

HEALTHCARE COMPLIANCE WEBINAR: COMPLIANCE CONCERNS APPLICABLE TO NEVADA



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OVERVIEW: NEVADA TOPICS

- Legislative Update: 81st (2021) Session
 - Behavioral Health
 - Pharmacy/Drugs
 - Other Health Care Bills
- COVID-19 Waivers
- Record Retention
- Corporate Practice of Medicine
- Nevada Self-Referral Prohibition

NEVADA LEGISLATIVE UPDATE: 81ST (2021) SESSION

■ Behavioral Health:

- SB 56 Revises insurance coverage for behavioral health services.
- SB 69 Revises behavioral health provisions.
- SB 70 Revises provisions governing mental health.
- BDR 38-451 Revises Medicaid coverage of certain behavioral health services.
- SB 44 Revises provisions governing behavioral health providers.
- SB 36 Revises provisions relating to plans for responses to crises, emergencies and suicides by schools.

NEVADA LEGISLATIVE UPDATE: 81ST (2021) SESSION

- Pharmacy/Drugs:
 - BDR 40-443 Authorizes formation of purchasing coalitions for prescription drugs
 - BDR 40-445 Revises provisions relating to the prescription drugs.
 - BDR 57-446 Revises provisions relating to PBMs
 - BDR 54-444 Requires licensing of pharmaceutical sales representatives
 - BDR 40-546 Changes to end-of-life controlled substance prescribing, dispensing & administration
 - BDR 57-442 Requires prescription drug coverage

NEVADA LEGISLATIVE UPDATE: 81ST (2021) SESSION

■ Other Healthcare Bills

- AB 21 Revises confidentiality of personal information.
- SB 40 Provides for collection health care data.
- AB 47 Revises unfair trade practices provisions.
- SB 5 Makes changes relating to telehealth.
- BDR 54-644 Ratifies Nurse Licensure Compact.
- AB 44 Revises provisions relating to county hospitals.
- BDR 38-449 Requires Medicaid coverage of services provided by community health workers.
- AB 14 Revises provisions relating to emergency management.
- AB 35 Revises seniors/disabled health care cost assistance program.
- AB 76 Revises provisions relating to care for veterans.

NEVADA COVID-19 WAIVERS

■ Declaration of Emergency Directive 011

SECTION 1:

The waiver of licensing provision of [NRS 414.110](#) is hereby invoked. Professional licensing boards regulating providers of medical services shall temporarily waive certain licensing requirements to allow the practice of currently unlicensed skilled medical professionals during the pendency of the COVID-19 crisis. For the purposes of this Directive, a provider of medical services includes all categories of skilled personnel deemed necessary by the Governor's COVID-19 Medical Advisory Team to augment and bolster Nevada's healthcare workforce to the levels necessary to combat this pandemic, including without limitation, medical doctors, physician assistants, nurse practitioners, advanced practice registered nurses, registered nurses, licensed practical nurses, emergency medical technicians, advanced emergency medical technicians, respiratory care practitioners, paramedics, pharmacists, pharmacy technicians, medical students, nursing students, medical laboratory directors or technicians, and licensed or certified behavioral health professionals.

NEVADA COVID-19 WAIVERS

■ Declaration of Emergency Directive 011

SECTION 2:

The waiver and exemption of professional licensing requirements shall apply to qualified providers of medical services during this declared emergency who currently hold a valid license in good standing in another state, providers of medical services whose licenses currently stand suspended for licensing fee delinquencies, providers of medical services whose licenses currently stand suspended for failure to meet continuing medical education requirements, and providers of medical services who have retired from their practice in any state with their license in good standing. These waivers and exemptions shall not apply to persons whose licenses have been revoked or voluntarily surrendered as a result of disciplinary proceedings.

NEVADA COVID-19 WAIVERS

■ Declaration of Emergency Directive 011

SECTION 3:

The Chief Medical Officer is authorized to approve the waiver and exemption of professional licensing requirements for any provider of medical services who has received training in another country but is not currently licensed in the United States, subject to verification of their credentials.

SECTION 4:

Individuals seeking waiver and exemption of professional licensing requirements are required to notify the applicable Nevada licensing board or agency and provide any requested information. Any medical facility as defined by [NRS 449.0151](#), laboratory, or pharmacy employs or contracts with a provider of emergency medical services who is not licensed in Nevada during this declared emergency must ensure that the provider has notified the applicable Nevada license board or agency.

SECTION 5:

The Chief Medical Officer and, to the extent necessary, the appropriate professional licensing board shall expedite the processing and final disposition of all applications to practice under the terms of this Directive.

NEVADA COVID-19 WAIVERS

■ Declaration of Emergency Directive 011

SECTION 6:

A provider of medical services during this emergency is authorized to supervise students in their profession to provide any emergency medical services as is appropriate to the student's knowledge and skill level without further licensure or certification.

SECTION 7:

All providers of medical services in the State of Nevada are authorized to practice outside the scope of their specialization, within the limits of their competency, to the extent necessary to augment and bolster Nevada's healthcare system during the COVID-19 crisis.

SECTION 8:

The Governor authorizes the Chief Medical Officer or his designee to review and approve the Crisis Standards of Care Guidance for COVID-19 promulgated by the State of Nevada Department of Health and Human Services, Division of Public and Behavioral Health, and the Governor's COVID-19 Medical Advisory Team.

NEVADA COVID-19 WAIVERS

- Declaration of Emergency Directive 011

SECTION 9:

All regulatory requirements for providers of medical services that are not compatible with the applicable Crisis Standards of Care approved by the Chief Medical Officer during this declared emergency will be suspended.

SECTION 10:

All providers of medical services related to COVID-19 are performing services for emergency management subject to the order or control of and at the request of State Government and shall be afforded the immunities and protections set forth in [NRS 414.110](#), subject to the same exclusions therein.

NEVADA COVID-19 WAIVERS

NRS 414.110 Immunity and exemption

- Grants immunity to liability for death or injury, or damage to property, for functions and activities related to emergency management, except in cases of willful misconduct, gross negligence, or bad faith
- Profession, mechanical, or skilled licensing requirements do not apply to those authorized workers in the course of performing his/her duties during an emergency or disaster
- This includes any full-time or part-time paid, volunteer or auxiliary employee of this State, of any political subdivision thereof, of other states, territories, possessions or the District of Columbia, of the Federal Government, of any neighboring country, or of any political subdivision thereof, or of any agency or organization, performing services for emergency management at any place in this State subject to the order or control of, or pursuant to a request of, the State Government or any political subdivision thereof

NEVADA COVID-19 WAIVERS

■ Declaration of Emergency Directive 011

SECTION 11:

All licensing fees assessed on providers of medical services by the State of Nevada or professional licensing boards shall be waived for all persons applying to practice in the State of Nevada pursuant to this Directive, for the duration that this Directive shall be in effect. Providers of medical services currently licensed by the State of Nevada may, at their election, delay submission of outstanding licensing fees for the period this Directive shall be in effect, except that no person who has paid the fee prior to the date of this Directive shall be entitled to a refund thereof by virtue of this order. No license for a provider of medical services shall be suspended for nonpayment of licensing fees while this Directive is in effect, and for a period of 60 days thereafter.

NEVADA COVID-19 WAIVERS

■ Declaration of Emergency Directive 011

SECTION 12:

No license for a provider of medical services shall be suspended for any administrative reasons, including without limitation, continuing education requirements while this Directive is in effect, and for a period of 60 days thereafter. This restriction shall not be construed to prohibit the suspension or revocation of licenses for reasons that jeopardize patient health, including without limitation, incompetency or malpractice.

SECTION 13:

This Directive shall remain in effect until specifically modified or terminated by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic.

RECORD RETENTION IN NEVADA

- NRS 629.051 Each custodian of health care records shall retain the health care records of patients as part of the regularly maintained records of the custodian for 5 years after their receipt or production (unless longer time period mandated by federal law)
- Health care records may be retained
 - in written form,
 - by microfilm or any other recognized form of size reduction, including, without limitation, microfiche, computer disc, magnetic tape and optical disc
 - may be created, authenticated and stored in a computer system which meets the requirements of [NRS 439.581](#) to [439.595](#), inclusive, and the regulations adopted pursuant thereto

RECORD RETENTION IN NEVADA

- Health care provider must
 - Post a sign in a conspicuous place at each health care services location advising that records may be destroyed after 5 years
 - Provide disclosure to patient at first visit that records may be destroyed after 5 years
 - If no disclosure at first visit, then at next
- Disclosure may
 - Also be provided any other time
 - Be combined with other paperwork provided to patient

RECORD RETENTION IN NEVADA

- Patient under 23:
 - Health care provider may not destroy the records of a patient under age 23
 - Health care provider may destroy records of a patient attaining age 23 if the records have been maintained for 5 years (or longer applicable federal period)

NEVADA SELF-REFERRAL STATUTE

- NRS 439B.425 Prohibits a practitioner's referral of patients, directly or through an intermediary, for healthcare-related goods or services, to a health facility, medical laboratory, diagnostic imaging or radiation oncology center or commercial establishment in which the practitioner has a financial interest *unless*:
 - (a) Service not otherwise available within a 30-mile radius of practitioner's office;
 - (b) Referral to an HMO participating provider;
 - (c) Referral made to practitioner's group practice;
 - (d) Referral made to licensed ASC;

NEVADA SELF-REFERRAL STATUTE

Exceptions Continued:

- (e) The referral is made by:
 - (1) A urologist for lithotripsy services; or
 - (2) A nephrologist for services and supplies for a renal dialysis;
- (f) The financial interest represents an investment in a corporation that has shareholder equity of more than \$100,000,000, regardless of whether the securities of the corporation are publicly traded; or
- (g) The referral is made by a physician to a rural surgical hospital in which the physician has an ownership interest along with other requirements.
- 4. The provisions of this section do not prohibit a practitioner from owning and using equipment in his or her office solely to provide to his or her patients services or goods related to health care.

CORPORATE PRACTICE OF MEDICINE IN NEVADA

CORPORATE PRACTICE OF MEDICINE IN NEVADA

- What is the corporate practice of medicine?
 - Employment of physicians by hospitals.
[2010 AG Opinion No. 2010-04]
 - Employment of a physician by a corporation other than physician-owned professional corporation.
 - Investment in or ownership of a medical practice by an unlicensed person, including partnerships with professionals with different licenses (i.e. M.D. & Chiropractor).
 - Usually refers to medical doctors (M.D.) and doctors of osteopathic medicine (D.O.); because there are far more M.D.'s than D.O.'s in Nevada, guidance and literature tends to focus on M.D.'s.
 - Ownership of a medical facility (hospital, skilled nursing facility, ambulatory surgery center) is not generally deemed to be the practice of medicine.
 - Trend is to limit physician ownership of medical facilities:
 - Anti-Kickback Statute safe harbor limitation on surgery center ownership
 - Federal limitations on referrals to owned durable medical equipment providers and labs.
 - Prohibition on physician owned hospital expansion under ACA § 6001.

CORPORATE PRACTICE OF MEDICINE IN NEVADA

- Nevada corporate practice of medicine issues continued:
 - Usually refers to medical doctors (M.D.) and doctors of osteopathic medicine (D.O.); because there are far more M.D.'s than D.O.'s in Nevada, guidance and literature tends to focus on M.D.'s.
 - Ownership of a medical facility (hospital, skilled nursing facility, ambulatory surgery center) is not generally deemed to be the practice of medicine.
 - Trend is to limit physician ownership of medical facilities even if it does not strictly constitute the practice of medicine:
 - Anti-Kickback Statute safe harbor limitation on surgery center ownership
 - Federal limitations on referrals to owned durable medical equipment providers and labs.
 - Prohibition on physician owned hospital expansion under ACA § 6001.

CORPORATE PRACTICE OF MEDICINE IN NEVADA

- No Nevada statute expressly prohibiting corporate practice
 - 2 Attorney General Opinions based upon:
 - NRS 630.003 requires a licensee to be a “person”
 - NRS 630.305(1)(b) prohibits fee splitting
 - NRS 630.305(1)(a) prohibits fees to influence professional judgment
 - NRS 630.305(1)(e) prohibits in aiding in the unlicensed practice of medicine

CORPORATE PRACTICE OF MEDICINE IN NEVADA

- 1977 AG Opinion 219
 - One or more physicians may practice medicine in the corporate form provided they strictly comply with NRS Chapter 89 Professional Corporations and Associations Act:
 - All PC incorporators, owners, officers & employees must be licensed physicians under NRS Chapter 630
 - Authorized HMOs are not deemed to be practicing medicine under NRS 695C.050.
 - HMOs are licensed by the Division of Insurance, which has oversight over the HMO and the ability to revoke its license.
 - HMO licensure considered comparable to physician licensure due to background checks, capital requirements, and quality checks in place such as utilization review.

CORPORATE PRACTICE OF MEDICINE IN NEVADA

- 2002 AG Opinion 2002-10
 - 1. Laws holding corporations that affect quality of health care liable for their actions:
 - No Nevada cases dealing with the corporate practice of medicine doctrine
 - NRS Chapter 89: PCs to render professional services related to medicine, homeopathy and osteopathy.
 - Expanded 1977 opinion that HMOs are allowed to engage in the corporate practice of medicine to entities created under NRS 695B (Medical Dental Service Organizations); NRS 695F (Prepaid Limited Health Service Organizations) & NRS 695G (Managed Care Organizations), and regulated by the Commissioner of Insurance.

CORPORATE PRACTICE OF MEDICINE IN NEVADA

- 2002 AG Opinion 2002-10
 - 2. Does the corporate practice of medicine usurp the authority of the state to protect the public?
 - The corporate practice of medicine is permissible if the corporation is in the form of a NRS Chapter 89 PC, NRS Chapter 695C HMO, NRS 695B (Medical, Dental Service Organization), etc.
 - Each of these organizations is regulated and protected by the state either by a licensing board or the Commissioner of Insurance, which has the authority to review and evaluate organization performance, with license revocation if appropriate.

QUESTIONS?

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