



September 1, 2017

Ms. Amy Roukie
Secretary
State Board of Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Re: Proposed Peer Support Recovery Organization Regulations (R120-16P)

Dear Ms. Roukie:

I am writing today to provide information pertaining to the upcoming meeting of the State Board of Health. Please find attached a memorandum detailing information for the Boards consideration of proposed regulation LCB File No. R120-16P.

We are asking the Board to *reject* the proposed regulations pursuant to their authority in NRS 439 and 449. The regulations constitute an unfortunate and substantial departure from the legislative intent of the statute they seek to clarify. Additionally, the current draft of the regulations was, perhaps erroneously, considered by the Legislative Committee on Health Care during the last interim, and been rejected.

Of most concern, and certainly relevant to your current position as administrator is for the community to understand better how precisely the Division intends to evaluate qualifications for licensure.

We have been active and present at every public opportunity to detail our concerns and offer to help the division craft regulations that comply with the statute, promote access to community based services, and protect the integrity of the public payer system. This included drafting of proposed regulations and revisions to this draft. None have been accepted and therefore we are opposed to these regulations *in toto*.

However, if the Board does return the regulations for further drafting, we would offer to be of service to the state in supporting community driven peer recovery support. I'm sure you agree, that a dynamic recovery oriented system of care for all Nevada individuals and families is elemental to building resiliency in light of a public health crisis.

Sincerely,

A handwritten signature in black ink, appearing to read "Trey Delap", written over a horizontal line.

Trey Delap, M.A.


ATTACHMENT



MEMORANDUM

Date: September 1, 2017

To: Members
State Board of Health
4150 Technology Way, Suite 300
Carson City, NV 89706

From: Trey Delap, M.A., Director, Group Six Partners 

Re: Peer Support Recovery Organization Regulations (R120-16P)

This memorandum is submitted to the State Board of Health on the occasion of their consideration and adoption of proposed regulations pertaining to Peer Support Recovery Organizations (LCB File No. R120-16P).

We request that the State Board of Health reject the proposed regulations (LCB File No. R120-16P). For the following reasons:

1. Proposed regulations do not meet the legislative intent of the corresponding statute.
 - a. NRS 449.01563 was amended by Senate Bill 489 (2015, 78th Session). A review of the records indicates the legislative intent was to expand service opportunity for new organizations.
 - i. Drafted regulations effectively contract service opportunity in opposition to legislative intent.
 - b. This draft of the regulations was considered by the Legislative Committee on Health Care during their interim meeting on August 24, 2016, and rejected.
 - i. The draft remains unaffected despite the legislative committee's concerns.
2. Regulations were drafted by the Nevada Peer Leadership Advisory Committee (NPLAC) at the request of the Division, but were not considered by the state in this draft.
3. Inadequate consideration of the proposed fees plus the collateral costs incurred by potential organizations seeking this license.

LEGISLATIVE INTENT: PEER RECOVERY SUPPORT.

Legislative History: Senate Bill 489 – Amending NRS Chapter 449 (2015, 78th Session)

Senate Bill 489 was introduced during the 78th Nevada Legislature (2015). The bill was considered during five (5) committee hearings in both Senate and Assembly. The bill was amended once in the Assembly and ultimately passed both houses unanimously. The Bill was approved by the Governor, effective October 1, 2015.

Records of Legislative Committee Hearings

In support of SB 489, the state represented that this bill would allow for the creation of new,

stand-alone entities providing peer recovery support services to access the public payer system vis a vis Medicaid.¹ Merry Wherry, then Deputy Administrator of the Department of Public and Behavioral Health (DPBH) stated,

“The goal is to grow the private sector for peer supporters and our concern is the private sector has not responded to Medicaid offering this coverage since 2005. Nobody in the private sector has embraced the peer support model, which is very atypical.... If agencies could be created that manage those requirements and employ the peer support specialists, those individuals would not have to worry about administrative burden. Perhaps then we could create that kind of model in the community, where people will have peer supporters to utilize in their recovery. ”²

Continuing during the hearing, the committee clarified that this bill would not require currently licensed entities to obtain a new license to provide these services. Rather, the intent of the bill was to create stand-alone entities to provide such services to encourage the availability of peer recovery support in the state.

Wherry continued, “What is being created is a business model that will employ people in the market because people are not taking advantage of this service now. An employment vehicle is being created.”³

The intention was to increase the opportunity for private organizations to provide services as a public benefit and to relieve the demand on the state being the exclusive provider of reimbursable peer services.

A regulatory scheme would grant access for the entity to the payer system through this licensing process. It would include opportunities for peer services to be reimbursable through private payers as well.

It was clearly stated that the licensing component would apply to the organization not the individual providing the peer services. In this regard, the entity would be held accountable over the individual peer provider.

It was also stated, and included in the bills only amendment, that these provisions would apply only to those peer supports being paid to provide services. This would exempt voluntary organizations that may be construed to be providing peer recovery support sufficient to fall under state regulation.⁴

Intent to Leverage Federal Money to Support Peer Recovery Support Services.

Peer Recovery support services are fungible through various federal appropriations including the Public Health Service Act and the Social Security Act. States have flexibility in how to leverage

¹ Debra Carmichael, “Senate Committee on Health and Human Services-April 8, 2015,” July 26, 2017.

² *ibid.*

³ *ibid.*

⁴ Karen Buck, “Assembly Committee on Health and Human Services-May 27, 2015,” July 26, 2017.

federal funds to pay for recovery support.⁵

It was made abundantly clear that the intention of SB 489 was to promote access to an underutilized service beyond the capacity of the state operated providers. Additionally, the current funded provider network is inadequate to complete the scope of services included in any Recovery Oriented System of Care (ROSC). Therefore, it is essential for the state to encourage and support organizations to provide these services to Nevadan's seeking recovery from mental illness and addiction.

In the current policy environment, the federal government and the state is actively engaged in a dynamic public response to the opiate overdose epidemic. Active innovative projects are occurring where integration of services, collaboration, and direct support of community based recovery support services is occurring. The state cannot endure a restrictive policy error that may restrain availability of these critical services to the people of Nevada.

These regulations may inhibit the state's access to federal public funding sources if they do not align with anticipated sources of funding for these services. A more thorough vetting of how exactly the state intends to support peer recovery support services is in order. That component is missing from consideration of these regulations.

Narrow Focus of Services, Oppositional to Legislative Intent

SB 489 was intended to create an opportunity for independent peer support recovery organizations with strong connections to their communities to offer services without excessive regulation. In most cases, the value of the license to these organizations is to provided peer services only. A license under this regulation is directly correlated with the organizations providing of peer recovery support services, and for no other purpose.

This distinction is important to note when considering the regulatory burden including the cost of compliance above and beyond the fee structure. Each compliance point has an associated cost that the organization would need to offset with either diminished return, other capital or funding.

If the organization is *only* providing peer services, there is not sufficient data or indication at what point at to what level services may be revenue from reimbursement may be realized. This makes identifying necessary startup capital and budgeting for sustainability impossible.

The scope of services provided through this license is very narrow – the financial impact of compliance with the regulations as drafted do not promote new opportunities, rather they protect current licensed facilities from potential competition. Ironically, however, current licensees have failed to meet the demand for these services for over twelve years thus the need for the new license class in NRS 449 in the first place.

Although the regulations would protect currently licensed providers who are not providing the services, they will not encourage them to expand peer services to meet demand. Even if they do, there is no indication that such services would be expanded in manner consistent with generally

⁵ US Department of Health and Human Services, Substance Abuse and Mental Health Services, and Partners for Recovery, "Financing Recovery Support Services: Review and Analysis of Funding Recovery Support Services and Policy Recommendations," June 18, 2010, 1–51.

accepted standards for community based peer recovery support.⁶ These standards emphasize a strong community connection for peer recovery support services because the peers must reside, work, and live in the communities where they are recovering.

As drafted, the regulations will not encourage more or new service providers, they will dissuade entry into the service market. This is oppositional to the legislative intent of SB 489 which was deliberately to encourage more providers.

Regulation Drafting: Missed Opportunity for Stakeholder Participation

On May 12, 2015, Ms. Wherry speaking on behalf of the state represented that they would encourage the Nevada Peer Leadership Advisory Committee (NPLAC) to participate in the development of the regulations. The Senate Minutes for that meeting read, said,

Ms. Wherry: “I made a presentation to the peer support leadership council meeting this afternoon. We encourage all members to submit their names so they can be made aware of public workshops allowing them to participate in development of regulations for licensure of peer support recovery organizations.”⁷

During the interim session, NPLAC met to consider regulation drafting. NPLAC appointed an ad hoc committee to draft the regulations. Mike McMahon and Luana Ritch intermittently attended these meetings. The ad hoc committee met for three consecutive months crafting regulations, none of which were considered by the state.

It is notable that during this process there have been numerous senior level staff changes at DHHS and DPBH, and it is certainly conceivable that new leadership was not aware of this ongoing project.

Despite the state requested input of NPLAC, the Division submitted its initial draft of these regulations to the Legislative Counsel Bureau (LCB) on June 26, 2016 (LCB File No. R120-16I). The LCB revised the draft and returned it to the Division on August 3, 2016 (LCB File No. R120-16P).

Rejected by Legislative Committee on Health Care

It is not clear why LCB File No. R120-16P was included on the agenda for the interim meeting of the Legislative Committee on Healthcare conducted August 24, 2016, however, they were on the agenda and discussed.

This was the first public opportunity to review the regulations. The committee accepted testimony. Noted in the video of this hearing Senator Kieckhefer noted his concerns specifically with R120-16P. During the video, Senator Kieckhefer noted concerns with demonstrating competency in informal counseling as well as a lack of information on how the adequacy of training would be determined by the division. (See Archive Video at 58:22 – 1:01

⁶ SAMHSA, Substance Abuse and Mental Health Services Administration US Department of Health and Human Services, and Recovery Community Services Program, “What Are Peer Recovery Support Services?,” August 28, 2009, 1–16.

⁷ Susan McArthur, “Senate Committee on Finance-May 12, 2015,” July 26, 2017.

http://nvleg.granicus.com/MediaPlayer.php?clip_id=5983).

The committee agreed to draft a letter to the Legislative Commission expressing their disapproval of the regulations inclusive of LCB File No. R120-16P. Such a letter was never drafted because the regulations have not been considered by the Legislative Commission as of yet. This is an appropriate process because, on August 24, 2016, no public workshop had yet been conducted on these regulations. It would be worth inquiry to identify why these regulations had skipped critical elements the Administrative Procedure Act (NRS 233B).

However, it is instructive that the committee rejected this version of the regulations in August, and since then the Division has had sufficient time to remedy Senator Kieckhefer's concerns, and has chosen not to do so.

It would seem reasonable that if the Division adopted the same draft of these regulations, the Legislative Commission, would reject them.

Public Workshops

We have participated in every noticed public workshop on these regulations in compliance with NRS 233B, the Nevada Administrative Procedures Act. While Mr. Steve Gerleman, on behalf of the state noted our concerns. He also noted that if errata needed to be drafted to clarify the regulations.

No errata have been issued, no modifications to the proposed draft have been offered, and the regulations are sent for Board of Health approval on September 8, 2017. It is appropriate to assume that the Division is confident then drafted regulations meet legislative intent.

CONCLUSION

It is within the power of the State Board of Health to reject these regulations, and this document details numerous valid reasons to do so. We would encourage the Board to direct the Division to engage more deliberately the potential pool of service providers to identify specifically how best to meet the intent of SB 489. Nevada is not immune from the opiate overdose epidemic, and it cannot endure a policy error during a public health emergency.

REFERENCES and NOTES

1. SB 489 (2015, 78th Session) As Enrolled.
2. Senate Committee on Health and Human Services Hearing on SB 489 April 8, 2015
3. Senate Committee on Health and Human Services Hearing on SB 489 April 10, 2015
4. Senate Finance Committee Hearing on SB 489 May 12, 2015
5. Senate Finance Committee Hearing on SB 489 May 25, 2015
6. Assembly Committee on Health and Human Services Hearing on SB 489 May 27, 2015
7. LCB File No. 120-16P
8. Agenda - August 24, 2016, Legislative Committee on Health Care (Interim Meeting).
9. Minutes - August 24, 2016, Legislative Committee on Health Care (Interim Meeting).
10. Group Six Partners Public Comment on R120-16 to August 24, 2016, Legislative Committee on Health Care (Interim Meeting).
11. April 21, 2016 – NPLAC Ad Hoc Minutes
12. May 2016 – NPLAC Minutes
13. June 2016 – NPLAC Minutes

July 31, 2017

State Board of Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Ladies and Gentlemen of the State Board of Health,

The Nevada Peer Leadership Advisory Council (NPLAC) is an organization dedicated to advocating for a sustainable peer driven behavioral health system of recovery and wellness for persons with mental health challenges, substance use disorders and co-occurring disorders. NPLAC is a statewide council that is comprised of Peers working or volunteering in the fields of Mental Health, Addictions and Co-Occurring Disorders. NPLAC has representation from service providers as well as peer training providers.

NPLAC is fundamentally concerned with the regulations pertaining to Peer Support Recovery organizations and would like to respectfully ask the Board to consider the following:

- Reject the current version of the proposed regulations.
- Invite NPLAC to be a part of writing regulation language for Peer Support Recovery Organizations (R120-16P)

In 2016, NPLAC was engaged by Department of Health and Human Services Leadership, including Mike McMahon and Luana Ritch (both currently separated from state service). NPLAC formed an ad-hoc committee to draft regulations. The committee met several times, and developed a working draft of possible regulations. However, there is no evidence the state incorporated any of NPLAC's draft regulations into the current proposed draft.

NPLAC is an invaluable resource for the State on issues pertaining to peer recovery support services. It is unfortunate that NPLAC's experience and expertise was not considered in drafting these regulations. However, this may be remedied, but rejecting the current draft and engaging NPLAC in modifying these regulations to promote access to peer recovery support for all Nevadans.

Thank you for your time and consideration in reading and addressing our concerns.

Respectfully,



NPLAC