

NOTICE OF INTENT TO ACT UPON A PROPOSED REGULATION
R105-24

NOTICE IS HEREBY GIVEN that the Nevada State Board of Examiners for Long Term Care Administrators will hold a public hearing to consider amendments to Nevada Administrative Code (NAC) 654. The hearing is scheduled to begin at **10:00 a.m. on Wednesday, August 7, 2024, at State of Nevada Building, Room 334, 700 E. Warm Springs Road, Las Vegas, NV 89119, the Legislative Counsel Bureau, 401 S. Carson St., Room 2135, Carson City, NV 89701, and dial in telephonic testimony for public comment. To dial in to provide telephonic testimony during this period of public comment in the meeting: Dial (888) 475-4499. When prompted to provide Meeting I.D., please enter 864 6547 4723 then press #. When prompted for a Participant ID, please press #. A copy of the proposed regulation is attached hereto as Attachment 1.**

The purpose of the hearing is to receive comments from all interested persons regarding the adoption of a regulation that pertains to Chapter 654 of the Nevada Administrative Code, LCB File No. R105-24.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation.

The purpose of the proposed regulation is to facilitate the operation of SB 260 (2023 Session) that authorized certain licensed small businesses to refer client or patients to Nevada's long term care facilities and to collect a payment for the referral. The Board's prior version of the regulations prohibited payment for referrals.

2. Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

Sec. 2 - NEW LANGUAGE - Defines "senior living community"

Sec. 3 - NEW LANGUAGE - Defines "senior living community referral agency"

Sec. 4 - NEW LANGUAGE - Sets out list of documents that must be obtained at least once annually by an administrator from a senior living community referral agency that has contracted with the administrator's facility

Sec. 5 - AMENDS NAC 654.010 – Conforming language

Sec. 6 - AMENDS NAC 654.1515 – Changes reference to the national database to conform to the present title for the database, namely the National Practitioner Data Bank

Sec. 7 - AMENDS NAC 654.210 – Defines terms and conditions under which a paid referral may be made to and accepted by an administrator of a long term care facility and creates new cause for disciplinary action where an administrator accepts a resident or patient into a facility where the administrator knows or should know that the facility is unable to provide adequate care to the resident or patient

Sec. 8 - AMENDS NAC 654.220 - Changes reference to the national database to conform to the present title for the database, namely the National Practitioner Data Bank

3. If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.

The text of the proposed regulation may be inspected and copied at the office or requests therefore may be mailed to the Nevada State Board of Examiners for Long Term Care Administrators, 3157 N. Rainbow Blvd. #313, Las Vegas, Nevada 89108. Text of the proposed regulation may also be inspected online at <http://beltca.nv.gov> or <http://leg.state.nv.us/register/2024Register/R105-24P.pdf>.

4. A statement of 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:
 - (a) Both adverse and beneficial effects.
 - (1) *Adverse: This regulation will have minimal adverse effects on Nevada small businesses, which effect will be the gathering and storing of some paperwork to facilitate the referrals that will be made incident to the regulation.*
 - (2) *Beneficial: This regulation will be beneficial to small businesses that make referrals to Nevada's long term care facilities by authorizing payment for such referrals enabled by SB 260 (2023 Session) where the previous regulations prohibited such paid referrals.*
 - (b) Both immediate and long-term effects.
 - (1) *Direct: These regulations will be a direct effect on referral businesses and long term care facilities when the proposed regulations are removed and/or revised.*
 - (2) *Indirect: The indirect effect is unknowable at this time.*
5. A statement identifying the methods used by the Board of Examiners for Long Term Care Administrators in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608:

The proposed revisions were discussed in an open and public meeting on September 27, 2023, December 6, 2023, January 24, 2024, and May 15, 2024. Between the January 24, 2024 meeting and the May 15, 2024 meeting, Board staff and legal counsel met with and extensively negotiated with affected small businesses and their legal counsel. Board staff and legal counsel and affected small businesses and their legal counsel produced and worked through seven drafts of the regulation language to reach compromise language agreeable to all involved. On June 12, 2024, the Board held a workshop on the consensus language of the regulation.

Copies of the Notice of Public Workshop to Consider the Proposed Regulation Changes and the Proposed Regulation Changes were e-mailed to all licensees and whose email addresses are on file with the Board and were posted at :

ADSD
3208 Goni Rd., Building 1, Suite 181
Carson City, NV 89706

ADSD
1860 E. Sahara Ave.
Las Vegas, NV 89104

DPBH
4150 Technology Way
Carson City, NV 89706

DPBH
4220 S. Maryland Pkwy., Suite 100, Bldg. A
Las Vegas, NV 89119

ADSD
9670 Gateway Dr., Suite 200
Reno, NV 89521

Public Library, Sierra View Branch
4001 S. Virginia St.
Reno, NV 89502

Carson City Courthouse
100 Stewart St.
Carson City, NV 89701

Clark County – Las Vegas Library
732 N. Las Vegas Blvd.
Las Vegas, NV 89101

Grant Sawyer Office Building
555 E. Washington Blvd.
Las Vegas, NV 89102

6. The estimated cost to the agency for enforcement of the proposed regulation.

There will be no significant cost to Board for enforcement of the proposed regulation.

7. A description of any regulations of other state or local 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 notice must include the name of the regulating federal agency.

The Board is not aware of any similar regulations of other state or government agencies that the proposed regulations overlap or duplicate.

8. If the regulation is required pursuant to federal law, a citation and description of the federal law.

This proposed regulation is not required by federal law.

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

This proposed regulation does not include any provision that is more stringent than a federal regulation that regulates the same activity.

10. The time when, the place where and the manner in which interested persons may present their views regarding the proposed regulation.

Persons wishing to comment upon the proposed regulations may appear and make oral comment at the scheduled public hearing, or may address their comments, data, views, or arguments, in written form, to the Nevada State Board of Examiners for Long Term Care Administrators, 3157 N. Rainbow Blvd. #313, Las Vegas, Nevada 89108, by fax at 702-468-5439, or by email: beltca@beltca.nv.gov. Written submissions must be received by the Board on or before July 15, 2024. If no person who is directly affected by the proposed action appears to request to make an oral presentation, the Board may proceed immediately to act upon any written submission.

Copies of the notice and the regulations to be adopted or amended will be available at the Nevada State Board of Examiners for Long Term Care Administrators, 3157 N. Rainbow Blvd. #313, Las Vegas, Nevada 89108. A copy of this notice and the regulation to be adopted or amended has been submitted for posting for inspection by members of the public during business hours at the Nevada State Library and Archives, 100 Stewart Street, Carson City, NV 89701. Copies of this notice and the proposed regulation will be mailed to members of the public upon request.

This notice and the text of the proposed regulation has been submitted to the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.us>. This information is also available at the Boards' website at <http://beltca.nv.gov>.

Upon adoption of any regulation, the agency, if requested to do so by an interested person either before adoption within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

A copy of this notice of intent to act upon a regulation has been emailed to all licensees whose email addresses are registered with the Board of Examiners for Long Term Care Administrators, and mailed to all persons who have requested in writing that they be placed upon a mailing list, which is maintained by the Board of Examiners for Long Term Care Administrators for this purpose.

Copies may be obtained in person, by mail, or by calling 702-468-5445.

**PROPOSED REGULATION OF
THE BOARD OF EXAMINERS FOR
LONG-TERM CARE ADMINISTRATORS**

LCB File No. R105-24

June 4, 2024

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

AUTHORITY: §§ 1-5, NRS 654.110; § 6, NRS 654.110 and 654.180; §§ 7 and 8, NRS 654.110 and 654.190.

A REGULATION relating to long-term care administrators; requiring certain administrators of facilities for long-term care to obtain and maintain certain documents from senior living community referral agencies; updating the name of a certain federal database; revising the grounds for disciplinary action against a long-term care administrator; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the Board of Examiners for Long-Term Care Administrators to: (1) develop, impose and enforce standards for licensure for nursing facility administrators, administrators of residential facilities for groups and health services executives; and (2) establish and carry out procedures to ensure such persons are in compliance with the standards. (NRS 654.110) Senate Bill No. 260 (S.B. 260) of the 2023 Legislative Session establishes requirements for the operation of senior living community referral agencies. (Sections 4 and 5 of Senate Bill No. 260, chapter 109, Statutes of Nevada 2023, at pages 564 and 565, respectively) (NRS 449.114, 449.1145)) **Sections 2 and 3** of this regulation define certain terms for the purposes of this regulation to have the same meanings as are ascribed to those terms in S.B. 260. **Section 5** of this regulation makes a conforming change to indicate the proper placement of **sections 2 and 3** in the Nevada Administrative Code.

If a senior living community that is administered by a nursing facility administrator, administrator of a residential facility for groups or health services executive contracts with a senior living community referral agency, **section 4** of this regulation requires the nursing facility administrator, administrator of a residential facility for groups or health services executive to obtain and maintain documents that establish the senior living community referral agency is complying with certain requirements of S.B. 260 relating to insurance, privacy and the provision of certain statements of disclosure to persons who are aged or their representatives. (NRS 449.114, 449.1145)

Sections 6 and 8 of this regulation update the name of the National Practitioner Data Bank, a federal database of certain adverse actions against providers of health care.

Existing regulations prohibit a nursing facility administrator, administrator of a residential facility for groups or health services executive from paying or giving, or causing to be paid or given, any compensation, inducement or incentive for the solicitation, procurement or referral of a patient or resident to a facility. Existing regulations additionally prohibit such a person from paying or giving, or causing to be paid or given, any financial incentive to a patient, resident or family member of or responsible party for a patient or resident for referring the patient or resident to a facility. (NAC 654.210) **Section 7** of this regulation creates an exception to those prohibitions to authorize a nursing facility administrator, administrator of a residential facility for groups or health services executive to pay or give, or cause to be paid or given, compensation, an inducement or an incentive to a senior living community referral agency for the solicitation, procurement or referral of a patient or resident by a senior living community referral agency to a senior living community under certain conditions. **Section 7** additionally prohibits a nursing facility administrator, administrator of a residential facility for groups or health services executive from accepting a resident or patient into a facility if the nursing facility administrator, administrator of a residential facility for groups or health services executive knows or should know that the facility is unable to provide adequate care to that person.

Section 1. Chapter 654 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“Senior living community” has the meaning ascribed to it in NRS 449.0179.*

Sec. 3. *“Senior living community referral agency” has the meaning ascribed to it in NRS 449.0181.*

Sec. 4. *If a nursing facility administrator, an administrator of a residential facility for groups or a health services executive serves as the administrator of a senior living community that contracts with a senior living community referral agency, the nursing facility administrator, administrator of a residential facility for groups or health services executive shall obtain annually from the senior living community referral agency and maintain for at least 5 years:*

1. Proof that the senior living community referral agency maintains liability insurance as required by paragraph (b) of subsection 2 of NRS 449.1145;

2. A copy of the policy established by the senior living community referral agency to protect the privacy of persons who are aged and the representatives of such persons required by paragraph (f) of subsection 2 of NRS 449.1145; and

3. A copy of the statement of disclosure that the senior living community referral agency provides to a person who is aged or the representative of such a person pursuant to paragraph (a) of subsection 1 of NRS 449.114.

Sec. 5. NAC 654.010 is hereby amended to read as follows:

654.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 654.014 to 654.055, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 654.1515 is hereby amended to read as follows:

654.1515 1. An applicant who wishes to obtain a license as an administrator of a residential facility for groups without taking the examination required by NRS 654.155 must submit evidence satisfactory to the Board that:

(a) For the 2 years immediately preceding the date on which he or she submits an application to the Board, the applicant has been licensed as an administrator of a residential facility for groups in a state that requires a person to pass the national examination administered by the National Association of Long Term Care Administrator Boards to obtain such a license;

(b) The applicant's license in that state is in good standing; and

(c) The applicant has complied with all other requirements for licensure as an administrator of a residential facility for groups set forth in this chapter and chapter 654 of NRS.

2. An applicant who wishes to be licensed pursuant to this section will be denied licensure if he or she has a record of any disciplinary, civil or criminal action taken against him or her for

activities that the Board finds to be contrary to the qualifications for a licensee that is listed on a federal, state or private registry or data bank, including, without limitation, the ~~[Healthcare Integrity and Protection]~~ *National Practitioner* Data Bank maintained by the Health Resources and Services Administration of the United States Department of Health and Human Services.

Sec. 7. NAC 654.210 is hereby amended to read as follows:

654.210 In addition to the reasons set forth in NRS 654.190, the Board may bring disciplinary action against a licensee or deny the issuance of or refuse to renew a license as a nursing facility administrator, administrator of a residential facility for groups or health services executive if the Board finds that the applicant or licensee:

1. Is guilty of fraud or deceit in procuring or attempting to procure a license pursuant to this chapter.
2. Is guilty of unprofessional conduct, including, without limitation:
 - (a) Providing services to a patient or resident which the applicant or licensee is not capable of providing with reasonable skill and safety because of his or her use of alcohol or drugs, or because of lack of adequate training, skill or knowledge;
 - (b) Gross or repeated negligence in providing services;
 - (c) Willful noncompliance with any order of the Board or any other enforcement authority;
 - (d) Failure to notify the Board of the loss of a license issued by the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health of the Department of Health and Human Services;
 - (e) Failure to notify the Board of a change in circumstances as required pursuant to NAC 654.181;

(f) Paying or giving, or causing to be paid or given, a fee, commission or other valuable consideration, inducement or incentive *to a senior living community referral agency* for the solicitation, ~~{or}~~ procurement *or referral* of a patient or resident ~~{to}~~ *to a senior living community by the senior living community referral agency, except where the licensee has obtained from the senior living community referral agency:*

(1) An affirmation that the senior living community referral agency provided a statement of disclosure to and obtained the consent of the patient or resident, or his or her representative, pursuant to subsection 1 of NRS 449.114; and

(2) A copy of the contract between the senior living community referral agency and the senior living community as required by paragraph (e) of subsection 1 of NRS 449.1145;

(g) ~~{Paying}~~ *Except as otherwise provided in paragraph (f), paying* or giving, or causing to be paid or given, a fee, commission or other valuable consideration, inducement or incentive for ~~{referring}~~ *the solicitation, procurement or referral of* a patient or resident to a facility;

(h) ~~{Providing}~~ *Paying* or giving, or causing to be paid or given, any financial incentive, including, without limitation, a discount on rent or other fees, to a patient, resident, or family member of or responsible party for a patient or resident, to fund a payment to a person or entity for referring the patient or resident to a facility ~~{to}~~, *except where the referral is authorized by paragraph (f);*

(i) Engaging in fraudulent, misleading or deceptive advertising;

(j) Failing to protect the privacy of a resident or patient;

(k) Violating the confidentiality of a resident or patient;

(l) Failing to maintain records as required by law;

(m) Falsifying or altering the records of a resident or patient;

(n) Failing to protect a resident or patient from the incompetent, abusive or illegal practice of any person;

(o) Engaging in sexual contact with a resident or patient;

(p) Engaging in conduct which endangers the safety of the general public, patients, residents, clients or employees by making actual or implied threats of violence or carrying out such threats;

(q) Abusing, exploiting, isolating, neglecting or abandoning a resident or patient as defined in NRS 200.5092; ~~for~~

(r) Willfully or repeatedly violating the provisions of this chapter ~~for~~; or

(s) Accepting a resident or patient into a facility administered by the licensee if the licensee knows or should know that the facility is unable to provide adequate care to the resident or patient.

3. Is convicted in any jurisdiction of:

(a) A felony or any offense involving moral turpitude;

(b) Any offense listed in paragraph (a) of subsection 1 of NRS 449.174;

(c) Any violation of NRS 200.5091 to 200.50995, inclusive;

(d) Any offense which is substantially related to the practice of an administrator or health services executive; or

(e) Any offense for driving under the influence of intoxicating liquor or a controlled substance.

4. Has a record of any disciplinary, civil or criminal action taken against the applicant or licensee that has been reported to or is required pursuant to the law of any jurisdiction to be reported to the National Practitioner Data Bank maintained by the Health Resources and Services

Administration of the United States Department of Health and Human Services which the Board determines is contrary to the qualifications of an applicant or licensee.

5. Fails to pay an administrative fine levied by the Board pursuant to this chapter or NRS 654.190.

Sec. 8. NAC 654.220 is hereby amended to read as follows:

654.220 1. Any person who becomes aware that a person licensed pursuant to the provisions of chapter 654 of NRS is engaged in conduct which constitutes grounds for disciplinary action may file a complaint with the Board. The complaint must be in writing and signed by the complainant.

2. The Board will permit the licensee to provide proof satisfactory to the Board that he or she was not engaged in conduct which is grounds for disciplinary action.

3. A member of the Board, or a committee appointed by the Board to review cases, will review each complaint and conduct an investigation to determine whether there is a reasonable basis for the complaint. Except as otherwise provided in subsection 4, a member of the Board who participated in the investigation may not participate in the decision whether to take further action on the complaint following the investigation and may not participate in any subsequent hearing or action by the Board relating to the complaint.

4. If a member of the Board, or a committee appointed by the Board to review cases, decides to proceed with disciplinary action, the member of the Board or committee:

(a) Will refer the case to a prosecutor to bring charges against the licensee in the manner set forth in NRS 622A.300; and

(b) May recommend that the Board impose on the licensee one or more of the disciplinary actions set forth in subsection 8.

5. If the member of the Board or committee appointed to review the case recommends that the Board impose one or more of the disciplinary actions set forth in subsection 8:

(a) The Board will give the licensee written notice of the disciplinary action recommended by the member of the Board or committee appointed to review the case. The written notice must be:

- (1) Delivered personally to the licensee; or
- (2) Sent by certified mail to the last known address of the licensee.

(b) Upon receipt of the written notice required pursuant to paragraph (a), the licensee may submit a written request to the Board to enter into a discipline agreement with the Board. The written request must:

- (1) Be on a form prescribed by the Board; and
- (2) State that the licensee knowingly, intelligently and voluntarily:
 - (I) Waives his or her right to a hearing on the charges brought against him or her; and
 - (II) Agrees to the terms of the discipline recommended to the Board pursuant to paragraph (b) of subsection 4.

6. If a licensee submits a written request for a discipline agreement to the Board pursuant to paragraph (b) of subsection 5, the Board will consider whether to impose the discipline recommended pursuant to paragraph (b) of subsection 4 at a meeting of the Board held pursuant to NRS 654.100. At the meeting, the Board may not impose any discipline on the licensee other than the discipline recommended pursuant to paragraph (b) of subsection 4 that was agreed to by the licensee pursuant to sub-subparagraph (II) of subparagraph (2) of paragraph (b) of subsection 5.

7. If:

(a) The Board does not impose discipline on the licensee at the meeting described in subsection 6; or

(b) The licensee does not submit a written request to enter into a discipline agreement with the Board pursuant to paragraph (b) of subsection 5,

→ the Board will set a time and place for a formal hearing. The Board will conduct the hearing in compliance with the provisions of chapters 233B and 622A of NRS.

8. If the Board determines by a finding of substantial evidence at a hearing conducted pursuant to subsection 7 that the licensee was engaged in conduct which is grounds for disciplinary action, it may order that the licensee:

(a) Be placed on probation for a specified time with conditions that the Board considers appropriate which may include, without limitation, restricting the number of facilities for which the licensee may act as an administrator of record.

(b) Receive a public reprimand.

(c) Have restrictions placed on the licensee's practice, including, without limitation, prohibiting the licensee from transporting patients or residents by motor vehicle if the licensee has been convicted for any offense for driving under the influence of intoxicating liquor or a controlled substance.

(d) Receive a suspension for a specified time or until further order of the Board.

(e) Have his or her license revoked.

(f) Participate in a program for the treatment of substance abuse.

(g) Pay an administrative fine, pursuant to NRS 654.190, of not more than \$10,000 for each violation.

9. If the Board determines at a hearing conducted pursuant to subsection 7 that the licensee was not engaged in conduct which is grounds for disciplinary action, the Board will dismiss the charges in writing and notify the licensee that the charges have been dismissed.

10. If discipline is imposed against a licensee pursuant to this section, the Board will report the disciplinary action to the ~~Healthcare Integrity and Protection~~ *National Practitioner* Data Bank maintained by the Health Resources and Services Administration of the United States Department of Health and Human Services or its successor.

11. The Board may, subject to the provisions of NRS 654.190, accept the voluntary surrender of a license.