

Steve Sisolak
Governor

Richard Whitley,
MS
Director



DEPARTMENT OF
HEALTH AND HUMAN SERVICES
AGING AND DISABILITY SERVICES DIVISION
Helping people. It's who we are and what we do.



Dena Schmidt
Administrator

December 5th, 2022

To: Peter Reed, Chair and Members of the Task Force on Alzheimer's Disease (TFAD)
Re: State Plan Recommendation regarding Development of Choice and Care Setting

Chair Reed and Members,

I hold the office of Attorney for the Rights of Older Persons and Persons with a Physical Disability, an Intellectual Disability, or a Related Condition under NRS 427A.123 and serve at the pleasure of the Governor. For over 700,000¹ adults in Nevada living with a disability, the Rights Attorney works to advance systemic improvement in the aging and disability services network through legal and policy advocacy to ensure that Nevadans can live independent, meaningful, and dignified lives. In addition, the office acts as the designated Legal Assistance Developer under the Older Americans Act. 42 U.S.C. § 3058j.

I would like to offer my support to the group as you finalize the State Plan for Nevada. Of particular importance is the recommendation to promote choice in care and care setting. Due to the extraordinary liberty interest at stake, it is both timely and appropriate for Nevada to reflect on necessary regulatory or statutory changes needed to ensure the practice in our state aligns with the jurisprudential underpinnings of freedom, liberty, and due process rights.

An individual's liberty and autonomy interests, including the freedom to determine intimate, social, and familial relationships as well as privacy in one's home has been afforded constitutional protections under the fourteenth amendment due process clause. *See, e.g. Loving v. Virginia*, 388 U.S. 1, 87 S. Ct. 1817 (1967) (

Skinner v. Oklahoma, 316 U.S. 535, 62 S. Ct. 1110 (1942)

Pierce v. Soc'y of Sisters, 268 U.S. 510, 45 S. Ct. 571 (1925)

Griswold v. Connecticut, 381 U.S. 479, 85 S. Ct. 1678 (1965)

Rochin v. California, 342 U.S. 165, 72 S. Ct. 205 (1952)

Mo. Dep't of Health, 497 U.S. 261, 110 S. Ct. 2841 (1990)

Cruzan v. Dir.,

deprive a person of these most fundamental rights without notice and a meaningful opportunity to be heard. *U.S. Const. amend. 14; see also Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

The recommendation here recognizes that individuals with diagnosis such as Alzheimer's are marginalized in their decision-making and care based solely on their diagnosis and not on their functional abilities. All persons are presumed to possess capacity unless and until adjudicated otherwise. For persons with disabilities, particularly those with disabilities such as Alzheimer's or those that are aging, they are faced with the opposite presumption than the law affords. Additionally, the recommendation highlights the misunderstanding and misuse of powers of attorney in our state. While powers of attorney are powerful tools for advanced care planning, they do not circumvent the need for due process and judicial intervention when they are challenged or

¹ Centers for Disease Control, *Nevada Category: Disability Estimates*, Disability and Health Data System

exceed their scope. In fact, Nevada has taken steps as recently as 2019 to explicitly include provisions in powers of attorney that promote choice and determination regarding placement and living preferences; expand the power of attorney statute to include specific forms for persons living with disabilities, such as dementia; and recognize that an individual with a diagnosis is not precluded from exercising choice and planning for care. Nevada continues to place the upmost importance on empowering individuals to maintain choice and decision-making autonomy regardless of age or disability.

The recommendation correctly recites the status of Nevada law, that is there is no talisman or badge of authority, which unilaterally imbues a long-term care facility or singular clinician to confine residents against their will without judicial process. In Nevada, those processes include the involuntary civil commitment procedure under NRS 433A and the adult guardianship process under NRS 159. Nevada's guardianship statute provides an array of remedies including an expedited placement process and emergency proceedings. Under Nevada's guardianship statute, the court must make an additional judicial finding on the appropriateness of a secured long-term residential facility for a guardian to place an individual in such a restrictive setting. *See, e.g., NRS 159.079.*

Unfortunately, there is a lack of state and national data in this area to illuminate the number of individuals affected. Therefore, part of the important work of this recommendation will be working with partners across the network to identify and promote education, awareness, and regulatory changes that will ensure the admissions process in these settings is subject to enforcement, compliance, and ongoing oversight.

Thank you to the members of the Task Force for the tireless work that you do to improve the lives of our family, friends, and colleagues across the state. I can be reached at jrichards@adsd.nv.gov or 775-685-6584 with any additional comments or concerns.



Jennifer M. Richards, Esq.