

Amendment No. 748

Senate Amendment to Assembly Bill No. 46 First Reprint (BDR 39-132)

Proposed by: Senate Committee on Health and Human Services

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 46 R1 (§ 6).

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EWR/JWP



Date: 5/21/2017

A.B. No. 46—Revises provisions governing services provided to persons with mental illness and other disabilities. (BDR 39-132)



ASSEMBLY BILL NO. 46—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE DIVISION OF PUBLIC AND
BEHAVIORAL HEALTH OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES)

PREFILED NOVEMBER 17, 2016

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing services provided to persons with mental illness and other disabilities. (BDR 39-132)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Executive Budget.

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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; providing for the certification and regulation of providers of community-based living arrangement services; requiring a person or entity to consider certain factors when determining the placement of a person with a mental illness or a person with a related condition; clarifying that providers of community-based living arrangement services, supported living arrangement services and temporary respite services are not subject to certain licensing and regulatory requirements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law: (1) imposes certain requirements relating to supported living arrangement services provided to persons with intellectual disabilities and related conditions; and (2) authorizes the Aging and Disability Services Division of the Department of Health and Human Services to take certain actions to regulate the provision of such services. (NRS 435.3305-435.339) **Sections 2-12** of this bill enact similar provisions that apply to community-based living arrangement services. **Section 4** defines "community-based living arrangement services" to mean flexible, individualized services provided in the home to persons with mental illness or persons with related conditions that are designed to help such persons maximize their independence.

Section 5 requires a person or entity to be certified by the Division of Public and Behavioral Health of the Department or be a natural person who is employed by the holder of a certificate before providing community-based living arrangement services. **Section 6:** (1) requires the State Board of Health to adopt regulations governing community-based living arrangement services; and (2) authorizes the Board to impose a fee for the issuance or renewal of a certificate. **Section 7:** (1) requires an applicant for renewal of a certificate who has a state business registration to provide his or her business identification number in the application;

and (2) prohibits the renewal of a certificate if the applicant fails to provide such information or is delinquent on a debt to a state agency.

Section 8 authorizes the Division to investigate an applicant for the issuance or renewal of a certificate or a provider of community-based living arrangement services against whom a complaint has been filed. **Section 8** also authorizes the Division to employ such persons and enter into such agreements as are necessary to carry out provisions of law governing community-based living arrangement services. **Section 9** authorizes the Division to bring an action to enjoin any person or entity who provides community-based living arrangement services without a certificate or after a certificate has been revoked or suspended.

Existing federal law requires each state to adopt procedures to ensure that applicants for certain licenses and certificates comply with child support obligations. (42 U.S.C. § 666) **Sections 10-12** enact such procedures applicable to applicants for certificates in order to comply with federal law.

Section 12.5 of this bill requires any person or entity that determines the placement of a person with a mental illness or a person with a related condition to consider the ability of a facility or provider of services to meet the needs of the person and ensure the safety of the person.

Certain providers of nursing services are subject to regulation under existing law as medical facilities. (NRS 449.0015, 449.0151, 449.0153) **Sections 16 and 19** of this bill exempt providers of community-based living arrangement services from those provisions. Existing law defines "supported living arrangement services" to mean flexible, individualized services provided in the home, for compensation, to a person with an intellectual disability or a person with a related condition that are designed and coordinated to assist the person in maximizing the person's independence. (NRS 435.3315) **Sections 18 and 20** of this bill clarify that a home in which community-based living arrangement services or supported living arrangement services are provided does not constitute a residential facility for groups or a home for individual residential care subject to regulation under chapter 449 of NRS. **Section 17** of this bill provides that an agency that contracts with the Aging and Disability Services Division of the Department to provide temporary respite services, which are services provided to a natural person periodically to provide a respite to the person's regular caregiver, is not an agency to provide personal care services in the home subject to regulation under chapter 449 of NRS.

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

Section 1. Chapter 433 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to ~~H2~~ **12.5**, inclusive, of this act.

Sec. 2. *As used in sections 2 to 12, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Certificate" means a certificate that authorizes a natural person or entity to provide services that is issued by the Division pursuant to sections 2 to 12, inclusive, of this act and the regulations adopted pursuant thereto.*

Sec. 4. *"Community-based living arrangement services" or "services" means flexible, individualized services, including, without limitation, training and habilitation services, that are:*

1. Provided in the home, for compensation, to persons with mental illness or persons with related conditions who are served by the Division or any other entity; and

2. Designed and coordinated to assist such persons in maximizing their independence.

Sec. 5. *1. Except as otherwise provided in subsection 2, a person, government or governmental agency shall not provide services without first obtaining a certificate from the Division.*

2. *A natural person who has not been issued a certificate but is employed by the holder of a certificate may provide services within the scope of his or her employment by the holder.*

Sec. 6. 1. *The State Board of Health shall adopt regulations governing services, including, without limitation, regulations that set forth:*

(a) *Standards for the provision of quality care by a provider of services;*
(b) *Requirements for the issuance and renewal of a certificate; and*
(c) *The rights of consumers of services, in addition to those prescribed in this chapter, including, without limitation, the right of a consumer to file a complaint against a provider of services and the procedure for filing such a complaint.*

2. *The State Board of Health may, by regulation, prescribe a fee for:*

(a) *The issuance of a certificate; and*

(b) *The renewal of a certificate.*

3. *Any fee prescribed pursuant to subsection 2 must be calculated to produce the revenue estimated to cover the costs related to the issuance and renewal of certificates, but in no case may the fee for the issuance or renewal of a certificate exceed the actual cost to the Division of issuing or renewing the certificate, as applicable.*

Sec. 7. 1. *In addition to any other requirements set forth in this chapter and the regulations adopted pursuant to section 6 of this act, an applicant for the renewal of a certificate must indicate in the application submitted to the Division whether the applicant has a state business registration. If the applicant has a state business registration, the applicant must include in the application the business identification number assigned by the Secretary of State upon compliance with the provisions of chapter 76 of NRS.*

2. *A certificate may not be renewed if:*

(a) *The applicant fails to submit the information required by subsection 1; or*
(b) *The State Controller has informed the Division pursuant to subsection 5 of NRS 353C.1965 that the applicant owes a debt to an agency that has been assigned to the State Controller for collection and the applicant has not:*

(1) *Satisfied the debt;*

(2) *Entered into an agreement for the payment of the debt pursuant to NRS 353C.130; or*

(3) *Demonstrated that the debt is not valid.*

3. *As used in this section:*

(a) *“Agency” has the meaning ascribed to it in NRS 353C.020.*

(b) *“Debt” has the meaning ascribed to it in NRS 353C.040.*

Sec. 8. *The Division may:*

1. *Upon receipt of an application for a certificate, conduct an investigation into the qualifications of the personnel, methods of operation, policies and purposes of the applicant;*

2. *Upon receipt of a complaint against a provider of services, except for a complaint concerning the cost of services, conduct an investigation into the qualifications of the personnel, methods of operation, policies, procedures and records of the provider of services;*

3. *Employ such professional, technical and clerical assistance as it deems necessary to carry out the provisions of sections 2 to 12, inclusive, of this act; and*

4. *Enter into such agreements with public and private agencies as it deems necessary for the provision of services.*

Sec. 9. 1. *The Division may bring an action in the name of the State of Nevada to enjoin any person, government or governmental agency from providing services:*

(a) *Without first obtaining a certificate from the Division; or*

1 (b) After the certificate has been revoked or suspended by the Division.
2 2. It is sufficient in such an action to allege that the defendant did, on a
3 certain date and in a certain place, provide services without a certificate.

4 Sec. 10. 1. A natural person who applies for the issuance or renewal of a
5 certificate must submit to the Division the statement prescribed by the Division of
6 Welfare and Supportive Services of the Department pursuant to NRS 425.520.
7 The statement must be completed and signed by the applicant.

8 2. The Division shall include the statement required pursuant to subsection
9 1 in:

10 (a) The application or any other forms that must be submitted for the
11 issuance or renewal of the certificate; or

12 (b) A separate form prescribed by the Division.

13 3. A certificate may not be issued or renewed by the Division if the applicant
14 is a natural person who:

15 (a) Fails to submit the statement required pursuant to subsection 1; or

16 (b) Indicates on the statement submitted pursuant to subsection 1 that the
17 applicant is subject to a court order for the support of a child and is not in
18 compliance with the order or a plan approved by the district attorney or other
19 public agency enforcing the order for the repayment of the amount owed
20 pursuant to the order.

21 4. If an applicant indicates on the statement submitted pursuant to
22 subsection 1 that the applicant is subject to a court order for the support of a
23 child and is not in compliance with the order or a plan approved by the district
24 attorney or other public agency enforcing the order for the repayment of the
25 amount owed pursuant to the order, the Division shall advise the applicant to
26 contact the district attorney or other public agency enforcing the order to
27 determine the actions that the applicant may take to satisfy the arrearage.

28 Sec. 11. The application of a natural person who applies for the issuance
29 of a certificate must include the social security number of the applicant.

30 Sec. 12. 1. If the Division receives a copy of a court order issued pursuant
31 to NRS 425.540 that provides for the suspension of all professional, occupational
32 and recreational licenses, certificates and permits issued to a natural person who
33 is the holder of a certificate, the Division shall deem the certificate issued to that
34 person to be suspended at the end of the 30th day after the date the court order
35 was issued unless the Division receives a letter issued to the holder of the
36 certificate by the district attorney or other public agency pursuant to NRS
37 425.550 stating that the holder of the certificate has complied with the subpoena
38 or warrant or has satisfied the arrearage pursuant to NRS 425.560.

39 2. The Division shall reinstate a certificate that has been suspended by a
40 district court pursuant to NRS 425.540 if the Division receives a letter issued by
41 the district attorney or other public agency pursuant to NRS 425.550 to the
42 person whose certificate was suspended stating that the person whose certificate
43 was suspended has complied with the subpoena or warrant or has satisfied the
44 arrearage pursuant to NRS 425.560.

45 Sec. 12.5. 1. Any person or entity, including, without limitation, the
46 Division, that determines the placement of a person with a mental illness or a
47 person with a related condition in a mental health facility, medical facility or
48 facility for the dependent, with a provider of community-based living
49 arrangement services or any other placement shall, when making such a
50 determination, consider whether the mental health facility, medical facility,
51 facility for the dependent, provider of community-based living arrangement
52 services or other placement is capable of:

(a) Adequately addressing the needs of the person for care and services, including, without limitation, the administration of medication; and

(b) Ensuring the safety of the person in the event of a fire or other emergency.

2. As used in this section:

(a) "Community-based living arrangement services" has the meaning ascribed to it in section 4 of this act.

(b) "Facility for the dependent" has the meaning ascribed to it in NRS 449.0045.

(c) "Medical facility" has the meaning ascribed to it in NRS 449.0151.

Sec. 13. NRS 439B.225 is hereby amended to read as follows:

439B.225 1. As used in this section, "licensing board" means any division or board empowered to adopt standards for the issuance or renewal of licenses, permits or certificates of registration pursuant to NRS 435.3305 to 435.339, inclusive, chapter 449, 625A, 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 637B, 639, 640, 640A, 640D, 641, 641A, 641B, 641C, 652 or 654 of NRS ~~or~~ **sections 2 to 12, inclusive, of this act.**

2. The Committee shall review each regulation that a licensing board proposes or adopts that relates to standards for the issuance or renewal of licenses, permits or certificates of registration issued to a person or facility regulated by the board, giving consideration to:

(a) Any oral or written comment made or submitted to it by members of the public or by persons or facilities affected by the regulation;

(b) The effect of the regulation on the cost of health care in this State;

(c) The effect of the regulation on the number of licensed, permitted or registered persons and facilities available to provide services in this State; and

(d) Any other related factor the Committee deems appropriate.

3. After reviewing a proposed regulation, the Committee shall notify the agency of the opinion of the Committee regarding the advisability of adopting or revising the proposed regulation.

4. The Committee shall recommend to the Legislature as a result of its review of regulations pursuant to this section any appropriate legislation.

Sec. 14. Chapter 449 of NRS is hereby amended by adding thereto a new section to read as follows:

"Community-based living arrangement services" has the meaning ascribed to it in section 4 of this act.

Sec. 15. NRS 449.001 is hereby amended to read as follows:

449.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 449.0015 to 449.0195, inclusive, **and section 14 of this act** have the meanings ascribed to them in those sections.

Sec. 16. NRS 449.0015 is hereby amended to read as follows:

449.0015 1. "Agency to provide nursing in the home" means any person or governmental organization which provides in the home, through its employees or by contractual arrangement with other persons, skilled nursing and assistance and training in health and housekeeping skills.

2. The term does not include ~~††~~:

(a) A provider of community-based living arrangement services during any period in which the provider of community-based living arrangement services is engaged in providing community-based living arrangement services; or

(b) A provider of supported living arrangement services during any period in which the provider of supported living arrangement services is engaged in providing supported living arrangement services.

1 **Sec. 17.** NRS 449.0021 is hereby amended to read as follows:

2 449.0021 1. "Agency to provide personal care services in the home" means
3 any person, other than a natural person, which provides in the home the services
4 authorized pursuant to NRS 449.1935 to elderly persons or persons with
5 disabilities.

6 2. The term does not include:

7 (a) An independent contractor who provides nonmedical services specified in
8 NRS 449.1935 without the assistance of employees;

9 (b) An organized group of persons composed of the family or friends of a
10 person needing personal care services that employs or contracts with persons to
11 provide nonmedical services specified in NRS 449.1935 for the person if:

12 (1) The organization of the group of persons is set forth in a written
13 document that is made available for review by the Division upon request; and

14 (2) The personal care services are provided to only one person or one
15 family who resides in the same residence; ~~for~~

16 (c) An intermediary service organization ~~for~~ **or**

17 (d) *A person or agency that contracts with the Aging and Disability Services*
18 *Division of the Department of Health and Human Services to provide temporary*
19 *respite services.*

20 3. As used in this section ~~for~~ **"intermediary"** :

21 (a) **"Intermediary** service organization" has the meaning ascribed to it in NRS
22 449.4304.

23 (b) *"Temporary respite services" means services provided through a contract*
24 *with the Aging and Disability Services Division of the Department of Health and*
25 *Human Services to a natural person on a periodic basis to provide a respite for a*
26 *regular provider of services.*

27 **Sec. 18.** NRS 449.0105 is hereby amended to read as follows:

28 449.0105 "Home for individual residential care" means a home in which a
29 natural person furnishes food, shelter, assistance and limited supervision, for
30 compensation, to not more than two persons with intellectual disabilities or with
31 physical disabilities or who are aged or infirm, unless the persons receiving those
32 services are related within the third degree of consanguinity or affinity to the person
33 providing those services. The term does not include:

34 1. A halfway house for recovering alcohol and drug abusers; or

35 2. A home in which **community-based living arrangement services or**
36 supported living arrangement services are provided by a provider of ~~supported~~
37 ~~living arrangement~~ **such** services during any period in which the provider ~~of~~
38 ~~supported living arrangement services~~ is engaged in providing ~~supported living~~
39 ~~arrangement~~ **the** services.

40 **Sec. 19.** NRS 449.0153 is hereby amended to read as follows:

41 449.0153 1. "Nursing pool" means a person or agency which provides for
42 compensation, through its employees or by contractual arrangement with other
43 persons, nursing services to any natural person, medical facility or facility for the
44 dependent.

45 2. The term does not include:

46 ~~for~~ (a) An independent contractor who provides such services without the
47 assistance of employees;

48 ~~for~~ (b) A nursing pool based in a medical facility or facility for the dependent;
49 ~~for~~

50 ~~3-~~ (c) *A provider of community-based living arrangement services during*
51 *any period in which the provider of community-based living arrangement services*
52 *is engaged in providing community-based living arrangement services; or*

(d) A provider of supported living arrangement services during any period in which the provider of supported living arrangement services is engaged in providing supported living arrangement services.

Sec. 20. NRS 449.017 is hereby amended to read as follows:

449.017 1. Except as otherwise provided in subsection 2, "residential facility for groups" means an establishment that furnishes food, shelter, assistance and limited supervision to a person with an intellectual disability or with a physical disability or a person who is aged or infirm. The term includes, without limitation, an assisted living facility.

2. The term does not include:

(a) An establishment which provides care only during the day;

(b) A natural person who provides care for no more than two persons in his or her own home;

(c) A natural person who provides care for one or more persons related to him or her within the third degree of consanguinity or affinity;

(d) A halfway house for recovering alcohol and drug abusers; or

(e) ~~A facility funded by a division or program of the Department of Health and Human Services.~~ *home in which community-based living arrangement services or supported living arrangement services are provided by a provider of such services during any period in which the provider is providing the services.*

Sec. 21. NRS 632.316 is hereby amended to read as follows:

632.316 The provisions of NRS 632.315 do not prohibit:

1. Gratuitous nursing by friends or by members of the family of a patient.

2. The incidental care of the sick by domestic servants or persons primarily employed as housekeepers as long as they do not practice nursing within the meaning of this chapter.

3. Nursing assistance in the case of an emergency.

4. The practice of nursing by students enrolled in accredited schools of nursing or by graduates of those schools or courses pending the results of the first licensing examination scheduled by the Board following graduation. A student or graduate may not work as a nursing assistant unless the student or graduate is certified to practice as a nursing assistant pursuant to the provisions of this chapter.

5. The practice of nursing in this State by any legally qualified nurse or nursing assistant of another state whose engagement requires the nurse or nursing assistant to accompany and care for a patient temporarily residing in this State during the period of one such engagement, not to exceed 6 months, if the person does not represent or hold himself or herself out as a nurse licensed to practice in this State or as a nursing assistant who holds a certificate to practice in this State.

6. The practice of any legally qualified nurse of another state who is employed by the United States Government, or any bureau, division or agency thereof, while in the discharge of his or her official duties in this State, including, without limitation, providing medical care in a hospital in accordance with an agreement entered into pursuant to NRS 449.2455.

7. Nonmedical nursing for the care of the sick, with or without compensation, if done by the adherents of, or in connection with, the practice of the religious tenets of any well-recognized church or religious denomination, if that nursing does not amount to the practice of practical or professional nursing as defined in NRS 632.017 and 632.018, respectively.

8. A personal assistant from performing services for a person with a disability pursuant to NRS 629.091.

9. *A natural person from providing community-based living arrangement services if:*

1 *(a) That person has been issued a certificate pursuant to sections 2 to 12,*
2 *inclusive, of this act, and the regulations adopted pursuant to section 6 of this*
3 *act; or*

4 *(b) That person is employed or retained as an independent contractor by a*
5 *partnership, firm, corporation or association, state or local government or agency*
6 *thereof that has been issued a certificate pursuant to sections 2 to 12, inclusive, of*
7 *this act, and the regulations adopted pursuant to section 6 of this act.*

8 ➤ *As used in this subsection, “community-based living arrangement services”*
9 *has the meaning ascribed to it in section 4 of this act.*

10 **10.** A natural person from providing supported living arrangement services if:
11 (a) That person has been issued a certificate pursuant to NRS 435.3305 to
12 435.339, inclusive, and the regulations adopted pursuant to NRS 435.3305 to
13 435.339, inclusive; or

14 (b) That person is employed or retained as an independent contractor by a
15 partnership, firm, corporation or association, state or local government or agency
16 thereof that has been issued a certificate pursuant to NRS 435.3305 to 435.339,
17 inclusive, and the regulations adopted pursuant to NRS 435.3305 to 435.339,
18 inclusive.

19 ➤ As used in this subsection, “supported living arrangement services” has the
20 meaning ascribed to it in NRS 435.3315.

21 **Sec. 22.** Notwithstanding the provisions of section 5 of this act, a person,
22 government or governmental agency is not required to possess a certificate issued
23 by the Division of Public and Behavioral Health of the Department of Health and
24 Human Services to provide community-based living arrangement services in this
25 State before October 1, 2017, unless the Division establishes, by regulation, an
26 earlier date for compliance with section 5 of this act.

27 **Sec. 23.** 1. This act becomes effective on July 1, 2017.

28 2. Sections 10, 11 and 12 of this act expire by limitation on the date on which
29 the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under
30 which the state has authority to withhold or suspend, or to restrict the use of
31 professional, occupational and recreational licenses of persons who:

32 (a) Have failed to comply with the subpoena or warrant relating to a
33 proceeding to determine the paternity of a child or to establish or enforce an
34 obligation for the support of a child; or

35 (b) Are in arrears in the payment for the support of one or more children,
36 ➤ are repealed by the Congress of the United States.