

ASSEMBLY BILL NO. 29—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE AGING AND
DISABILITY SERVICES DIVISION)

PREFILED DECEMBER 20, 2014

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing the care and treatment of persons with intellectual disabilities and related conditions. (BDR 39-324)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to mental health; making certain restrictions relating to the use of restraints and interventions applicable to facilities operated or certified by the Aging and Disability Services Division of the Department of Health and Human Services; authorizing certain private entities to provide job and day training services; making various other changes to provisions relating to the administration of the Division; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law prohibits the use of aversive interventions by a facility providing
2 services to persons with mental illness, persons with intellectual disabilities and
3 persons with related conditions, authorizes the use of physical, mechanical and
4 chemical restraint by such a facility under certain circumstances, and requires such
5 a facility to make a report when such restraints are used. (NRS 433.545-433.551)
6 Existing law also sets forth the procedures for the admission of such persons to
7 mental health facilities and programs of community-based or outpatient services, as
8 well as procedures for the hospitalization of such persons. (Chapter 433A of NRS)
9 **Section 2** of this bill makes provisions applicable to such a facility that is operated
10 or certified by the Aging and Disability Services Division of the Department of
11 Health and Human Services. **Section 9** of this bill removes references to the rights
12 of persons with intellectual disabilities and persons with related conditions which
13 are now addressed in **section 2**.



* A B 2 9 *

Existing law sets forth the requirements for a nonprofit organization, state or local government or agency to obtain a certificate from the Division to provide jobs and day training services. (NRS 435.130-435.310) Sections 4-7 of this bill require a for-profit partnership, firm, corporation or association to obtain a certificate from the Division to provide jobs and day training services to meet similar requirements.

Sections 3, 8 and 10-13 of this bill specify that the Administrator of the Division is required to adopt regulations relating to the various administrative procedures of the Division.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 433B.190 is hereby amended to read as follows:

433B.190 1. The Division shall adopt regulations to:

(a) Provide for a more detailed definition of abuse of a consumer, consistent with the general definition given in NRS 433B.340;

(b) Provide for a more detailed definition of neglect of a consumer, consistent with the general definition given in NRS 433B.340; and

(c) Establish policies and procedures for reporting the abuse or neglect of a consumer.

2. The regulations adopted pursuant to this section must, to the extent possible and appropriate, be consistent with the regulations adopted by the Division of Public and Behavioral Health of the Department pursuant to NRS 433.331 and the *Administrator of the Division of Aging and Disability Services* of the Department pursuant to NRS 435.435.

Sec. 2. Chapter 435 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Nothing in this chapter purports to deprive any person of any legal rights without due process of law.

2. Unless the context clearly indicates otherwise, the provisions of NRS 433.545 to 433.551, inclusive, and chapter 433A of NRS apply to all persons subject to the provisions of this chapter.

Sec. 3. NRS 435.220 is hereby amended to read as follows:

435.220 1. The ~~[Division]~~ *Administrator* shall adopt regulations governing jobs and day training services, including, without limitation, regulations that set forth:

(a) Standards for the provision of quality care and training by providers of jobs and day training services;

(b) The requirements for the issuance and renewal of a certificate; and



(c) The rights of consumers of jobs and day training services, including, without limitation, the right of a consumer to file a complaint and the procedure for filing the complaint.

2. The Division may enter into such agreements with public and private agencies as it deems necessary for the provision of jobs and day training services.

Sec. 4. NRS 435.225 is hereby amended to read as follows:

435.225 1. A *partnership, firm, corporation or association, including, without limitation, a* nonprofit organization, *or a* state or local government or agency thereof shall not provide jobs and day training services in this State without first obtaining a certificate from the Division.

2. A natural person other than a person who is employed by an entity listed in subsection 1 shall not provide jobs and day training services in this State without first obtaining a certificate from the Division.

Sec. 5. NRS 435.227 is hereby amended to read as follows:

435.227 Before being issued a certificate by the Division pursuant to NRS 435.225 and annually thereafter as a condition of certification, ~~for~~ *a partnership, firm, corporation or association, including, without limitation, a nonprofit* organization, must:

1. Be on file and in good standing with the Secretary of State and organized pursuant to title 7 of NRS;

2. Submit to the Division an annual audit of ~~the~~ *its* financial statements ~~[of the organization]~~ that ~~is~~ *has been* conducted by an independent certified public accountant; and

3. ~~[Submit]~~ *If it is a nonprofit organization, submit* to the Division the most recent federal tax return of the *nonprofit* organization, including, without limitation, Form 990, or its successor form, and the Schedule L and Schedule R of such return, or the successor forms of such schedules, which include an itemization of:

(a) Any transaction during the federal tax year of the *nonprofit* organization in which an economic benefit is provided by the *nonprofit* organization to a director, officer or board member of the *nonprofit* organization, or any other person who has substantial influence over the *nonprofit* organization, and in which the value of the economic benefit provided by the *nonprofit* organization exceeds the value of the consideration received by the *nonprofit* organization;

(b) Any loans to or from the *nonprofit* organization which are received by or from a director, officer or board member of the *nonprofit* organization, a person who has substantial influence over the *nonprofit* organization or a family member of such director,



1 officer, board member or person and which remain outstanding at
2 the end of the federal tax year of the *nonprofit* organization;

3 (c) Any grants or other assistance from the organization during
4 the federal tax year of the *nonprofit* organization which benefit a
5 director, officer or board member of the *nonprofit* organization, a
6 person who has substantial influence over the *nonprofit*
7 organization or a family member of such director, officer, board
8 member or person;

9 (d) Business transactions during the federal tax year of the
10 *nonprofit* organization between the *nonprofit* organization and a
11 director, officer or board member of the *nonprofit* organization, a
12 person who has substantial influence over the *nonprofit*
13 organization or a family member of such director, officer, board
14 member or person which exceed, in the aggregate, \$100,000, or a
15 single business transaction that exceeds \$10,000; and

16 (e) All related party transactions including, without limitation,
17 the receipt of interest, royalties, annuities or rent, the sale or
18 purchase of assets or services, the sharing of facilities, equipment or
19 employees, and the transfer of cash or property.

20 **Sec. 6.** NRS 435.235 is hereby amended to read as follows:

21 435.235 The Division may:

22 1. Upon receipt of an application for a certificate, conduct an
23 investigation into the qualifications of the personnel, methods of
24 operation, policies and purposes of any natural person, *a*
25 *partnership, firm, corporation or association, including, without*
26 *limitation, a* nonprofit organization, *or a* state or local government
27 or agency thereof proposing to provide jobs and day training
28 services;

29 2. Upon receipt of a complaint against a natural person, *a*
30 *partnership, firm, corporation or association, including, without*
31 *limitation, a* nonprofit organization, *or a* state or local government
32 or agency thereof providing jobs and day training services, except
33 for a complaint concerning the cost of services, conduct an
34 investigation into the qualifications of the personnel, methods of
35 operation, policies, procedures and records of the provider of jobs
36 and day training services; and

37 3. Employ such professional, technical and clerical assistance
38 as it deems necessary to carry out the provisions of NRS 435.130 to
39 435.310, inclusive.

40 **Sec. 7.** NRS 435.241 is hereby amended to read as follows:

41 435.241 1. The Division may bring an action in the name of
42 the State of Nevada to enjoin any natural person, *a partnership,*
43 *firm, corporation or association, including, without limitation, a*
44 nonprofit organization, *or a* state or local government or agency
45 thereof from providing jobs and day training services:



- 1 (a) Without first obtaining a certificate from the Division; or
- 2 (b) After the certificate has been revoked or suspended by the
- 3 Division.

4 2. It is sufficient in such an action to allege that the defendant
5 did, on a certain date and in a certain place, provide jobs and day
6 training services without a certificate.

7 **Sec. 8.** NRS 435.333 is hereby amended to read as follows:

8 435.333 1. The ~~[Division]~~ *Administrator* shall adopt
9 regulations governing supported living arrangement services,
10 including, without limitation, regulations that set forth:

11 (a) Standards for the provision of quality care by providers of
12 supported living arrangement services;

13 (b) The requirements for the issuance and renewal of a
14 certificate to provide supported living arrangement services; and

15 (c) The rights of consumers of supported living arrangement
16 services, including, without limitation, the right of a consumer to
17 file a complaint and the procedure for filing such a complaint.

18 2. The Division may enter into such agreements with public
19 and private agencies as it deems necessary for the provision of
20 supported living arrangement services.

21 3. For each regulation adopted pursuant to NRS 435.3305 to
22 435.339, inclusive, and submitted to the Legislative Counsel
23 pursuant to NRS 233B.067 for review by the Legislative
24 Commission, the Division shall set forth in the informational
25 statement prepared pursuant to NRS 233B.066 that accompanies the
26 regulation any supported living arrangement services that the
27 regulation authorizes persons to provide pursuant to NRS 632.340
28 when the persons would otherwise be prohibited from providing
29 such services pursuant to NRS 632.315.

30 **Sec. 9.** NRS 435.350 is hereby amended to read as follows:

31 435.350 1. Each person with an intellectual disability and
32 each person with a related condition admitted to a division facility is
33 entitled to all rights enumerated in NRS ~~[433.482, 433.484, 433.545~~
34 ~~to 433.551, inclusive,]~~ 435.565 and 435.570 ~~[.]~~ *and section 2 of this*
35 *act.*

36 2. The Administrator shall designate a person or persons to be
37 responsible for establishment of regulations relating to denial of
38 rights of persons with an intellectual disability and persons with
39 related conditions. The person designated shall file the regulations
40 with the Administrator.

41 3. Consumers' rights specified in NRS 433.482, 433.484,
42 435.565 and 435.570 may be denied only for cause. Any denial of
43 such rights must be entered in the consumer's treatment record, and
44 notice of the denial must be forwarded to the Administrator's



1 designee or designees as provided in subsection 2. Failure to report
2 denial of rights by an employee may be grounds for dismissal.

3 4. Upon receipt of notice of a denial of rights as provided in
4 subsection 3, the Administrator's designee or designees shall cause
5 a full report to be prepared which sets forth in detail the factual
6 circumstances surrounding the denial. A copy of the report must be
7 sent to the Administrator and the Commission on Behavioral Health.

8 5. The Commission on Behavioral Health has such powers and
9 duties with respect to reports of denial of rights as are enumerated
10 for the Commission on Behavioral Health in subsection 3 of
11 NRS 435.610.

12 **Sec. 10.** NRS 435.365 is hereby amended to read as follows:

13 435.365 1. To the extent that money is available for that
14 purpose, whenever a person with an intellectual disability or a
15 related condition is cared for by a parent or other relative with
16 whom the person lives, that parent or relative is eligible to receive
17 assistance on a monthly basis from the Division for each such
18 person who lives and is cared for in the home if the Division finds
19 that:

20 (a) The person with an intellectual disability or a related
21 condition has been diagnosed as having a profound or severe
22 intellectual disability or, if he or she is under 6 years of age, has
23 developmental delays that require support that is equivalent to the
24 support required by a person with a profound or severe intellectual
25 disability or a related condition;

26 (b) The person with an intellectual disability or a related
27 condition is receiving adequate care; and

28 (c) The person with an intellectual disability or a related
29 condition and the parent or other relative with whom the person
30 lives is not reasonably able to pay for his or her care and support.

31 ➤ The amount of the assistance must be established by legislative
32 appropriation for each fiscal year.

33 2. The ~~Division~~ **Administrator** shall adopt regulations:

34 (a) Which establish a procedure of application for assistance;

35 (b) For determining the eligibility of an applicant pursuant to
36 subsection 1; and

37 (c) For determining the amount of assistance to be provided to
38 an eligible applicant.

39 3. The ~~Division~~ **Administrator** shall establish a waiting list
40 for applicants who are eligible for assistance but who are denied
41 assistance because the legislative appropriation is insufficient to
42 provide assistance for all eligible applicants.

43 4. The decision of the ~~Division~~ **Administrator** regarding
44 eligibility for assistance or the amount of assistance to be provided
45 is a final administrative decision.



Sec. 11. NRS 435.425 is hereby amended to read as follows:

435.425 1. The Division shall carry out a vocational and educational program for the certification of intellectual disability technicians, including forensic technicians employed by the Division, or other employees of the Division who perform similar duties, but are classified differently. The program must be carried out in cooperation with the Nevada System of Higher Education.

2. An intellectual disability technician is responsible to the director of the service in which his or her duties are performed. The director of a service may be a licensed physician, dentist, podiatric physician, psychiatrist, psychologist, rehabilitation therapist, social worker, registered nurse or other professionally qualified person. This section does not authorize an intellectual disability technician to perform duties which require the specialized knowledge and skill of a professionally qualified person.

3. The ~~{Division}~~ *Administrator* shall adopt regulations to carry out the provisions of this section.

4. As used in this section, "intellectual disability technician" means an employee of the Division who, for compensation or personal profit, carries out procedures and techniques which involve cause and effect and which are used in the care, treatment and rehabilitation of persons with intellectual disabilities and persons with related conditions, and who has direct responsibility for:

(a) Administering or carrying out specific therapeutic procedures, techniques or treatments, excluding medical interventions, to enable consumers to make optimal use of their therapeutic regime, their social and personal resources, and their residential care; or

(b) The application of interpersonal and technical skills in the observation and recognition of symptoms and reactions of consumers, for the accurate recording of such symptoms and reactions, and for carrying out treatments authorized by members of the interdisciplinary team that determines the treatment of the consumers.

Sec. 12. NRS 435.430 is hereby amended to read as follows:

435.430 1. The ~~{Division}~~ *Administrator* shall adopt regulations:

(a) For the care and treatment of persons with intellectual disabilities and persons with related conditions by all state agencies and facilities, and their referral to private facilities;

(b) To ensure continuity in the care and treatment provided to persons with intellectual disabilities and persons with related conditions in this State; and

(c) Necessary for the proper and efficient operation of the facilities of the Division.



2. The ~~Division~~ *Administrator* may adopt regulations to promote programs relating to intellectual disabilities and related conditions.

Sec. 13. NRS 435.435 is hereby amended to read as follows:

435.435 The ~~Division~~ *Administrator* shall adopt regulations to:

1. Provide for a more detailed definition of abuse of a consumer of the Division, consistent with the general definition given in NRS 435.645;

2. Provide for a more detailed definition of neglect of a consumer of the Division, consistent with the general definition given in NRS 435.645; and

3. Establish policies and procedures for reporting the abuse or neglect of a consumer of the Division.

Sec. 14. NRS 435.540 is hereby amended to read as follows:

435.540 "Facility" means any:

1. Unit or subunit operated by the Division for the care, treatment and training of consumers.

2. Hospital, clinic or other institution operated by any public or private entity, for the care, treatment and training of consumers.

3. A partnership, firm, corporation or association, including, without limitation, a nonprofit organization, or a state or local government or agency thereof that enters into a contract with the Division for the care, treatment and training of consumers. As used in this subsection, "nonprofit organization" has the meaning ascribed to it in NRS 435.179.

Sec. 15. This act becomes effective upon passage and approval.

