summary of the feedback provided during the public workshop and additional measures the Division took to reduce the impact on small businesses.

- GENERAL COMMENTS
 - Can existing regulations be fixed instead of rewriting them?
 - Deadlines specified in the regulations are too tight – they should be extended so facilities can meet the standards.
 - Annual review needs a longer time period to respond...not enough time to be thorough.
 - Changing “maternal” to “pregnant may be appropriate but is beyond the scope of the bills”.
 - Reference to Indirect Discrimination is not in the bills, is vague, and not understood, so should be omitted. LTC (long term care) provider is not responsible.
 - “Agent” should be clarified. It doesn't include most physicians.

- TRAINING
 - The draft regulation doesn't distinguish between courses from the training division, a private group, or in house to the facility.
 - The state needs to offer a standard program and allow the facility to modify.
 - The State needs to create an online program offered at no cost to the facility (multiple comments).
 - Section 5 – course content – inclusion of 'self-reflection' is unusual. Long term care provider is not responsible. Providing the document should be sufficient and should not be required.
 - Training pulls the caregiver away from provider care – regulations should be minimal to meet statutory requirement but nothing more.
 - The curriculum advisory group (CCAG) doesn't include a member from a facility.
 - CCAG is not authorized by the bills, though may need to be considered/no statutory requirement/no health care facility involvement.
- MEDICAL RECORDS
 - Altering historical medical records is dangerous, and the H&P (History and Physical) process during intake should cover necessary issues.

To help reduce the impact to small businesses the following modifications to the regulations were made:

1) Modified the language to clearly show that a facility does not have to develop its own cultural competency training. The language provides a facility the option of developing their own training or utilizing a training approved by the Department Director or designee.

2) Clarified that (3) of paragraph (b) of section 16 relating to the health records of a medical facility only applies to medical facilities. In addition, the scope of the data collection was reduced by requiring an organ inventory only if the gender assigned at birth is different than the declared gender identity.

3) Removed the requirement that a facility attest that it has reviewed their cultural competency course or program annually with each licensure renewal.

4) Modified section 15 to give a facility flexibility in developing its own process and timing for handling prohibited discrimination complaints or grievances filed with the facility.

5) The proposed regulations were modified to allow more time for facilities to submit the approved cultural competency course or program that the facility conducts from adoption of the proposed regulations or upon licensure from 60 business days to 90 days, which extends the time by approximately 6 days. In addition, the proposed regulations were modified to allow a facility 6 months from such time that the facility is notified that the facility's current course or program no longer meets revised standard of the Division to find a course or program that does meet the revised standards.

5) The estimated cost to the agency for enforcement of the proposed regulation.

These proposed regulations will not add any costs to the current regulatory enforcement activities conducted by HCQC. The facilities impacted by the new laws are already licensed and inspected by HCQC and these new training and posting/patient notification requirements can be incorporated into HCQC's current workload.

6) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount DPBH expects to collect and the manner in which the money will be used.

These proposed regulations do not provide for a new fee or increase to any existing fee associated with health facility licensing.

7) An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

Regulations are in compliance with NRS 449.0302, and NRS 449.101 to NRS 449.104, which fill gaps in the federal standards.

8) Provide a summary of the reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.

- Cultural competency training curriculum requirements will be widely disseminated to health facility licensees (web and email) to help businesses reduce time spent searching for training requirements should they decide to create their training internally.
- Sanctions – The impact to small businesses from monetary sanctions imposed for noncompliance with the new regulations should be minimal because:
 - Training noncompliance is generally a lower severity.
 - Posting of complaint information is expected to require minimal time and resources by facilities.
- The proposed regulations provide for flexibility in the methods that can be used to deliver required cultural competency training and allows facilities to utilize trainings that have been approved by other persons; therefore, meeting the requirements of the bill while providing options to help facilities tailor trainings to the needs of their individual facilities to help reduce costs.
- Subsection 1 of NRS 449.104 requires the Board of Health to adopt regulations that requires impacted facilities to develop policies to ensure that a patient or resident is addressed by his or her preferred name and pronoun and in accordance with his or her gender identity or expression. Subsection 2 of NRS 449.104 also requires the facility to adapt electronic records to reflect the gender identities or expressions of gender diverse patients or residents, so regulations must conform.
 - Many electronic health record (EHR) systems already have incorporated the ability to input this information into the software. It is expected that medical facilities that upgraded their electronic health records in 2016 or later to receive participation payments from a Centers for Medicare and Medicaid Services incentive program already have the sexual orientation/gender identity information in their EHR system.
 - For facilities for the dependent or other residential facilities, NRS 449.104 requires adapting electronic and paper records to include the preferred name and pronoun and gender identity or expression of a resident. Regulations do not expand upon the bill requirements.

In conclusion, it is recognized that the proposed regulations, in carrying out the provisions of NRS 449.0302 and NRS 449.101 to NRS 449.104, may or may not cause an adverse financial impact on facilities and that the impact may vary depending on the individual facility; therefore, the Division moved forward the proposed regulations in a manner that brings the regulations into compliance with the bills while providing flexibility and options to facilities to help reduce the financial impact.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to:

Nathan Orme
Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, NV 89701
Phone: 775-684-1070
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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 and is accurate.

Signature:



Date: 2/12/2020

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

LCB File No. R016-20

July 24, 2020

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

AUTHORITY: §§1-6, 8-13, 20-34, NRS 449.0302; §7, NRS 449.0302 and 449.101; §§14-18,
NRS 449.0302 and 449.103; §19, NRS 449.0302 and 449.104.

A REGULATION relating to health care; setting forth specific types of prohibited discrimination; prohibiting certain facilities from discriminating against a patient or resident of the facility based on the source of payment for services provided; requiring certain facilities to post certain notices and information and to provide written copies of certain statements, notices and information to patients or residents of the facilities; requiring the statements, notices and information that a facility posts to meet certain posting requirements; clarifying how a patient or resident or authorized representative of a patient or resident provides express permission in certain situations; requiring certain facilities to provide cultural competency training through a course or program approved by the Director of the Department of Health and Human Services; establishing procedures for obtaining approval for such a course or program; requiring certain facilities to ensure that a patient or resident is addressed by his or her preferred name and pronoun in accordance with his or her gender identity and to adapt the records of the patient or resident to reflect diverse gender identities and expressions; requiring certain statements, notices and information be provided in English and certain other languages; requiring certain facilities to designate a representative of the facility to ensure compliance with discrimination and cultural competency statutes and regulations; requiring certain facilities to provide the Division of Public and Behavioral Health of the Department and the Department certain information upon request; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Health to adopt regulations as it deems necessary or convenient to carry out the provisions governing the licensing, regulating and staffing of medical facilities and other related entities. (NRS 449.0302)

Existing law prohibits medical facilities, facilities for the dependent or certain other licensed facilities and any employee or independent contractor of such facilities from discriminating in the admission of, or the provision of services to, a patient or resident based wholly or partially on the actual or perceived race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human

immunodeficiency virus status of the patient or resident or any person with whom the patient or resident associates. Existing law requires such facilities to develop and carry out policies to prevent the specific types of prohibited discrimination described in regulations adopted by the Board and meet any other requirements prescribed by regulations of the Board. (NRS 449.101) Existing law requires the Board to adopt such regulations that prescribe the specific types of prohibited discrimination. (NRS 449.0302) **Section 7** of this regulation prescribes the specific types of prohibited discrimination, including: (1) discrimination that results in a person not being treated with dignity; (2) indirect discrimination that may or may not be intentional and which results from the uniform application of policies in a nondiscriminatory manner; (3) discrimination which is based wholly or partially on the discriminated person associating with certain other persons; and (4) harassment or bullying of any kind of a person. **Section 8** of this regulation prohibits a facility from discriminating against a patient or resident based on the source of payment for the services provided.

Existing law requires a medical facility, facility for the dependent or certain other licensed facilities to post prominently in the facility and include on any Internet website used to market the facility a statement saying that the facility does not discriminate and does not permit discrimination based on certain criteria. (NRS 449.101) **Section 9** of this regulation further requires such facilities to post prominently in the facility and on any Internet website used to market the facility: (1) notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the Division of Public and Behavioral Health of the Department of Health and Human Services; and (2) the contact information for the Division. **Section 10** of this regulation sets forth the specific requirements with which a statement, notice and information posted by a facility must comply, including: (1) how large the letters and the physical copy of the statement, notice and information must be; and (2) where such a statement, notice and information must be posted.

Section 11 of this regulation requires a medical facility, facility for the dependent or certain other licensed facilities to provide to a patient or resident, upon admission : (1) a written copy of the statement, notice and information required by existing law and **section 9**; and (2) a written notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the facility in addition to the complaint that may be filed with the Division. **Section 12** of this regulation requires a facility to: (1) develop and adopt a written policy on how a complaint filed with the facility is documented, investigated and resolved; and (2) maintain a log that lists certain information.

Existing law requires a medical facility, facility for the dependent or certain other licensed facilities to prohibit employees or independent contractors of the facility who are not performing a physical examination or directly providing care to a patient or resident from being present during any portion of a physical examination or care during which the patient or resident is fully or partially unclothed without the express permission of the patient or resident or the authorized representative of the patient or representative. (NRS 449.102) **Section 13** of this regulation clarifies that to provide express permission, a patient or resident or the authorized representative of the patient or resident must provide such permission in writing.

To enable a medical facility, facility for the dependent and certain other facilities to more effectively treat patients or care for residents, existing law requires the Board, by regulation, to

require such a facility to conduct training relating specifically to cultural competency for any agent or employee of the facility who provides care to a patient or resident of the facility so that such an agent or employee may better understand patients or residents who have different cultural backgrounds. Such training must be provided through a course or program that is approved by the Department. (NRS 449.103) **Section 14** of this regulation imposes the requirement that a facility conduct training relating specifically to cultural competency for any agent or employee of the facility who provides care to a patient or resident of the facility. **Section 14** further requires such cultural competency training to be provided through a course or program that is approved by the Director of the Department or his or her designee and to be assigned a course number by the Division.

Sections 15 and 33 of this regulation require a facility to submit to the Department the course or program through which a facility will provide the cultural competency training. **Section 15** requires certain information to also be provided to the Department, including evidence that the course or program includes the course materials required by **section 16** of this regulation. Upon receiving the information required by **section 15**, **section 17** of this regulation provides the procedure which the Department must complete before the Director of the Department or his or her designee approves or does not approve the course or program. Not later than 7 business days after the course or program is approved, **section 17** requires the Director or his or her designee to notify the Division of the approval of the course or program. **Section 18** of this regulation requires the Division, not later than 7 business days after receiving the notice of approval, to assign a course number to the approved course or program. **Section 18** requires the Division, not later than 7 business days after assigning the course number, to notify the facility of the assigned course number.

Existing law requires the Board to adopt regulations that require a medical facility, facility for the dependent and certain other facilities to: (1) develop policies to ensure that a patient or resident is addressed by his or her preferred name and pronoun and in accordance with his or her gender identity or expression; and (2) adapt electronic records to reflect the gender identities or expressions of patients or residents with diverse gender identities or expressions. (NRS 449.104) **Section 19** of this regulation establishes these requirements and additionally requires: (1) the health records that a medical facility keeps to include certain information; and (2) the medical facility to develop a procedure to ensure the information of a patient or resident accurately reflects the diverse gender identities or expressions of patients or residents when interacting with insurance providers.

Section 20 of this regulation requires the statements, notices and information that are provided to patients or residents concerning prohibited discrimination be in English and in any other language the Department determines is appropriate based on the demographic characteristics of this State. In addition to these languages, **section 20** authorizes a facility to provide the statements, notices and information in any foreign language the facility may desire. **Section 20** requires a facility to make reasonable accommodations for patients or residents who: (1) do not read or speak English or any other language in which the statements, notices and information are written; and (2) have certain communication impairments.

Section 21 of this regulation requires a facility to designate a representative of the facility who is responsible for ensuring that the facility complies with the provisions of existing law and this regulation.

Upon request from the Division or Department, **section 22** of this regulation requires a facility to make available to the Division or Department documentation for the Division or Department to determine if the facility is complying with the provisions of this regulation and existing law.

Existing regulations prohibit various types of discrimination of a patient or resident. (NAC 449.153, 449.15369, 449.269, 449.355, 449.4083, 449.413, 449.731, 449.74375, 449.74455) **Section 34** of this regulation repeals these provisions since existing law and the provisions of this regulation replace these prohibitions. **Sections 24-32** of this regulation make conforming changes.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 22, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 22, 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. *“Cultural competency training” means the training required by section 14 of this regulation.*

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

Sec. 5. *“Director” means the Director of the Department.*

Sec. 6. *“Facility” means a medical facility, facility for the dependent or facility which is otherwise required by regulations adopted by the Board pursuant to NRS 449.0303 to be licensed.*

Sec. 7. *Pursuant to paragraph (e) of subsection 1 of NRS 449.0302 and paragraph (a) of subsection 2 of NRS 449.101, the specific types of prohibited discrimination include, without limitation:*

1. *Discrimination that results in a person not being treated with dignity and which is based wholly or partially on the actual or perceived race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status of the patient or resident or any person with whom the patient or resident associates.*

2. *Indirect discrimination that may or may not be intentional and which results in the application of policies that are applied uniformly and in a nondiscriminatory manner by the facility.*

3. *Discrimination which is based wholly or partially on the person associating with other persons who:*

(a) Are actually or perceived to be of a different race, color, religion, national origin, ancestry, age, gender, sexual orientation, gender identity or expression or human immunodeficiency virus status of the person; or

(b) Actually or are perceived to have a physical or mental disability.

4. *Harassment or bullying of any kind of a person because of his or her actual or perceived race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status.*

Sec. 8. *A facility shall adopt and maintain policies and procedures for the transfer and discharge of, and the provision of services to, patients or residents in the facility which do not discriminate against a patient or resident based on the source of payment for the services provided.*

Sec. 9. *In addition to the statement prescribed by paragraph (b) of subsection 2 of NRS 449.101, a facility shall post prominently in the facility and include on any Internet website to market the facility:*

1. Notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the Division; and

2. The contact information for the Division.

Sec. 10. *1. The statement required to be posted pursuant to paragraph (b) of subsection 2 of NRS 449.101 and the notice and information required to be posted pursuant to subsection 3 of NRS 449.101 or section 9 of this regulation, as applicable, must:*

(a) State the name of the facility; and

(b) When posted in the facility:

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

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

2. When posting prominently the statement required to be posted pursuant to paragraph (b) of subsection 2 of NRS 449.101 and the notice and information required to be posted pursuant to subsection 3 of NRS 449.101 or section 9 of this regulation, as applicable, the facility shall post the statement or notice and information in each:

(a) Public entrance of the facility;

(b) Waiting room of the facility; and

(c) Public dining room of the facility.

Sec. 11. *1. Upon admission of a patient or resident, the facility shall:*

(a) Provide the patient or resident with a written copy of the statement required pursuant to paragraph (b) of subsection 2 of NRS 449.101 and the notice and information required pursuant to subsection 3 of NRS 449.101 or section 9 of this regulation, as applicable.

(b) Provide the patient or resident with a written notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the facility. The written notice provided by the facility must include, without limitation:

(1) The contact information for the Division;

(2) A clear statement that such a complaint with the facility:

(I) May be filed in addition to the complaint that may be filed with the Division pursuant to subsection 3 of NRS 449.101 or section 9 of this regulation, as applicable; and

(II) Is not required to be filed for the patient or resident to file a complaint with the Division pursuant to subsection 3 of NRS 449.101 or section 9 of this regulation, as applicable; and

(3) The procedure that the facility uses to address such complaints with the facility and the timeframe for how long it will take the facility to address such complaints with the facility.

2. As used in this section, “prohibited discrimination” means the discrimination described in section 7 of this regulation and in subsection 1 of NRS 449.101.

Sec. 12. A facility shall:

1. Develop and adopt a written policy on how a complaint with the facility that is filed pursuant to paragraph (b) of subsection 1 of section 11 of this regulation is documented, investigated and resolved; and

2. Maintain a log that lists:

(a) All complaints with the facility that are filed pursuant to paragraph (b) of subsection 1 of section 11 of this regulation;

(b) The actions taken by the facility to investigate and resolve the complaint; and

(c) If no action was taken, an explanation as to why no action was taken.

Sec. 13. To provide express permission pursuant to subsection 2 of NRS 449.102, a patient or resident or the authorized representative of the patient or resident must provide permission in writing.

Sec. 14. 1. Pursuant to subsection 1 of NRS 449.103, within 30 business days after the course or program is assigned a course number by the Division pursuant to section 18 of this regulation or within 30 business days of any agent or employee being contracted or hired, whichever is later, and at least once each year thereafter, a facility shall conduct training relating specifically to cultural competency for any agent or employee of the facility who provides care to a patient or resident of the facility so that the agent or employee may:

(a) More effectively treat patients or care for residents, as applicable; and

(b) Better understand patients or residents who have different cultural backgrounds, including, without limitation, patients or residents who fall within one or more of the categories in paragraphs (a) to (f), inclusive, of subsection 1 of NRS 449.103.

2. The facility shall provide the training required by subsection 1 through a course or program that is approved by the Director of the Department or his or her designee pursuant to section 17 of this regulation and is assigned a course number by the Division pursuant to section 18 of this regulation.

3. *The facility shall keep documentation in the personnel file of any agent or employee of the facility of the completion of the cultural competency training required pursuant to subsection 1.*

Sec. 15. 1. *Within 90 days after a facility is licensed to operate, the facility must submit to the Department on a form prescribed by the Department the course or program which the facility will use to provide cultural competency training. The facility may:*

(a) Develop or operate the course or program; or

(b) Contract with a third party to develop and operate the course or program.

2. *The course or program submitted by the facility pursuant to subsection 1 must address patients or residents who have different cultural backgrounds from that of the agent or employee of the facility, including, without limitation, patients or residents who fall within one or more of the categories in paragraphs (a) to (f), inclusive, of subsection 1 of NRS 449.103.*

3. *When a facility submits a course or program pursuant to subsection 1, the facility must also provide to the Department the following information for the instructor of the course or program:*

(a) The application of the instructor who will teach the course or program;

(b) Three letters of recommendation for the instructor, including, without limitation, at least one letter of recommendation in which the recommender has knowledge of the methods the instructor uses in teaching a cultural competency course or program; and

(c) The resume of the instructor of the course or program that includes, without limitation, the education, training and experience the instructor has in providing cultural competency training.

4. Except as otherwise provided in subsection 5, when a facility submits a course or program pursuant to subsection 1, the facility must also provide to the Department:

(a) The syllabus of the course or program;

(b) The following information:

(1) The name of the facility;

(2) The address of the facility;

(3) The electronic mail address of the facility;

(4) The license number of the facility; and

(5) The name and contact information of a person who represents the facility and who can discuss the course or program submitted by the facility pursuant to subsection 1;

(c) If the facility contracts with a third party who develops and operates the course or program, the following information:

(1) The name of the third party;

(2) The address of the third party;

(3) The electronic mail address of the third party; and

(4) The name and contact information of a person who represents the third party and who can discuss the course or program submitted by the facility pursuant to subsection 1;

(d) Evidence that the subjects covered by the course or program include, without limitation, the course materials required by section 16 of this regulation;

(e) A sample sign-in sheet for the course or program that contains:

(1) The dates of the course or program; and

(2) A place for a participant of the course or program to print and sign his or her name;

(f) A sample evaluation form that a participant of the course or program may complete at the end of the course or program which evaluates:

(1) The content of the course or program;

(2) The instructor of the course or program; and

(3) The manner in which the course or program is presented to the participant; and

(g) A sample document that a participant of the course or program may complete at the end of the course or program in which the participant can perform a self-evaluation.

5. A facility may submit a course or program pursuant to subsection 1 without submitting the information required in subsection 4 if the course or program:

(a) Is provided by:

(1) A nationally recognized organization, as determined by the Director of the Department;

(2) A federal, state or local government agency; or

(3) A university or college that is accredited in the District of Columbia or any state or territory of the United States; and

(b) Provides proof of completion upon the participant of the course or program completing the course or program that the Director or his or her designee determines to be satisfactory.

6. When a facility submits pursuant to subsection 1 a course or program that is described in subsection 5, the facility must also provide to the Department:

(a) The name of the course or program;

(b) The name of the organization, agency, university or college providing the course or program;

- (c) If the course or program is provided online, the URL of the course or program;*
- (d) If the course or program is provided through a training system, access to the training system;*
- (e) If the course or program is not provided online or through a training system, the syllabus of the course or program;*
- (f) The following information:*
 - (1) The name of the facility;*
 - (2) The address of the facility;*
 - (3) The electronic mail address of the facility;*
 - (4) The license number of the facility; and*
 - (5) The name and contact information of a person who represents the facility and who can discuss the course or program submitted by the facility pursuant to subsection 1; and*
- (g) Any other information the Department requests to assist the Director or his or her designee in determining whether or not to approve the course or program pursuant to section 17 of this regulation.*

7. As used in this section, "URL" means the Uniform Resource Locator associated with an Internet website.

Sec. 16. 1. A course or program subject to the requirements of subsection 4 of section 15 of this regulation must include, without limitation, the following course materials:

- (a) An overview of cultural competency;*
- (b) An overview of implicit bias and indirect discrimination;*
- (c) The common assumptions and myths concerning stereotypes and examples of such assumptions and myths;*

- (d) An overview of social determinants of health;*
- (e) An overview of best practices when interacting with persons who fall within one or more of the categories in paragraphs (a) to (f), inclusive, of subsection 1 of NRS 449.103;*
- (f) An overview of gender, race and ethnicity;*
- (g) An overview of religion;*
- (h) An overview of sexual orientation and gender identities or expressions;*
- (i) An overview of mental and physical disabilities;*
- (j) Examples of barriers to providing care;*
- (k) Examples of language and behaviors that are discriminatory; and*
- (l) Examples of a welcoming and safe environment.*

2. The course materials included in a course or program, including, without limitation, the course materials required by subsection 1, must include, without limitation:

- (a) Evidence-based, peer-reviewed sources;*
- (b) Source materials that are used in universities or colleges that are accredited in the District of Columbia or any state or territory of the United States;*
- (c) Source materials that are from nationally recognized organizations, as determined by the Director of the Department;*
- (d) Source materials that are published or used by federal, state or local government agencies; or*
- (e) Other source materials that are deemed appropriate by the Department.*

3. The Department must:

- (a) Publish a copy of the requirements set forth in subsections 1 and 2 on its Internet website; and*

(b) Provide a copy of the requirements set forth in subsections 1 and 2 to a facility upon request by the facility.

Sec. 17. 1. The Department shall review the course or program information submitted pursuant to section 15 of this regulation and, if applicable, section 16 of this regulation within 60 days after receipt. During this review process, the Department may have the course or program reviewed by a person who is an expert on cultural competency or a committee of persons who are experts on cultural competency.

2. If the information that is provided to the Department meets the requirements set forth in sections 15 and 16, if applicable, of this regulation, the Director or his or her designee may approve the course or program. If the information that is provided to the Department does not meet the requirements set forth in sections 15 and 16, if applicable, of this regulation, the Director or his or her designee shall not approve the course or program.

3. Within 5 business days after completing the review of the information pursuant to subsection 1, the Director or his or her designee shall:

(a) Notify the facility that submitted the information whether the course or program is approved or not approved pursuant to subsection 2; and

(b) If the Director or his or her designee does not approve the course or program, inform the facility of any additional information that the facility needs to submit for the course or program to be approved.

4. The facility shall submit the additional information that the facility needs to submit pursuant to paragraph (b) of subsection 3 within 45 days after being notified that the course or program is not approved pursuant to paragraph (a) of subsection 3. Upon receiving the additional information, the Director or his or her designee may approve the course or

program. If the additional information is not received or fails to include all of the information that the Director or his or her designee informed the facility that it needed to submit, the Director or his or her designee shall not approve the course or program.

5. Any course or program approved pursuant to this section may be provided:

(a) Online;

(b) Through a training system; or

(c) In person.

6. If the Director or his or her designee approves the course or program, the Director or his or her designee shall notify the Division of the approval of the course or program not later than 7 business days after such approval.

Sec. 18. 1. Not later than 7 business days after receiving the notice of approval of the course or program pursuant to subsection 6 of section 17 of this regulation, the Division shall assign a course number to the approved course or program.

2. Not later than 7 business days after assigning the course number pursuant to subsection 1, the Division shall notify the facility whose course or program is approved pursuant to section 17 of this regulation of the course number assigned pursuant to subsection 1.

Sec. 19. 1. A facility shall:

(a) Develop policies to ensure that a patient or resident is addressed by his or her preferred name and pronoun and in accordance with his or her gender identity or expression; and

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

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

(2) If the facility is a facility for the dependent or other residential facility, adapting electronic records and any paper records the facility has to include the preferred name and pronoun and gender identity or expression of a resident.

2. If a patient or resident chooses to provide the following information, the health records adapted pursuant to subparagraph (1) of paragraph (b) of subsection 1 must include, without limitation:

(a) The preferred name and pronoun of the patient or resident;

(b) The gender identity or expression of the patient or resident;

(c) The gender identity or expression of the patient or resident that was assigned at the birth of the patient or resident;

(d) The sexual orientation of the patient or resident; and

(e) If the gender identity or expression of the patient or resident is different than the gender identity or expression of the patient or resident that was assigned at the birth of the patient or resident:

(1) A history of the gender transition and current anatomy of the patient or resident;

and

(2) An organ inventory for the patient or resident which includes, without limitation, the organs:

(I) Present or expected to be present at the birth of the patient or resident;

(II) Hormonally enhanced or developed in the patient or resident; and

(III) Surgically removed, enhanced, altered or constructed in the patient or resident.

3. A medical facility that has adapted health records pursuant to subparagraph (1) of paragraph (b) of subsection 1 shall develop a method to lead patients or residents through a series of questions to help obtain thorough and medically relevant information regarding the patients or residents to accurately reflect the diverse gender identities or expressions of patients or residents with diverse gender identities or expression to be used in providing care to the patient or resident, including, without limitation, when interacting with insurance providers. A patient or resident may decline to answer any such questions.

Sec. 20. 1. Except as otherwise provided in subsection 2, the statements, notices and information required by sections 2 to 22, inclusive, of this regulation and NRS 449.101 to 449.104, inclusive, must be in English and, as appropriate for a facility, in any other language the Department determines is appropriate based on the demographic characteristics of this State. In addition to the notices and information provided in English and any other language the Department determines is appropriate based on the demographic characteristics of this State, a facility may provide the statements, notices and information in any other language the facility may desire.

2. A facility must make reasonable accommodations in providing the statements, notices and information described in subsection 1 for patients or residents who:

(a) Are unable to read;

(b) Are blind or visually impaired;

(c) Have communication impairments; or

(d) Do not read or speak English or any other language in which the statements, notices and information are written pursuant to subsection 1.

Sec. 21. A facility shall designate a representative of the facility who shall be responsible for ensuring that the facility is in compliance with sections 2 to 22, inclusive, of this regulation and NRS 449.101 to 449.104, inclusive.

Sec. 22. Upon request from the Division or Department, a facility shall make available to the Division or Department documentation for the Division or Department to determine if the facility is complying with sections 2 to 22, inclusive, of this regulation and NRS 449.101 to 449.104, inclusive. If the Division or Department obtains personally identifiable information of a patient or resident through such a request, the Division or Department shall maintain the confidentiality of such information.

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

449.0034 ~~["Facility"]~~ Except as otherwise defined in section 6 of this regulation, "facility" means a medical facility, facility for the dependent, ~~[home for individual residential care]~~ an employment agency that contracts with persons in this State to provide certain nonmedical services described in subsection 1 of NRS 449.03005, a facility which is otherwise required by regulations adopted by the Board pursuant to NRS 449.0303 to be licensed or a referral agency.

Sec. 24. NAC 449.019 is hereby amended to read as follows:

449.019 As used in NAC 449.019 to ~~[449.153],~~ 449.150, inclusive, unless the context otherwise requires, the words and terms defined in NAC 449.022 to 449.072, inclusive, have the meanings ascribed to them in those sections.

Sec. 25. NAC 449.111 is hereby amended to read as follows:

449.111 1. The administrator is responsible to the governing body for the operation of the facility in accordance with established policy.

2. The administrator shall:

(a) Organize the administrative functions of the program, delegate duties and establish a formal means of accountability on the part of subordinates.

(b) Ensure that a written manual defining program policies and procedures is prepared, regularly revised and updated. The manual must:

(1) Contain all of the required written policies, procedures, definitions, lists and other documentation required by NAC 449.019 to ~~[449.153,]~~ **449.150**, inclusive.

(2) Be available to members of the staff at all times at designated and convenient locations.

(c) Appoint a person of majority age to act for him or her during any absence.

Sec. 26. NAC 449.121 is hereby amended to read as follows:

449.121 A social model detoxification program may be offered to clients in:

1. Residential programs that offer detoxification services;
2. A licensed facility for modified medical detoxification pursuant to NAC 449.15311 to ~~[449.15369,]~~ **449.15367**, inclusive; or

3. A medically managed intensive detoxification program.

Sec. 27. NAC 449.15311 is hereby amended to read as follows:

449.15311 As used in NAC 449.15311 to ~~[449.15369,]~~ **449.15367**, inclusive, unless the context otherwise requires, the words and terms defined in NAC 449.15313 to 449.15321, inclusive, have the meanings ascribed to them in those sections.

Sec. 28. NAC 449.15339 is hereby amended to read as follows:

449.15339 1. The administrator of a facility is responsible to the governing body of the facility for the operation of the facility in accordance with the policies and procedures of the facility.

2. The administrator shall:

(a) Organize the administrative functions of the program, delegate duties and establish a formal means of accountability on the part of subordinates.

(b) Ensure that a written manual defining the policies and procedures of the program is prepared, regularly revised and updated. The manual must:

(1) Contain all policies and procedures of the facility, including, without limitation, definitions and other documentation required by NAC 449.15311 to ~~[449.15369;]~~ **449.15367**, *inclusive*; and

(2) Be available to members of the staff of the facility at all times at designated and convenient locations.

(c) Appoint a person who has attained the age of majority to act for him or her during any extended absence.

Sec. 29. NAC 449.154973 is hereby amended to read as follows:

449.154973 1. In addition to satisfying the requirements of NAC 449.011, an applicant for a license to operate a facility must include with his or her application a statement indicating whether he or she will be operating a facility:

(a) That only provides a housing and living environment;

(b) That provides or arranges for the provision of supportive services for residents of the facility to assist the residents with reintegration into the community, in addition to providing a housing and living environment; or

(c) That provides or arranges for the provision of alcohol or other substance use disorder programs, in addition to providing a housing and living environment and providing or arranging for the provision of other supportive services.

2. If the applicant wishes to operate a facility described in paragraph (c) of subsection 1, the applicant must:

(a) Obtain certification of its program pursuant to paragraph (d) of subsection 1 of NRS 458.025 and include evidence of that certification with his or her application; and

(b) Satisfy the requirements set forth in NAC 449.019 to ~~[449.153,]~~ **449.150**, inclusive, for a facility for the treatment of abuse of alcohol or drugs.

3. If the applicant wishes to operate a facility described in paragraph (b) or (c) of subsection 1 which has residents who are under the supervision of a parole officer, the applicant must:

(a) Obtain the approval of the Division of Parole and Probation of the Department of Public Safety; and

(b) Include evidence of that approval with his or her application.

Sec. 30. NAC 449.74311 is hereby amended to read as follows:

449.74311 As used in NAC 449.74311 to ~~[449.74375,]~~ **449.74373**, inclusive, unless the context otherwise requires, the words and terms defined in NAC 449.74313 to 449.74325, inclusive, have the meanings ascribed to them in those sections.

Sec. 31. NAC 449.74341 is hereby amended to read as follows:

449.74341 1. The administrator of a facility is responsible to the governing body of the facility for the operation of the facility in accordance with the policies and procedures of the facility.

2. The administrator shall:

(a) Organize the administrative functions of each program, delegate duties and establish a formal means of accountability on the part of subordinates.

(b) Ensure that a written manual defining the policies and procedures of each program is prepared, regularly revised, and updated at least annually. The manual must:

(1) Contain all policies and procedures of the facility, including, without limitation, definitions and other documentation required by NAC 449.74311 to ~~{449.74375,}~~ 449.74373, inclusive; and

(2) Be available to members of the staff of the facility at all times at designated and convenient locations.

(c) Appoint a person who is qualified by education, experience and training to act as administrator in his or her absence.

(d) Notify the Bureau within 24 hours after the administrator becomes aware of:

(1) The death of a patient at the facility; or

(2) The elopement from the facility of an at-risk patient.

Sec. 32. NAC 449.99718 is hereby amended to read as follows:

449.99718 1. A recovery center must be designed, constructed, equipped and maintained in a manner that protects the health and safety of the patients and personnel of the recovery center and members of the general public.

2. A recovery center shall comply with all applicable:

(a) Federal and state laws;

(b) Local ordinances, including, without limitation, zoning ordinances; and

(c) Life safety, environmental, health, fire and local building codes,

↪ related to the construction and maintenance of the recovery center. If there is a difference between state and local requirements, the more stringent requirements apply.

3. Except as otherwise provided in this section:

(a) Each recovery center shall comply with the provisions of *NFPA 101: Life Safety Code*, as adopted by reference pursuant to NAC 449.0105.

(b) Any new construction, remodeling or change in use of a recovery center must comply with the *Guidelines for Design and Construction of Hospitals and Outpatient Facilities*, as adopted by reference pursuant to NAC 449.0105, unless the remodeling is limited to refurbishing an area within the recovery center, including, without limitation, painting the area, replacing the flooring, repairing windows or replacing window and wall coverings.

4. A recovery center shall be deemed to be in compliance with the provisions of subsection 3 if:

(a) The recovery center:

(1) Was licensed as a facility for intermediate care pursuant to NRS 449.040 to 449.094, inclusive, before September 21, 2017;

(2) Is seeking to change its operation as an intermediate care facility to a recovery center;

(3) Does not change the use of the physical space in the recovery center; and

(4) Does not have any deficiencies in the construction of the recovery center that are likely to cause serious injury, harm or impairment to the health and welfare of the public; or

(b) Before September 21, 2017, the recovery center initially applied for licensure as an intermediate care facility pursuant to NRS 449.040 to 449.094, inclusive, and:

(1) The recovery center submitted building plans to the Division in the manner set forth in NAC 449.0115;

(2) The Division determines that the plans comply with the standards for construction of intermediate care facilities, which are set forth in NAC 449.685 to ~~449.731,~~ **449.728**, inclusive;

(3) Construction of the recovery center has commenced;

(4) The center is constructed in accordance with such standards; and

(5) There are no deficiencies in the construction of the recovery center that are likely to cause serious injury, harm or impairment to the health and welfare of the public.

5. A recovery center shall submit building plans for new construction or remodeling to the entity designated to review such plans by the Division pursuant to NAC 449.0115. The entity's review of those plans is advisory only and does not constitute approval for the licensing of the recovery center. Before the construction or remodeling may begin, the plans for the construction or remodeling must be approved by the Division. The Division shall not approve a recovery center for licensure until all construction or remodeling has been completed and a survey is conducted at the site of the recovery center.

Sec. 33. Notwithstanding the provisions of section 15 of this regulation, a facility licensed to operate on the effective date of this regulation must, within 90 days of the effective date of this regulation, submit to the Department of Health and Human Services the course or program required by section 15 of this regulation and, if applicable, the information required by section 16 of this regulation.

Sec. 34. NAC 449.153, 449.15369, 449.269, 449.355, 449.4083, 449.413, 449.731, 449.74375 and 449.74455 are hereby repealed.

TEXT OF REPEALED SECTIONS

449.153 Discrimination prohibited. 1. No facility may deny treatment to a prospective client on the grounds of race, color, age, disability or national origin.

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

449.15369 Discrimination prohibited. 1. No facility that accepts a person for treatment for whom all or part of the payment for treatment is made from the money of the Division of Welfare and Supportive Services or any other agency funded in whole or in part by federal money may deny treatment to a prospective client on the grounds of race, color, national origin, age, gender or disability.

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

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

449.269 Discrimination prohibited. 1. A resident of a residential facility shall not be segregated or restricted in the enjoyment of any advantage or privilege enjoyed by other residents, or provided with any assistance, service or other benefit which is different or provided in a different manner from that provided to other residents, on the ground of race, color, religion, national origin or disability.

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

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

449.4083 Discrimination prohibited. 1. A client shall not be segregated or restricted in the enjoyment of any advantage or privilege enjoyed by other clients or provided with any assistance, service or other benefit which is different or provided in a different manner from that provided to others on the ground of race, color or national origin.

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

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

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

449.74375 Discrimination prohibited. 1. No facility that accepts a person for treatment for whom all or part of the payment for treatment is made from federal or state money may deny treatment to a prospective patient on the grounds of race, color, national origin, age, gender or disability.

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

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

449.74455 Discrimination prohibited. 1. A patient in a facility for skilled nursing shall not be segregated or restricted in the enjoyment of an advantage or privilege enjoyed by other patients, or provided with any assistance, service or other benefit which is different or provided in a different manner from that provided to other patients, on the ground of race, color, religion, national origin or disability.

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

1/7/2019

Written Testimony (email) Submitted by James L. Wadhams representing the Nevada Hospital Association (NHA); Followed by NHA Proposal of Proposed Regulations

Dear Leticia,

On behalf of the Nevada Hospital Association, we have reviewed the draft of a proposed regulation to be adopted for implementation of SB 364 and SB 470 and offer the following comments and attach a mark up of the proposal to reflect the comments.

We first went back to the text of the two bills and essentially identified the "new principles" that were being adopted. They are actually fairly simple but it is those principles which the regulation must limit itself to

1. Hospitals to utilize an approved program for "Cultural Competency" for personnel that provide care to patients (SB 470 (1) and (2)). SB 470 does not require that any hospital prepare such a program but that it provide such training through an approved course. In order provide uniformity and eliminate disparate programs from different hospitals, we provide language that the Department shall develop the program for cultural competency that will then be distributed to medical facilities and posted on the Department's website after it has been adopted following notice and hearing. We support the opportunity for a facility to adopt and seek approval of an alternative program. We understand that your agency may already have such a program which is currently being offered. We are also aware that there may be programs available from nationally recognized organizations which should be considered as being "acceptable" programs.
2. SB 364 directs regulated facilities to implement and communicate their policies against cultural discrimination by posting them and identifying methods of recourse should such discrimination occur. It further (Sec. 2.5(1)) repeats the requirement of SB 470 that employees that provide care must be trained in cultural competency as described in the approved program. SB 364 (Sec. 3.5) provides further detail for the program that will be developed by the Department.

We then went through the draft and struck anything that went outside the clear authority granted in the two bills. That created a significant redline. There are existing requirements in NRS 449A.112 and 118 that already prohibit or require several elements that are being proposed and all of those items are struck as well from the draft as being redundant to existing law. We note that our redlining eliminates several sections in the proposal that create an "advisory committee". If we have overlooked some authorization in either the two Senate bills or NRS 449.0302 for the creation of this proposed advisory committee we would appreciate being apprised of that authority.

We finally reviewed existing regulations that address discrimination in medical facilities and added the elements of discrimination newly added by the two bills, SB 364 and SB 470. The initial draft suggested eliminating those existing sections which would have been outside the authority granted in either bill. Should the general authority granted to the Board in NRS 449.0302 be the basis for editing of other regulations not required by SB 364 or SB 470, that distinction should be made clear and those changes should be considered in one or more separate regulations.

We look forward to continuing to work on these developing regulations.

Jim

1/7/2019

PROPOSED REGULATIONS OF THE STATE BOARD OF HEALTH

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

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

AUTHORITY: Senate Bill 364 of the 2019 Legislative Session, Senate Bill 470 of the 2019 Legislative Session and NRS 449.0302.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth in sections 2 to 25:

Sec. 2. *As used in sections 3 to 25, inclusive, of this regulation, the words and terms defined in sections 3 to 4, inclusive, of this regulation have the meanings ascribed to them in those sections.*

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

Sec. 4. *“Facility” has the meaning ascribed to it in NAC 449.0034 as amended by section 26.*

Sec. 4.5 The department will develop preapproved training program(s), which would include online offerings, and identify preapproved trainers for various facility types. Such training program shall be adopted after a workshop and hearing. Facilities may either utilize the preapproved training programs and trainers or develop their own program/trainers following the requirements outlined in Section 5 to 14.

Sec. 5. 1. *A facility choosing to use a program other than the one adopted by the Department must submit to the Division department an application, within 60 business days of adoption of these regulations, within 60 business days of licensure or within 30 business days of revising the cultural competency course or program pursuant to section 10, as applicable, to provide a cultural competency course or program, as required by Senate Bill 364 and Senate Bill 470 of the 2019 legislative session, which must, for each course or program provided in any format, that includes, without limitation:*

- a. The syllabus for the course;*
- b. The resume of the instructor including education, training and experience in providing cultural competency training;*
- c. The name of the facility, the address of the facility, the facility license number and the name and contact information of the person who can be reached to discuss the application;*
- d. The content of the information that will be provided to course or program participants which must meet the cultural competency course or program standards set forth by the Department ~~system~~ pursuant to NRS 449.0302 and NRS 233B, ~~including, but not limited to definitions of words to be used, subjects that must be covered by the course or program, other subjects that may be provided~~*

1/7/2019

in addition to the subjects that must be covered; the criteria that must be addressed by each subject; and the criteria to be used to evaluate the qualifications of the instructor outlined in the resume pursuant to subsection b, or any other criteria deemed appropriate by the Division. The Division may develop one or more standards to meet the needs of different health care facilities as it deems necessary;

- e. A sign in sheet with the date(s) of the course or program and printed name and signature of each course or program participant;*
 - f. A written evaluation of the content and presentation of the course that will be completed by each course or program participant; and*
 - g. A self-evaluation or reflection of each individual course participants perspective on the content of the course and the instructor.*
- h.g. If the facility will be using a cultural competency course or program that has already been approved by the Director of the Department or designee, the facility does not need to submit an application pursuant to section 2 but needs to submit an abbreviated application with the name of the facility, the facility address, the facility license number, the name and contact information of the person who can be reached to discuss the application, the name of the course or program and the course number that will be provided by the facility and the course number assigned pursuant to subsection i.*
- h.i. The Division; department will assign a course number to each approved course or program.*
- j.i. The facility can provide the course directly, through contract, or by sending an employee to an approved in person course or approved online course.*

Sec. 6. The Division shall make available the cultural competency course or program standards developed pursuant to section 5(d) on the Division's website which can be used by health care facilities to access the most current standards approved by the Division.

Sec. 7. The Director of the Department or designee may approve an application submitted pursuant to section 5 any application submitted to the Director must be approved within 30 business days or it is deemed approved. The Director of the Department or designee may also approve applications submitted from persons that are not health care facilities so long as the provisions of sections 3 to 14 are met, except 5(e), which would include the name of the applicant, the applicant's address and contact information, instead of the facility's information.

Sec. 8. The cultural competency course or program submitted by the facility pursuant to section 5 must include all the patients or residents listed in section 2.5; section 1(a-f) of Senate Bill 364 or a combination of courses or programs that addresses all the residents or patients; which may include courses or programs that already are approved by the Director of the Department or designee or courses or programs that a facility is submitting for approval in accordance with section 5 or a combination of both; in a format prescribed by the Division.

Sec. 9. 1. The Division shall establish a Cultural Competency Advisory Group.

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

1/7/2019

Health—1

the Department shall revise its preapproved cultural competency program and notify all facilities of the change and its effective date. based on the recommendations of the Cultural Competency Advisory Group pursuant to section 9, subsection 6, the facility using a program other than the one developed and approved by the Department shall revise their existing cultural competency course or program if necessary to meet the revised standards and submit the revised course or program within 30 business days of being notified by the Division department of a revision of the current standards which were revised pursuant to this section.

— Five people who each have a minimum of three years of experience providing cultural competency courses or programs including developing a course or program and presenting the materials in person or in an electronic format to businesses, schools, or government agencies or is an employee or contractor of an accredited Nevada college or university who deals with diversity issues, or combination thereof.

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

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

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

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

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

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

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

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

2. The Advisory Group may facilitate the development of materials which may be used to educate the public concerning cultural competency and diversity based on the standards developed pursuant to section 5(d).

2. The Advisory Group may review the cultural competency course or program applications submitted pursuant to section 5 and provide recommendations to the Division based on the standards developed pursuant to section 5(d).

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

Sec. 10. 1. If the Division department revises the standards pursuant to NRS 449.0302 and NRS 233B, the Department shall revise its preapproved cultural competency program and notify all facilities of the change and its effective date. based on the recommendations of the Cultural Competency Advisory Group pursuant to section 9, subsection 6, the facility using a program other than the one developed and approved by the Department shall revise their existing cultural competency course or program if necessary to meet the revised standards and submit the revised course or program within 30 business days of being notified by the Division department of a revision of the current standards which were revised pursuant to this

section.

or program annually with each licensure renewal in a format prescribed by the Division department. After review of the course or program pursuant to this section, if the facility determines that their cultural competency course or program needs to be revised the facility shall submit the revision to the Division department for approval within ~~15~~ 30 business days of completing the review pursuant to this section. The Director of the Department or designee may approve the revised course or program pursuant to this section.

If the facility believes that their existing cultural competency course or program meets the revised standards pursuant to subsection 1 of this section, the facility shall submit a statement, in a form prescribed by the Division, that the course or program meets the revised standards.

Sec. 11. The Division shall review each revised course or program resubmitted pursuant to section 10, subsection 1 or existing course or program pursuant to section 10, subsection 2, and if the Division finds that the course or program is found not to meet the current standards of the Division, the Division shall notify the facility that the program no longer meets the current standards of the Division set forth in section 5 (d) and of the information required to bring the course or program back into compliance. The facility will then have 30 business days to:

→ Notify the Division of an approved current cultural competency course or program to be utilized by the facility; or

→ Submit a revised cultural competency course or program to the Division for approval by the Director of the Department or designee pursuant to section 5 that meets the current standards of the Division;

→ If a revised cultural competency course or program is not submitted to the Division pursuant to this section within 30 business days, then the course or program will be removed from the list of approved cultural competency courses or programs maintained by the Division.

Sec. 12. The facility shall attest that the facility has reviewed their cultural competency course or program annually with each licensure renewal in a format prescribed by the Division department. After review of the course or program pursuant to this section, if the facility determines that their cultural competency course or program needs to be revised the facility shall submit the revision to the Division department for approval within ~~15~~ 30 business days of completing the review pursuant to this section. The Director of the Department or designee may approve the revised course or program pursuant to this section.

Sec. 13. An individual who provides care to a patient or resident of a facility who provides care to a patient or resident of the facility, must complete a cultural competency course or program approved by the Director of the Department or designee pursuant to section 5 within 30 business days of hire and annually after hire.

Sec. 14. Each agent or employee of facility who provides care to a patient or resident of the facility, must complete a cultural competency course or program approved by the Director of the Department or designee pursuant to section 5 within 30 business days of hire and annually after hire.

Sec. 15. 1. A facility shall post the statement required by section 2, subsection 2(b) of Senate Bill 31 and Division order at the back of the agency's main lobby in compliance with the Department of Health and Senior Services' requirements.

(e) — States the name of the facility;

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

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

2. A facility shall post the statement required by section 2, subsection 2(b) of Senate Bill 364 of the 2019 legislative session and notice that a patient or resident who has experienced prohibited discrimination may file a complaint with the Division along with the contact information for the Division in each public entrance of the facility and in all locations where patient, residents, staff or the public may congregate in the facility.

~~2. A facility shall post the statement required by section 2, subsection 2(b) of Senate Bill 364 of the 2019 legislative session and notice that a patient or resident who has experienced prohibited discrimination may file a complaint or grievance with the facility. This notice shall include the facility's process and timing to address complaints and the contact information of the Division. The patient or resident chose to file the complaint with the State.~~

~~Sec. 17. Upon admission of a patient or resident, the facility shall obtain written permission of the patient or resident or the authorized representative of the patient or resident, in order to obtain express permission of the patient or resident pursuant to section 3, subsection 2, of Senate Bill 364 of the 2019 legislative session. The patient or resident may refuse to give permission pursuant to this section.~~

~~Sec. 18. 1. A facility shall provide each patient or resident a written notice upon admission that a patient or resident who has experienced prohibited discrimination may file a complaint or grievance with the facility. This notice shall include the facility's process and timing to address complaints and the contact information of the Division. The patient or resident chose to file the complaint with the State.~~

~~2. The facility shall maintain a log which lists all complaints and grievances filed by residents or patients and the interventions taken to resolve the complaint or provide a reason why no action was taken.~~

~~3. A patient or resident who files a grievance or complaint or reports an incident pursuant to subsection 1 of this section must be notified of the final outcome of the facility's investigation within 15 business days of the completion of the investigation of the complaint or grievance or be given a reason why no action needs to be taken.~~

~~4. The investigation conducted pursuant to subsection 3 of this section, must be completed within 60 days of a patient or resident filing a grievance or complaint.~~

~~5. The facility shall maintain a written policy concerning the manner in which complaints or grievances filed pursuant to subsection 1 from residents or patients will be documented and resolved and a log which lists all complaints and grievances filed by residents or patients and the interventions taken to resolve the complaint or provide a reason why no action was taken.~~

~~Sec. 19. A facility shall:~~

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1/7/2019

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

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

~~(0) If the facility is a medical facility, adapting health records, including electronic and paper records, to meet the medical needs of patients or residents with diverse sexual orientations and gender identities or expressions, including, without limitation, integrating information concerning sexual orientation and gender identity or expression into electronic systems for maintaining health records; and~~

~~(0) If the facility is a facility for the dependent or other residential facility, adapting electronic records and any paper records the facility has, to include:~~

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

~~(1) The records adapted pursuant to subparagraph (1) of paragraph (b) of~~

~~this section must include the:~~

~~a) Preferred name;~~

~~a) Gender identity;~~

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

~~a) Gender assigned at birth;~~

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

~~(0) Lesbian;~~

~~(0) Gay;~~

~~(0) Straight/Heterosexual;~~

~~(0) Bisexual;~~

~~(0) Queer; or~~

~~a) Something else;~~

~~(0) Organs present at birth or expected at birth;~~

~~(1) Organs hormonally enhanced or developed; and~~

~~(1) Organs surgically removed, enhanced or constructed;~~

~~a) A means to maintain an inventory of a patient's medical gender transition history and current anatomy;~~

~~a) A means to maintain chart integrity when interfacing with insurance, for example, legal name and legal sex;~~

Sec. 19. A facility shall inquire upon admission whether the patient has a preference for a name or pronoun other than what is on the medical records and shall insure that all persons giving care to the patient are instructed to refer to the patient according to those preferences. If the patient records are maintained in written form, those preferences must be noted on the record. If records are maintained in electronic form, a notation as to that preference may be made in a data field, if available, that does not alter the medical records otherwise. If no data field exists, a notation in the margin or as a supplementary electronic record will suffice. Any information medically pertinent to the patient's with diverse sexual orientations and gender identity or expression shall be integrated into the facility's medical records as soon as economically and functionally practicable.

1/7/2019

Sec. 20. The specific types of discrimination prohibited by section 2, subsection 2 (a), of Senate Bill 364, includes:

- a. ~~Discrimination by association in which an individual is discriminated against because the other individual's they associate with are of a different race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status of the patient or resident.~~
- b. ~~Discrimination by association in which an individual is discriminated against because the other individual's they associate with are of a different race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status of the patient or resident.~~
- c. ~~Discrimination by association in which an individual is discriminated against because the other individual's they associate with are of a different race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or human immunodeficiency virus status of the patient or resident.~~
- d. ~~Harassment, of any kind, of an individual because they are of a certain race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or because of the human immunodeficiency virus status of the patient or resident.~~

Sec. 21. 1. A facility shall:

required pursuant to sections 5 to 25.

- Report if an older person or vulnerable person has been abused, neglected, exploited, isolated or abandoned in accordance with the provisions of Senate Bill 540 of the 2019 legislative session; and
- Report if a child has been abused or neglected in accordance with NRS 432B.220.

Sec. 22. A facility shall demonstrate the ability to read, write, speak and communicate effectively with the patients or residents residing in their facility.

Sec. 23. A facility administrator shall ensure compliance with the provisions of Senate Bill 364 of the 2019 legislative session:

Sec. 24. A facility shall adopt and maintain policies and procedures for the transfer and discharge of patients or residents of the facility which do not discriminate against a patient based on the source of payment for the services provided.

Sec. 25. The facility shall make available to the Division department, upon request, any documentation required pursuant to sections 5 to 25.

Sec. 26. NAC 449.0034 is hereby amended to read as follows:

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

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Sec. 27. NAC 449.365 is hereby amended to read as follows:

0.—An obstetric department of a hospital shall provide services for labor, delivery, newborn care and recovery care, and shall maintain the areas in which these services are provided in a safe and clean manner.

0.—The obstetric department must be equipped with those items needed to provide obstetrical care and emergency procedures in life-threatening situations to a ~~[mother]~~ pregnant patient or ~~[her]~~ the pregnant patient's baby.

1/7/2019

Sec. 28, MAC 449.3655 is hereby amended to read as follows:

~~0—No person may be transferred or discharged from an obstetric department of a hospital unless:~~

- ~~(-) The transfer or discharge is appropriate based on a risk assessment of the patient;~~
- ~~(-) A physician determines that the patient is not in active labor; or~~
- ~~(-) A physician determines that the medical needs of the patient exceed the capability of the obstetric department.~~

~~0—The criteria for the transfer of a patient must be in writing and included in the manual for policies and procedures of the obstetric department.~~

~~0—A patient in the obstetric department may be transferred only to a hospital capable of providing a higher level of obstetrical and neonatal care and for which there are written documents which verify that the receiving hospital agrees to accept emergency patients without regard to their ability to pay.~~

~~0i—The obstetric department shall establish written protocols for the discharge of patients from the hospital, which include, without limitation:~~

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

~~(a) Plans for the examination of the *mother* pregnant patient and newborn after discharge;~~

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

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

Sec 29, MAC 449.39524 is hereby amended to read as follows:

~~0—An intermediary service organization shall ensure that a person with a disability who receives services from the intermediary service organization or, as applicable, other responsible person acting on *his or her* their behalf:~~

~~(-) Has the right to select the person's assistant of *his or her* their choice;~~

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

~~(-) Receives services from the intermediary service organization *which are in compliance with Senate Bill 364 of the 2019 legislative session* [without regard to race, color, creed, national origin, sex or disability];~~

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

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

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

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

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

1/7/2019

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

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

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

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

DRAFTING NOTE FOR LEGISLATIVE COUNSEL BUREAU

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

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

OMITTED REGULATIONS

[NAC 449.153 is hereby amended to read as follows:

1— No facility may deny treatment to a prospective client on the grounds of race, color, age, disability, or national origin.

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

[NAC 449.15369 is hereby amended to read as follows:

— 1— No facility that accepts a person for treatment for whom all or part of the payment for treatment is made from the money of the Division of Welfare and Supportive Services or any other agency funded in whole or in part by federal money may deny treatment to a prospective client on the grounds of race, color, national origin, age, gender or disability.

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

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

[NAC 449.269 is hereby amended to read as follows:

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

1/7/2019

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

[NAC 449.355 is hereby amended to read as follows:

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

[NAC 449.4083 is hereby amended to read as follows:

1. A client shall not be segregated or restricted in the enjoyment of any advantage or privilege enjoyed by other clients or provided with any assistance, service or other benefit which is different or provided in a different manner from that provided to others on the ground of race, color or national origin.

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

[NAC 449.413 is hereby amended to read as follows:

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

[NAC 449.731 is hereby amended to read as follows:

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

[NAC 449.74375 is hereby amended to read as follows:

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

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

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

[NAC 449.74455 is hereby amended to read as follows:

— 1—A patient in a facility for skilled nursing shall not be segregated or restricted in the enjoyment of an advantage or privilege enjoyed by other patients, or provided with any assistance,

1/7/2019

service or other benefit which is different or provided in a different manner from that provided to other patients, on the ground of race, color, religion, national origin or disability.

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

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NAC 449.153 Discrimination prohibited. (NRS 449.0302)

1. No facility may deny treatment to a prospective client on the grounds of race, color, age, disability, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or national origin.

2. No resident may be segregated, given separate treatment, restricted in the employment of any advantage or privilege enjoyed by others under the program or provided with any aid, treatment, services or other benefits which are different or provided in a different manner from that provided to others under the program, on the grounds of race, color, age, disability, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or national origin.

[Bd. of Health, Alcohol and Drug Abuse Treatment Facilities Art. 15, eff. 3-27-76] — (NACeA 8-1-91; R077-01, 10-18-2001)

NAC 449.15369 Discrimination prohibited. (NRS 449.0302)

1. No facility that accepts a person for treatment for whom all or part of the payment for treatment is made from the money of the Division of Welfare and Supportive Services or any other agency funded in whole or in part by federal money may deny treatment to a prospective client on the grounds of race, color, national origin, age, gender, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or disability.

2. No client may be segregated, given separate treatment, restricted in the employment of any advantage or privilege enjoyed by others under the program or provided with any aid, treatment, services or other benefits which are different or provided in a different manner from that provided to others under the program on the grounds of race, color, national origin, age, gender, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or disability.

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

(Added to NAC by Bd. of Health by R129-99, 11-29-99, eff. 1-1-2000)

NAC 449.269 Discrimination prohibited. (NRS 449.0302)

1. A resident of a residential facility shall not be segregated or restricted in the enjoyment of any advantage or privilege enjoyed by other residents, or provided with any assistance, service or other benefit which is different or provided in a different manner from that provided to other residents, on the ground of race, color, religion, national

1/7/2019

origin, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or disability.

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

(Added to NAC by Bd. of Health by R003-97, eff. 10-30-97)

NAC 449.355 Discrimination prohibited. (NRS 449.0302) A hospital shall not discriminate in the admission of, or the provision of services to, a person on the basis of his or her race, color, religion, national origin, age, gender, disability, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or ability to pay.

[Bd. of Health, Health Facilities Reg. Part III Ch. I § XVI subsec. E, eff. 10-9-69; Ch. II part § XI, eff. 10-9-69] — (NAC A by R050-99, 9-27-99)

NAC 449.4083 Discrimination prohibited. (NRS 449.0302)

1. A client shall not be segregated or restricted in the enjoyment of any advantage or privilege enjoyed by other clients or provided with any assistance, service or other benefit which is different or provided in a different manner from that provided to others on the ground of race, color, age, disability, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or national origin.

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

(Added to NAC by Bd. of Health, eff. 6-23-86)

NAC 449.413 Discrimination prohibited. (NRS 449.0302, 449.0303) A psychiatric residential treatment facility shall not discriminate in the admission of, or the provision of services to, a person on the basis of his or her race, color, religion, national origin, ancestry, age, gender, disability, sexual orientation, religion, human immunodeficiency virus status or gender identity or expression.

(Added to NAC by Bd. of Health by R046-14, eff. 10-24-2014)

NAC 449.731 Discrimination prohibited. (NRS 449.0302) No facility accepting a person for resident care, for whom all or part of the payment for care is made from funds of the Division of Welfare and Supportive Services or any other agency funded in whole or part by federal funds, may deny admission to a prospective resident on the grounds of race, color, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or national origin. No resident may be segregated, given separate treatment, restricted in the enjoyment of any advantage or privilege enjoyed by others under the program or provided with any aid, care services or other benefits which are different or provided in a different manner from that provided to others under the program, on the grounds of race, color, religion, ancestry, gender, sexual orientation, gender identity or expression, human immunodeficiency virus status or national origin. Employment practices, including, but not limited to, hiring, discharge,

1/7/2019

rate of remuneration, assignments or work hours scheduled, may not be based on discriminatory grounds.

[Bd. of Health, Intermediate Care Facilities Reg. § 15.1, eff. 12-5-75] — (Substituted in revision for NAC 449.746)

NAC 449.74375 Discrimination prohibited. (NRS 449.0302)

1. No facility that accepts a person for treatment for whom all or part of the payment for treatment is made from federal or state money may deny treatment to a prospective patient on the grounds of race, color, national origin, age, gender, religion, ancestry, sexual orientation, gender identity or expression, human immunodeficiency virus status or disability.

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

3. Employment practices of a facility, including, without limitation, hiring, firing, the rate of remuneration, assignments or work hours, may not be based on race, color, national origin, age, gender, religion, ancestry, sexual orientation, gender identity or expression, human immunodeficiency virus status or disability.

(Added to NAC by Bd. of Health by R051-06, eff. 7-14-2006)

NAC 449.74455 Discrimination prohibited. (NRS 449.0302)

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

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

(Added to NAC by Bd. of Health by R051-99, eff. 9-27-99)

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Nevada Health Care Association
Nevada Center for Assisted Living
2520 St. Rose Pkwy Ste. 202C
Henderson, NV 89052

January 29, 2020

Leticia Metherell, Health Program Manager III
Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, Nevada, 89701

RE: **NOTICE OF PUBLIC WORKSHOP** – Proposed amendments to NAC 449 related to SB 364 and SB 470 (2019).

Dear Ms. Metherell,

The Nevada Health Care Association/Nevada Center for Assisted Living represents both skilled nursing and assisted living facilities. I am writing this letter in response to the *Notice of Public Workshop* for proposed rules based upon passage of SB 364 and SB 470 (2019). Our association has the following concerns with the draft regulations:

Section 5 states:

“A facility must submit to the Division an application, within 60 business days of adoption of these regulations, within 60 business days of licensure or within 30 business days of revising the cultural competency course or program pursuant to section 10, as applicable, to provide a cultural competency course or program, as required by Senate Bill 364 and Senate Bill 470 of the 2019 legislative session...”

COMMENT: We request more time to meet the various deadlines contained in these proposed regulations. Some long term care facilities have policies to address the issues contained in these rules. However, many facilities will need more time to develop or purchase additional materials in order to meet the newest requirements of SB 364 and 470. We suggest the following changes to the timelines:

- *A facility must submit to the Division an application, within ~~60~~ 90 business days of adoption of these regulations*
- *A facility must submit to the Division an application... within ~~30~~ 60 business days of revising the cultural competency course or program*

Section 5 states (cont'd):

***“f. A written evaluation of the content and presentation of the course that will be completed by each course or program participant; and
g. A self-evaluation or reflection of each individual course participants perspective on the content of the course and the instructor.”***



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COMMENT: We want to make sure that a long term provider is not responsible for whether or not such a form (f) or (g) is actually completed by the participant. We suggest language that “providing such a document to each participant” would meet the requirement of the rule. We believe a non-mandatory approach will encourage more honest feedback rather than mandating a person “self-evaluate” or “reflect” upon the course.

Section 8 states:

“The cultural competency course or program submitted by the facility pursuant to section 5 must include all the patients or residents listed in section 2.5, section 1 (a -f) of Senate Bill 364 or a combination of courses or programs that addresses all the residents or patients, which may include courses or programs that already are approved by the Director of the Department or designee or courses or programs that a facility is submitting for approval in accordance with section 5 or a combination of both, in a format prescribed by the Division.”

COMMENT: Can an approved form of course or program be available as an online-only course? Also, it is our hope that there would be a generic template made available for providers that would reduce costs associated with need to develop an entirely new training.

Section 9 states:

***“1. The Division shall establish a Cultural Competency Advisory Group.
2. The Advisory Group consists of the following seven members appointed by the Board of Health.
(a) Five people who each have a minimum of three years of experience providing cultural competency courses or programs including developing a course or program and presenting the materials in person or in an electronic format to businesses, schools, or government agencies or is an employee or contractor of an accredited Nevada college or university who deals with diversity issues, or combination thereof.
(b) Two people who represent the Department, one of which is an employee or contractor of the Bureau of Health Care Quality and Compliance.”***

COMMENT: It is very important to skilled nursing and assisted living facilities to have a voice on this advisory group. We are the people on the ground implementing these courses. Our administrators and directors of nursing will have invaluable feedback about how the information is received and what needs changed to improve the materials in our long term care communities. Please include us on this group.



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Section 12 states:

“The facility shall attest that the facility has reviewed their cultural competency course or program annually with each licensure renewal in a format prescribed by the Division. After review of the course or program pursuant to this section, if the facility determines that their cultural competency course or program needs to be revised the facility shall submit the revision to the Division for approval within 15 business days of completing the review pursuant to this section. The Director of the Department or designee may approve the revised course or program pursuant to this section.”

COMMENT: The timeline for submitting a revision to the Division needs extended or it will work as a disincentive to update the course. Long term care facilities need the time to be thoughtful and thorough to make the adequate changes. Please allow them a longer period to submit revisions for approval after the required annual review.

Section 14 states:

“Each agent or employee of facility who provides care to a patient or resident of the facility, must complete a cultural competency course or program approved by the Director of the Department or designee pursuant to section 5 within 30 business days of hire and annually after hire. The facility must keep documented proof in the agent’s or employee’s personnel file of completion of the course or program.”

COMMENT: Please define the term “agent” for the purposes of these rules.

Section 20 states:

***“The specific types of discrimination prohibited by section 2, subsection 2 (a), of Senate Bill 364, includes:
b. Indirect discrimination which may or may not be intentional by applying policies that are applied uniformly and in a nondiscriminatory manner.”***

COMMENT: “Indirect discrimination” in subsection (b) is not a specific type of discrimination contained in SB 364. Please provide justification for a standard not contained in the original legislation. Also, the “indirect discrimination” in subsection (b) of this section is very vague and would be difficult to enforce or to understand how to comply. We are concerned about attempting to comply with a standard that is “indirect” and may be intentionally or unintentionally applied. We suggest removing the provision.



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Section 22 states:

“A facility shall demonstrate the ability to read, write, speak and communicate effectively with the patients or residents residing in their facility.”

COMMENT: Please provide clarification on this section. We do not know how a “facility” would actually demonstrate the ability to read, write, speak effectively? This seems to exceed the scope of the enabling legislation.

General Comments:

COMMENT: Residential Facilities for Groups (ALFs) are social and not medical models. There is much confusion in the assisted living provider community about what portion of these draft regulations would apply to the assisted living model. Assisted living facilities do not typically house “medical records” because those are housed with the resident’s physician. We need clarity in the regulations for these facility types (residential facility for groups).

COMMENT: We want to speak generally about the increasing number of regulations in long term care. Skilled nursing facilities are regulated both at the federal and state level. Each time a regulation is added in both skilled nursing and assisted living facilities, it has the potential to pull caregivers away from providing quality care to our residents. There is a cumulative effect over time of adding regulation by regulation to providers. There is also a cost – it costs time and scarce resources in order to implement each new regulation.

COMMENT: Clarity in language reduces confusion and will allow our long term care facilities to continue providing quality care to our residents. We are concerned that some of these changes in the draft regulations create confusion for our residents and our caregivers. We want to abide by the statute but request an opportunity to sit at the table to address our concerns. We still have time to work through these concerns before the rules need to be effective on July 1, 2020.

We appreciate the opportunity to comment.

Thank you,

Brett S.

Brett Salmon, President/CEO
Nevada Health Care Association/Nevada Center for Assisted Living

January 29, 2020

Leticia Metherell, Health Program Manager III
Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, Nevada 89701

Re: NOTICE OF PUBLIC WORKSHOP – Proposed amendments to NAC 449 related to SB 364 and SB 470 (2019)

Dear Ms. Metherell,

I have been a licensed nursing facility administrator and consultant to operations since 1984 when I was #156 in the state of Nevada. I am now licensed as a Health Services Executive#3 which covers Skilled Nursing, Residential Facilities, Home Health, and Hospice operations having passed all national board exams in these areas.

Currently I am a Board member of the Nevada Health Care Association/Nevada Center for Assisted Living and current co-chair of the Assisted Living Advisory Council. Previously I was co-chair of the Skilled Nursing Advisory Council at the time that Mental Health/Behavioral Services and reimbursement rate were evolving.

Of note, I have been a part of Nevada's transformation from 1984 to now. Our facility was one of the first to implement Universal Precautions and to care for those first diagnosed with HIV/AIDS. Our facility was one of the first to care for children and to implement background checks. Our facility was one of the first to embrace ADA compliance. Our facility was one of the first to have a secure ALZ/Behavioral Unit with GPS tracking and monitoring for improved patient care.

The mandate within the legislation that was signed into law SB 470 was to **“more effectively treat patients or care for residents**, as applicable, the Board shall, BY REGULATION, require such a facility to conduct training relating specifically to cultural competency for any agent or employee of the facility who provides care to a patient or resident of the facility SO THAT such an agent or employee may better understand patients or residents who have different cultural backgrounds...”

“The training relating specifically to cultural competency conducted by a facility “must be provided through a course or program that is approved by the Department of Health and Human Services.”

The mandate within SB 364 relating to the protection of vulnerable persons in addition to requiring the aforementioned training, has provisions prohibiting certain discriminatory actions, protecting the privacy, and adapting records to reflect certain information.

I believe that these mandates can be achieved through the system that APPLIES TO ALL PATIENTS AND RESIDENTS currently in place for Abuse, Neglect, and Exploitation with alterations to allow for the language within the bills that pertains to cultural diversity groups within SB 470 section 1 language.

TO MORE EFFECTIVELY TREAT PATIENTS OR CARE FOR RESIDENTS has always been our mantra and mandate. I will proceed to apply this filter to the proposed regulations:

Sec. 5: A facility must submit to the Division an application... a. syllabus, b. resume, d. content, e. sign in, f. written evaluation, g. self-evaluation/reflection h. i. Division assigning number, j. course through contract or sending employee Sec. 7 and Sec. 8

Recommend: Strike Sections 5,7, and 8. Use existing Abuse, Neglect, and Exploitation training processes in place(include Cultural Diversity training language) approved by Surveyors out in field through their routine processes.

Taking administrative time away from cares to submit these excessive documents constantly with workforce changes DOES NOT MEET THE REQUIREMENT TO MORE EFFECTIVELY TREAT PATIENTS OR CARE FOR RESIDENTS nor is the State staffed to process all of this. Put the money into direct care.

Sec. 9: Advisory Group – Strike this Section altogether. Overreaching and not authorized in either Bill. An Advisory Group already exists for all licensed provider groups.

Sec. 12,14 – Once again strike completely as the facility having to submit would be overly burdensome and not in keeping with effectively treating patients or caring for residents, involving more treatment and care to paper or administrative systems.

Sec. 13 is overly restrictive and would cause me to be out of compliance with current programs provided in this area through Relias Learning Management System online. Each employee's courses are timed and tested. Cultural Sensitivity Course is very good and this practice has been in place for years.

Sec. 14 Strike above.

Sec. 15. and Sec. 16 Posting and Written Notice Upon Admission currently in place for all facilities and can be expanded to include the language in SB364 and SB470.

Sec. 17. Residents already sign a HIPAA Confidentiality Agreement for most providers so again this could be expanded to include the language in SB364 and SB470 with the opt outs currently in place.

Sec. 18. Residents already sign acknowledgement of complaint or grievance with facility protocols so again this could be expanded to include the language in SB364 and SB470. Suggest adding the word written to precede complaint or grievance.

Sec. 19 Facilities already allow for preferred name since so many have to use whatever name was put into the Social Security and Medicare Systems for billing and payment. This could be expanded to preferred name or pronoun.

Once again the proposed regulations are too specific. I would strike anywhere that says "must include". Recommend a hybrid system for opting out of male/female and paper form that could be completed with simple language in the bills to then be included in the record by scanning into electronic or keeping in hard copy binder.

Also, the specifics as to organs and gender modifications history cannot be done by nonmedical and even the medical settings would once again be taking time away from cares when pertinent information can be shared through the H & P process without mandate.

Sec. 20

Strike a. and b. as too vague and "indirect" discrimination is not within the Bills' language.

c. and d. seem to be ok at face value.

Recommend adding Bullying which is within SB364. Once again, regulations shouldn't be overly burdensome and not too specific.

Sec. 21 strike Abuse, Neglect, and Exploitation reporting already in place.

Sec. 22 Strike A facility shall demonstrate language a problem in this area.

Sec. 23 Not needed. Administrators have to comply with everything.

Sec. 24 Strike. Not in Bills and discharge and transfer practices already provided for in CFRs.

Sec. 25. Strike Not needed. Facilities already make all documents available on surveys to meet compliance requirements.

Sec. 27. NAC 449.365 Once again the Bill does not require pronoun or terminology adjustments to prior regulations.

Recommend keep current pronouns as they have been preferred by mother, his or her individuals for years and within the senior population used in greater number. Also of note, once a mother has delivered the baby, that individual is no longer a pregnant patient.

Potentially, for the small numbers preferring pronoun changes comparatively, "their" could be added to his or her. (The majority of seniors would equate that to poor grammar.)

Potentially, for the small numbers preferring not to be called mother, pregnant or delivering patient could be added to mother.

Revisit all of the Omitted Regulations as many of these could be tweaked with language added whenever it says "on the grounds of race, color, age, disability, or national origin." To say "on the basis of actual or perceived race, color, religion, national origin, ancestry, age, gender, physical or mental disability, sexual orientation, gender identity or expression or HIV status, or based on association with another person... HIV status."

The process that was undertaken in crafting the dementia regulations was one that was more inclusive and one that I was involved in to more effectively treat patients or care for residents with dementia which are far greater in number than this emerging class.

I remain available to further craft regulations to meet the mandate within the legislation that was signed into law under SB 364 and SB 470 to **“more effectively treat patients or care for residents** in this emerging area of humanity.

Sincerely,

Jeanne Bishop-Parise,
Nevada HSE #3

From: Dora Valentin (email)

RE: Small-Business Impact Questionnaire: Anti-Discrimination and Cultural Competency

In reviewing "[Proposed Changes to Nevada Administrative Code Chapter 449 - Anti-Discrimination and Cultural Competency in Health Facilities \(SB 364 and SB 470\)](#)," I find that it has very little to do with cultural competency and absolutely nothing to do with anti-discrimination. The entire proposal is half-hearted and frankly offensive to anyone who is aligned with social justice. However, this is a small business impact questionnaire, so allow me to address both the shortcomings regarding true cultural competency as well as how it will affect my small business financially.

Cultural competence is the ability to understand, communicate with and effectively interact with people across cultures. Cultural competence encompasses being aware of one's own world view, developing positive attitudes towards cultural differences, gaining knowledge of different cultural practices and world views. With this definition in mind, I am wondering how this regulation addresses cultural competence. In order to achieve a level of understanding of this, academics would submit that it would take years of study... but if we are going to have to create some sort of mass education, at the minimum we are talking months and many (80+) hours by competent trainers. As a graduate of the Social Justice Training Institute and as someone with a Masters in Higher Education, and a decade in training college students in this topic, I am appalled that this regulation thinks it addresses Cultural Competence. Although this topic is necessary for all citizens to engage in, the amount of training it would take to move my non-educated, at the most High school level caregivers, is enormous and frankly not the responsibility of my small business. This topic belongs in a high school curriculum.

The regulation fails to state how long this training needs to be. And frankly, any more than a 1-hour annual training would put an extreme strain on my small business.

I am questioning the requirement of an Advisory council. The proposed regulation states almost nothing about the curriculum, the length of the training, yet it goes into detail into defining a volunteer advisory board, which no other required trainings ask for. Why is there not an Advisory council created for the required Elder abuse, Caregiver Training, Alzheimer's Training, etc? Because we do not have the resources for that. Yet, this topic— which cannot be trained in a 1-hour course to begin with— gets an Advisory Council with strict parameters? It is strange.

The regulation states that as a licensee, I would have to collect certain data on my residents. So, gender is not enough. This regulation would require that I ask my elderly residents upon admission to describe their birth organs, their history of sex change operations, and current status? Isn't the whole point of social justice is to accept people for the identity they present? And if there is a medical reason for this, how is this relevant in a non-medical facility? I am at a loss or I need more education in this matter. I cannot imagine asking an elder these questions. If a trans/gay/bi elder presents for admission in one of my facilities, I would ask the normal person centered care: what are YOUR needs... if incontinence care or bathing ADL is one of the services requested, I guarantee you, that this person will share with us if there is anything they need from the caregivers – why would I need to ask this question from all of my incoming residents?

I am happy to include trans/gay/bi protected classes in my anti-discrimination statement, and that would let my incoming residents know that they may have a roommate who belongs to different cultural groups from their own.

It must be really hard to understand and believe us, operators, when we say that hiring good caregivers is by far the greatest challenge we all face. The amount of turn-over, the lack of qualified candidates, the enormous barriers to hire – which includes all the trainings required, is not just a hardship on small businesses. It is a crisis. Our demographics is such that the elder care population is large, while the population of younger workers is small – the math is simple. We don't have enough caregivers to meet the demand for assisted living/care of any type. So, having had the medication training been tightened up by secondary education and other requirements, for having to have more and more required trainings – is not feasible.

However, in general, we should all be more culturally competent, yes. However, this requirement should not create another barrier to hire, or to retain staff. If this requirement were, say, an online course – like ADSD's Elder Abuse Course – which is free, available 24/7... that would be the only thing that would make sense from a perspective of time and money it takes to manage our businesses.