

PROPOSED REGULATION OF THE STATE BOARD OF HEALTH

LCB File No. R150-15

PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF REGULATIONS

Section 1. NAC 439.030 is hereby amended to read as follows: Action on petition by Secretary of State Board of Health. (NRS 439.200)

1. The Secretary of the State Board of Health shall, within ~~45~~ **30** days after receipt of the letter submitted pursuant to NAC 439.010, either deny the petition in writing, stating the reasons, or initiate the procedure for the adoption, amendment or repeal of regulations.

2. If the petition is denied, a copy of the letter of denial must be sent to each member of the Board.

[Bd. of Health, Admin. Procedure Reg. § 3, eff. 10-24-65; A and renumbered as § 3.0, 7-17-80; § 4, eff. 10-24-65; A and renumbered as § 4.0, 7-17-80]—(NAC A by R010-06, 5-4-2006)

GENERAL PROVISIONS

Sec. 2. Chapter 439A of NAC is hereby amended by adding thereto a new section to read as follows: *‘Letter of Approval’ defined. (NRS 439A.081) ‘Letter of Approval’ means a letter from the Director approving the proposed health facility construction project; this is commonly referred to as a certificate of need.*

Sec. 3. NAC 439A.365 is hereby amended to read as follows: Procedure for submission; fee; acknowledgment of receipt. ([NRS 439A.081](#))

1. The original and three copies of an application for a letter of approval must be submitted by mail or delivered by hand to the Department.

2. Each application submitted to the Department must be accompanied by a nonrefundable fee of \$9,500. The fee must be paid by ~~cashier’s~~ check made payable to the order of the Department of Health and Human Services.

3. The Department will acknowledge receipt of an application and accompanying fee:

(a) For applications delivered by hand, by a receipt issued to the deliverer at the time of delivery; or

(b) For applications received through the mail, by mail within 5 working days after the date of receipt. □ Receipt will be acknowledged on a form of receipt prescribed by the Department.

(Added to NAC by Dep’t of Human Resources, eff. 9-4-84; A 3-6-86; 11-10-87; 1-2-90; 10-14-97)

Sec. 4. NAC 439A.465 is hereby amended to read as follows: Progress reports; requests for information; access to project site and records. ([NRS 439A.081](#))

1. The holder of a letter of approval shall provide the Department with quarterly progress reports, beginning with the first calendar quarter following the issuance of the letter of approval

and due no later than 30 days after the end of the quarter. Each progress report must include all of the following:

- (a) The date of commencement of the project;
- (b) The extent of progress made in complying with the approved timetable, including:
 - (1) All deadlines which have passed; and
 - (2) Whether the required activity met the deadline;
- (c) Any financial arrangements which differ from those originally approved, including a detailed description of, and the reason for, each difference;
- (d) The actual cost to date for the project;
- (e) A revised estimate of the total project cost, including a detailed description and explanation of the differences, if any, between the revised cost and that originally approved;
- (f) All the steps taken to ensure compliance with each applicable condition;
- (g) The material changes in the project, including a detailed description and explanation of each change; and
- (h) The projected date of completion of the project.

2. The Department may, from time to time, request in writing such additional information as is necessary to determine whether the holder of a letter of approval is complying with the letter of approval.

3. The holder of a letter of approval will have 20 working days from his or her receipt of a request for information from the Department to submit the required information in writing. Failure to respond within this period may constitute grounds for the Department to initiate withdrawal proceedings pursuant to [NAC 439A.505](#).

4. The holder of a letter of approval must provide access to the project site and all project records to the Department's staff for examination and inspection in order to verify compliance with the letter of approval and any information submitted by the holder of the letter of approval.

~~{5. The provision of information through progress reports required by the Department will not be construed or interpreted as an application for extension pursuant to NAC 439A.475 or the notification required pursuant to NAC 439A.305.}~~

(Added to NAC by Dep't of Human Resources, eff. 9-4-84; A 11-10-87; 1-2-90; 10-14-97)

Sec. 5. NAC 439A.475 is hereby amended to read as follows: Extension of approved timetable. ([NRS 439A.081](#))

1. A letter of approval is subject to withdrawal pursuant to [NAC 439A.505](#) if the approved timetable is not met by the holder of the letter of approval, unless an extension is granted by the Department pursuant to this section.

2. An extension will be granted only if the applicant manifests an intention to complete the project and demonstrates that good and sufficient reasons exist for its failure to meet the timetable. Good and sufficient reasons include delays caused by:

- (a) Litigation;
- (b) The actions of a regulatory agency other than the Department; or
- (c) An event determined by the Department to be beyond the control of the holder of the letter of approval.

3. Except as otherwise provided in subsection 4, a request for an extension must be submitted to the Department, *in the quarterly report*, at least 90 days before the required date of completion of the project. The request must contain information setting forth the reasons for noncompliance with the timetable and the extent of the progress toward completion of the project.

4. A request for an extension of a letter of approval which is submitted less than 90 days before the required date of completion of the project will not be accepted unless the applicant can demonstrate to the satisfaction of the Department that unforeseen occurrences prevented a timely submission.

5. Within 20 working days after receipt of the request, the Director will determine whether or not to grant an extension.

6. If the decision is to grant an extension, the Director will issue a letter of extension to the holder of the letter of approval, which will contain:

- (a) The reasons for granting the extension; and
- (b) A revised timetable for the project, including a revised date of completion for the project.

7. If an extension is not granted, proceedings to withdraw the letter of approval may be initiated pursuant to [NAC 439A.505](#).

(Added to NAC by Dep't of Human Resources, eff. 9-4-84; A 3-6-86)

Sec. 6. NAC 439A.485 Transfer of interest *before project completion*. ([NRS 439A.081](#))

1. A person shall not sell, purchase, assign, grant or otherwise transfer or convey in any manner any interest in a letter of approval or a proposed project without first obtaining the written approval of the Director.

2. A written request for the approval of any transfer must be submitted to the Director by the holder of the letter of approval and must include:

- (a) The identity and, if other than a natural person, the organizational structure of the person who will acquire the interest;
- (b) All facts and materials relating to the proposed transaction;
- (c) Copies of all legal documents required to be executed by the parties in order to effect the transfer; and
- (d) A statement signed by the person who will acquire the interest manifesting an intent to complete the project and agreeing to be bound by each condition of the letter of approval.

3. Upon the request of the Director, any of the parties involved in the proposed transaction shall submit additional information:

- (a) Regarding their financial interest in the transaction or the proposed project;
- (b) Regarding any changes in the project or the cost of or charges for the proposed services resulting from the proposed transaction; and
- (c) Which the Director determines is relevant to the transaction or the proposed project.

4. The Director will determine the effect of the proposed transaction on the project.

5. Approval of a transfer of interest requested pursuant to this section will be denied only if the Director determines:

- (a) That approval would have an adverse effect on the project; or
- (b) That the proposed transaction would result in a transfer of more than 49 percent, in the aggregate, of the interest in the project.

6. The Director will issue to the holder of the letter of approval a written decision approving or disapproving the transaction and setting forth the reasons for his or her decision.

(Added to NAC by Dep't of Human Resources, eff. 9-4-84; A 3-6-86; 1-2-90; 10-14-97)

Sec. 7. NAC 439A.595 Burden of proof; applicability. ([NRS 439A.081](#))

1. The applicant for a letter of approval has the burden of proof to satisfy all applicable criteria for review contained in [NAC 439A.605](#) to ~~439A.637~~ [439A.###](#), inclusive.

2. A finding that the applicant has failed to meet its burden of proof regarding an applicable criterion will be made if:

(a) The applicant fails to provide sufficient, relevant, demonstrative evidence for a favorable determination; or

(b) The evidence on the record opposing the application outweighs the evidence in support of the application regarding the criterion.

3. The criteria for review are applicable to a proposed project if the project includes the construction or establishment of a facility to provide health services, except for a facility which will be used solely for the offices of practitioners of health care.

4. If an application is denied on the basis of these criteria, the written findings of fact must clearly state the reason for that denial.

(Added to NAC by Dep't of Human Resources, eff. 9-4-84; A 3-6-86; 11-10-87; 1-2-90; 10-14-97)