Minutes
STATE BOARD OF HEALTH
December 7, 2018
9:00 a.m.

Division of Public and Behavioral Health
4150 Technology Way, Room 303
Carson City, Nevada 89706

Grant Sawyer Building
555 E. Washington Ave.
Room 5100
Las Vegas, Nevada 89101

BOARD MEMBERS PRESENT:
Jon Pennell, DVM (Las Vegas)
Monica Ponce, DDS (Las Vegas)
Dipti Shah, M.D. (Las Vegas)
Judith Bittner (Carson City)

BOARD MEMBERS EXCUSED:
Jeffrey Murawsky, M.D.
Charles Smith

DIVISION OF PUBLIC & BEHAVIORAL HEALTH (DPBH) STAFF PRESENT:
Ihsan Azzam, Chief Medical Officer, Barrett Evans, Program Manager- EHS, Jason Lewis, Vital Records Program Officer, Margot Chappel, Deputy Administrator-Regulatory and Planning Services, Darcy Davis, Psychologist, Leticia Metherell, Health Program Manager-HCQC, Vickie Ives, Health Program Manager, Beth Handler, Deputy Administrator-Community Health Services, Steve Gerleman, Health Facilities Inspector-HCQC, John Gemar, Health Facilites Inspector- HCQC, Paul Shubert, Bureau Chief-HCQC, Kevin Kreitzman, Health/Human Services Professional Trainee-SNAMHS, Ana Lisa Dizon, Health/Human Services Professional Trainee-SNAMHS, Freddy Ramos, Health Facilities Inspector-SNAMHS

OTHERS PRESENT:
Linda Anderson, AG, Scott Weiss, THGG, Roselyn Javier, Maria Nutile, EMC, Steven Gleicher, PCAN, Joe Iser, SNHD, Jody Domineck, SEIU, Lanita Trayano, SEIU, Janie Rivera, SEIU, Gloria Madrid, SEIU, Veronica Ornelas, SEIU, Blanca Garcia Gomez, Kraft Sussman Financial Services, Yesenia Vasquez, SEIU, Sam Shaw, SEIU, Jen Valdecatos, SEIU, Henny Sonia, NNOC, Samantha Sato, Carrara NV, Ashley Cruz, Carr, Katie Ryan, Dignity Health, Darene Godfrey, SEIU, Randall Peters, SEIU, Tina Dortch, NV Office of Minority Health, Cathleen Hamel, UMC, Lynne McAllister, VHS, Emily Tuttle, Brittany Tolleson, Romina Lizaso, Jessica Lagor, Magdalena Alvarez, Cassia Lopez, Chase Brenfon, NVH, Gina Pierotti-Buthman, VHS, Mia Brucelango, SEIU, Rachael Peters, DCFS, Gretchen Batis, CQES, Steve Spentzakis, MMLV, Tom Waher, BCH, Liz Angel, KLAS, Hayley Jarolimek, DCFS, Eileen Kinzel, ComFor Care, Robert Colbert, Nevada HAND, Erin Leroux, Nevada HAND, Laura Hennum, Dignity Health, Ellie McNutt, Elite Medical Center, Maria Caguiela, Jadelle Beacon Hope, Steve Sorensen, SEIU, Helen Foley, NALA, Trent Stephenson, American Addiction Centers, Josie P. Castillo, AHONN, Stephanie Robbins, NV Medicaid, Molly Ratfield, Cascades of the Sierra, Connie McMullen, PCAN, Molly Blanchette, DCFS, Marissa Brown, NHA, Chris Bosse,

Renown, Brian Reeder, Ferrari Public Affairs, Eloisa Ortega, AHONN, Warly Pizarro, AHONN, Bill Welch, NHA, Harrison Billia, Truckee Meadows, Greg Amundson, AHONN, Rikki Hensley-Ricker, Bristlecone Family Resources, Lisa Campell, NALA, Leo Molino, AHONN, Ramon Alano, AHONN, Jackie Taylor, AHONN, Vangie Molino, AHONN, Paige Barnes, Crowley & Ferrato Public Affairs, Jeanne Bishop-Parise, NALA, Crystal Wren, ADSD, Nicki Aaker, CCHHS, Rob Merrill, ADSD, Jesse Wadhams, NHA, Jose Castilla, AHONN

Chair Pennell opened the meeting at 9:00 a.m. Chair Pennell indicated the meeting agenda was posted in accordance with the Nevada Open Meeting Law.

Roll call was taken and it was determined that a quorum of the State Board of Health was present.

Approval of Minutes:

Chair Pennell asked if there were any additions or corrections to the minutes from the September 7, 2018 meeting. No recommendations were made.

A motion was made to approve the minutes by Dr. Shah, seconded by Dr. Ponce and carried to approve the minutes of September 7, 2018.

Consent Agenda:

Consideration and appointment of Andrea Gregg to the Nevada Office of Minority Health and Equity (NOMHE) Advisory Committee

Consideration and Approval of Variance #696, NAC 449.3154(2), Elite Medical Center

Consideration and Approval of Variance #697, NAC 449.0105.1(c), Boulder City Hospital

Consideration and Approval of Variance #698, NAC 444.7503, Bryan Burlison

Chair Pennell asked if there were any objections to the consent agenda. There were no objections.

CHAIR PENNELL ENTERTAINED A MOTION ON ITEM 3, CONSENT AGENDA. A MOTION BY DR. SHAH TO APPROVE THE CONSENT AGENDA WAS MADE AND SECONDED BY DR. PONCE; THE MOTION PASSED UNANIMOUSLY.

Consideration and Adoption of Proposed Regulation Amendments to NAC 449, Medical Facilities and Other Related Entities, LCB File No. R133-18 & Errata- Hospitals/Obstetric Centers. Leticia Metherell, Health Program Manager, Bureau of Health Care Quality and Compliance

Ms. Metherell provided an overview of the proposed regulation amendments. (Exhibit “A”)

Public Comment:
Gina Pierotti-Buthman, Valley Health Systems- Ms. Pierotti-Buthman stated when the regulation came out, there was concern with the actual grassroots level of completing what was necessary to ensure the success of the purpose of the program. The reality of daily operation in an acute hospital and consideration of our employees was a bit disconcerting. The original document was 5 pages and at the time, there was not an electronic version. Ms. Pierotti-Buthman looks forward to further enhancements to the form to accomplish meeting the goals for these populations.

Laura Hennum, Dignity Health- Ms. Hennum commented all new hospitals establishing licensures and operations in the State should be CMS certified and follow regulations put forth under the Emergency Medical Treatment and Labor Act (EMTALA). Ms. Hennum stated it is critically important, emergency rooms continue to serve all patients regardless of the ability to pay and their insurance coverage is not key to them receiving treatment or related to the ability to make payments for emergency services rendered in a licensed hospital.

Joseph Iser, Southern Nevada Health District- Dr. Iser stated he fully agrees with the last comments.

Jesse Wadhams, Nevada Hospital Association- Mr. Wadhams stated they are in support of Sections 9-15 of the proposed regulation.

Ms. Anderson stated the last comments may not be addressed in this adoption. However, it is good for the Board to hear the requested changes for the future. Ms. Anderson stated the changes would not be incorporated in the current regulations before the Board today.

CHAIR PENNELL ENTERTAINED A MOTION ON ITEM 4, LCB FILE NO. R133-18 AND ERRATA. A MOTION BY DR. SHAH TO APPROVE THE PROPOSED REGULATION AND ERRATA WAS MADE AND SECONDED BY MS. BITTNER; THE MOTION PASSED UNANIMOUSLY.

Consideration and Adoption of Proposed Regulation Amendments to NAC 449, Medical and Other Related Entities, LCB File No. 109-18 & Errata- Employment Agencies. Leticia Metherell, Health Program Manager, Bureau of Health Care Quality and Compliance

Ms. Metherell provided an overview of the proposed regulation amendments. (Exhibit "B")

Public Comment:
Gretchen Batis, Center for Quality Eldercare Services- Ms. Batis inquired on the training requirements relating to blood glucose and auto injection training to give to caregivers. Ms. Metherell replied the regulation outlines who can provide the training, it includes a physician, physician assistant, licensed nurse or employee of the facility that has received the required training, has one year of experience in providing training and has demonstrated competency in the tasks. Ms. Metherell informed if the errata is approved, it would also include a pharmacist.

If the employee is not one of the health care professionals listed, the tasks would have to be performed for a year as a caregiver and show competency before providing the training. Ms. Batis inquired if their Academic Director who is a nurse of 58 years could develop a program and teach the class. Ms. Metherell confirmed a licensed nurse could provide the training.

Connie McMullen, Personal Care Association of Nevada- Ms. McMullen stated they are in support of NRS 449.03005, NRS449.0304, and NRS 449.4309. It will help keep a lot of people safe in their homes. Ms. McMullen believes the changes for vital signs will help people and save money. They think it is great and appreciate the way the changes have been written.

Jeanne Bishop-Parise, Nevada Assisted Living Association- Ms. Bishop-Parise provided a written statement. (Exhibit "C") Ms. Bishop-Parise added she would like to bring to the Board's attention, the second revised proposed regulations of LCB File No. R109-18, the errata contains the pharmacy instructor yet omits page 5 recommendations of industry advisory in which monetary penalties should be commensurate with the pay rate suggested at 20%.

Jackie Taylor, Association of Homecare Owners of Northern Nevada- Ms. Taylor provided a written statement. (Exhibit "D")

Ms. Anderson asked Ms. Metherell to address some of the concerns raised. Ms. Anderson stated all comments are taken very seriously.

Ms. Metherell addressed the monetary fines. Although the regulations increase the monetary fines, the fines have not increased since 2002. The Division has mitigated the increases with section 17 which allows the facility to invest the money back to correct their deficiencies and improve their facility in lieu of payments thus reinvesting the money back into their facility for a first violation. Existing regulation, NAC 449.99904, allows the facility if they waive the right to a hearing, correct their deficiencies and pay the fine within 15 days, to receive a 25% reduction in the penalty.

Ms. Metherell provided an example of a severity level 4 violation fine.

Ms. Metherell stated while the changes to the fines established represent increases, the legislation driving these changes was generated by the Division during the 2017 legislative session and significantly reduced the maximum fines to a reasonable amount. The provision in SB71 which would have allowed to impose penalties of $1,000 and up to $10,000 per patient who was harmed or at risk, was omitted. Based on historical data, only 2% to 4% of facilities receive state sanctions relating to monetary penalties. There should be very few facilities impacted. Those impacted will have violated regulations resulting in serious harm to patients. Historically, the Bureau has not seen facilities go out of business based on fines. Data shows the amount of sanctions applied has decreased.

Mr. Shubert added the industry does not believe increased fines is the answer to issues relating to harm and things that occur in the facilities. The regulations go a step farther for the agency in relation to alternatives and that is what the Division did in section 17, to find ways for facilities to use the fines collected to improve their facilities. The Division felt it was necessary and believes it mitigates much of the concern. The regulations reflect compromise and mitigation while having the ability to issue a fine to encourage facilities to protect the people they are caring for.

CHAIR PENNELL ENTERTAINED A MOTION ON ITEM 5, LCB FILE NO. R109-18 AND ERRATA. A MOTION BY DR. SHAH TO APPROVE THE PROPOSED REGULATION AND ERRATA WAS MADE AND SECONDED BY DR. PONCE; THE MOTION PASSED UNANIMOUSLY.

Public comment was taken out of order.

Public Comment:
Lanita Trayano, SEIU- Ms. Trayano stated they were pleased when Nevada Legislature enacted SB482 in 2017, which they felt would strengthen safe staffing in facilities. In their opinion, the legislation has not been implemented as intended. In the first hearing on the proposed regulations, the definition of a unit was requested to be further clarified and defined. The proposed regulations being heard today do not address this important issue. The current definition has led to each hospital adapting very different interpretations of a unit. The intent of the legislation was to ensure the representatives of this committee have day to day knowledge of the challenges faced by nurses in these units. The facilities where the unit is defined over broadly creates a situation where it is impossible for the representative to know all the challenges faced as they would not have interactions with patients who have similar care or need similar care. The definition of a unit should be narrowed to ensure nurses and certified nursing assistants caring for similar types of patients with similar types of needs will be represented by a nurse and/or certified nursing assistant with responsibility of caring for those same types of patients. SEIU encourages the legislature to adopt regulations which reflect this reality.

Ms. Anderson requested a show of hands of those in support of the comments made so far.

Jody Domineck, SEIU- Ms. Domineck stated the current concern with the definition of a unit is the interpretation and it leaves specialized units with unique staffing for unique patient populations having to be represented by one person to represent very different care units. Ms. Domineck suggested further defining the areas to be able to provide the staffing requirements for the highly specialized patients.

Cathy Hamel, University Medical Center- Ms. Hamel recommended the standard and definition of a unit stand as written, giving the organization’s an opportunity to make a committee operational.

Consideration and Adoption of Proposed Regulation Amendments to NAC 433, Administration of Mental Health and Intellectual and Developmental Disability Programs, LCB File No. R134-18- Community based living arrangement facilities. Amir Bringard, Health Facilities Inspection Manager, Bureau of Health Care Quality and Compliance

Mr. Bringard provided an overview of the proposed regulation amendments. (Exhibit "E")

Public Comment:
Steve Spentzakis, Minds Matter LV- Mr. Spentzakis inquired if comments from the public workshop were addressed.

Mr. Bringard stated all the information from the public workshop was taken into consideration.

Lisa Campbell, Nevada Assisted Living Association- Ms. Campbell stated the Nevada Assisted Living Association would like to go on record and request CBLA's fall under the same regulations as residential facilities for groups.

CHAIR PENNELL ENTERTAINED A MOTION ON ITEM 6, LCB FILE NO. R134-18 AND ERRATA. A MOTION BY DR. PONCE TO APPROVE THE PROPOSED REGULATION AND ERRATA WAS MADE AND SECONDED BY DR. SHAH; THE MOTION PASSED UNANIMOUSLY.

Consideration and Adoption of Proposed Regulation Amendments to NAC 440, LCB File No. R150-18- Vital Statistics. Jason Lewis, Program Officer, Office of Vital Records and Statistics
Mr. Lewis stated the proposed regulations to Nevada Administrative Code 440, relating to Vital Statistics, is to amend and modify existing language, to make regulations more clear, current and compatible with the intent and scope of the Office of Vital Records program. The proposed regulations are designed around current industry standards and practices. A summary of the changes was provided which includes to propose a new regulation for initiating death records within 24 hours and timely death reporting. Proposed revisions to existing language to provide clarity for the process of home births. Proposed revisions to existing language to provide clarity, update for new state laws and address common issues for corrections and amendments to birth and death records. Proposed revisions to existing language for adding omitted names to birth records to be more consistent with industry standards. Proposed revisions to existing language to facilitate and assist, to ensure accurate information is recorded on death records. Proposed revisions to existing language to list new certifiers for death records based on new state law. Proposed revisions to existing language regarding the issuance of birth and death record data.

Mr. Lewis informed the Division of Public and Behavioral Health has held several opportunities for the public, small businesses, and stakeholders to provide input and comments regarding the proposed regulations including the economic impact the regulations may have on a small

business and the public. Overall, small businesses appear to not be impacted by the proposed regulations.

Public Comment:
Harrison Billia, Truckee Meadows Cremation and Burial- Mr. Billia asked for clarification on starting a death record if the family has not chosen the funeral home's services.

Mr. Lewis stated the funeral home receiving the decedent starts the death record. If the family selects a different funeral home, the funeral home who started the record can change the funeral home.

CHAIR PENNELL ENTERTAINED A MOTION ON ITEM 7, LCB FILE NO. R150-18. A MOTION BY DR. SHAH TO APPROVE THE PROPOSED REGULATION WAS MADE AND SECONDED BY DR. PONCE; THE MOTION PASSED UNANIMOUSLY.

Chair Pennell informed Dr. Iser's report would be taken out of order.

Dr. Iser reported it is the time of year to worry about food safety in the home. Dr. Iser informed there are food safety recommendations on the Southern Nevada Health District's website. The influenza season has started and is a slow start to the season. The public health accreditation site visit is scheduled in January. The primary care model of care started in September and will be a slow rollout. Gun violence is on the rise throughout the nation.

Ms. Anderson acknowledged the mothers present in support of regulations previously adopted.

Approval of 2019 Board of Health Meeting Dates:
A motion was made to approve the meeting dates by Dr. Shah, seconded by Dr. Ponce and carried to approve the 2019 meeting dates.

Vital Records Presentation on 1 October 2017 Incident:
Mr. Lewis provided a presentation on the October 1st shooting in Las Vegas and how it pertained to Vital Records in the State of Nevada.

See presentation on 1 October 2017 Incident.

Reports:
Nicki Aaker, Director of Carson City Health and Human Services (CCHHS)- Ms. Aaker reported a Tobacco Prevention Coordinator has been hired. CCHHS continues to work with Carson City Parks and Recreation Department to create smoke-free parks and discuss possible ordinance in Carson City. A pilot is currently underway on a bi-directional interface between Carson City Health and Human Services' Electronic Health Record and Nevada WebIz. The Community Health Improvement Plan is in motion and subcommittees are working to accomplish the objectives and activities decided upon. Ms. Aaker brought to the Board's attention, food service

workers at two different food establishments were excluded in November due to being a household contact to a confirmed Salmonella Typhi (Typhoid Fever). The food handlers were excluded until each had two negative stool cultures. Ms. Aaker reported there is a slow start with the flu in the three counties monitored. The first CASPER (Community Assessment for Public Health Emergency Response) survey was conducted in September. A drive-thru flu Point of Distribution (POD) was conducted in October.

Dr. Ishan Azzam, Chief Medical Officer- Dr. Azzam reported the number of children with acute flaccid myelitis continues to grow. There are 134 confirmed cases in 33 states which includes one confirmed case in Nevada. The exact etiology of this polio-like paralysis is still unclear. There is no vaccine and no effective treatment yet. The influenza season officially started seven weeks ago and is expected to end week 20 of 2019. So far, it seems to be comparable to or milder to previous seasons. The Division of Public and Behavioral Health is producing an enhanced weekly flu report which covers the severity and burden of the current flu season. The activity of the flu transmission is increasing. The tendency for the flu activity to peak is during the holiday season and is expected to peak again in February.

Recommendations for future agenda items:
No recommendations were made.

Public Comment:
There was no public comment.

The meeting adjourned at 10:54 a.m.

R133-18: Hospitals/Obstetric Centers
Board of Health Testimony

Chairman Pennell and members of the Board, for the record my name is Leticia Metherell, Health Program Manager with the Bureau of Health Care Quality and Compliance. I am presenting for your consideration proposed amendments for Nevada Administrative Code, Chapter 449, Legislative Counsel Bureau (LCB) File No. R133-18.

The proposed regulations have undergone the statutorily required process. Details such as information on the public workshop are included in your staff recommendation memo.

As a condition to receiving certain grants, existing federal law requires a state to require the development of a plan of safe care for an infant born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder.

Sections 2-6 of this regulation define terms used in provisions relating to the Comprehensive Addiction and Recovery Act of 2016 (CARA) Plan of Care. An errata changing the name in the LCB draft of the proposed regulations from "Plan of safe care" to "CARA Plan of Care" to avoid confusion with another similarly named plan is being recommended for approval by the Board in conjunction with the proposed regulations.

Section 7 requires a provider of health care who delivers or provides services to an infant born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure or a fetal alcohol spectrum disorder in a medical facility to establish a CARA plan of care for the infant, prescribes the required contents of a plan of safe care, and requires a medical facility to provide a copy of the plan of safe care to the parents or legal guardian of the infant and to the Division.

Section 8 requires the Division to monitor the implementation of each plan of safe care to ensure that the infant and his or her family are receiving appropriate services; and to provide a copy of a plan of safe care to an agency which provides child welfare services upon request. Section 8 also provides for the confidentiality and safe maintenance of a plan of safe care and any associated information.

Section 9 requires a hospital, with certain exceptions, to be primarily engaged in providing care by or under the supervision of physicians, to inpatients, diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, to inpatients

and prescribes the manner in which the Division must determine whether a hospital is primarily engaged in providing these services to inpatients.

Section 10 requires a hospital, with certain exceptions, to be accredited by an approved national accrediting organization that has been approved by the Centers for Medicare and Medicaid Services. **Section 10** also requires all accredited hospitals to submit to the Division proof of such accreditation at prescribed times; and notify the Division if the hospital ceases to be accredited.

Section 12 amends the definition of the term "inpatient" to mean a person who is admitted to a hospital for purposes of diagnosis or treatment and who is expected, at the time of admission, to receive care or occupy a bed at the hospital at midnight on at least 2 consecutive days or actually receives care or occupies a bed at the hospital at midnight on at least 2 consecutive days.

Section 14 requires a hospital to submit to the Division, with each application for initial licensure or renewal of a license an attestation, under penalty of perjury, that the hospital is in compliance with NAC 449.331, as outlined in the proposed regulations.

Section 15 requires a hospital, upon the referral or transfer of a patient to another facility, to share necessary administrative information, such as demographics and insurance information, as well as medical information about the patient with the receiving facility and requires a hospital to provide for the security of and accountability for the personal effects of the patient being referred or transferred to another facility.

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. R133-18 with the errata.

This concludes my presentation on the proposed regulations.

May I answer any questions?

R109-18: Health Facilities

Board of Health Testimony

Chairman Pennell and members of the Board, for the record my name is Leticia Metherell, Health Facilities Program Manager with the Bureau of Health Care Quality and Compliance. I am presenting for your consideration proposed amendments for Nevada Administrative Code, Chapter 449, Legislative Counsel Bureau (LCB) File No. R109-18.

The proposed regulations have undergone the statutorily required process. Details such as information on the public workshop are included in your staff recommendation memo.

A new law passed during the 2017 legislative session, NRS 449.03005, which requires the State Board of Health to license and regulate employment agencies that contract with persons to provide nonmedical services related to personal care to elderly persons or persons with disabilities in the home, which will be referred to as employment agencies in my remaining testimony.

Sections 2-7 define terms relating to the licensure and regulation of employment agencies.
Section 8 to 11 prescribe the requirements for licensing and regulating employment agencies including:

- Prescribes requirements relating to the scope and content of a license to operate an employment agency and requires such an employment agency to maintain liability coverage.
- Requires each employment agency to appoint an administrator and prescribes the qualifications and duties of an administrator.
- Prescribes the qualifications of and training requirements for an attendant of an employment agency.
- Requires an employment agency to provide records to the Division of Public and Behavioral Health of the Department of Health and Human Services upon request; perform certain duties relating to the evaluation and supervision of attendants; provide certain information to clients; and if the employment agency is located outside Nevada, pay necessary expenses incurred by the Division when conducting inspections and investigating complaints.

A new law passed during the 2017 legislative session, NRS 449.1825, requires a medical facility or facility for the dependent that receives a star rating from the Centers for Medicare and Medicaid Services to post the most recent star rating assigned to the facility in a conspicuous place near each entrance to the facility that is regularly used by the public.

Section 12 prescribes requirements concerning the posting of the star rating and clarifies that a facility which does not receive a star rating is not required to post a star rating.

New laws passed during the 2017 legislative session, NRS 449.0304 and 449.4309, requires the Board to adopt regulations authorizing an employee of a residential facility for groups, an agency to provide personal care services in the home, a facility for the care of adults during the day or an intermediary services organization to check vital signs, administer insulin using an auto-injection device and perform blood glucose testing, subject to certain requirements.

Sections 13 to 16 authorizes an employee of a facility listed in the law just mentioned to perform those tasks. **Sections 13 to 16 and 22** require an employee who performs such tasks to receive certain training; adhere to the manufacturer's instructions for any device used in performing the task and any applicable federal and state laws and regulations; and to refrain from using a device for monitoring blood glucose on more than one person. In addition, if a client of a facility is physically or mentally incapable of performing a blood glucose test and an employee performs such a test, the facility is required to obtain a Clinical Laboratory Improvement Amendment (CLIA) certificate, in accordance with federal law. Finally, sections 13 to 16 authorizes an employee of one of the facilities listed in NRS 449.0304 or 449.4309, to measure weight if the employee has received certain training and the person being weighed has consented. These sections also list who can provide the caregiver training required to perform the tasks mentioned in NRS 449.0304 and 449.4309, and includes a physician, physician assistant, license nurse or employee of the facility that has received the required training, has 1 year of experience in preforming the task for which he or she is providing training and has demonstrated competency in the tasks. An errata adding pharmacists to the list of individuals who could provide caregiver insulin auto-injection device and blood glucose testing training is being recommended for approval by the Board in conjunction with the proposed regulations.

Section 17 authorizes a facility 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 and authorizes the Bureau of Health Care Quality and Compliance to approve such a request if the deficiency results from the facility's first violation of a particular provision of law or regulation.

Section 19 prescribes the fees for the issuance and renewal of a license of an employment agency.

A new law passed during the 2017 legislative session, NRS 449.165, requires the Board to adopt regulations establishing the criteria for the imposition of monetary penalties and to establish an administrative penalty to be imposed for a violation that causes harm or a risk of harm to more than one person. An existing law, NRS 449.163, was revised to allow for the imposition of an administrative penalty of not more than $5,000 per day for each violation, together with interest thereon at a rate not to exceed 10 percent per annum

Section 32 revises the amount of each initial monetary penalty and establishes an initial monetary penalty for a violation that causes harm or a risk of harm to more than one person.

Section 33 increases the maximum amount of the monetary penalty for a day of noncompliance, when applicable.

Staff recommends the State Board of Health adopt the LCB draft of second revised proposed regulations, amendments to Nevada Administrative Code (NAC) 449, "Medical Facilities and Other Related Entities, LCB File No. R109-18 with the amended errata.

This concludes my presentation on the proposed regulations.

May I answer any questions?

Exhibit "C"

NALA
Nevada Assisted Living Association

Improving Seniors' Lives through Advocacy, Education, and Leadership

The Nevada Assisted Living Association supports the roll out of SB324 with these proposed amendments to 449 allowing diabetic care in its settings. Somewhere along the way, Pharmacists did not pull forward in the allowable trainers and that needs to be amended.

Diabetics will now be able to remain in a less institutional, homelike Residential Facility For Groups setting vs Skilled Nursing Facilities throughout Nevada. Moreover, it will help ease the growing crisis throughout Nevada from reduced numbers of safe, cost effective long-term care beds.
The processes to get SB324 through built new working relationships that can go forward to keep Nevada's nation leading system of Licensed NRS 449 Residential Facilities For Groups (RFFG) a standard-bearer.

That being said, the roll out of SB 71 with these proposed amendments to 449 despite hundreds of small business impact statements, Assisted Living Advisory Council's opposition, NALA and AHONN opposition is unacceptable in its current format of "one size fits all" with no consideration to the disparity in daily rates paid by Medicare/Medicaid to medical facilities vs nonmedical facilities such as RFFG. Medicare rates to medical facilities can exceed $1,000 daily with Medicaid rates at the lower end of the pay spectrum still exceeding $225 daily. Compare that to Nevada Medicaid rates paid to licensed RFFGs at a range of $48 to $30 daily.

Throughout Chapter 449 of NAC there are very clear distinctions between medical and nonmedical facilities. These penalties can be rolled out to meet the intent of SB 71 yet allow for the differences in Medical and Nonmedical facility types either by a two-tiered amount or a factor such as 10-15% applied to the amount consistent with the difference in Medicare/Medicaid published rates.

Medical facilities are staffed with highly trained, educated, certified, licensed and registered disciplines serving a more critical population requiring constant assessment and intervention. Their government compensation reflects that higher acuity. Nonmedical RFFGs serve stable, predictable elderly in a social model with Caregiver Med Techs that are 1st Aide/CPR and 16 hour Med Tech certificate trained. It is difficult to imagine in any fair, transparent, consistent free market with a single set of rules for similar services that the penalties can by one absolute amount for very different levels of care.

These penalties should not be assessed for an initial complaint investigation, but for a pattern of noncompliance. A directed Plan of Correction should be the first level of remediation. The RFFGs have no Informal Dispute Resolution to contest a Statement of Deficiency finding as is required by CMS for Skilled Nursing Facilities despite many requests for this educational, quality improving, process and enforcement enhancement. As well, small group homes lack financial resources to take a citation through Administrative Appeal or Court.

NALA
Nevada Assisted Living Association

The high turnover in Surveyors for RFFGs has resulted in far too many Statements of Deficiencies issued with erroneous citations that have had to be retracted or issuing deficiencies months beyond the 10 day timeframe.

There are also no federal validation surveys or oversight to the nonmedical RFFGs where that exists for Skilled Nursing Facilities through CMS.

This could be the last straw on the proverbial camels' back for the licensed small group home operator. Legislative Council Bureau audit findings reveal that the State overpaid Certified only small group home operations under CBLA/SLA with many licensed operations changing from licensed to certified only. Nevadans will suffer because of this over-regulation of licensed getting paid a lower daily rate only to be penalized at the highest daily rate. It will cause many to close operations and/or create a mass exodus to certified only operations as a business model.

This is even more concerning with the evolution of two sets of regulations and standard for the same non-medical care in Licensed RFFG NRS 449 and Unlicensed, state certified, NRS 433/435. Our recent objections to the proposed regulation experiments on CBLA's at the 11/2/18 workshop illustrate some of our continued concerns for the safety of the disabled and mentally ill, dramatic mismanagement of tax payers' funds, with 3 consecutive scathing internal state audits of CBLA's when there exists already proven safe and far more cost-effective licensed choices in non-medical care. Please join us and Senator Kieckhefer who is calling "to look for a different way" in his statement to the Nevada Independent by supporting the existing proven different way in requiring nrs 433/435 to follow the same rules as their direct competitor of nrs 449 which is already proven safe and cost effective.

In closing, please DO NOT allow the penalties to be codified in the proposed manner. There needs to be a distinction between medical and nonmedical with consideration given to the daily rates paid by Medicare/Medicaid in setting the dollar amount of the penalty. An Informal Dispute Resolution is a must since federal validation survey and oversight are lacking in the nonmedical RFFGs that are licensed.

Please demand specific detailed on how CBLA and RFFG and all licensed care including pca's are different. The data is now clear that the CBLA experiment needs to stop to protect the disabled, mentally ill and the tax payers from continued abuses.

Thank you in advance of your consideration. NALA stands ready to help in the development of regulations that better advocate for the senior population we serve.

Exhibit "D"

ASSOCIATION OF HOMECARE OWNERS OF NORTHERN NEVADA

Mailing Address: 3413 Alpland Lane Sparks, Nevada 89434 – 6715
E-mail Address: ahonn.tayo@gmail.com
Website: www.ahonn.org

SMALL BUSINESS IMPACT STATEMENT OF ASSOCIATION OF HOMECARE OWNERS OF NORTHERN NEVADA (AHONN) TO THE INTENT OF THE STATE BOARD OF HEALTH TO ADOPT REGULATIONS (LCB FILE R109-18) THE AMENDMENTS TO CHAPTER 449 OF NEVADA ADMINISTRATIVE CODE (NAC)

Presented by AHONN to the State Board of Health Public Hearing on Friday, December 7, 2018, 9:00 am.

The most vulnerable elderly (65 years old and above) and thousands of the low income citizens of the State of Nevada being provided with care in Home for Individual residential Care (HIRC – Licensed for 2 beds) and Residential Facility for Groups with beds of 10 and below will be the most affected by these amendments. Section 31 to 34 pertaining to the increase in penalties which is ranging from 250% to 500% will have severe impact on already financially beleaguered homecare industry.

At present, due to the high costs to operate a home care business such as high salaries demanded by caregivers, higher payments for utilities, higher premium to the required insurances, high taxes, high cost of living, unexpected miscellaneous expenses, and the fact that the elderly do not have high income, homecare providers barely make it, resulting in the closure of other homecare owners. Where will these low- income and frail elderly Nevadans go if the closure of small homecare providers escalate? It will costs more to the government if these seniors will go to Skilled Nursing Facilities or stay in the hospitals or rehabilitation centers. The charges of these facilities are almost double or triple compared with the monthly charges of the homecare providers.

If the State Board of Health will fully implement these amendments, particularly Section 31 to 34, they will have to look into consideration of how the regulators do their part in the implementation of the NRS 449. The big turnover in staffing at the HCQC is a major contributing factor to the inconsistencies in interpretation and enforcement of the regulations. The criteria, the mastery, consistency, and knowledge in assigning scope and severity are big factors to the implementations of these amendments. If the surveyors are not well trained enough in the execution of these regulations, it will be more work for them and the supervisors because more administrative review requests will follow if the providers disagree with the findings or statement of deficiency. The late issuance of Statement of Deficiency (SOD) / Out of Compliance (OOC) shows the regulators/surveyors/investigators/supervisors are not efficient enough in doing their job in a timely manner.

It is unfair for us providers because we are given 10 days only to submit our Plan of Correction after the receipt of the notice which takes several weeks or months before they issue such statement. Upon request of the State Board of Health, AHONN can provide data of the inefficiencies and inconsistencies of the regulators.

Homecare facilities are non-medical facility with a **small gross income** and should not be sanctioned at the same rate as medical facilities. It is unfair to be judged and fined at this same level as a larger facility with a large profit margin. How can we be expected to be fined/sanctioned/judged at the same level as a larger facility or a medical facility?

Homecare owners need a written, formalized independent Dispute Resolution Process like the Skilled Nursing Facilities. Homecare owners do not have resources to take to Administrative Hearing or Court. The current system is subjective and inconsistent. Human errors/mistakes have been made where deficiencies have been incorrectly cited and then reinstated. High turnover of surveyors and supervisors exists and tends to create a very defensive environment during the survey process. As a provider, we are driven to provide good care and abide by regulations yet, inexperienced surveyors tend to be unwilling to discuss situations to fully understand and/or allow our administrators to understand the interpretation of the regulation in question. Adverse economic impact can strike homecare owners at any time if these areas of inconsistencies are not resolved. The regulators should be positive and not ”fault finders” during the survey. Homecare providers need to be given a chance to correct any deficiency and learn from it. There are so many loop holes in the regulations and even the regulators are confused. The State Board of Health / HCQC should exercise a directed plan of correction as remediation first, not exorbitant penalties right away.

AHONN believed that imposing higher penalties is not the solution to the challenging issues being faced by the Bureau of Health in the State of Nevada. No homecare providers want to have a scope and severity that would determine such high penalties. However, ensuring the great care we provide is the most important. **IF THESE AMENDMENDS ON PENALTIES WILL BE IMPLEMENTED, MORE AND MORE HOMECARE PROVIDERS WILL SHUT DOWN THEIR BUSINESS. AT THE END OF THE DAY, IT WOULD BE THE ELDERLY NEVADANS WHO WILL BE THE FIRST CASUALTIES.**

Thank you very much and we hope that the State Board of Health will put into consideration the AHONN Statement in adopting these regulations (LCB File R109-18) Amendments to Chapter 449 of Nevada Administrative Code.

Exhibit "E"

Testimony R134-18 NAC 433 CBLA

Mr. Chairman and members of the Board, my name is Amir Bringard, I'm a manager for the Bureau of Health Care Quality and Compliance. I am presenting for your consideration proposed amendments to Nevada Administrative Code, Chapter 433, Legislative Counsel Bureau File No. R134-18.

The proposed regulations have undergone the statutorily required process. Details, such as information on the public workshop are included in your staff recommendation memo.

In August of 2018 the Division sent small business impact questionnaires to active CBLA providers, as well as pending CBLA applicants and received input with regards to the effect of the regulations on small businesses. On November 2, 2018, the division held a public workshop. Recommendations from providers of CBLA facilities and the public were taken into consideration into the proposed amended regulations being presented today.

If it pleases the Board, I will now outline the major provisions in the proposed regulations:

Section 4, makes it a requirement that employees and or independent contractors of a CBLA facility must submit a set of fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report within 10 days after hire and every 5 years after.

Section 5, ensures each employee of a CBLA facility be currently certified in standard first aid and cardiopulmonary resuscitation (CPR) from the American Red Cross or American Heart Association or their successor organizations.

Section 6, allows a maximum of 6 residents in a certified CBLA facility.

Section 7, sets spacing requirements in resident bedrooms of 80 square feet of floor space for one resident and 120 square feet of floor space for two residents in a room.

Section 8, sets requirements for having furniture in common areas of CBLA facilities and food storage requirements to ensure food is stored in a safe and sanitary manner.

Section 9, ensures environmental conditions in CBLA facilities are safe and sanitary setting requirements for ambient air temperatures between 68 and 82 degrees Fahrenheit. Ensuring the facility has sufficient water supply, operable toilets and plumbing, free of offensive odors and vermin infestation as well as free of hazardous conditions.

Section 10, ensures CBLA facilities have appropriate fire extinguishers that are monitored and maintained in operable conditions. Ensures CBLA facilities have smoke detectors.

Section 11, sets requirements that no minor of the provider or an employee of a CBLA facility to be present when services are being provided.

Section 13, includes the addition of a nonrefundable fee of $100 for a CBLA application.

Section 17, sets requirements of a $100 fee to renew a CBLA certificate to not exceed once every two years.

An Errata was done to modify a few sections of the proposed amended regulations:

Section 9, was modified to eliminate the requirement that residents can not smoke within 25 feet of the facility. After consideration, this was removed as it is not feasible for residents in CBLA homes to be 25 feet away from the home or apartment.

Section 18, was added to ensure CBLA facilities comply with the policies adopted by the Commission of Behavioral Health pursuant to NRS 433.314(1).

In conclusion, staff recommends adoption of LCB File Number R134-18 with the Errata.