

**ADOPTED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R118-05

Effective November 17, 2005

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

AUTHORITY: §§1-4, NRS 449.037.

A REGULATION relating to residential facilities for groups; revising the provisions governing the prior approval of plans for the construction or remodeling of such a facility; requiring a caregiver of such a facility to pass an examination relating to the management of medication approved by the Bureau of Licensure and Certification of the Health Division of the Department of Health and Human Services; and providing other matters properly relating thereto.

Section 1. NAC 449.179 is hereby amended to read as follows:

449.179 1. ~~{Before an applicant for a license to operate a new}~~ *Except for a residential facility with less than 11 beds, before a* residential facility ~~{begins construction of}~~ *is constructed or an existing facility is remodeled,* the facility ~~{or before an applicant for a license to operate an existing residential facility or a licensee begins a project to remodel an existing residential facility, the applicant or licensee}~~ must:

(a) Submit the plan for construction or remodeling to the entity designated to review such plans by the Health Division pursuant to the provisions of NAC 449.0115 ; ~~{and the state and local agencies that are required to approve the plan before construction or remodeling may be commenced;}~~

(b) Notify the Bureau of a tentative date for the completion of the construction or remodeling; and

- (c) Obtain approval of the plan from the Health Division.
- 2. The plan for construction or remodeling must include a description of the materials that will be used to complete the project.
- 3. Before issuing a license to operate a residential facility, the Bureau shall inspect the facility to ensure that it complies with:
 - (a) The provisions of NAC 449.156 to 449.2766, inclusive; and
 - (b) The applicable zoning ordinances and regulations.
- 4. An applicant for a license to operate a residential facility must submit to the Bureau with his application evidence that the applicant and the facility are in compliance with the provisions of NRS 449.001 to 449.240, inclusive, and NAC 449.156 to 449.2766, inclusive.
- 5. The Bureau shall not perform the inspection required pursuant to subsection 3 until the applicant has submitted to the Bureau the application required pursuant to NRS 449.040, the fee required pursuant to NAC 449.016 and the evidence required pursuant to subsection 4.

Sec. 2. NAC 449.196 is hereby amended to read as follows:

- 449.196 1. A caregiver of a residential facility must:
- (a) Be at least 18 years of age;
 - (b) Be responsible ~~and~~ *and* mature and have the personal qualities which will enable him to understand the problems of the aged and disabled;
 - (c) Understand the provisions of NAC 449.156 to 449.2766, inclusive, and sign a statement that he has read those provisions;
 - (d) Demonstrate the ability to read, write, speak and understand the English language;
 - (e) Possess the appropriate knowledge, skills and abilities to meet the needs of the residents of the facility; and

(f) Receive annually not less than 8 hours of training related to providing for the needs of the residents of a residential facility.

2. If a resident of a residential facility uses prosthetic devices or dental, vision or hearing aids, the caregivers employed by the facility must be knowledgeable of the use of those devices.

3. If a caregiver assists a resident of a residential facility in the administration of any medication, including, without limitation, an over-the-counter medication or dietary supplement, the caregiver must ~~receive,~~ :

(a) *Receive*, in addition to the training required ~~in subsection 1,~~ *pursuant to NRS 449.037, at least 3 hours of* training in the management of medication. ~~The training must include not less than 1 hour of instruction in the requirements of this chapter concerning the management of medication.~~ The caregiver must receive ~~such~~ *the* training at least every 3 years and ~~must supply~~ *provide* the residential facility with satisfactory evidence of the content of the training and his attendance at the training ~~;~~ *;* *and*

(b) *At least every 3 years, pass an examination relating to the management of medication approved by the Bureau.*

Sec. 3. NAC 449.2702 is hereby amended to read as follows:

449.2702 1. Each residential facility shall have a written policy on admissions which includes:

(a) A statement of nondiscrimination regarding admission to the facility and treatment after admission; and

(b) The requirements for eligibility as a resident of that type of facility.

2. A person who wishes to reside in a residential facility with residents that require a higher category of care than he requires may reside in the facility if he is not otherwise prohibited from residing in the facility.

3. A person who is admitted to a residential facility must be at least 18 years of age.

4. Except as otherwise provided in NAC 449.275 and 449.2754, a residential facility shall not admit *or allow to remain in the facility* any person who:

(a) Is bedfast;

(b) Requires restraint;

(c) Requires confinement in locked quarters; or

(d) Requires skilled nursing or other medical supervision on a 24-hour basis.

5. A person may not reside in a residential facility if the person's physician or the Bureau determines that the person does not comply with the requirements for eligibility.

6. As used in this section:

(a) "Bedfast" means a condition in which a person is:

(1) Incapable of changing his position in bed without the assistance of another person; or

(2) Immobile.

(b) "Restraint" means:

(1) A psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms;

(2) A manual method for restricting a resident's freedom of movement or his normal access to his body; or

(3) A device or material or equipment which is attached to or adjacent to a resident's body that cannot be removed easily by the resident and restricts the resident's freedom of movement or his normal access to his body.

Sec. 4. NAC 449.193 is hereby repealed.

TEXT OF REPEALED SECTION

449.193 Renewal of license: Form; fee; required information.

1. An applicant for the renewal of a license to operate a residential facility must submit to the Bureau a completed application on a form prescribed by the Bureau and the fee for renewal required pursuant to NAC 449.016.

2. The applicant for renewal must submit with the application required pursuant to subsection 1:

- (a) Evidence of compliance with NRS 449.065 or 449.067;
- (b) A copy of the license issued to the administrator of the facility by the Nevada State Board of Examiners for Administrators of Facilities for Long-Term Care pursuant to chapter 654 of NRS;
- (c) A certificate of insurance stating that the facility has purchased a policy of liability insurance for the facility; and
- (d) A copy of the business license issued to the facility or proof that the facility has complied with local zoning ordinances.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R118-05

The State Board of Health adopted regulations assigned LCB File No. R118-05 which pertain to chapter 449 of the Nevada Administrative Code on October 14, 2005.

Notice date: 9/14/2005
Hearing date: 10/14/2005

Date of adoption by agency: 10/14/2005
Filing date: 11/17/2005

INFORMATIONAL STATEMENT

1. DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED, SUMMARY OF PUBLIC RESPONSE, AND AN EXPLANATION OF HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.

A Small Business Impact Questionnaire was mailed to the Residential Facilities for Groups on April 5, 2005. Attachment A is the Small Business Impact Statement Questionnaire. Attachment B is a copy of the Small Business Impact Summary.

Notice of public workshops held on April 28, 2005, in Las Vegas and on April 29, 2005, in Reno was published in the Las Vegas Review Journal and Reno Gazette Journal on April 11, 2005. Notices of public workshops, and proposed regulations were mailed to all county libraries in Nevada, Residential Facilities for Groups, Residential Facilities for Groups/Alzheimer's, and interested parties on April 5, 2005. The Small Business Impact Summary was available at both workshops.

The Legislative Council Bureau (LCB) had not completed the review of the proposed regulations until September 28, 2005. The LCB version was mailed out to the above mentioned parties on or before October 3, 2005.

Four individuals commented during the workshops. One comment was that the regulation for medication training would have an adverse effect on facilities, two comments supported the 3 hours of medication training, and one comment suggested that 3 hours was not enough training.

Copies of the workshop minutes and Board of Health hearing minutes may be obtained by calling the Bureau of Licensure and Certification at (775) 687-4475.

2. THE NUMBER OF PERSONS WHO:

(A) ATTENDED THE HEARING;

Approximately 62 people attended the October 14, 2005, Board of Health hearing.

(B) TESTIFIED AT EACH HEARING; AND

Lynn Homnick, President of the Southern Nevada Coalition of Assisted Residential Environments (CARE) of the Southern Nevada Chapter, stated she was in support of the regulations as proposed.

Dr. David Udy, eElders.org, thought the requirements for medication management training should be more than three hours every three years. In addition, any effort to improve medication management is greatly limited without some initiatives focused on the monitoring and improvement of the nutritional and dietary processes that are present in Nevada's group homes.

(C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

Dr. David Udy submitted a written statement.

Lynn Homnick submitted a written statement.

3. A DESCRIPTION OF HOW COMMENT WAS SOLICITED FROM AFFECTED BUSINESSES, A SUMMARY OF THEIR RESPONSE, AND AN EXPLANATION HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY

Comment was solicited from affected or potentially affected businesses by mailing appropriate facilities and all interested parties the proposed regulations, a small business impact questionnaire, a copy of the small business impact summary, and the notices for the workshops and Board of Health hearings. Copies of the workshop minutes and Board of Health hearing minutes may be obtained by calling the Bureau of Licensure and Certification at (775) 687-4475.

4. IF THE REGULATION WAS ADOPTED WITHOUT CHANGING ANY PART OF THE PROPOSED REGULATION, A SUMMARY OF THE REASONS FOR ADOPTING THE REGULATION WITHOUT CHANGE.

No testimony was received in opposition to the proposed regulation or which suggested changes to the proposed regulation.

5. 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; AND

Anticipated effects on the business which NAC 449 regulates.

Adverse: None

Beneficial: The changes are designed to simplify plan review and renewal processes as well as to increase caregiver education.

Anticipated effects on the public:

Adverse: None

Beneficial: Residents in Residential Facilities for Groups should benefit from increased caregiver knowledge concerning medication management.

(B) BOTH IMMEDIATE AND LONG TERM EFFECTS.

Anticipated effects on the business which NAC 449 regulates.

Immediate: None

Long-term: Increased initial compliance with building standards for large facilities.
Reduction of time required for renewal of licenses. Increased caregiver knowledge concerning medication management.

Anticipated effects on the public:

C. Immediate: None

D. Long-term: None

6. THE ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION.

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

7. A DESCRIPTION OF ANY REGULATIONS OF OTHER STATE OR GOVERNMENT AGENCIES WHICH THE PROPOSED REGULATION OVERLAPS OR DUPLICATES AND A STATEMENT EXPLAINING WHY THE DUPLICATION OR OVERLAPPING IS NECESSARY. IF THE REGULATION OVERLAPS OR DUPLICATES A FEDERAL REGULATION, NAME THE REGULATING FEDERAL AGENCY.

There is no duplication or overlap of other state or local government agency's regulations.

8. IF THE REGULATION INCLUDES PROVISION WHICH ARE MORE STRINGENT THAN A FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY, A SUMMARY OF SUCH PROVISION.

These proposed regulations do not overlap or duplicate federal regulations. The regulations do not have a counterpart in the code of federal regulations.

9. IF THE REGULATION PROVIDES A NEW FEE OR INCREASES AN EXISTING FEE, THE TOTAL ANNUAL AMOUNT THE AGENCY EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED.

The amendments do not establish any new fees or increase any existing fees.

SMALL BUSINESS IMPACT STATEMENT
(Nevada Revised Statutes 233B.0608)
RESIDENTIAL FACILITIES FOR GROUPS

Background:

The purpose of the proposed revised regulations for residential facilities is to require submission of building plans prior to construction for facilities with 11 or more beds. The proposed language will ensure that large projects submit plans prior to construction. Also proposed are changes to increase the requirements for medication management training for residential facilities and to require the passing of an examination every three years. The language at NAC 449.193 is being repealed in order to streamline the renewal process. Lastly the language at NAC 449.2702(4) is being changed to ensure inappropriate residents are not retained by facilities.

Interested individuals can obtain a copy of the information packet, including the Small Business Impact Questionnaire, sent to all licensed facilities, from Shirley Rains, Administrative Assistant IV, Bureau of Licensure and Certification, 1550 East College Parkway, Suite 158, Carson City, Nevada 89703

1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.

Pursuant to NRS 233B.0608 (2) (a), the BLC has requested input from operators of Residential Facilities for Groups.

A Small Business Impact Questionnaire was sent to the facilities along with written correspondence detailing the proposed amendments, including a copy of the proposed regulation changes, on April 5, 2005. The questions on the questionnaire were:

- 1) How many employees are currently employed by your business?
- 2) Will a specific regulation have an adverse economic effect upon your business?
- 3) Will the regulation(s) have any beneficial effect upon your business?
- 4) Do you anticipate any indirect adverse effects upon your business?
- 5) Do you anticipate any indirect beneficial effects upon your business?

The specific responses to these questions may be found in the attached document titled: "Small Business Impact Questionnaire Summary – Residential Facilities For Groups". Below is a table indicating the number of responses.

Total Number of Responses:	17	
Q2- # having Direct Adverse Effect:	3	Economic Effect
Q3- # having Direct Beneficial Effect:	9	General Effect
Q4- # having Indirect Adverse Effect:	2	General Effect
Q5- # having Indirect Beneficial Effect:	5	General Effect

2. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate including without limitation both adverse and beneficial effects and both direct and indirect effects.

There will be an economic effect to those facilities previously not required to submit architectural plans for review, however, the benefit in identifying potential non-compliance at a point where changes can be made to plans, rather than a constructed building, balance the costs of the plan review.

There will only be a minimal economic effect to facilities concerning the increased training requirements for medication management. This cost is minimized by the ability of facilities to conduct this training as in-service training, however, the examination must be approved by the Bureau of Licensure & Certification.

Repealing the language at NAC 449.193 will have no adverse economic effect on facilities because it actually eliminates requirements for documents to be submitted along with a renewal application.

3. A description of the methods that BLC considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used those methods.

The BLC did not include small residential facilities in the requirement to submit building plans in order to eliminate economic burden to small residential facilities.

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

The estimated cost to the agency for enforcement of the proposed amendments to NAC is negligible.

5. Total amount BLC expects to collect from any fees and the manner in which the money will be used.

The revisions to the plan review requirements will not generate new revenue for BLC, because the fees paid for this process go directly to the contractor who conducts the reviews (P & D Consultants).

6. An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

No duplication or more stringent provision are either created or already in existence.