

Secretary of State Filing Data
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**For Filing Administrative
Regulations**

For Emergency Regulations Only
Effective Date: Expiration Date:  <hr/> Governor's Signature

Agency:

Aging and Disability Services Division

Classification Proposed Adopted by Agency Temporary Emergency Permanent

Brief description of action:

Due to the COVID 19 Pandemic, Nevada experienced an extreme health care shortage, especially in the field of nursing. This nursing shortage has created limited staffing availability within our community home healthcare agencies that would otherwise provide daily routine nursing care for enteral (tube) feedings and medication administration for individuals supported by Developmental Services Community Services. Without these nursing supports, those individuals who have been dependent upon this long-term service to remain in their homes in our community are at risk for long term institutional placement, which will negatively impact their quality of life, increasing risk for isolation, infection and long-term complications associated with institutional care. Our community skilled nursing facilities also are experiencing nurse staffing shortages, which impacts the availability of institutional level of care for all persons with long term needs.

1. The purpose of the change is to authorize a member of the direct support staff of a provider of supported living arrangement services to perform specific skilled care services for a person with an intellectual or developmental disability who live in our community.
2. These health support services may include medication administration, and other skilled services for individuals who are medically stable.
3. The benefits will be to enhance the individual's quality of life while supporting their health care needs in a community setting.

Authority citation other than 233B, NAC 435

Notice date: _____ Date of Adoption by Agency: March 25, 2022

Hearing date: _____

NAC 435.675 Administration of medication. (NRS 435.333)

1. A member of the direct support staff of a provider of supported living arrangement services may administer medication to persons receiving supported living arrangement services if the member has successfully completed a program concerning the administration of medication which is approved by the Division.

2. A person who is receiving supported living arrangement services may have his or her medication administered by:

(a) A provider of health care; or

(b) A member of the direct support staff of a provider of supported living arrangement services who has successfully completed a program concerning the administration of medication which is approved by the Division if:

(1) The member of the direct support staff administers the medication according to the instructions of a provider of health care;

(2) The person, or his or her parent or guardian, as applicable, provides written authorization to receive medication from a member of the direct support staff of the provider of supported living arrangement services in accordance with NRS 453.375 and 454.213; and

(3) The person submits to a physical examination by his or her provider of health care on an annual basis and the provider of health care determines that the person is medically cleared to receive medication from the member of the direct support staff.

3. A member of the direct support staff of a provider of supported living arrangement services who has successfully completed a program concerning the administration of medication which is approved by the Division:

(a) May administer medication pursuant to this section;

(b) Must refer a person who is receiving supported living arrangement services to a provider of health care if:

(1) The medical condition of the person changes or the person develops a new or additional medical condition;

(2) The medication prescribed by the person authorized to prescribe medication does not accomplish the objectives of the medication, as identified by the person authorized to prescribe medication, after the medication has been administered according to the prescription;

(3) Any emergency situation develops; or

(4) The provider of health care of the person instructs the member of the direct support staff to refer the person to the provider of health care;

(c) Shall not administer:

(1) Any medication to a person who has been admitted to a medical facility;

(2) Any medication which requires dose titration or an assessment of the needs of the person who is receiving supported living arrangement services concerning the medication;

(3) Except as otherwise provided in paragraph (d), any medication required to be administered by injection;

(4) Any extended release medication which must be crushed, cut or otherwise altered before the administration of the medication; or

~~—(5) Any nutrition or medication which is prescribed by a provider of a healthcare or a person authorized to prescribe medication to be administered enterally; and~~

(d) May administer auto-injectable epinephrine for acute or emergent anaphylactic response if prescribed by a person authorized to prescribe medication and the member of the direct support staff has documentation that he or she has been trained in the use of auto-injectable epinephrine and monitoring persons who have received auto-injectable epinephrine for side effects.

4. As used in this section:

(a) “Direct support staff” means any member of the staff of a provider of supported living arrangement services who works directly with a person with an intellectual disability or a person with a developmental disability to provide supported living arrangement services.

(b) “Person authorized to prescribe medication” means:

(1) A physician, dentist or podiatric physician who holds a license to practice his or her profession in this State;

(2) A hospital, pharmacy or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this State;

(3) An advanced practice registered nurse who has been authorized to prescribe controlled substances, poisons, dangerous drugs and devices;

(4) A physician assistant who:

(I) Holds a license issued by the Board of Medical Examiners; and

(II) Is authorized by the Board of Medical Examiners to possess, administer, prescribe or dispense controlled substances, poisons, dangerous drugs or devices under the supervision of a physician as required by chapter 630 of NRS;

(5) A physician assistant who:

(I) Holds a license issued by the State Board of Osteopathic Medicine; and

(II) Is authorized by the State Board of Osteopathic Medicine to possess, administer, prescribe or dispense controlled substances, poisons, dangerous drugs or devices under the supervision of an osteopathic physician as required by chapter 633 of NRS; or

(6) An optometrist who is certified by the Nevada State Board of Optometry to prescribe and administer therapeutic pharmaceutical agents pursuant to NRS 636.288, when the optometrist prescribes or administers therapeutic pharmaceutical agents within the scope of his or her certification.

(c) “Provider of health care” means:

(1) A physician licensed pursuant to chapter 630, 630A or 633 of NRS;

- (2) A dentist licensed pursuant to chapter 631 of NRS;
- (3) A registered nurse licensed pursuant to chapter 632 of NRS;
- (4) An advanced practice registered nurse certified pursuant to chapter 632 of NRS; or
- (5) A physician assistant licensed pursuant to chapter 630 or 633 of NRS.

[Men. Hygiene & Men. Retardation Div., Residences § 37, eff. 2-5-82] — (NAC A by Div. of Men. Health & Dev. Services by R071-06, 11-13-2006; A by Aging & Disability Services Div. by R144-16, 5-16-2018)

NAC 435.XXX Provision of Skilled Care Services

1. Except as otherwise provided in subsection 4, a provider of health care may authorize a member of the direct support staff of a provider of supported living arrangement services to perform specific skilled care services for a person with an intellectual or developmental disability without obtaining any professional license required for a provider of health care or his or her assistant to perform the services if:

(a) The skilled care services to be performed are services that a person without an intellectual or developmental disability usually and customarily would personally perform without the assistance of a provider of health care.

(b) The provider of health care determines that the member of the direct support staff of a provider of supported living arrangement services has the knowledge, skill, and ability to perform the services competently.

(c) The provider of health care determines that the procedures involved in providing the services are simple and the performance of such procedures by a member of the direct support staff of a provider of supported living arrangement services does not pose an increased risk to the person with an intellectual or developmental disability.

(d) The provider of health care determines that the condition of the person with an intellectual or developmental disability is stable and predictable; and

(e) A member of the direct support staff of a provider of supported living arrangement services agrees with the provider of health care to refer the person with an intellectual or developmental disability to the provider of health care if:

(1) The condition of the person with an intellectual or developmental disability changes or a new medical condition develops.

(2) The progress or condition of the person with an intellectual or developmental disability after the provision of the service is different than expected.

(3) An emergency develops; or

(4) Any other situation described by the provider of health care develops.

2. A provider of health care that authorizes a member of the direct support staff of a provider of supported living arrangement services to perform certain

services shall note in the medical records of the person with an intellectual or developmental disability who receives such services:

(a) The specific services that the provider of health care has authorized the member of the direct support staff of a provider of supported living arrangement services to perform; and

(b) That the requirements of this section have been satisfied.

3. After a provider of health care has authorized A member of the direct support staff of a provider of supported living arrangement services to perform specific services for a person with an intellectual or developmental disability, no further authorization or supervision by the provider of health care is required for the continued provision of those services.

4. A member of the direct support staff of a provider of supported living arrangement services shall not:

(a) Perform services pursuant to this section for a person with an intellectual or developmental disability who resides in a medical facility.

(b) Perform any specific skilled care services for a person with an intellectual or developmental disability which is not specifically authorized by a provider of health care pursuant to subsection 1.

5. As used in this section:

(a) "Direct support staff" means any member of the staff of a provider of supported living arrangement services who works directly with a person with an intellectual disability or a person with a developmental disability to provide supported living arrangement services.

(b) "Provider of health care" means:

(1) A physician licensed pursuant to chapter 630, 630A or 633 of NRS;

(2) An advanced practice registered nurse certified pursuant to chapter 632 of NRS; or

(3) A physician assistant licensed pursuant to chapter 630 or 633 of NRS.

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

March 25, 2022

The Honorable Steve Sisolak
Governor of the State of Nevada
State Capitol Building
101 N. Carson Street Carson City, NV 89701

Re: Statement in Support of Emergency Regulation

Dear Governor Sisolak,

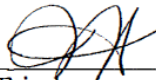
This statement is required by NRS 233B (Nevada Administrative Procedure Act) and is meant to outline the emergent need for a set of regulations under NRS 233B.0613(1)1.

Statement of Emergency: Due to the COVID 19 Pandemic, Nevada experienced an extreme health care shortage, especially in the field of nursing. This nursing shortage has created limited staffing availability within our community home healthcare agencies that would otherwise provide daily routine nursing care for enteral (tube) feedings and medication administration for individuals supported by the Aging and Disability Services Division, Developmental Services, Community Services. Without these nursing supports, those individuals who have been dependent upon this long-term service to remain in their homes in our community are at risk for long term institutional placement, which will negatively impact their quality of life, increasing risk for isolation, infection and long-term complications associated with institutional care. Our community skilled nursing facilities also are experiencing nurse staffing shortages, which impacts the availability of institutional level of care for persons with long term needs.

1. The purpose of the change is to authorize a member of the direct support staff of a provider of supported living arrangement services to perform specific skilled care services for a person with an intellectual or developmental disability who live in our community.
2. These health support services may include medication administration, and other skilled services for individuals who are medically stable.
3. The benefits will be to enhance the individual's quality of life while supporting their health care needs in a community setting
4. The current resources for nursing in the community is very limited, resulting in institutional placement for individual who otherwise could be supported our community.
5. Any skilled services as referenced in NAC 435 performed by direct support staff of a provider of a supported living arrangement services must be authorized to perform the service, by the individual's provider of health care, indicating competency in that skill.

Thank you for your time and consideration in this matter. If the enclosed regulations meet with your approval, please endorse this statement below.

DATED this 25 day of March, 2022



Jennifer Frischmann
Quality Assurance Manager

Encl.: Emergency Regulations under NRS 435.

Endorsement under NRS 233B.0613:

I, Governor Steve Sisolak, do hereby endorse the written statement of emergency above related to NRS 437 and the enclosed emergency regulations for the reasons set forth above as if fully incorporated herein and authorize provision of the original of this document to be filed with the Nevada Secretary of State's office and included as a part of the regulation per statute.

DATED this 18th day of April, 2022.



Hon. Steve Sisolak

NRS 233B.0613 Emergency regulations.

If an agency determines that an emergency exists, it shall submit to the Governor a written statement of the emergency which sets forth the reasons for the determination. If the Governor endorses the statement of the emergency by written endorsement at the end of the full text of the statement of emergency on the original copy of a proposed regulation, the regulation may be adopted and become effective immediately upon its being filed in the Office of the Secretary of State pursuant to subsection 3 of NRS 233B.070. The statement of the emergency endorsed by the Governor must be included as a part of the regulation for all purposes.

Steve Sisolak
Governor

Richard Whitley, MS
Director



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Dena Schmidt
Administrator

March 25, 2022

Barbara Cegavske
Nevada Secretary of State 202 N. Carson St.
Carson City, NV 89701

Via Hand Delivery

Please find below the Informational Statement required by NRS 233B.066 and the enclosed original Statement in Support of Emergency Regulation signed by Governor Steve Sisolak, along with the draft regulations. A copy of this document with the enclosed statement and regulation draft will also be courtesy copied to the Governor's Office and Legislative Counsel.

Informational Statement Pursuant to NRS 233B.066

(a) A clear and concise explanation of the need for the adopted regulation.

Due to the COVID 19 Pandemic, Nevada experienced an extreme health care shortage, especially in the field of nursing. This nursing shortage has created limited staffing availability within our community home healthcare agencies that would otherwise provide daily routine nursing care for enteral (tube) feedings and medication administration for individuals supported by Developmental Services Community Services. Without these nursing supports, those individuals who have been dependent upon this long-term service to remain in their homes in our community are at risk for long term institutional placement, which will negatively impact their quality of life, increasing risk for isolation, infection and long-term complications associated with institutional care. Our community skilled nursing facilities also are experiencing nurse staffing shortages, which impacts the availability of institutional level of care for all persons with long term needs.

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(intervening subsections eliminated under subsection (2) as they do not apply to emergency regulations)

(g) The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

(1) Both adverse and beneficial effects; and

There are no adverse effects to the adoption of these regulations. The beneficial effect is that individuals that have an intellectual or developmental disability will be able to reside in their own home, as opposed to having to transfer to a long term care facility, such as a skilled nursing facility, which may be considered an Olmstead violation.

(2) Both immediate and long-term effects.

Both the immediate and long-term effects are that individuals that have an intellectual or developmental disability will be able to reside in their own home, as opposed to having to transfer to a long term care facility, such as a skilled nursing facility, which may be considered an Olmstead violation.

(h) The estimated cost to the agency for enforcement of the proposed regulation.

There is no cost to the agency for enforcement of the proposed regulation.

(i) A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

This is not applicable.

(j) If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This is not applicable.

(k) If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

There are no fees associated with this regulation.

2. The requirements of paragraphs (b) to (f), inclusive, of subsection 1 do not apply to emergency regulations.