

REVISED PROPOSED REGULATION OF THE STATE

BOARD OF HEALTH

LCB File No. R044-97

September 4, 1997

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

AUTHORITY: §§2-6, 8-10, 12-16 and 19-24, NRS 449.037; §§7, 11, 17, 18 and 25-30, NRS 233B.050 and 449.037.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. *An application for a license that is filed with the health division pursuant to NRS 449.040:*

- 1. Must be complete and notarized.*
- 2. In accordance with NRS 449.050, must be accompanied by the appropriate application fee specified in this chapter.*
- 3. In establishing that the applicant is of reputable and responsible character as required by NRS 449.040, must include personal references and information concerning the applicant's financial status and business activities and associations in and out of this state during the immediately preceding 3-year period. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, such*

references and information must be provided with respect to the members thereof and the person in charge of the facility or program for which application is made.

4. In addition to the information required by NRS 449.040 and any other information specifically required for a particular license, must include:

(a) Full, complete and accurate information regarding the ownership of the facility or program and all changes to that ownership that occur while the application is pending.

The information must include the name of:

(1) Each natural person who is an owner of the facility or program;

(2) Each person who has a direct or indirect ownership interest in the facility or program of 10 percent or more and who is the owner, in whole or in part, of any mortgage, deed of trust, note or other obligation secured in whole or in part by the facility or program or any of the property or assets of the facility or program;

(3) If the applicant is a corporation, each officer and director; and

(4) If the applicant is a partnership, each partner.

(b) The address of the applicant's principal office.

(c) Evidence satisfactory to the health division that the facility or program meets all applicable federal, state and local laws and complies with all safety, health, building and fire codes. If there are any differences between the state and local codes, the more restrictive standards apply.

(d) If required by NRS 439A.100, a copy of a letter of approval issued by the director of the department of human resources.

(e) A copy of the certificate of occupancy, a copy of the applicant's business license and a copy of any special use permits obtained in connection with the operation of the facility or program.

(f) A copy of any property lease or rental agreements concerning the facility or program.

(g) If the applicant is a corporation, a copy of its bylaws and articles of incorporation.

Sec. 3. 1. Upon receipt of a properly completed and notarized application and the appropriate fee, the health division shall conduct an investigation concerning the premises, facilities, qualifications of personnel, methods of operation and policies of the applicant and perform a prelicensure survey of:

(a) The applicant; and

(b) The facility, program plan and management plan, as appropriate.

2. Before issuing a license, the health division must receive a satisfactory report of inspection of the facility from the state fire marshal or the local fire department.

Sec. 4. 1. Upon receipt of a license, the licensee shall display the license at a conspicuous location within the facility.

2. During the term of the license, the licensee shall continuously maintain the facility in conformance with the provisions of this chapter and chapter 449 of NRS.

3. If there is a transfer of the real property on which the facility is located, but no change in the operator of the facility, the licensee shall, within 10 days, notify the health

division of the transfer in writing and provide the health division with a copy of any lease agreement relating to the transfer.

4. If there is a change in the administrator of the facility, the licensee shall notify the health division of the change within 10 days. The notification must provide evidence that the new administrator is currently licensed pursuant to chapter 654 of NRS and the regulations adopted pursuant thereto.

5. A licensee shall notify the health division immediately of any change in the ownership of, the location of, or the services provided at, the facility.

Sec. 5. *1. A licensee who wishes to renew his license must submit a complete application for renewal to the health division not less than 45 days before the date on which the license expires. The existing license shall be deemed valid until the submitted application for renewal is evaluated and a final determination is made by the health division concerning whether to renew the license. The health division may require an inspection of the facility to ensure that it meets the requirements of this chapter before deciding whether to renew a license. Such an inspection must not be scheduled until the complete application and fees are received by the health division.*

2. A licensee who, without good cause, fails to file an application for the renewal of his license within the time set forth in subsection 1 is not eligible for the renewal of the license and, if he wishes to be licensed, must submit an application for a new license.

Sec. 6. *In addition to the grounds set forth in NRS 449.160 and any other grounds specifically applicable to a particular license, the health division may deny an application for a license or may suspend or revoke a license upon any of the following grounds:*

- 1. The failure or refusal of an applicant or licensee to comply with any of the provisions of chapter 449 of NRS or the regulations adopted by the state board of health.*
- 2. The failure or refusal of an applicant or licensee to comply with a reasonable order from the health division to remove a resident from a facility or program.*
- 3. Operating a facility or program without a license, if a license is required before operating.*
- 4. Accepting for care, at any given time, more residents than the number specified in the license.*
- 5. The failure or refusal of a licensee to return an adequate plan of correction to the health division within 10 days after the receipt by the licensee of a statement of deficiencies.*
- 6. The failure or refusal to cooperate fully with an investigation or inspection by the bureau.*
- 7. Misappropriation of the property of a resident of a facility.*
- 8. Abuse, neglect or exploitation of an infirm, mentally retarded or disabled person, or of a person who is 60 years of age or older.*

Sec. 7. *An applicant or licensee who is aggrieved by an action of the health division relating to the denial, suspension or revocation of a license may appeal pursuant to the procedures set forth in chapter 439 of NAC.*

Sec. 8. NAC 449.013 is hereby amended to read as follows:

449.013 1. The nonrefundable fee for the issuance or renewal of a license to operate any:

(a) Ambulatory surgical center, facility for the treatment of irreversible renal disease, home health agency, freestanding facility for hospice care, rural clinic, obstetric center, program of hospice care or independent center for emergency medical care is \$500.

(b) Nursing pool is \$250.

2. An application for a license is *only* valid for [1 year after the date] the *calendar year in which the* application is submitted. If an applicant does not meet the requirements for licensure imposed by chapter 449 of NRS or the regulations adopted pursuant thereto [within 1 year after the date] *on or before December 31 of the year in which* he submitted his application, he must submit a new application and pay the required fee to be considered for licensure.

3. As used in this section:

- (a) "Ambulatory surgical center" has the meaning ascribed to it in NAC 449.972.
- (b) "Home health agency" has the meaning ascribed to it in NAC 449.749.

Sec. 9. NAC 449.016 is hereby amended to read as follows:

449.016 1. The nonrefundable fee for the issuance or renewal of a license to operate any medical facility or facility for the dependent, other than as prescribed by NAC 449.013, is \$25 for each bed in the facility and:

- (a) If the facility is a hospital or skilled nursing facility, an additional \$500.
- (b) If the facility is an intermediate care facility, residential facility for groups or facility for the treatment of abuse of alcohol or drugs, an additional \$250.
- (c) If the facility is a facility for the care of adults during the day, an additional \$150.

2. An application for a license is *only* valid for [1 year after the date] the *calendar year in which the* application is submitted. If an applicant does not meet the requirements for licensure imposed by chapter 449 of NRS or the regulations adopted pursuant thereto [within 1 year after the date] *on or before December 31 of the year in which* he submitted his application, he must submit a new application and pay the required fee to be considered for licensure.

Sec. 10. NAC 449.0188 is hereby amended to read as follows:

449.0188 A person licensed to administer a program of hospice care or to operate a freestanding facility for hospice care shall maintain the continuity of service provided to each patient pursuant to NAC 449.017 to 449.0188, inclusive, during the term of his license. [Any violation of those provisions may result in the suspension or revocation of his license by the health division.]

Sec. 11. NAC 449.079 is hereby amended to read as follows:

449.079 1. [The failure or refusal to comply with regulations adopted by the board of health is sufficient grounds for the denial, suspension or revocation of a license by the health division. Notice of denial, suspension or revocation and the legal authority and reasons for the action taken will be sent to the applicant by certified mail within 30 days.

2. Within 10 calendar days after the date of the notice from the health division, the applicant or licensee may file a notice of appeal with the state health officer.

3. Within 20 calendar days after receipt of the notice of appeal by the state health officer, the health division must hold a hearing in the manner provided by chapter 233B of NRS and the regulations of the board of health.

4. Notice of the hearing must be given no less than 5 days before the date set for the hearing.

5.] As a condition of the issuance of a license, the investigation conducted by the health division pursuant to section 3 of this regulation must show that the facility satisfactorily complies with NAC 449.019 to 449.153, inclusive, and the facility must provide proof that it is accredited and certified by the bureau.

2. Any person who operates an accredited alcohol and drug treatment facility which receives federal or state [funds,] *money*, and does not have a license issued by the health division is guilty of a misdemeanor under NRS 449.210.

[6.] 3. Whenever the health division has reason to believe that an accredited facility is operating without a license, or a licensed facility is not conforming to the conditions of the license or the regulations for alcohol or drug abuse treatment facilities, the health division

or bureau may inspect the premises where the violation is alleged to have occurred and conduct such other investigations as may be indicated.

[7.] 4. If the bureau revokes or does not renew the accreditation of a facility, the health division [will] *shall* revoke the license of the facility subject to the appeals procedure [outlined in subsections 1 to 6, inclusive.] *set forth in chapter 439 of NAC.*

Sec. 12. NAC 449.085 is hereby amended to read as follows:

449.085 1. Every alcohol or drug abuse facility must have a governing body which has the ultimate authority for the administration of the overall program.

2. The governing body shall adopt written bylaws and policies that define the powers and duties of the governing body, its committees, the administrator and any advisory group.

3. The bylaws and policies must:

(a) Identify the overall goals.

(b) Include an organizational chart.

(c) Define the major lines of authority and areas of responsibility within the treatment program.

(d) Define the membership of the governing body, the types of membership, the method of selection or appointment of members, offices or committees and their terms of office.

(e) Define the frequency of meetings of the governing body and attendance requirements.

4. The duties of the governing body include, but are not limited to, the following items:

- (a) Appointment of a qualified administrator with authority and responsibilities appropriate to the requirements of the program;
 - (b) Adoption, review and revision of the governing body's bylaws and policies;
 - (c) Adoption of controls designed to achieve and maintain maximum standards of service; and
 - (d) Review and approval of an annual budget to carry out the objectives of the program.
5. New facilities must show sufficient resources to operate for 120 days.
6. The governing body shall retain the ultimate responsibility for the overall program and its objectives.
7. The governing body shall issue an annual report available to the public which discloses ownership *in the same manner* as required in [NAC 449.076.] *an application for a license filed pursuant to section 2 of this regulation.*

8. The governing body shall meet at least semiannually. Minutes must be kept of the meetings, including the date of the meeting, those in attendance, topics discussed, decisions made and actions taken, target dates for the implementation of recommendations and all program reports.

Sec. 13. NAC 449.307 is hereby amended to read as follows:

449.307 1. Each license is separate and distinct and is issued to a specific person to operate a hospital at a specific location which is indicated on the license. The hospital must

be operated and conducted in the name designated on the license with the name of the person responsible for its operation also appearing on the face of the license. The license is not transferable.

2. Each hospital must retain proof that it is adequately covered against liabilities resulting from claims incurred in the course of operation. Liability coverage must be verified in the annual application.

3. [The license must be conspicuously posted in such a manner as to be visible to all people entering the facility.

4.] Separate licenses are required for institutions which are maintained on separate premises even though they are under the same management. This does not apply to outpatient departments, clinics or separate buildings on the same grounds.

Sec. 14. NAC 449.6113 is hereby amended to read as follows:

449.6113 As used in NAC 449.6113 to 449.61178, inclusive, unless the context otherwise requires:

1. [“Division” means the health division of the department of human resources.

2.] “Licensed advanced practitioner of nursing” means an advanced practitioner of nursing who is licensed pursuant to chapter 632 of NRS and who has specialized training in midwifery approved by the state board of nursing.

[3.] 2. “Licensed physician” means a physician licensed pursuant to chapter 630 or 633 of NRS.

[4.] 3. “Maternal patient” means a woman admitted to an obstetric center in accordance with NAC 449.61134 who has had a normal uncomplicated prenatal course, as determined by adequate prenatal care, and the prospect for a normal, uncomplicated birth, as defined by the criteria established by the American College of Obstetricians and Gynecologists and by reasonable and generally accepted clinical standards for maternal and fetal health.

[5.] 4. “Obstetric care” means the care which is provided, in accordance with NAC 449.6113 to 449.61178, inclusive, immediately before, during and for not more than 24 hours after delivery to a maternal patient:

- (a) Who has completed at least 36 weeks of gestation and not more than 42 weeks of gestation; and
- (b) Whose condition is reasonably expected to result in a normal and uncomplicated vaginal birth.

[6.] 5. “Obstetric center” has the meaning ascribed to it in NRS 449.0155.

Sec. 15. NAC 449.61138 is hereby amended to read as follows:

449.61138 1. [After the division receives a properly completed and notarized application accompanied by the appropriate fee, the division will conduct an investigation of the applicant and perform an inspection of the proposed obstetric center.

2. Before issuing a license for the operation of an obstetric center, the division must receive a satisfactory report of an inspection of the obstetric center from the state fire marshal.

3. Upon receipt of the license, a licensee shall display the license at a conspicuous location within the obstetric center.
4. A licensee shall inform the division immediately of any change in the ownership of, location of, or services provided at the obstetric center.
5. During the term of the license, a licensee shall continuously maintain the obstetric center in conformance with the provisions of this chapter and chapter 449 of NRS. Any violation of these provisions may result in the suspension or revocation of the license.
6. If the division receives an application for the renewal of a license not less than 30 days before the date on which the license would otherwise expire, the license will remain in effect until the division has had time to evaluate the application for the renewal of the license.
- 7.] An application for a license or the renewal of a license may be denied if the facility, personnel or equipment fails to meet the requirements of this chapter or if cause or circumstance exists that may, in the opinion of the *health* division, threaten or have the potential to threaten the safety or health of the public.
- [8.] 2. A license may be revoked or summarily suspended in accordance with this chapter and chapters 233B and 449 of NRS if the facility, personnel or equipment fails to meet the requirements of this chapter or if cause or circumstance exists that may, in the opinion of the *health* division, threaten or have the potential to threaten the safety or health of the public.

Sec. 16. NAC 449.61154 is hereby amended to read as follows:

449.61154 1. An obstetric center shall maintain the records for each maternal patient admitted for care in the obstetric center in accordance with accepted professional practice.

2. Only authorized personnel may have access to medical records of the obstetric center. Information contained in a medical record of a maternal patient must not be released without the written consent of the maternal patient or guardian except:

- (a) As required by law; or
- (b) As otherwise provided by the agreement on admission.

3. A medical record must be in a format that may be readily and legibly reproduced when needed or requested.

4. A licensee who ceases operation shall notify the *health* division of the arrangements made for access to and the safe preservation of medical records in the custody of the licensee.

5. Medical records must not be removed from the obstetric center except upon the issuance of an order by a court of competent jurisdiction.

6. A complete copy of the medical record for each maternal patient transferred from the obstetric center must be sent with the maternal patient to the facility receiving that patient.

7. The medical record of a maternal patient discharged from the obstetric center must be completed within 20 days after the date that the maternal patient is discharged from the obstetric center.

8. Each medical record must be protected against loss, destruction and unauthorized use.

9. The medical record of a maternal patient must be retained for 5 years or more after the date that the maternal patient is discharged from the obstetric center.

Sec. 17. NAC 449.61256 is hereby amended to read as follows:

449.61256 1. The health division may deny, suspend or revoke its approval because of the failure of the hospital affected to comply with any provision of NAC 449.612 to 449.61256, inclusive.

2. The health division shall advise the hospital affected in writing whenever it intends:

- (a) To deny an application for approval or for renewal of approval;
- (b) To revoke approval; or
- (c) To order a hospital to cease and desist providing services for open-heart surgery.

3. The hospital affected may request a hearing on the proposed action of the health division. The [request must be in writing and must be submitted to the administrator of the health division within 15 days after the hospital is notified by the health division of its intended action.

4. If a timely request for a hearing is made, the hospital must be afforded a hearing by a hearing officer appointed by the administrator. The hearing must be held within 30 days after the request for the hearing is filed with the health division. The hearing officer shall provide his recommendation in writing to the administrator within 10 days after the completion of the hearing.

5. The administrator shall consider the findings of the site inspection team, the evidence presented at the hearing and the recommendations of the hearing officer.
6. The administrator shall advise the hospital of any action the health division will take regarding the hospital's provision of open-heart surgery within 30 days after receipt of the hearing officer's recommendations.] *hearing must be conducted in accordance with the procedures set forth in chapter 439 of NAC.*

Sec. 18. NAC 449.6127 is hereby amended to read as follows:

- 449.6127 1. If the health division intends to deny an application for approval or to revoke its approval, it [will] *shall* so advise the hospital affected in writing.
2. The hospital may request a hearing on the proposed action of the health division. The [request for a hearing must be in writing and must be submitted to the administrator of the health division within 15 days after the hospital is notified by the health division of its intended action.
3. The hospital will be afforded a hearing before a hearing officer appointed by the administrator. The hearing must be held within 30 days after the request for a hearing is filed with the health division. The hearing officer will provide his recommendation in writing to the administrator within 10 days after the completion of the hearing.
4. The administrator will consider the evidence presented at the hearing and the recommendation of the hearing officer. The administrator will, within 30 days after his receipt of the recommendation of the hearing officer, advise the hospital of the disposition

of its request for review.] hearing must be conducted in accordance with the procedures set forth in chapter 439 of NAC.

Sec. 19. NAC 449.61302 is hereby amended to read as follows:

449.61302 [1. In addition to the requirements of NRS 449.040, an applicant for a license to operate an independent center for emergency medical care must submit to the health division:

- (a) A complete application with the notarized signature of the applicant;
 - (b) If the applicant is a corporation, the name and address of each owner, officer and director of the corporation;
 - (c) If the applicant is a partnership, the name and address of each partner;
 - (d) Evidence satisfactory to the health division that the center complies with all applicable fire and safety codes, and state and local building codes;
 - (e) Information on the business activities and associations of the applicant during the 3 years immediately preceding the date he submitted his application;
 - (f) A copy of the certificate of occupancy or business license issued to the applicant, within 5 days after the applicant receives the certificate or license; and
 - (g) A copy of the bylaws and articles of incorporation for the center, if applicable.
2. Upon receipt of a complete application and the fee required by NAC 449.013, the health division shall conduct an investigation of the applicant and visit the site of the center.

3.] The health division shall not issue a license to operate an independent center for emergency medical care [:

(a) Unless the division has received a satisfactory report of inspection from the local fire department or state fire marshal;

(b) Unless the center is] *unless the center:*

1. *Is* located more than 30 minutes by ground transportation from a facility which is licensed to provide a higher level of emergency medical care; and

[(c) The center routinely]

2. *Routinely* provides limited emergency medical care or holds itself out to the general public as a facility which provides limited emergency medical care.

Sec. 20. NAC 449.747 is hereby amended to read as follows:

449.747 As used in NAC 449.747 to [449.7482,] 449.7481, inclusive, unless the context otherwise requires:

1. “License” means a document issued by the health division permitting the operation of a nursing pool.

2. “Licensee” means a person to whom a license has been issued.

3. “Nursing pool” has the meaning ascribed to it in NRS 449.0153.

Sec. 21. NAC 449.7473 is hereby amended to read as follows:

449.7473 1. Each license is separate and distinct and is issued to a specific person to operate a nursing pool at a specific location. A nursing pool must be operated and conducted under the name and within the area of service designated on the license. The

name of the person who is designated as responsible for its conduct must appear on the face of the license.

2. [A license is not transferrable and must be posted conspicuously in such a manner as to be visible to any person entering the office of the nursing pool.]

3.] A separate license is required for each nursing pool owned and controlled by a central organization, corporate entity or home office, but operated and directed by governing and administrative bodies separate from the central organization or any other unit owned and controlled by the central organization.

Sec. 22. NAC 449.7478 is hereby amended to read as follows:

449.7478 If a nursing pool provides nursing services under a contract with another entity, other than a licensed medical facility, the services must be furnished in accordance with the terms of a written contract. The contract must:

1. Provide for retention by the nursing pool of responsibility for and control of the services.
2. Designate the services to be provided, including the setting and geographical area to be served. Services provided must be within the scope and limitations set forth in a physician's plan of treatment for his patient, and must not be altered with regard to type, amount, frequency or duration, unless the patient suffers an adverse reaction to that treatment.
3. Describe the means of supervision of the personnel performing the services.
4. Describe the method of coordinating the services with the nursing pool.

5. Specify the method of determining charges by and reimbursement of the nursing pool for specific services provided under the contract. Only the nursing pool may bill or collect for services rendered.
6. Specify the period the contract will be effective and the frequency with which the contract will be reviewed. The contract must be reviewed not less than annually.
7. Ensure that the personnel and services which are the subject of the contract meet the requirements of NAC 449.747 to [449.7482,] 449.7481, inclusive, including those requirements concerning licensure, qualifications, medical examinations, functions, supervision, orientation and continuing education.
8. Provide that only the nursing pool may accept patients for nursing services.
9. Ensure that the personnel and services which are the subject of the contract will provide treatment to referred patients without regard to race, creed or national origin.

Sec. 23. NAC 449.758 is hereby amended to read as follows:

449.758 1. Each license is separate and is issued to a specific person to operate a home health agency at a specific location. The home health agency must be operated and conducted in the name designated on the license with the designated service area and the name of the person responsible for its operation also appearing on the face of the license.

The license is not [transferrable.] *transferable*.

2. A separate license is required for each subunit agency.
3. [The license must be conspicuously posted in such a manner as to be visible to all people entering the agency's office.] Copies of the original license must be issued for each

agency or branch of an agency which is maintained on separate premises under the same management.

4. Each home health agency must have proof that it is adequately covered against liabilities resulting from claims incurred in the course of operation and must verify this coverage upon its annual application to the health division.

Sec. 24. NAC 449.978 is hereby amended to read as follows:

449.978 [Except as otherwise provided by NAC 449.9775, if] If a license authorizing an ambulatory surgical center expires, patients must not occupy the center.

Sec. 25. NAC 449.99855 is hereby amended to read as follows:

449.99855 1. If necessary to protect the public health and safety, the bureau may impose such sanctions as are necessary without notice to the facility or by oral notice to the facility.

2. If there is an immediate and serious threat to the health and safety of recipients served by a facility, the bureau may appoint a temporary manager to remove the threat. A temporary manager may also be appointed without prior written notice on an emergency basis if a facility violates any ban on admissions. If there is an immediate and serious threat to the health and safety of recipients, the times provided for notice contained in this subsection govern. In all other respects, the provisions governing temporary management found in NAC 449.99915 to 449.99921, inclusive, apply.

3. The bureau may, in an emergency, impose a ban on admissions, a limitation on occupancy of a residential facility or may suspend the license of a facility without notice or upon oral notice as provided in this section.

4. In any case where sanctions are imposed without written notice, the bureau shall provide written notice that complies with the requirements of *chapter 439 of NAC* [449.99951] within 48 hours after the imposition of the sanctions.

Sec. 26. NAC 449.9989 is hereby amended to read as follows:

449.9989 1. If a monitor is not an employee of the health division, the bureau shall establish a reasonable compensation for him and shall require him to furnish a bond. The compensation of the monitor and the expense of the bond must be charged to the facility and paid from the revenues of the facility or, if necessary, from money collected from the assessment of monetary penalties.

2. The facility must be billed for these costs at the end of the period of monitoring.

The bill is due and payable 15 days after receipt.

3. The necessity for a monitor and the costs of the monitoring may be appealed to the bureau as provided in [NAC 449.99955 to 449.99968, inclusive.] *chapter 439 of NAC*.

Sec. 27. NAC 449.99911 is hereby amended to read as follows:

449.99911 1. If the facility fails to pay a monetary penalty, the health division may suspend the license of the facility.

2. The health division shall , [provide notice,] in accordance with the requirements of [NAC 449.99951, of its intent] *chapter 439 of NAC, provide notice of its intention* to suspend the license of the facility.

3. If the facility fails to pay the monetary penalty, including any additional costs incurred in collection of the penalty, within 10 days after receipt of the notice, the health division shall suspend the license of the facility. The suspension must not be stayed during the pendency of any administrative appeal.

Sec. 28. NAC 449.99915 is hereby amended to read as follows:

449.99915 1. If a temporary manager is to be appointed, the bureau shall orally notify the facility of the appointment. Written notice that complies with the requirements of *chapter 439 of NAC* [449.99951] must be mailed within 48 hours after the oral notice.

2. If the facility does not accept the temporary manager or a temporary manager is not available within 10 days after the date of the deficiency, and the immediate and serious threat is not removed, the bureau shall deny, suspend or revoke the license of the facility and, if applicable, shall also recommend to the welfare division termination or suspension of the Medicaid provider agreement of the facility.

3. If the facility accepts the temporary manager, the bureau shall:
(a) Notify the facility that, unless it removes the immediate and serious threat, its license will be denied, suspended or revoked pursuant to NRS 449.160; and

(b) Where applicable, recommend to the welfare division that the Medicaid provider agreement of the facility be terminated, effective on the 23rd day after the date of appointment of the temporary manager.

4. If the immediate and serious threat is not removed on or before the 23rd day after the appointment of the temporary manager, the bureau shall deny, suspend or revoke the license of the facility and, if applicable, recommend to the welfare division that the Medicaid provider agreement be terminated.

Sec. 29. NAC 449.99916 is hereby amended to read as follows:

449.99916 Appointment of a temporary manager where there is not an immediate and serious threat must be made in conformity with the provisions for notice contained in [NAC 449.99951.] *chapter 439 of NAC.*

Sec. 30. NAC 449.004, 449.0179, 449.018, 449.0182, 449.076, 449.4062, 449.4064, 449.4066, 449.61136, 449.61304, 449.61310, 449.662, 449.665, 449.669, 449.7472, 449.7482, 449.755, 449.764, 449.975, 449.976, 449.9765, 449.977, 449.9775, 449.9995, 449.99951, 449.99955, 449.99956, 449.99957, 449.99958, 449.99959, 449.9996, 449.99961, 449.99962, 449.99963, 449.99964, 449.99965, 449.99966, 449.99967 and 449.99968 are hereby repealed.

TEXT OF REPEALED SECTIONS

449.004 “Hearing officer” defined. “Hearing officer” means a person appointed by the administrator of the health division to preside at any hearing conducted pursuant to this chapter.

449.0179 Requirements for license to administer program of hospice care. In addition to submitting the information required by NRS 449.040, an applicant for a license to administer a program of hospice care must submit to the health division:

1. The name of any individual owner of the program of hospice care.
2. If the applicant is a corporation, the name of each officer and director of the corporation.
3. If the applicant is a partnership, the name of each partner.
4. The address of the applicant’s principal office.
5. A narrative description of the program of hospice care which sets forth in writing:
 - (a) The manner in which the program is administered and operated;
 - (b) The type of hospice care that is provided; and

(c) The name and qualifications of each person who is involved in providing hospice care.

6. The appropriate fee for the license.
7. If required by NRS 439A.100, a letter issued by the director of the department of human resources approving the program of hospice care.

449.018 Requirements for license to operate freestanding facility for hospice care.

1. In addition to submitting the information required by NRS 449.040, an applicant for a license to operate a freestanding facility for hospice care must:

- (a) Provide adequate assurances to the health division that the facility complies with local building codes and all applicable codes for safety from fire.
- (b) Submit to the health division:
 - (1) The certificate of occupancy for the freestanding facility of hospice care; or
 - (2) A copy of the license issued to the applicant to do business as a freestanding facility for hospice care,
issued by the appropriate authority of the political subdivision in which the freestanding facility for hospice care is located. The document must be submitted within 5 days after it is received by the applicant.

2. The health division shall not issue a license to operate a freestanding facility for hospice care until it has received a satisfactory report of inspection of the facility from the state fire marshal.

449.0182 Application for renewal of license; validity of existing license pending

decision on application. A person who is licensed to administer a program of hospice care or to operate a freestanding facility for hospice care must submit his application for the renewal of his license to the health division not less than 30 days before the date on which the license expires. The existing license shall be deemed valid until the application for renewal is evaluated by the health division and a final determination is made by the health division whether to renew the license.

449.076 License: Application; investigation; issuance.

1. Before issuing a license:
 - (a) The health division will conduct a prelicensure survey of the applicant, the proposed facility, the program plan and the management plan.
 - (b) The applicant must submit to the health division a completed application on a form supplied by the division with an application fee. A provisional license may be issued upon receipt of the application fee.
 - (c) Applicants must provide the health division with full and complete information regarding ownership and report promptly any changes which would affect the current accuracy of that information. The information must include the identity of:
 - (1) Each person having a direct or indirect ownership interest of 10 percent or more in the facility who is the owner, in whole or in part, of any mortgage, deed of trust, note or other obligation secured in whole or in part by the facility or any of the property or assets of the facility;

- (2) Each officer and director if the facility is a corporation; and
 - (3) Each partner if the facility is a partnership.
- (d) New applicants must submit satisfactory evidence to the health division that they are of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, similar evidence must be submitted as to its members and the person in charge of the facility for which application for license is made. The evidence must include personal references and information on business activities and associations in and out of the state within the immediately preceding 3 years.
- (e) The facility must comply with all currently adopted life safety, environmental health, building and zoning codes. If there is a difference between the state and local codes, the more restrictive standards apply.
2. If the investigation shows that the facility satisfactorily complies with NAC 449.019 to 449.153, inclusive, and is accredited and certified by the bureau, a license will be issued within 60 days following the survey.
3. The license is effective for 1 year from the date of issuance, except in the case of a provisional license, and applies only to the person named on the license. It is not transferable.
4. The health division must be notified in writing within 10 days if there is a change in the administrator.

5. The health division must be notified in writing within 10 days if there is a transfer of the real property but no change in operator. A copy of the lease agreement must be furnished to the division.
6. The license must be posted in a public place within the facility.
7. The name, sign, listing or other designation of a facility must not contain any terms misleading to the public with regard to the services offered.
8. Before the expiration of the license, the licensee shall apply for a renewal of the license. A licensure survey will not be scheduled until the application and fee are received. If, after investigation, the health division determines that the facility is still in compliance with the provisions of NAC 449.019 to 449.153, inclusive, the license will be renewed for a period not to exceed 1 year.

9. Residential facilities must not accept for care any clients in excess of the number specified on the license.

10. The number of residents for which a facility will be licensed is determined by the type of facilities provided, the staffing and space requirements and the capability of the physical plant.

449.4062 Application for license.

1. Any person or governmental entity desiring to operate a facility shall submit a notorized application for a license to the division at 505 East King Street, Room 202, Carson City, Nevada 89710.

2. Evidence submitted as to the character of the applicant or person in charge of the facility must include personal references and information on his business activities and associations during the preceding 3 years.

3. Upon receipt of an application for a license, the division will investigate the premises, facilities, qualifications of personnel, methods of operation and policies of any person proposing to operate a facility.

4. Satisfactory assurances must be given that the facility complies with all applicable state and local codes relating to safety from fire and the protection of health.

449.4064 Display of license; transfer of real property.

1. The license must be prominently displayed in a public area at the facility.

2. The division must be notified in writing within 10 days after any transfer of the real property of a licensed facility if there is no change in the person authorized to operate the facility. A copy of any lease related to the transfer must be furnished to the division.

449.4066 Renewal of license. An application to the division for the renewal of a license must be made at least 45 days before the expiration of the license. An inspection before renewal of the license will not be scheduled until the application and fee are received.

449.61136 Application for license to operate obstetric center.

1. To obtain a license to operate an obstetric center, an applicant must:

(a) Submit a completed application with a notarized signature to the health division;

(b) Submit with the application:

- (1) A nonrefundable application fee of \$500;
 - (2) Complete information concerning the ownership of the proposed obstetric center, including the name and address of each owner, officer and director of the corporation or each partner, as appropriate;
 - (3) Evidence concerning the character of the applicant if he is a natural person, or of the person in charge if the applicant is other than a natural person or governmental agency, including information on business activities and associations of the applicant and financial status during the preceding 3 years;
 - (4) Evidence of the ability of the applicant to comply with the provisions of this chapter and chapter 449 of NRS;
 - (5) Assurances that the obstetric center complies with all applicable fire and safety codes, zoning ordinances, and state and local building codes; and
 - (6) Assurances that the applicant meets all applicable federal, state and local laws; and
- (c) Submit a copy of:
- (1) The certificate of occupancy or a copy of the business license of the obstetric center to the division; and
 - (2) The bylaws and articles of incorporation of the obstetric center.
2. The application must include a narrative description of the operations of the obstetric center and services which are or will be available at the obstetric center.

449.61304 Application for renewal of license; validity of existing license pending

decision on application. If a person licensed to operate an independent center for emergency medical care submits to the health division an application for the renewal of his license not less than 30 days before the date on which his license expires, the license remains valid until the health division makes a determination on the application for renewal.

449.61310 Display of license; notification of change of ownership, location or services. A person licensed to operate an independent center for emergency medical care shall:

1. Display his license in a conspicuous location inside the center; and
2. Immediately notify the health division of any change in the ownership, location or services of the center.

449.662 License required to operate facility; application.

1. No person may operate an intermediate care facility without a license from the health division.
2. Before issuing a license, the health division will conduct a prelicensure survey of the applicant, the proposed facility, the proposed plan of care and the plan for management.
3. An application for a license to operate an intermediate care facility must be made to the health division. An initial application must include approval by the office of health planning and resources. On receipt by the health division of a properly completed application and the application fee, a provisional license may be issued.

4. Applicants must supply to the health division full and complete information regarding ownership and promptly report any changes which would affect the current accuracy of the information as to the identification of each:

 - (a) Person having a direct or indirect ownership interest of 10 percent or more in the facility who is the owner, in whole or in part, of any mortgage, deed of trust, note or other obligation secured, in whole or in part, by the facility or any of the property or assets of the facility;
 - (b) Officer and director of the corporation, if a facility is organized as a corporation;
 - (c) Partner, if a facility is organized as a partnership.
5. New applicants must submit satisfactory evidence to the health division that they are of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, similar evidence must be submitted regarding the members thereof and the person in charge of the intermediate care facility for which application for license is made. The evidence must include personal references and information on business activities and associations in and out of this state within the immediately preceding 3 years.

6. The facility must comply with all currently adopted life safety, environmental health, building and zoning codes. If there is a difference between the state and local codes, the more stringent standards apply.

449.665 Licenses: Investigation; expiration; posting.

1. If the investigation for a license shows that the facility satisfactorily complies with these regulations, a license will be issued within 60 days following the licensure survey.
2. The name, sign, listing or other designation of an intermediate care facility may not contain any terms misleading to the public with regard to the services offered.
3. A license is effective for 1 year from the date of issuance except in the case of a provisional license, and applies only to the person named in the license. A license is not transferable. The health division must be notified in writing within 10 days if there is a transfer of the real property but no change in operator. A copy of the lease agreement must be furnished to the division.
4. The license must be posted in a public place within the facility.
5. Before the expiration of the license, the licensee shall apply for a renewal of the license. A licensure survey will not be scheduled until the application and fee are received. If, after investigation, the health division determines that the facility is still in compliance with these regulations, the license will be renewed for a period not to exceed 1 year.
6. No facility may accept for care at any given time more residents than the number specified in the license. The number of residents for which a facility will be licensed is determined by the type of facility provided, the staffing and space requirements and the capability of the physical plant.

449.669 Denial, suspension, revocation of license.

1. Failure or refusal to comply with regulations adopted by the health division is grounds for the denial, suspension or revocation of a license. Notice of denial, suspension

or revocation, the legal authority, jurisdiction and reasons for the action taken will be sent to the applicant by certified mail within 30 days.

2. Within 10 calendar days after the date of the notice from the health division, the applicant or licensee may file a notice of appeal with the state health officer.

3. Within 20 calendar days after the receipt of the notice of appeal by the state health officer, the health division will hold a hearing in the manner provided by chapter 233B of NRS and the regulations of the state board of health in chapter 439 of NRS.

4. Notice of the hearing must be given no less than 5 days before the date set for the hearing.

5. Whenever the health division has reason to believe that a facility is operating without a license, or a licensed facility is not conforming to the conditions of the license or the regulations for intermediate facilities, the division will make an investigation to determine the facts. The division may inspect the premises where the violation is alleged to have occurred and conduct other investigations as indicated.

449.7472 Application for and issuance of license.

1. A person, state or local government, or agency thereof, who desires a license must file with the health division an application on a form provided by the health division and pay the fee required by NAC 449.013.

2. Upon determining that the applicant is in full compliance with chapter 449 of NRS and in substantial compliance with NAC 449.747 to 449.7482, inclusive, the health division will issue a license to the applicant.

449.7482 Denial, suspension or revocation of license: Grounds; notice; hearing.

1. The health division may deny an application for a license, or suspend or revoke a license, upon any of the grounds set forth in NRS 449.160 or for the failure of the applicant or licensee to comply with the provisions of NAC 449.747 to 449.7482, inclusive.

2. Except as otherwise provided in NRS 449.170, the health division shall provide the applicant or licensee with written notice of its intent to deny an application for a license or to suspend or revoke a license. The applicant or licensee may, within 15 days after receipt of the notice, submit to the administrator a written request for a hearing on the proposed denial, suspension or revocation.

3. Upon timely receipt of a request for a hearing pursuant to subsection 2, the administrator shall appoint a hearing officer and schedule a hearing on the matter to be held within 30 days. The hearing officer shall provide the administrator with his written recommendation on the matter within 10 days after the hearing is completed. The administrator shall:

- (a) Consider the evidence presented at the hearing and the recommendation of the hearing officer; and
- (b) Within 30 days after he receives that recommendation, notify the applicant or licensee of the action to be taken by the health division.

4. As used in this section, "administrator" means the administrator of the health division.

449.755 Licenses: Application; issuance.

1. Any person, state, local government, or any agency thereof desiring a license must file with the health division an application on a form prescribed, prepared and furnished by the health division.
2. The health division shall review each application it receives. If the health division receives an application which is not complete, it shall notify the applicant of that fact within 30 days after it receives the application.
3. Before the health division issues a license pursuant to this section, it shall conduct an inspection of the home health agency of the applicant in the order in which the application is received by the health division, but not later than 90 days after the application is received.
4. Upon a determination of full compliance of the agency with the regulations adopted by the health division, and the payment of the fee, the health division shall issue a license to the applicant.
5. The health division may issue a provisional license to an agency which:

- (a) Is in operation at the time of the adoption of new regulations to provide a reasonable time, not to exceed 1 year after the effective date of the regulations within which to comply with the new regulations; or
- (b) Has failed to comply with the provisions of NAC 449.749 to 449.803, inclusive, but which is in the process of making the necessary changes or has agreed in writing to effect the changes within a reasonable time specified by the health division, not to exceed 1 year.

449.764 Appeal from denial, suspension, revocation of license.

1. If the health division denies, suspends or revokes a home health agency license, the division will afford reasonable notice to all parties by certified mail. The notice will contain the legal authority, jurisdiction and reasons for the action taken.
2. The aggrieved person may file notice of appeal with the state health officer within 10 calendar days after receipt of notice of any action of the health division.
3. Within 20 calendar days after the receipt of the notice of appeal by the health officer, the health division will hold a hearing in the manner provided in chapter 233B of NRS and the regulations of the board of health in chapter 439 of NAC.
4. Notice of the hearing must be given no less than 5 days before the date set for the hearing.

449.975 Application for license. A person who desires a license to operate an ambulatory surgical center must:

1. Obtain a form of application from the division, completely fill out the form, sign the form and have the signature notarized, and submit the application to the division.
 2. Submit with the application the following documents and information:
 - (a) The fee required by NAC 449.013.
 - (b) If his approval is required, a copy of a letter of approval issued by the director of the department of human resources pursuant to NRS 439A.100.
 - (c) Complete information concerning the ownership of the proposed ambulatory surgical center, including the name and address of each owner, officer and director of the corporation or each partner, as appropriate.
 - (d) Evidence concerning the character of the applicant, if he is a natural person, or of the person in charge if the applicant is a firm or government agency. This evidence must include personal references and information on business activities and associations during the preceding 3 years.
 - (e) Evidence of the ability of the applicant to comply with the provisions of NAC 449.971 to 449.9975, inclusive.
 - (f) Assurances that the proposed ambulatory surgical center will comply with all applicable fire and safety codes, zoning ordinances, and state and local building codes.

3. The applicant must submit a copy of the certificate of occupancy or a copy of his business license to the division within 5 days after he receives either of these documents.

449.976 Report of inspection for safety from fire. Before issuing a license for the operation of an ambulatory surgical center, the division must receive a satisfactory report

of an inspection of the center from the local fire department or, if he has jurisdiction, the state fire marshal.

449.9765 Notice of change in ownership, location or services. The applicant or licensee shall inform the division immediately of any change in the:

1. Ownership of the center;
2. Location of the center; or
3. Services provided at the center.

449.977 Display of license. Upon his receipt of the license, the licensee shall display the license at a conspicuous location within the ambulatory surgical center where persons visiting the center can read it.

449.9775 Continuance of license pending application for renewal. If an application for the renewal of a license is received by the division not less than 30 days before the date the license would otherwise expire, the license will remain in effect until the division has had time to evaluate the application.

449.9995 General requirements. Except as otherwise provided in NAC 449.99855, if the health division or the bureau intends to impose any sanction upon a facility, the licensee and the administrator or agent in charge of the facility must be so notified in writing. This notice must meet the requirements of NAC 449.99951 and must be delivered by personal service or mailed by certified mail, return receipt requested.

449.99951 Time for delivery; contents. The notice sent pursuant to NAC 449.9995 must, except in an emergency or in a case in which the sanction is the issuance of a

provisional license, be delivered at least 5 days before the imposition of the sanction and must include:

1. A citation of the statutory and regulatory authority for the sanction;
2. The factual findings providing the basis for the deficiency;
3. A description of any circumstances, such as self- correction or subsequent, uncorrected or repeated deficiencies, considered in determining the sanction;
4. Instructions for responding to the notice, including a statement of the right of the facility to a hearing, the time within which a hearing must be requested and the consequences of waiving a hearing; and
5. If a monetary penalty is to be imposed, the amount of any initial and any daily monetary penalty per day of noncompliance.

449.99955 Applicability of provisions.

1. Except as otherwise provided in NAC 449.99955 to 449.99968, inclusive, the provisions of those sections apply to every contested case provided for in this chapter.
2. As used in this section, “contested case” has the meaning ascribed to it in NRS 233B.032.

449.99956 Appeal of imposition of sanction. Any aggrieved party may, within 15 days after receipt of the notice required by NAC 449.9995 and 449.99951, appeal the decision in writing to the bureau.

449.99957 Stay of sanction pending administrative hearing. Except as otherwise provided in this chapter for payment of daily penalties or interest, no sanction imposed by the bureau of regulatory health services may be stayed pending an administrative hearing.

449.99958 Hearing officer: Appointment; disqualified persons.

1. The administrator of the health division shall appoint an employee or an independent contractor of the health division to act as a hearing officer and preside at any hearing requested pursuant to this chapter.
2. Any employee or independent contractor of the health division who has engaged in the performance of investigative or prosecutorial functions in the case or in a factually related case involving the facility or an affiliated facility is disqualified and must not preside at the hearing or take part in the decision of the case. Any employee who is or has been an owner or manager or who is or has been engaged as an employee or consultant to the facility or an affiliated facility within 2 years preceding the request for hearing in the

case is disqualified and must not preside at the hearing or take part in the decision of the case. The procedures provided in NRS 233B.122 for replacement of a disqualified hearing officer must be used.

449.99959 Hearing officer: Powers and duties. The hearing officer:

1. May issue subpoenas, administer oaths and affirmations, rule on offers of proof and receive relevant evidence, dispose of procedural requests and similar matters, hear the arguments of the parties, and otherwise regulate hearings consistent with the rules of the health division and the Nevada Administrative Procedure Act.
2. May extend any limitation of time prescribed by NAC 449.9996 upon agreement of the parties, or for good cause shown.
3. Shall render a recommended decision within 10 days after the close of the hearing to the administrator of the health division in accordance with NAC 449.99964.

449.9996 Notice, record and date of hearing.

1. The hearing officer shall give all parties notice of a scheduled hearing at least 5 days before the date of the hearing.
2. The notice must be effected by personal service or certified mail, return receipt requested, and must set forth the time, place and subject matter of the hearing and the legal authority and jurisdiction under which the hearing is to be held.
3. The hearing must be held within 30 days after the receipt by the bureau of the written appeal. The notice of hearing and record of hearing must comply with the requirements of NRS 233B.121 and NAC 449.99951.

449.99961 Burden of proof; rights of parties. In any adjudication pursuant to this chapter, the burden of proof under a preponderance of the evidence standard is on the bureau. Every party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to cross-examine witnesses who testify.

449.99962 Receipt and exclusion of evidence. Any evidence may be received, but the hearing officer may exclude irrelevant, immaterial or unduly repetitious evidence. The evidentiary procedures described in NRS 233B.123 must be followed.

449.99963 Official record of proceeding; availability of transcript. A full and complete official record by tape recording or similar means of every proceeding must be kept. A copy of the transcript may be obtained by any interested party on payment of the costs of transcribing and preparing the copy. Payment must be made in advance.

449.99964 Recommended decision: Issuance; contents; service.

1. Following every hearing held pursuant to NAC 449.99955 to 449.99968, inclusive, the person presiding shall render a recommended decision to the administrator of the health division.

2. The recommended decision:

- (a) Must include a statement of findings of fact and conclusions of law, together with the reasons therefor, on all material issues of fact, law or procedure.
 - (b) Must comply with the provisions of NRS 233B.124 and 233B.125.
 - (c) Must be based on a preponderance of the evidence.

3. Each party and attorney of record must be served with a copy of the recommended decision by personal service or by certified mail, return receipt requested.

449.99965 Objections and exceptions to or concurrence with decision; introduction of additional evidence.

1. Within 20 days after receipt of the recommended decision, any party may file with the administrator of the health division written objections and exceptions to the decision or concurrence with the decision, accompanied by supporting reasons. The administrator may allow the introduction of additional evidence within this 20-day period upon a finding of good cause.

2. As used in this section, "good cause" means the failure to produce evidence without fault of the party requesting to admit it. If the evidence sought to be admitted was in the possession or control of the party seeking to produce it before the closure of the record of the administrative hearing and issuance of the recommended decision, the party seeking admission is presumed to be at fault.

449.99966 Final decision: Issuance; inclusion in official record; contents; service.

1. The administrator of the health division shall render a final decision upon consideration of the recommended decision within 30 days after the date the recommended decision is issued. The administrator of the health division shall consider the recommended decision and any documents filed in support of or in objection to the recommended decision in rendering a final decision of the health division.

2. The final decision, and any recommended decision if reversed or modified, must be a part of the official record. Every decision must include a statement of findings and conclusions, together with the reasons therefor, on all material issues of fact, law or procedure as provided by NRS 233B.125.

3. The decision or order must be mailed by certified mail, return receipt requested, or delivered forthwith to each party and attorney of record.

449.99967 Petition for rehearing or reconsideration of final decision. A petition for rehearing or reconsideration of the final decision may be filed with the administrator of the health division pursuant to NRS 233B.130.

449.99968 Judicial review of final decision. Judicial review of the final decision of the health division must be conducted pursuant to NRS 233B.130.