Revive Health
Senior Care Management

Zachary & Chelsey Gray

Owners, Revive Health Senior Care

July 24, 2024

To whom it may concern:

We received the email from the state of Nevada Patient Protection Commission for the Solicitation of Health Care WorkForce Recommendations. We very much appreciate the opportunity to provide feedback and suggestions.

We own 3 nursing homes, representing 489 beds, and over 550 staff. We have had significant challenges with staffing, many of which we believe can be fixed with simple changes to the *interpretation* of current regulations by the Nevada Health Department. The solicitation email from the PCC identified 6 areas of focus:

1. Attracting and retaining talent to address health care workforce challenges in urban and rural communities;
2. Improving access to primary care and public health services;
3. Removing unnecessary state administrative hurdles to recruiting and retaining health care workers;
4. Identifying sustainable funding strategies for strengthening the state's health care workforce, which includes supporting competitive Medicaid reimbursements;
5. Ensuring recommended strategies for increasing provider reimbursement are based on payment methodologies that incentivize and reward for better quality and value for the taxpayer dollar; and
6. Identifying strategies for evaluating new and existing state investments in efforts to improve the capacity and size of the state's health care workforce.

We believe that a number of administrative interventions can be taken, which would immediately alleviate much of the workforce shortage. We are listing these suggestions in no specific order. After summarizing our recommendations, we will expand on each recommendation/observation in further detail farther in our letter. Much of our detailed explanations, we are sure, will be hard to believe when read; these stories are based on our personal experiences. Both Chelsey and I are licensed in the state of Nevada. Chelsey, as a CNA, and Zachary as a Nursing Home Administrator, CNA and laboratory assistant (phlebotomist). For his multiple licenses, Zach is currently in the process of getting his fingerprints done for the third time this year… in 2024… with the same company, Fingerprinting Express, to submit to the same Department of Health.

1) The Nevada HCQC has currently interpreted CMS guidance that no nursing home facility that has an abuse hand, substandard deficiency or extended survey may provide CNA clinical training. There are 22 nursing homes in Northern Nevada, and this eliminates 17 of them as training sites. This is the number one cause of the CNA shortage in Northern Nevada, and, we strongly believe it is based on incorrect interpretation and enforcement of a Federal Regulation. Of note, this is compounded by a regulatory issue in Northern Nevada.
2) If a CNA program has a failure rate of > 80%, they are put on a provisional license. This is a serious problem. The passing threshold should be reduced for provisional licenses or, we recommend eliminating it entirely. The stance of the Board of Nursing is that this is in statute; so this requires a regulatory change. This deters programs from taking a chance on individuals that might not be great students or test takers. The Board of Nursing test already exists to ensure individuals prove their proficiency before being licensed; it's unclear why we have created an environment where programs are afraid to train individuals for fear they will bring their passing rate to below 80%. CNA programs do not, and should not, be treated as licensed nursing programs.
3) Nurses coming from a different country have to obtain their license in Texas or California first (or any other state that doesn't require a Social Security Number for registration), and then apply in Nevada. This is problematic, time consuming and nonsensical. A quick process for foreign nurses should be put in place.
4) The fingerprinting process is archaic, redundant and illogical. The process should be significantly simplified.
5) The CEU requirements are overly onerous, particularly the relatively new "cultural competency program."
6) Many CNAs in Northern Nevada have to fly to Southern Nevada to take the licensing exam. Nevada should allow testing centers and virtual testing.
7) The CNA exam is the most difficult exam, of any exam, either of us has ever taken. It has multiple triggers for automatic failure. For example, if a wheelchair is not locked during testing, it is an automatic failure. Automatic failure provisions are not a normal testing procedure and should be eliminated from CNA testing.
8) There is an overzealous regulatory environment in Northern Nevada that's creating significant workforce and access issues. This issue should be addressed as it creates environments in Nursing Homes and Assisted Living facilities that individuals do not want to work in.

We believe that if the Patient Care Protection Commission implements these changes, there will be an immediate increase in the number of licensed RNs, LPNs and CNAs in the workforce, and a stabilization of workforce in post-acute care settings.

1) The Nevada HCQC has currently interpreted CMS guidance that no nursing home facility that has an abuse hand, substandard deficiency or extended survey may provide CNA clinical training. There are 22 nursing homes in Northern Nevada, and this eliminates 17 of them as training sites. This is the number one cause of the CNA shortage in Northern Nevada, and it is based on the incorrect interpretation and enforcement of a Federal Regulation.

Of note, this is compounded by a regulatory issue in Northern Nevada; so it is significantly impacting staffing in Northern Nevada.

There is no good explanation for HCQC's interpretation of this regulation. However, it is endemic. In most states, nursing homes play a central role in training Nursing Assistants for the workforce. However, Title 42 prohibits Nursing Homes with survey issues from ***operating*** a CNA program. This does create issues, as the regulatory program for nursing homes has become so punitive that it has become cost prohibitive to start a CNA training program within a SNF, only to have to shut it down because of one deficiency (in Northern Nevada, nursing homes average 34 deficiencies per year). However, this is a Federal Statute issue, not a state one. The Federal Statute reads:

"…the Social Security Act at sections §1819(f)(2)(B) and §1919(f)(2)(B), prohibits approval of nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by or in a facility which within the previous two (2) years has operated under a §1819(b)(4)(C)(ii)(II) or §1919(b)(4)(C)(ii) waiver; has been subject to an extended or partial extended survey; has been assessed a civil money penalty of not less than $5,000; or has been subject to a denial of payment, the appointment of a temporary manager, termination or, in the case of an emergency, been closed and/or had its residents transferred to other facilities. You have the right to appeal loss of the approval of the nurse aide training and competency evaluation programs and nurse aide competency evaluation programs offered by or in a facility."

In most states, nursing homes have partnered with hospitals to create independent CNA training programs and schools; this circumvents the onerous Federal statutes. Effectively, hospitals and nursing homes hire staff, and pay them to go through independent Nursing Assistant Programs. However, in Nevada, HCQC and the Board of Nursing has taken the extraordinary regulatory interpretive leap that nursing homes with poor survey history (17 or 22) cannot have clinical hours done by these schools at their facilities. It is a requirement that has created a significant hurdle to getting a CNA license in Nevada. Combine this with the provisional license rules, auto failure thresholds in the test and the lack of testing centers and there is no mystery why there is a significant workforce shortage in Northern Nevada.

2) **If a CNA program has a failure rate of > 80%, they are put on a provisional license. This is a serious problem. The passing threshold should be reduced. The stance of the Board of Nursing is that this is in statute; so this requires a regulatory change.**

Although well intentioned, this disincentivizes CNA programs to take at-risk students, or students that are not good test takers. Often, individuals fail the CNA exam because it is designed in a highly unusual way (many automatic failure triggers), not because they lack the intellect or caregiving skills. However, many future CNAs are turned away from schools, or fail out before being given an opportunity to take the class from start to finish multiple times. This rule should be abolished. Students and prospective CNAs should be given the opportunity to take the class and test as many times as they like, assuming they are willing and able to pay for it.

3) **Nurses coming from a different country have to obtain their license in Texas or California first, and then apply in Nevada. This is problematic, time consuming and nonsensical. A quick process for foreign nurses should be put in place.**

When a nurse comes from the Philippines, or another foreign country, it takes quite some time to get a social security number and background check. There are no provisions in the Nevada licensing boards for these individuals, and the licensing requirements are that a background check must be completed and a social security number provided. In other states, there are provisions for legally immigrated RNs to more quickly get this process done. Most RNs must start their journey to Nevada via Texas or another state.

These requirements should be examined and redesigned to make it easier for foreign trained nurses to come directly to Nevada and quickly participate in the workforce.

4) **The fingerprinting process is archaic, redundant and illogical. The process should be significantly simplified.**

The first question to be examined is why fingerprints are needed at all. A state database should suffice (as it does in other states). The current system is very, very costly. Chelsey and I spend approximately $3,000 per month in fingerprinting costs for new and current employees. The state keeps a database for each of these employees; ostensibly, the social security number, name and date of birth is enough to do a criminal background check.

The entire process is totally nonsensical.

To add insult and injury to this already questionable process, the database is not easy to access or use. It takes months to get results and fingerprints are required to be done multiple times.

A task force should 100% eliminate the third party vendors for this process, make it free to access the state database and a simple login check should suffice. This would save businesses thousands of dollars per year and hundreds of hours of waiting for clearance.

So far this year, Zach has been required to provide his fingerprints to various agencies at the Department of Health 3 times; each time he goes to Fingerprinting Express and pays the $90 or so required and emails it to the division requesting his “background” check.

5) **The CEU requirements are overly onerous, particularly the relatively new “cultural competency program.”**

This bullet point is for many of the professions in Nevada. A task force should eliminate some of the requirements. As a CNA for example, why must the same 4 hour cultural competency course be taken every 2 years?

We would also encourage the workgroup to actually sit through a cultural competency course; some topics do not need to be readdressed every 2 years, it is overly redundant. This is not a

judgment on whether or not a topic is important, it is about the understanding that memory does not overly fade in 2 years; that adults are capable of retaining information.

6) **Many CNAs in Northern Nevada have to fly to Southern Nevada to take the "exam." Allow testing centers and virtual testing.**

There continues to be a lack of testing sites and instructors in Northern Nevada. Many of the CNA students we put through class fly to Vegas to take the licensing exam, at great expense and time. Zach had to take his licensing exam in Gardnerville, more than 1 hour from his house, even though Reno is a fairly large city center. Had he failed that test, he would have had to fly to Vegas if he wanted something in the near future. There is a shortage of RNs to proctor the test. However, instead of acknowledging this shortage and coming up with an alternative plan, Nevada is avoiding the problem.

It is long past time to establish virtual skills tests for students that are not close to a testing center, and to have the exam proctored at a testing center as all the other licensing boards do.

7) **The CNA exam is the most difficult exam, of any exam, either of us has ever taken. It has multiple triggers for automatic failure. For example, if a wheelchair is not locked during testing, it is an automatic failure. Automatic failure provisions are not a normal testing procedure and should be eliminated from CNA testing.**

This recommendation should not be interpreted as "the test is too difficult." Whether the test is difficult or not has nothing to do with the dozen or so automatic failure provisions built into the testing process that is unique to the CNA licensing exam. Physicians, Registered Nurses, Nursing Home Administrators, phlebotomists; none of these professions have automatic failure hurdles built in. Only the CNA exam has this criteria. Why? Just eliminate that concept.

Examples include, if a bed is not locked during the resident transfer component of the skills test for a CNA, the CNA student automatically fails the test. If during the washing of dentures, the dentures hit the sink, the student automatically fails the test.

And, although the bed should be locked, and the dentures shouldn't hit the sink, why is this an automatic failure, as opposed to a few points? These things, quite frankly, happen thousands of times a day in Nevada nursing homes and elsewhere. People make mistakes, which is why no other licensing profession has these automatic failure provisions built into their exam.

8) **There is an overzealous regulatory environment in Northern Nevada, that's creating significant workforce and access issues. This issue should be addressed.**

The problem is fairly unique to Northern Nevada, but the HCQC team that surveys Northern Nevada averages > 400% more deficiencies than Southern Nevada. This volume of citations is driving Nursing assistants, LPNs and RNs out of the healthcare workforce in this part of the state. This includes hospice, nursing home and assisted living. The problem is well documented over more than 10 years, and has not been addressed. There is no simple solution to this problem, although clear evidence of this trend includes:

- There are no nursing homes with dialysis, ventilator or trach programs in Northern Nevada.
- The only nursing home to open in Northern Nevada since 2010, closed almost exactly 3 years later due to survey related issues.

Directors of Nursing and their staff (including RN's, LPN's, and CNA's) do not appreciate being chastised to this degree. People are leaving the workforce entirely because of the regulatory environment.

Attachments:

1) Letter of support from Perry Foundation.
2) Letter sent to Nevada Board of Nursing, January 2022.
3) CMS Memo "Clarification regarding Nurse Aide Training and Competency Evaluation Program (NATCEP/CEP) Waiver and Appeal Requirements" Dated 10/27/2017

Chelsey and I are available to answer any questions in person or submit further testimony in writing. Thank you for soliciting opinions and we hope that our letter was informative.

Sincerely,

Zachary & Chelsey Gray

Email sent to ppcinfo@dhhs.nv.gov.

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January 13, 2022

Regarding: Certified Nursing Assistant Shortage

To: CNA Advisory Committee & Dr. Michelle Johnson

Zach attended the last board meeting, in Reno, on November 17th, and expressed his concern of the shortage of CNAs available in the workforce in Northern Nevada. The Board graciously followed-up with us, and asked that we write a letter, both summarizing our concerns and identifying any suggestions or specific questions we may have. It was our intention to call into and attend the most recent CNA advisory meetings on January 6th and Board meetings on January 10th, however, our son was out of school for a week - as one of his classmates had COVID. So, much like so many other individuals in the workforce, one of us found ourselves at home instead of at work.

By way of background, we (husband and wife team) own Alta Skilled Nursing and Rehabilitation Center, the largest Skilled Nursing Facility by patient census in Northern Nevada. In 2021, we averaged 149 residents, daily. We employ (at any given time) between 175-210 employees. The majority of our workforce is Nursing Assistants. In February 2020, the month before the pandemic, we employed 89 full-time and part-time nursing assistants. Today, a year and a half later, we employ 55. **We are writing today because the staffing crisis is getting progressively worse in nursing homes.** There are fewer and fewer Nursing Assistants. This is an emergency, and we wanted to shed some light on it in the hopes it can be addressed immediately.

In this letter, we are sharing four ideas that we believe will help alleviate the CNA staffing crisis. We have focused on ideas we feel can be enacted quickly, as the crisis requires immediate intervention. When we describe the extent of the crisis to other businesses, regulatory agencies and non-healthcare workers, we often get two questions. We want to address those two questions in advance of our suggested immediate/emergency ideas. The first question we often get is, why is there a CNA staffing crisis? There is not just a CNA staffing crisis; there is a labor shortage everywhere. However, the CNA staffing shortage/crisis seems to be worse. Relative to the first question, we attribute this to five primary reasons:

1. We believe that many men and women have had to stay home because their children are frequently pulled out of school due to COVID exposures in the school. Anecdotally, we have three children, 5, 3 and 1, and in the months of October and November we had kids home most of 6 weeks with cold symptoms, and had to perform 3 PCR tests on our 5 year old, three separate

times. More recently, our oldest child is currently out of school because one of his classmates had COVID. We have had to alternate being at home with him.

2. We believe the pipeline for CNAs was depressed because of bullet point 1. Essentially, mothers and fathers couldn't find time to go to CNA class. This has created long-term issues which may continue for the next 1-2 years.
3. We believe these jobs have become less desirable on a relative basis for individuals, so they did not attend the classes and/or are currently waiting until less prohibitive restrictions (such as wearing PPE during work and focusing the majority of their efforts on COVID related issues) are in place.
4. Between June 2020 and September 2021, the unemployment benefits equated to approximately $27 dollars per hour; CNA wages pre-pandemic were $14 dollars per hour. During and post pandemic, we were able to raise them to $18/hour, but as a primarily Medicaid nursing home with an average reimbursement rate of $225 per day, we have not been able to match the unemployment benefit. The unemployment benefits continue; we have no opinion on their necessity or larger term implications, from a workforce issue, we believe continued extension of benefits decreases workforce participation.
5. We have lost a significant number of employees to contract positions in other states and/or Reno.

The second question we get is, why not just close wings and reduce patient load? Over the last 30 days, we have closed one of our 6 wings. Further reductions in resident count will ironically result in layoffs in other departments. It is our hope that the shortage will be resolved when the COVID crisis lessens, however, that seems unlikely. Until then, it is our hope that we can reasonably hold out until that point. However, this is an optimistic viewpoint, and one we are continually adjusting. If this staffing crisis continues, we will have to significantly reduce bed count.

The last year and half has been extremely difficult for all of the employees that have continued to show up to work every day they are asked. The last three months, the situation has begun to become untenable. In the interest of helping all nursing homes in Nevada, as well as the nursing assistants that work in them, we are hopeful the Board will take steps to institute some emergency provisions to offset the CNA labor shortage. Four ideas that we are suggesting are below. We provide further clarification after the summary bullets:

1) **Officially approve the "Temp CNA" program as in Nevada, and allow temporary CNAs to submit hours worked against the 75-hour training requirement rule. This would allow them to take the state exam once they have worked the required hours.**
2) **Waive the 80% pass rate requirement, on an emergency basis, for CNA schools.**
3) **Eliminate staffing "platforms" that are using nurses and CNAs as independent contractors.**
4) **Offer video exams or classes in lieu of in-person testing for the state exam.**

A more detailed explanation of these programs/suggestions is as follows:

1) **Officially approve the "Temp CNA" program as in Nevada, and allow temporary CNAs to submit hours worked against the 75-hour training requirement rule. This would allow them to take the state exam once they have worked the required hours.**

During the beginning of the pandemic, CMS provided a blanket waiver for the nurse aide training and certification requirements at 42 CFR §483.35(d) (except for requirements that the individual employed as a nurse aide be competent to provide nursing and nursing related services at 42 CFR §483.35(d)(1)(i)), specifically to permit nurse aides to work for longer than four months without having completed their training.[1]

The waiver allows facilities to employ individuals beyond four months, in a nurse aide role even though they might have not completed a state approved Nurse Aide Training and Competency Evaluation Programs (NATCEP). The individual could continue to work as long as the nursing home ensured that the nurse aide could demonstrate competency in skills and techniques needed to care for residents.

In its memo dated 4/8/2021, CMS provided recommendations for transitioning a nurse aide under the waiver to a certified nursing assistant. The recommendations were as follows:

- States evaluate their NATCEP, and consider allowing some of the time worked by the nurse aides during the PHE to count towards the 75-hour training requirement;
- Ensure that all of the required areas of training per 42 CFR §483.152(b) are addressed;
- Any gaps in onsite training that are identified are fulfilled through supplemental training; and
- Nurse aides must still successfully pass the state's competency exam per 42 CFR §483.154.

Shortly after the PHE was declared and the waiver initiated, the American Health Care Association (ACHA) created an 8 hour course to satisfy the training requirements per 42 CFR §483.152(b). This program has been officially adopted by 11 states, and adopted with some modifications in 12 states plus the District of Columbia. A link to the course is here:
https://educate.ahcancal.org/products/temporary-nurse-aide

We would like to advocate for immediate adoption of the nurse aide training program designed by ACHA. We would also like to advocate for a bridge program to allow nurse aides to become certified nurse aides by using their hours on the floor to satisfy the required 75-hours of instruction (NRS 632.2856). We have seen other states adopt a bridge program that required proof of 200 hours in a nursing home.

2) **Waive the 80% pass rate requirement, on an emergency basis, for CNA schools.**

This requirement, which we have been told is in statute (we can not find the statute) creates a dilemma for the CNA programs. It also, we believe, is the primary contributing factor to the staffing shortage. In a "normal" market, schools would be recruiting as many students as possible, and getting as many as possible to take the CNA class. Graduation rates, while important, are also variable; some population

[1] https://www.cms.gov/files/document/qso-21-17-nh.pdf

demographics will have much higher failure rates than others. In the current market, a tremendous number of schools are being put on provisional licenses because their graduation rates are lower than 80%, so they are specifically recruiting for students that will pass, or prohibiting students who they believe will not pass from taking the state exam. In the long-term, this has created a significant disinclination for people to enroll in a CNA course, as they know how difficult the process is.

We have been told that it will require a legislative act to relax this provision. We strongly feel an emergency action should be done to correct what is the biggest impediment to improving the number of CNAs we have in the workforce; allowing schools to recruit students.

Both of us have enrolled and successfully passed a CNA program in Northern Nevada. Zach is currently in the process of scheduling his test. Twice, his scheduled test has been canceled the day before. Constant rescheduling also makes passing exams harder on students.

3) **Eliminate staffing "platforms" that are using nurses and CNAs as independent contractors.**

Traditional staffing agencies (e.g. 13-week contracts) have always been problematic from a wage perspective. They do not offer benefits, or insurance, and thus employers often can't compete with the wage of a staging agency. They are great for rural markets with a low population of licensed professionals, but the staffing agencies have infiltrated markets that otherwise never needed them during COVID. Recently, however, a different type of staffing "platform" has come to the marketplace. They advertise themselves as "connecting" providers and employees. From a liability perspective, they offer no employment insurance or liability insurance.

It is unclear to us (we have not used these platforms for licensed workers, although other SNFs and ALs in Nevada are) how CNAs, LPNs and RNs can legally can work as contractors - since CNAs, LPNs and RNs should not qualify for independent contractor designation – they have no differentiation than our CNA, LPN and RN employees. However, companies have entered the market, with seemingly no regulatory oversight and are disrupting staffing patterns and quality of care. The largest example in Northern Nevada, Nursa.com, is not even licensed as a staffing agency or staffing pool in Nevada. Who is ensuring they have fingerprints done, pre-employment physicals, abuse training, etc.? These platforms are causing huge disruptions in staffing, with zero regulatory oversight.

4) **Offer video exams or classes in lieu of in-person testing for the state exam.**

Due to the CNA shortage, Zach took the CNA class. He graduated in August of 2021. Chelsey has been working as a CNA since she graduated from the program, over two years ago. Both times Zach attempted to take the Board of Nursing Exam, he took a day off of work to study. Now, with Omicron, it is difficult to commit to a set date, as it seems unlikely.

Offering video exams would significantly improve flexibility of scheduling for students, like Zach. While preparing for the CNA exam, Zach needed to get his CPR certification. The entity offering the Red Cross Certified course had designed a video program and in advance of the CPR exam, had sent all

students a device that measured compressions per minute remotely. It was innovative and convenient. We strongly believe a similar model could be set up for the CNA program.

Our suggestions clearly are from the perspective of nursing home owners. However, we would like to emphasize that these suggestions are also made from the perspective of nursing assistants who work the floor, including changing briefs, giving showers, getting people dressed and help with all other aspects of ADLs. We can tell you from experience that it is taxing and discouraging to work short. We wish our employees never had to work short and so we are writing this letter, desperately wanting to work together to get more CNAs as employees in nursing homes. With an increase in CNAs, we will greatly improve the quality of life for the residents that live in the facility we own.

We are available for questions, comments and feedback. We can fly to Las Vegas or meet in Reno. Thank you for your consideration and for all of the work you do to support nursing home workers.

Sincerely,

Zachary & Chelsey Gray

Robert Kidd
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May 21, 2024

Zach Gray
Chief Executive Officer & Owner
Revive Health Senior Care Management
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To Whom It May Concern:

I am writing to express my support for Revive Health Senior Care Management and the Skilled Nursing Facilities owned and operated by them. These facilities include Alpine Skilled Nursing and Rehabilitation, Alta Skilled Nursing and Rehabilitation, and Wingfield Skilled Nursing and Rehabilitation. The Bureau of Health Care Quality and Compliance has directed the Nevada State Board of Nursing to remove at least two if not all three of these facilities from the approved list of Nurse Aid Training Programs in Nevada, meaning they are not allowed to be clinical sites. This is pursuant to Title 42 of the Code of Federal Regulations (CFR) 483.151 (b) and 483.151 (e) requiring denial or withdrawal of approval for a facility-based Nurse Aide Training and Competency Evaluation Program/Competency Evaluation Program (NACEP/CEP) offered by or in a facility that within the previous two years has been subjected to an extended or partial extended survey.

It is my recommendation that these facilities be granted a waiver, allowing for clinical rotations to resume. Skilled nursing facilities are the number one employer of Certified Nursing Assistants in Nevada and it is vital that these Nursing Assistants in Training (NATs) are trained in the environment they most likely will be practicing in. Revive Health represents the single largest number of Medicaid beds in Northern Nevada, providing an essentially diverse population of residents for Nursing Assistants in Training to work with.

The Perry Foundation dba Perry Foundation Academy of Health is the largest accredited CNA school in Nevada, graduating the most CNAs which filter into these skilled nursing facilities. As a non-facility based program, with consistent, outstanding results as measured by our pass rates, we feel that utilizing these skilled nursing facilities is vital to the success of our students. Again, we are a non-facility based program, with our students under the direct supervision of our clinical educator while on site, not facility staff.

In closing, as the critical nursing shortage continues in Nevada, which includes Certified Nursing Assistants, we should be taking a more common-sense approach to training needs and solutions, not creating additional barriers. I feel that granting a waiver to the largest provider of skilled

nursing in Northern Nevada, allowing on-site clinical training to occur provided by an outside, non-facility based program should be common-sense. It is my understanding that although not clear, the intent of Title 42 was for facility-based programs. I believe that as a result, a waiver would be warranted provided the training was performed by an outside, non-facility based agency.

Please reach out to me with any questions.

Sincerely,

Robert Kidd

Robert Kidd
President / CEO
Perry Foundation