

**PROPOSED REGULATION OF THE
DIVISION OF CHILD AND FAMILY SERVICES OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB File No. R103-24

July 1, 2024

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

AUTHORITY: §§ 1-13, NRS 432B.190.

A REGULATION relating to child welfare; prohibiting the placement of a child in a qualified residential treatment program that does not meet certain requirements; requiring an agency which provides child welfare services and a qualified residential treatment program to comply with certain federal requirements relating to the placement of a child in a qualified residential treatment program; updating certain antiquated terminology; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing federal law requires the Federal Government to pay to state and local governments a portion of the cost of placing a child in a qualified residential treatment program that is regulated under state law as a childcare institution. (42 U.S.C. §§ 672, 674) Existing federal law defines “qualified residential treatment program” to mean a program that: (1) has a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances; (2) has certain clinical staff available 24 hours a day and 7 days a week; and (3) meets certain other requirements. (42 U.S.C. § 672(k)(4)) **Section 6** of this regulation prohibits an agency which provides child welfare services from placing a child in a qualified residential treatment program unless the qualified residential treatment program meets certain requirements related to: (1) the screening of children for trauma; (2) the delivery of services; (3) the environment provided by the qualified residential treatment program; and (4) the training of employees.

Existing federal law requires a state to assemble, for each child placed in a qualified residential treatment program, a family and permanency team consisting of family members and professionals who are a resource to the family of the child. (42 U.S.C. § 675a(c)(1)(B)(i)) Not later than 30 days after a child is placed in a qualified residential treatment program, existing federal law: (1) requires a qualified individual, who is a trained professional or licensed clinician and meets certain other requirements, to assess the child; and (2) prescribes certain requirements for such an assessment, including a requirement that the qualified individual work with the family and permanency team. (42 U.S.C. § 675a(c)(1)(A), (B)(i)) If the qualified individual determines after the assessment that the child should not be placed in a family foster home,

existing federal law requires the qualified individual to state the reasons for that determination in writing. (42 U.S.C. § 675a(c)(1)(C)) **Section 7** of this regulation incorporates those federal requirements into the Nevada Administrative Code, thereby requiring agencies which provide child welfare services and qualified residential treatment programs in this State to comply with those requirements to ensure the eligibility of this State for federal reimbursement.

Existing federal law requires a state to submit certain documentation relating to the family and permanency team of a child in the case plan of the child. (42 U.S.C. § 675a(c)(1)(B)(iii)) Existing regulations require an agency which provides child welfare services to develop a written case plan, which contains certain information, for a child within 45 days after the date on which the child is removed from his or her home. (NAC 432B.400) **Section 8** of this regulation requires an agency which provides child welfare services to additionally include in a case plan: (1) the information required by federal law relating to the family and permanency team; (2) certain documentation prepared by a qualified individual pursuant to **section 7**; and (3) the determination of the court regarding the continuation of placement of the child in the qualified residential treatment program.

Existing law requires a court to hold certain hearings relating to the placement of a child. (NRS 432B.575, 432B.580, 432B.590) Before any hearing for review of the temporary or permanent placement of the child, existing law requires an agency acting as the custodian of the child to submit to the court a report that contains certain information concerning the child. (NRS 432B.580, 432B.590) **Section 9** of this regulation requires an agency which provides child welfare services, at hearings concerning the placement of a child in a qualified residential treatment program, to submit to the court certain evidence required by federal law concerning the placement. (42 U.S.C. § 675a(c)(1)(D)(4))

Existing federal law requires a state agency to submit certain evidence and documentation to the Secretary of the United States Department of Health and Human Services if a child has been placed in a qualified residential treatment program for: (1) more than 12 consecutive months; (2) more than 18 nonconsecutive months; or (3) if the child is less than 13 years of age, more than 6 consecutive or nonconsecutive months. (42 U.S.C. § 675a(c)(5)) **Section 9** requires an agency which provides child welfare services to submit such documents to the Secretary of the United States Department of Health and Human Services under such circumstances.

Sections 4 and 5 of this regulation define the terms “agency” and “qualified individual” for the purposes of **sections 4-9**.

Existing law: (1) defines the term “family foster home” to mean a family home in which one to six children who are in certain situations are received, cared for and maintained, for compensation or otherwise, including the provision of free care; and (2) includes in such a definition a family home in which such a child is received, cared for and maintained pending completion of proceedings for the adoption of the child by the person or persons maintaining the home. (NRS 424.013) **Section 2** of this regulation makes that definition applicable to certain provisions of the Nevada Administrative Code that regulate child welfare. **Section 10** of this regulation makes a conforming change to indicate the proper placement of **section 2** in the Nevada Administrative Code. **Sections 11 and 13** of this regulation make conforming changes to remove duplicative references to that definition.

Existing regulations set forth provisions governing residential institutions concerning certain liabilities of such institutions and reports of abuse or neglect of a child in the care of such institutions. (NAC 432B.330-432B.370) Existing regulations define the term “residential

institution” to mean a facility which provides care to a child on a 24-hour basis and which is operated by a public agency or private person. (NAC 432B.330) **Section 12** of this regulation adds a qualified residential treatment program to the list of entities included in the definition of “residential institution.” **Section 12** additionally replaces certain terms which are not preferred for use in Nevada Revised Statutes and the Nevada Administrative Code with terms which are preferred for use in Nevada Revised Statutes and the Nevada Administrative Code to ensure uniformity with existing law and the policies prescribed by the Legislature relating to respectful language. (NRS 220.125, 233B.062)

Section 1. Chapter 432B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this regulation.

Sec. 2. *“Family foster home” has the meaning ascribed to it in NRS 424.013.*

Sec. 3. *As used in sections 3 to 9, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 and 5 of this regulation have the meanings ascribed to them in those sections.*

Sec. 4. *“Agency” means an agency which provides child welfare services.*

Sec. 5. *“Qualified individual” has the meaning ascribed to it in 42 U.S.C. § 675a(c)(1)(D).*

Sec. 6. *An agency shall not place a child in a qualified residential treatment program unless:*

1. The trauma-informed treatment model employed by the qualified residential treatment program pursuant to 42 U.S.C. § 675a(k)(4)(A) includes a process for identifying the signs and symptoms of trauma in children and addressing the needs of children related to trauma.

That process must include, without limitation:

(a) Screening each child placed in the qualified residential treatment program for trauma using a trauma-specific screening tool or obtaining the results of such a screening conducted

not earlier than 30 days before the child was placed in the qualified residential treatment program; and

(b) Ensuring that trauma-based interventions targeting specific trauma-related symptoms are available to each child placed in the qualified residential treatment program.

2. The qualified residential treatment program:

(a) Identifies the manner in which the program will provide trauma-specific treatment interventions to the child pursuant to paragraph (b) of subsection 1; and

(b) Develops and regularly reviews an individualized treatment plan for each child and allows the child to participate in such development and review.

3. In developing and providing services to each child, the qualified residential treatment program:

(a) Recognizes the impact of trauma on a child;

(b) Provides person-centered and culturally responsive services to each child; and

(c) Adjusts services based on the needs of each child.

4. The qualified residential treatment program provides a physical, social and emotional environment that promotes the physical and psychological safety of a child by:

(a) Responding to the needs of each child, including, without limitation, any trauma experienced by each child;

(b) Avoiding factors which may retraumatize a child; and

(c) Including designated spaces that are available to each child for engaging in sensory and self-soothing activities.

5. The qualified residential treatment program establishes policies and procedures which are based on trauma-informed principles. The policies and procedures must:

(a) Prohibit the use of aversive consequences on a child for any reason; and

(b) Describe the manner in which the qualified residential treatment program:

(1) Provides services according to the trauma-informed treatment model required by 42 U.S.C. § 672(k)(4)(A);

(2) Provides an environment which satisfies the requirements set forth in subsection 4; and

(3) Incorporates trauma-informed principles and practices into the organizational culture of the program.

6. The qualified residential treatment program ensures that, before having direct contact with a child and annually thereafter, each member of the staff of the program who comes into direct contact with children at the program receives training concerning:

(a) Concepts of trauma-informed care and how to provide services to a child according to such concepts;

(b) The impact of the culture, race, gender identity or expression and sexual orientation of each child on the behavioral health and traumatic experiences of the child; and

7. In addition to the training required by subsection 6, each member of the clinical staff of a qualified residential treatment program must receive training in trauma-specific treatment interventions.

Sec. 7. 1. Not later than 30 days after the date on which a child is placed in a qualified residential treatment program:

(a) The agency shall assemble a family and permanency team for the child that meets the requirements set forth in 42 U.S.C. § 675a(c)(1)(B); and

(b) The qualified residential treatment program shall ensure that a qualified individual performs the activities required by 42 U.S.C. § 675a(c)(1)(A), including, without limitation, assessing the strengths and needs of the child.

2. When performing the duties described in paragraph (b) of subsection 1, a qualified individual shall comply with all requirements of 42 U.S.C. § 675a(c)(1).

3. If the qualified individual determines after conducting an assessment pursuant to paragraph (b) of subsection 1 that the child should not be placed in a family foster home, the qualified individual shall specify in writing the information required by 42 U.S.C. § 675a(c)(1)(C).

Sec. 8. *In addition to the information required pursuant to subsection 2 of NAC 432B.400 to be included in a written case plan for a child who has been removed from his or her home, an agency shall, for each child placed in a qualified residential treatment program, include in the case plan:*

- 1. The information required to be documented pursuant to 42 U.S.C. § 675a(c)(1)(B)(iii);*
- 2. The written document prepared by the qualified individual pursuant to subsection 3 of section 7 of this regulation; and*
- 3. The determination issued by a court pursuant to subsection 5 of NRS 432B.575.*

Sec. 9. *1. At the hearing held pursuant to subsection 2 of NRS 432B.575, as part of each review conducted pursuant to NRS 432B.580 and at each hearing held pursuant to NRS 432B.590 for the duration of the placement of a child in a qualified residential treatment program, the agency shall submit to the court the evidence described in 42 U.S.C. § 675a(c)(4).*

2. If an agency places a child who is 13 years of age or older in a qualified residential treatment program for more than 12 consecutive months or more than 18 nonconsecutive

months, or places a child who is less than 13 years of age in a qualified residential treatment program for more than 6 consecutive or nonconsecutive months, the agency shall submit to the Secretary of the United States Department of Health and Human Services the documentation required by 42 U.S.C. § 675a(c)(5).

Sec. 10. NAC 432B.010 is hereby amended to read as follows:

432B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 432B.011 to 432B.017, inclusive, *and section 2 of this regulation*, have the meanings ascribed to them in those sections.

Sec. 11. NAC 432B.017 is hereby amended to read as follows:

432B.017 “Foster care” means any out-of-home placement of a child. The term includes:

1. The placement of a child into:
 - (a) A family foster home ; ~~as that term is defined in NRS 424.013;~~
 - (b) A group foster home, as that term is defined in NRS 424.015; or
 - (c) Any other similar institution having the appropriate qualifications and facilities to provide the necessary and desirable degree and type of care to the child.
2. The placement of a child with a relative other than the relative who had a legal responsibility for providing a home for the child before the child was placed into the custody of the agency which provides child welfare services.
3. An independent living arrangement approved by the agency which provides child welfare services in accordance with NAC 432B.410, made by the agency which provides child welfare services for a child in the custody of the agency which provides child welfare services pursuant to NRS 127.050 or 432B.550, or for whom the agency which provides child welfare services is responsible pursuant to NRS 432B.360.

Sec. 12. NAC 432B.330 is hereby amended to read as follows:

432B.330 As used in NAC 432B.330 to 432B.370, inclusive, unless the context otherwise requires, “residential institution” means a facility which provides care to a child on a 24-hour basis and which is operated by a public agency or private person, including facilities for the training and detention of youth, institutions for child care, facilities for mental health and ~~mental retardation,~~ *intellectual disabilities*, boarding schools, residential programs for alcohol and ~~drug abuse,~~ *substance use disorders*, group and family foster homes, *qualified residential treatment programs* and nursing homes caring for a child.

Sec. 13. NAC 432B.400 is hereby amended to read as follows:

432B.400 1. The agency which provides child welfare services shall develop a written case plan for a child within 45 days after the date on which the child is removed from his or her home. The case plan:

(a) Must:

(1) If possible, be developed jointly with a parent or guardian of the child who is receiving foster care;

(2) Be developed with input from the child if the agency which provides child welfare services determines it is appropriate, based on the age and stage of development of the child; and

(3) Be developed with input from the foster parent caring for the child.

(b) Must include a plan to ensure that:

(1) The care that the child receives is safe and proper; and

(2) The parent or guardian of the child receives services to improve the condition of the home as well as to facilitate the safe return of the child to his or her home or another permanent placement; and

(c) Must be updated at least once every 6 months and submitted to the court with the report required by NRS 432B.580.

2. The case plan developed pursuant to subsection 1 must include:

(a) A statement addressing the long-term goals of the plan, including reunification of the child and his or her family, permanent placement of the child with a relative, placement of the child for adoption, placement of the child into a legal guardianship or placement of the child into another permanent living arrangement;

(b) A projected time by which these goals should be achieved;

(c) A description of the current strengths of the family and the needs which must be satisfied to achieve these goals;

(d) A description of services offered or provided to prevent removal of the child from his or her home and to reunify the family of the child;

(e) A description of the type of home or institution in which the child is placed;

(f) A description of the safety and appropriateness of the placement to ensure that the child receives proper care, including, without limitation, a description of the manner in which the agency will accomplish this goal;

(g) A description of the manner in which the agency will ensure that services are provided to the child and the foster parents which address the needs of the child while in foster care, including, without limitation, the appropriateness of services that have been provided pursuant to the case plan;

(h) A description, as applicable, of the programs and services which will assist a child in foster care who is 16 years of age or older prepare for the transition from foster care to independent living;

(i) If the goal of the case plan is adoption or placement in another permanent home, a description of the steps that will be taken to finalize the adoption or placement, including any steps that will be taken to recruit adoptive parents through the use of electronic or other types of state, regional and national adoption exchanges, or by other means;

(j) A description of the manner in which a placement will be made and the reasons that such a placement will be in the best interest of the child, with particular consideration given to a placement that is safe and in the least restrictive familial environment available;

(k) In addition to the factors set forth in paragraph (j), if the goal of the case plan is reunification of the child and his or her family, the description provided pursuant to paragraph (j) must indicate that particular consideration will be given to a placement that is in close proximity to the home of the parent of the child;

(l) If the child will be placed in a family foster home or institution for child care that is located a substantial distance from or in a different state than where the family of the child resides, a description of the reasons that such a placement will be in the best interest of the child;

(m) If a child is placed in a family foster home or institution for child care that is located in a different state than where the parents of the child reside, a description of the frequency with which a caseworker from an agency that provides child welfare services and that is located in the state in which the child is placed or the state in which the parents of the child reside will visit the foster home or institution and will submit a report to the agency that provides child welfare services in the state in which the parents of the child reside;

(n) A description of the efforts that will be made to place children who are siblings together;

(o) A plan for family visitation, including, without limitation, visiting siblings if the siblings are not residing together;

(p) A statement indicating that the proximity of the school in which the child was enrolled at the time that he or she was placed in foster care was considered as a factor in the selection of the placement for foster care; and

(q) The health and education records of the child to the extent those records are available, including, without limitation:

- (1) The names and addresses of the providers of health care and education of the child;
- (2) The grade level at which the child performs;
- (3) Documentation of the immunizations that the child has had;
- (4) Documentation of any known medical or psychological problems of the child;
- (5) Documentation of any medications prescribed for the child; and
- (6) Such other health or educational information concerning the child as the agency which provides child welfare services determines is necessary.

3. The agency which provides child welfare services shall ensure that the report described in paragraph (m) of subsection 2 is submitted to the agency located in the county in which the parents of the child reside at least once every 12 months.

4. As used in this section ~~†~~:

—(a) ~~“Education”~~, **“education records”** means a report card or other report of progress and an individual education plan, if applicable.

~~†(b) “Family foster home” has the meaning ascribed to it in NRS 424.013.†~~