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**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
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MEMORANDUM

DATE: September 3, 2021

TO: Jon Pennell, DVM, Chair, State Board of Health

FROM: Lisa Sherych, Administrator, Division of Public and Behavioral Health

RE: Plan to Develop Regulations to Implement 2021 Legislative Session Bills

The Division of Public and Behavioral Health plans to develop several regulations in order to comply with bills that resulted from the 81st Legislative Session. This memo will serve as a complete list of proposed regulations the Division plans to establish, which will require State Board of Health review and adoption.

Bureau of Behavioral Health Wellness and Prevention:

- Compliance with **SB 5** – regulations governing the establishment of a telehealth relationship between provider and patient (Sec. 8.4.).
 - To the extent money is available, establish a data dashboard regarding access to telehealth services. Review policies to increase access to telehealth services.
- Compliance with **SB 69** –
 - Sec. 9: State Board of Health adopt regulations governing peer recovery support services. Allows Board to exempt from DPBH certification.
 - Sec. 10 & 11: procedures for application to the Division.
 - Sec. 12 & 13: certification by endorsement for PRS Specialist and Supervisor.
 - Sec. 14: certification renewal.
 - Sec. 15.6: Division to establish regulations for process of determining whether an employer or independent contractor who has not had or done background checks on PRS employees within the last 5 years may continue to provide PRS services and have contact with minors.
 - Sec. 26: Board of Health to adopt regs concerning the certification of prevention coalitions.
- Compliance with **SB 70** -
 - Sec. 30: changes “emergency admission” to “mental health crisis hold.” This may require conforming changes to regulations established last interim.
 - There may be other conforming changes required regarding mental health crisis hold process and the role directors of Division facilities (Consult with DAG).

Office of HIV:

Compliance with SB211 -

1. Section 1: Requires, with certain exceptions, a physician, physician assistant, advanced practice registered nurse or midwife who provides or supervises the provision of emergency medical services in a hospital or primary care to a patient who is at least 15 years of age to: (1) consult with the patient to ascertain whether he or she wishes to be tested or assisted with obtaining testing for sexually transmitted diseases and to determine which tests, if any, are medically indicated; and (2) to the extent practicable and that testing is medically indicated, test a patient who wishes to be tested for sexually transmitted diseases or help such a patient obtain a test.
2. Sections 1-6: Requires a hospital, physician, physician assistant, advanced practice registered nurse or midwife that fails to comply with the requirements of section 1 is not subject to a criminal penalty or an administrative fine imposed by the State Board of Health, but is subject to disciplinary action where applicable.
 - a. Section 3: Failure of provider of health care, medical facility or medical laboratory that willfully fails, neglects or refuses to comply with any regulation of the Board relating to the reporting of a communicable disease or drug overdose or any requirement of this chapter is guilty of a misdemeanor and, in addition, may be subject to an administrative fine of \$1,000 for each violation, as determined by the Board.
 - b. Section 4: The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:
 - i. (b) Engaging in any conduct, (2) Which the Board has determined is a violation of the standards of practice established by regulation of the Board; or Which is in violation of a provision of chapter 639 of NRS, or a regulation adopted by the State Board of Pharmacy pursuant thereto, that is applicable to a licensee who is a practitioner, as defined in NRS 639.0125.
 - ii. (p). Engaging in any act that is unsafe or unprofessional conduct in accordance with any regulations adopted by the Board.
 - iii. (r.). Failure to supervise adequately a medical assistant pursuant to the regulations of the Board.
 - c. Section 5: The Board may deny, revoke or suspend any license or certificate applied for or issued pursuant to this chapter, or take other disciplinary action against a licensee or holder of a certificate, upon determining that the licensee or certificate holder as violated certain conditions. (several provisions are contained within this section).
 - d. Section The grounds for initiating disciplinary action pursuant to this chapter shall be (various conditions, but namely the following):
 - i. (p) Failure to report any person the licensee knows, or has reason to know, is in violation of the provisions of this chapter or the regulations of the Board within 30 days after the date the licensee knows or has reason to know of the violation.
 - ii. (r) Engaging in any act that is unsafe in accordance with regulations adopted by the Board.
 - iii. (u) Failure to obtain any training required by the Board pursuant to NRS 633.473.

Compliance with **SB275** -

1. Existing law establishes procedures pursuant to which the Chief Medical Officer or a district health officer, or a designee thereof, may isolate, quarantine or treat persons who have been infected with or exposed to a communicable disease.(NRS 441A.510-441A.720) Those procedures: (1) require the Chief Medical Officer or district health officer, or a designee thereof, to provide each person quarantined with a statement of his or her rights; and (2) require a judicial proceeding if a person is to be quarantined involuntarily for longer than 72 hours. (NRS 441A.510, 441A.550).
 - a. Section 5:

- i. 1. A health authority who knows, suspects or is informed of the existence within the jurisdiction of the health authority of any communicable disease that poses a risk to the health of the public and is in an infectious state, at risk of developing into an infectious state or at risk of developing into a progressed state that endangers the health of the person with the communicable disease shall immediately investigate the matter and all circumstances connected with it, and shall take such measures for the prevention, suppression and control of the disease as are required by the regulations of the Board or a [local] district board of health.
 - ii. 4. The Board and each district board of health shall adopt regulations to establish a process by which a person may appeal to the health authority an order issued pursuant to paragraph (b) of subsection 2. The health authority shall provide to a person who receives such an order a document stating the rights of the person, including, without limitation, the right to appeal the order, at the time and in the manner prescribed by regulation of the Board or the district board of health, as applicable.
 - iii. 10. For the purposes of subsections 1 and 4, the likelihood of transmitting a communicable disease to another person must be determined using current medical or epidemiological evidence. The Board shall adopt regulations prescribing requirements for determining the sufficiency and legitimacy of medical or epidemiological evidence pursuant to this subsection.
- b. Section 8: All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease or drug overdose, or by any person who has a communicable disease or has suffered a drug overdose, or as determined by investigation of the health authority, is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena, search warrant or discovery proceeding, except:
- i. 6. To any person who has a medical need to know the information for his or her own protection or for the well-being of a patient or dependent person, as determined by the health authority in accordance with regulations of the Board.
 - ii. 10. To a firefighter, police officer or person providing emergency medical services if the Board has determined that the information relates to a communicable disease significantly related to that occupation. The information must be disclosed in the manner prescribed by the Board.
- c. Section 12: The health authority may establish such dispensaries, pharmacies or clinics for outpatient care as it believes are necessary for the care and treatment of persons who have [acquired immune deficiency syndrome or a] been diagnosed with the human immunodeficiency virus , [related disease,] and provide those institutions with financial or other assistance. Dispensaries, pharmacies or clinics which accept financial or other assistance pursuant to this section shall comply with all conditions prescribed by the Board relating to the use of that assistance.
- d. Section 12.3: 2. A health authority shall provide each person whom it isolates or quarantines pursuant to NRS 441A.510 to 441A.720, inclusive, and section 3.6 of this act with a document informing the person of his or her rights. The Board shall adopt regulations:
- i. (a) Setting forth the rights of a person who is isolated or quarantined that must be included in the document provided pursuant to this subsection; and
 - ii. (b) Specifying the time and manner in which the document must be provided pursuant to this subsection.

Office of Public Health, Investigations and Epidemiology (OPHIE):

Compliance with AB192 -

- Section 1: Requires the Board to designate syphilis as a communicable disease.
- Section 1.2: Requires a report of a pregnant woman who has syphilis to include certain information relating to the treatment, if any, provided to the pregnant woman.

- Section 1.6: Requires physicians and other persons who attend to pregnant women to make or ensure the performance of an examination and testing of a pregnant woman for Chlamydia trachomatis, gonorrhea, hepatitis B and hepatitis C, unless the pregnant woman opts out of such examination and testing.
- Section 2: Expands the requirement to test a pregnant woman for syphilis by requiring certain medical facilities, other than a hospital, and an emergency department or labor and delivery unit in a hospital evaluating or treating a pregnant woman to test the pregnant woman for syphilis if the pregnant woman indicates she has not had certain prenatal screenings and tests.
 - Section 2 additionally removes: (1) a requirement that a pregnant woman infected with syphilis commence treatment and instead requires the person or facility performing the testing to provide or refer for treatment if the woman consents; and (2) a restriction that a pregnant woman is only authorized to refuse testing for syphilis for religious reasons, thereby authorizing a pregnant woman to refuse such testing for any reason.
 - Section 2 also revises the times at which a pregnant woman must be tested for syphilis.
- Section 1.8: Restricts the amount that a physician or other person who attends a pregnant woman, a hospital or other medical facility or a medical laboratory is authorized to require a third party insurer to pay for the testing and treatment required by sections 1.6 and 2.
- Section 3: (1) replaces the misdemeanor violation for violating syphilis testing requirements with a civil penalty for persons who willfully violate those requirements; and (2) authorizes the imposition of a civil penalty against a person who willfully violates the requirements of section 1.6 concerning testing for other sexually transmitted infection

Compliance with **SB175** -

- Section 5: Requires the Chief Medical Officer to establish and maintain a system for the reporting of information on lupus and its variants.
- Sections 5 and 6: Require hospitals, medical laboratories, certain other facilities and providers of health care to report certain information prescribed by the State Board of Health concerning each case of lupus and its variants diagnosed or treated at the facility or by the provider, as applicable.
- Section 7: Requires the chief administrative officer of each health care facility in this State to make available to the Chief Medical Officer or his or her representative the records of the health care facility for each case of lupus and its variants for abstraction by the Division of Public and Behavioral Health of the Department of Health and Human Services and for the imposition of an administrative penalty against a person that fails to make the records of the facility for each case of lupus and its variants available for abstraction.

Cancer Registry:

Compliance with **AB 471** -

- Within section 1 of this bill, as defined in NRS 449, a fee will be assessed for each reapplication from a surgical center for ambulatory patients, facility for the treatment of irreversible renal disease, facility for hospice care, program of hospice care, hospital, facility for intermediate care, facility for skilled nursing, agency to provide personal care services in the home or rural clinic.
- Within sec. 2, as defined in NRS 457, we have clarified the language on what entities must report to the cancer registry, as this has caused confusion in the past. This will now include a provider of healthcare defined in NRS 629, as well as “other treatment facility” which has been added.
- Within sec. 3, the Board of Health will prescribe the fee assessed to the facilities and providers noted.
- Within sec. 4, language was removed that was very confusing related to cases referred between providers and who had the obligation to report.

- Sec. 5 notes the fee will be assessed for mammography and other radiological machines, surgical center for ambulatory patients, facility for the treatment of irreversible renal disease, facility for hospice care, program of hospice care, hospital, facility for intermediate care, facility for skilled nursing, agency to provide personal care services in the home or a rural clinician and the renewal of a license to operate a medical laboratory.
- Sec. 6 and 7 aligns the former language for reporting with the new language to note reporting requirements from the provider of health care of the treatment facility.
- Sec. 8 and 9 notes the fee imposed on radiation machines and medical laboratories. The amount of the fee must not exceed 8%.

Bureau of Health Care Quality and Compliance (HCQC):

2021 BILLS

- Compliance with **SB 364** – adopt regulations requiring a hospital or independent center for emergency medical care to provide certain training to persons who provide care to victims of sexual assault or attempted sexual assault.
- Compliance with **SB 45** – update regulations to no longer require Domestic Violence Program license submissions to Committee on Domestic Violence.
- Compliance with **AB 330** – Regulations to carry out provisions of bill (Medical Laboratory Personnel (Chapter 652) /Dietitians (Chapter 640 E) /Music Therapists (Chapter 640 D)
 - Requires each regulatory body shall adopt regulations to effectuate the following changes for each of the above noted Chapters:
 - Persons who complete certain training programs for occupational, vocational, career, trade or technical education and receive certificates for the completion of such programs shall be eligible to receive equivalent credit towards related professional and occupational licenses and certifications.
 - Provides for the appeal of a denial of equivalent credit.
 - While the dietitian, music therapist and medical laboratory chapters are open to come into compliance with AB 330 we may also include additional changes, as needed, to these chapters to address issues that will or may require regulatory changes.
- Compliance with **SB 69** – will bring regulations into compliance with provisions of bill (Chapter 433) & (Chapter 449). Although the Division is not responsible for certifying peer support specialists or developing regulations related to the certification of peer support specialists, unless such time that the Nevada Certification Board ceases to exist, there are still duties that the Division is required to carry out and regulations that the Board of Health must adopt to carry out the provisions of the bill as well as regulations that the Board of Health may adopt.
 - Sections 20.3, 22.5-24.8, 25.2-25.7 and 36 of this bill remove existing provisions for the licensing and regulation of peer support recovery organizations. Any regulations adopted by the State Board of Health pursuant to NRS 449.0302 governing peer support recovery organizations are void. The Legislative Counsel shall remove those regulations from the Nevada Administrative Code as soon as practicable after January 1, 2022
 - Section 15 of this bill authorizes the Division to bring an action to enjoin any adult from providing or supervising the provision of peer recovery support services in violation of section 8. The proposed regulation will outline how this provision is to be carried out.
 - The Division shall adopt regulations to establish civil penalties to be imposed against any person or entity that fails to comply with the requirements of Section 15.6 related to the required background check requirements for persons employed or independently contracted to provide or supervise the

provision of peer support services in a position where the person has regular and substantial contact with minors.

- 4. The Division, in consultation with each agency which provides child welfare services, may establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor who provides services to minors who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or a violation of NRS 201.540, 201.560, 392.4633 or 394.366 made against him or her may continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report. Any such review must be conducted in a manner which does not discriminate against a person in violation of 42 U.S.C. §§ 2000e et seq.
- While Chapter 449 is open we may also include additional changes, as needed, to these chapters to address issues that will or may require regulatory changes.
- Compliance with **AB 217** – The bill requires mandatory training for unlicensed caregivers from nationally recognized organizations that offer free or low-cost trainings.
 - The bill requires the Board to adopt regulations prescribing mandatory training for unlicensed caregivers who provide care at designated medical facilities, facilities for the dependent and facilities licensed pursuant to NRS 449.0303. The regulations must be from nationally recognized organizations that provide evidence-based training for caregivers, which must include at a minimum the control of infectious diseases, and requires the development and annual updates of a plan for the control of infectious diseases at each facility.
- Compliance with **AB 287** – The bill eliminates obstetric centers and instead requires for the licensing and regulation of freestanding birthing centers. A “Freestanding birthing center” means a facility that provides maternity care and birthing services using a family-centered approach in which births are planned to occur in a location similar to a residence that is not the usual place of residence of the person giving birth to a child. The bill requires the Board to adopt separate regulations governing the licensing and operation of freestanding birthing centers. Such regulations must: (a) Align with the standards established by the American Association of Birth Centers, or its successor organization, the accrediting body of the Commission for the Accreditation of Birth Centers, or its successor organization, or another nationally recognized organization for accrediting freestanding birthing centers; and (b) Allow the provision of supervised training to providers of health care, as appropriate, at a freestanding birthing center.

2019 BILLS - As of June 10, 2021, the regulations are at LCB for drafting and have not been returned to the Division.

- Compliance with **SB 92** – Expands businesses that provide referrals to residential facilities for groups to also include any other group housing arrangement that provides assistance, food, shelter or limited supervision to a person with a mental illness, intellectual disability, developmental disability or physical disability or who is aged or infirm by updating the definition of client in NAC 449.27813, as it related to business referral agencies, to include clients as expanded by SB 92. It also makes other similar conforming changes.
- Compliance with **SB 95** allows dietitians to order diets. The proposed regulations make conforming changes to allow the ordering of diets by dietitians.
- Compliance with **AB 147** authorizes physician assistants and advanced practice registered nurses to order home health agency services. The proposed regulations make conforming changes to allow for such.
- Compliance with **AB 232** removes the use of the term “general hospital”. The proposed regulations request that LCB make conforming changes to the regulations.
- Compliance with **SB 387** by establishing the certification requirements for nontransplant anatomical donation organizations that procures a human body or part in Nevada.

2017 BILLS –

- Compliance with **AB 260** by establishing certification requirements for programs for the treatment of persons who solicit prostitution which are certified by the Division of Public and Behavioral Health.

Other major provisions included that were not a result of the 2017, 2019 or 2021 legislative session are as follows:

- Experience and training requirements for surgical technologists
- Use of audio or video monitoring equipment to monitor patients and residents
- Parameters for releasing statements of deficiency and plans of correction
- Aligning home health agency state regulations with federal home health regulations as much as possible.
- Requiring medical facilities that are deemed by an approved national accrediting organization to meet Centers for Medicare and Medicaid Services to submit to the Division the approved deemed notice, within 7 calendar days of receiving the notice, from the approved national accrediting organization. It allows the Division to impose a \$1000 fine for each violation of this provision.
- Provisions related to abuse of residents in psychiatric residential treatment facilities.