

PROPOSED REGULATION OF THE STATE BOARD OF HEALTH

LCB File No. R114-10

Authority: §§2 and 4, NRS 439.890; §§3 and 4, NRS 439.885 and 439.890; §5, NRS 441A.167; §6, NRS 449.037 and 449.171; §§7 and 8, NRS 449.037, 449.163 and 449.165.

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. 1. *Each patient safety plan developed pursuant to NRS 439.865 must include, without limitation:*

- (a) A method for identifying and preventing infections, maintaining a sanitary environment and reporting any issues relating to infection or sanitation to the appropriate authority as required by state or federal law;*
 - (b) A method for identifying, preventing and correcting medication errors, and ensuring that prescription drugs, controlled substances, pharmaceutical services and medicines are provided in a safe and effective manner;*
 - (c) A disaster preparedness plan that provides for the emergency care of patients, staff and others in the medical facility in the event of fire, natural disaster, functional failure of equipment or any other unexpected event or circumstance that is likely to threaten the health and safety of such persons;*
 - (d) A fire safety plan;*
 - (e) A method for collecting and reporting sentinel events;*
 - (f) A method for educating the staff of the medical facility about the patient safety plan; and*
 - (g) The date on which it was approved by the governing board of the medical facility.*
- 2. The administrator of a medical facility shall ensure that the patient safety plan of the facility is carried out.*
- 3. Each medical facility shall:*
- (a) Evaluate its patient safety plan at least annually;*
 - (b) Include in the plan the date of the most recent evaluation of the plan; and*
 - (c) Update its patient safety plan as needed to meet the current needs of the medical facility and to reflect current standards of practice.*

Sec. 3. 1. *The provisions of NAC 449.99897, 449.99904, 449.99906, 449.99908, 449.9991 and 449.99911 apply to an administrative sanction imposed pursuant to subsection 2 of NRS 439.885. The provisions of NAC 449.99897, 449.99906 and 449.99908 will apply to a monthly monetary penalty/per month basis instead of a daily monetary penalty/per day basis to subsection 2 (b) of NRS 439.885. Daily or monthly monetary penalties do not apply to subsection 2 (c) of NRS 439.885.*

2. In imposing a monetary penalty pursuant to subsection 2 of NRS 439.885, the total penalty assessed against any medical facility bears interest at the rate of 10 percent per annum.

3. Unless it is waived by the Health Division, interest at the rate of 10 percent per annum will be assessed on the unpaid balance of a monetary penalty imposed pursuant to subsection 2 of NRS 439.885, beginning on the due date.

Sec. 4. NAC 439.900 is hereby amended to read as follows:

As used in NAC 439.900 to 439.920, inclusive, *and sections 2 and 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 439.902 to 439.912, inclusive, have the meanings ascribed to them in those sections.

Sec. 5. Chapter 441A of NAC is hereby amended by adding thereto a new section to read as follows:

1. For the purposes of NRS 441A.167, the following public agencies and political subdivisions shall share information with the appropriate state and local health authorities:

(a) Each state and local law enforcement agency which has information that is relevant to an investigation described in NRS 441A.167;

(b) Each local and state health authority which has information that is relevant to an investigation described in NRS 441A.167;

(c) Each professional licensing board which has information that is relevant to an investigation described in NRS 441A.167; and

(d) Each Division of the Department of Health and Human Services which has information that is relevant to an investigation described in NRS 441A.167.

2. The public agencies and political subdivisions set forth in subsection 1 shall share information and any medical records and reports with the appropriate state and local health authorities when the requesting health authority determines that sharing the information is in the best interest of the public and is necessary to further the investigation of the requesting health authority. A public agency or political subdivision set forth in subsection 1 which receives a request for information or medical records or reports from a health authority pursuant to NRS 441A.167 shall transmit the requested information to the requesting health authority within 10 calendar days after receiving the request.

3. A health authority that receives information from a public agency, law enforcement agency or political subdivision pursuant to NRS 441A.167 shall ensure that any protected health information remains confidential to the extent required pursuant to state and federal law.

4. A public agency, law enforcement agency or political subdivision that shares information with a health authority pursuant to NRS 441A.167 shall ensure that any protected health information it shares remains confidential to the extent required pursuant to state and federal law.

Sec. 6: NAC 449.99837 is hereby amended to read as follows:

NAC 449.99837 “Repeated deficiency” defined. (NRS 449.037) “Repeated deficiency” means a deficiency found by the ~~[Bureau]~~ *Health Division* again within 18 months, including one found at a follow-up survey, an investigation of a complaint or the *facility’s* next ~~[annual]~~ survey.

Sec 7: NAC 449.99861 is hereby amended to read as follows:

NAC 449.99861 Severity of deficiencies: Use of severity scale; basis for assessment; criteria for evaluation. (NRS 449.037, 449.165)

1. The severity scale must be used to assess the severity of a particular deficiency pertaining to the facility. The basis for the assessment must be the actual or potential harm to recipients.

2. Deficiencies of severity level one concern requirements promulgated primarily for administrative purposes. No harm is likely to occur to a recipient. No negative recipient impact has occurred or is likely to occur. The ability of a recipient to achieve the highest practicable physical, mental or psychosocial well-being has not been and is not likely to be compromised.

3. Deficiencies of severity level two indirectly threaten the health, safety, rights, security, welfare or well-being of a recipient. A potential for harm, as yet unrealized, exists. If continued over time, a negative impact on one or more recipients or a violation of one or more recipients' rights would occur or would be likely to occur or the ability of one or more recipients to achieve the highest practicable physical, mental or psychosocial well-being would be, or would likely be, compromised.

4. Deficiencies of severity level three create a condition or incident in the operation or maintenance of a facility that directly or indirectly threatens the health, safety, rights, security, welfare or well-being of one or more recipients. A negative impact on the health, safety, rights, security, welfare or well-being of one or more recipients has occurred or can be predicted with substantial probability to occur or the ability of recipients to achieve the highest practicable physical, mental or psychosocial well-being has been or is about to be compromised and requires intervention and correction of the deficiency. Violation of a partial or complete ban on admissions imposed on a facility, violation of a limitation on occupancy of a residential facility or failure to implement a directed plan of correction is presumed to be a deficiency of this level of severity.

5. Deficiencies of severity level four create a condition or incident that has resulted in or can be predicted with substantial probability to result in death or serious harm to a recipient. As used in this subsection, "serious harm" includes serious mental harm, serious impairment of bodily functions, serious dysfunction of any bodily organ or part, life-threatening harm or death~~[-.]~~ *or a hospitalization or extended hospitalization that was found to be preventable by the results of an investigation conducted by the Health Division.* ~~[life-threatening harm or death.]~~

(Added to NAC by Bd. of Health, eff. 8-1-91)

Sec. 8: NAC 449.99896 is hereby amended to read as follows:

NAC 449.99896 Criteria for imposition; imposition of initial and daily penalties. (NRS 449.037, 449.165)

1. Except as otherwise provided in subsection 4 of this section, the ~~[Bureau]~~ *Health Division* may impose a monetary penalty including interest thereon on any facility that is not in compliance with any participation requirement, regardless of whether the deficiency constitutes an immediate and serious threat. *The Health Division may impose a monetary penalty including interest thereon on any facility with a deficiency of a severity level 3 or 4 regardless of whether the deficiency occurs during a facility's period to correct under an acceptable plan of correction due to a previous citation.*

2. If a monetary penalty is imposed, the initial amount of the penalty must be based on the severity ~~[and scope score]~~ of the deficiency, *for each patient/client/resident who was harmed or at risk of harm as a result of the deficiency*, and must be imposed as provided in NAC 449.99899.

3. In addition to the initial monetary penalty, the *Health Division* ~~[Bureau]~~ may impose a monetary penalty for each day of noncompliance from the date the noncompliance occurs or is identified until compliance is verified.

4. A facility is not subject to a monetary penalty for a de minimis deficiency.
(Added to NAC by Bd. of Health, eff. 8-1-91)

Sec. 9: NAC 449.99899 is hereby amended to read as follows:

NAC 449.99899 Determination of amount of penalties. (NRS 449.037, 449.165)

1. In determining the amount of an initial monetary penalty, the ~~[Bureau]~~ *Health Division* shall consider the severity ~~level [alone if the severity level is four.] of the deficiency and each patient/client/resident who was harmed or at risk of harm as a result of the deficiency for a severity level of 3 or 4.~~ In determining the amount of the monetary penalty where the severity level is less than ~~three [four],~~ both severity and scope must be considered. In determining whether to impose a daily monetary penalty, the ~~[Bureau]~~ *Health Division* shall consider ~~[the severity and scope and]~~ the factors indicated for increased and decreased penalties provided in NAC 449.99902 and 449.99904.

2. For initial deficiencies with a severity level of four, in which there was actual harm as a result of the deficiency, an initial monetary penalty of \$5,000 for each patient/resident/client who was harmed as a result of the deficiency, per deficiency must be imposed.

~~[2.]~~ *3. For initial deficiencies with a severity level of four, in which there was a risk of harm as a result of the deficiency, an initial monetary penalty of \$3,000 for each patient/resident/client who was at risk of harm as a result of the deficiency, [\$1,000] per deficiency must be imposed.*

~~[3.]~~ *4. For initial deficiencies rated with a severity level of three [and a scope level of three,] in which there was actual harm as a result of the deficiency, [a monetary penalty of \$800] an initial monetary penalty of \$2,000 for each patient/resident/client who was harmed as a result of the deficiency, per deficiency must be imposed.*

~~[4.]~~ *5. For initial deficiencies with a severity level of three [and a scope level of two or less], in which there was a risk of harm as a result of the deficiency, an initial monetary penalty of \$1,000 for each patient/resident/client who was at risk of harm as a result of the deficiency, [\$400] per deficiency must be imposed.*

~~[5.]~~ *6. For initial deficiencies with a severity level of two and a scope level of three, an initial monetary penalty of [\$200] \$1,000 for each patient/client/resident who was harmed or at risk of harm as a result of the deficiency per deficiency may be imposed [] if the facility has more patients/clients/residents than it is licensed for (over-census). [The payment of this monetary penalty must be suspended if the facility has corrected the deficiencies within the time specified in the plan of correction approved by the Bureau.]*

~~[6.]~~ *7. For initial deficiencies with a severity level of two and a scope level of three, an initial monetary penalty of [\$200] \$1,000 for each patient/client/resident who was harmed or at risk of harm as a result of the deficiency, per deficiency [may] must be imposed if it is determined that an on-site follow-up survey is required to determine compliance of the deficiency. [The payment of this monetary penalty must be suspended if the facility has corrected the deficiencies within the time specified in the plan of correction approved by the Bureau.]*

~~[7.]~~ *8. In addition to any monetary penalty imposed pursuant to this section, the [Bureau] Health Division may impose a monetary penalty of not more than \$1000 [per recipient] per day for each day the deficiency continues.*

(Added to NAC by Bd. of Health, eff. 8-1-91; A by R051-02, 7-24-2002)

Sec 10: NAC 449.999 is hereby amended to read as follows:

NAC 449.999 Limitation on principal amount of total daily penalty *and penalty imposed on per patient/client/resident per deficiency.* (NRS 449.037, 449.165) *In no event may the Health Division impose a monetary penalty of more than \$10,000 for each patient/client/resident who was harmed or at risk of harm as a result of each deficiency. In addition if the Health Division chooses to impose a daily monetary penalty pursuant to NAC 449.99899 (6) in addition to the initial monetary penalty, i*~~in~~*n no event may the [principal]* amount of the total daily monetary penalty assessed against any facility exceed \$1,000 per deficiency per day.

(Added to NAC by Bd. of Health, eff. 8-1-91)

Sec 11: NAC 449.99901 is hereby amended to repeal the following:

~~[NAC 449.99901—Daily penalty: Computation according to number of recipients. (NRS 449.037, 449.165) If a monetary penalty is assessed on a daily basis according to the number of recipients and the number of recipients fluctuates, the penalty must be computed on the basis of the average daily number of recipients during the 3 months preceding the imposition of the penalty. —(Added to NAC by Bd. of Health, eff. 8-1-91)]~~

Sec. 12: NAC 449.99902 is hereby amended to read as follows:

NAC 449.99902 Increase in penalty for repeated deficiencies or false compliance. (NRS 449.037, 449.165)

1. Penalties must be increased if deficiencies are repeated or compliance is falsely alleged.
2. For each repeat deficiency present within 18 months after an initial deficiency, the monetary penalty must be computed at the rate of one and one-half times the rate that was or could have been assessed initially for a deficiency of that severity. ~~[and scope.]~~
3. The ~~[Bureau]~~ **Health Division** may double the daily monetary penalty that was or could have been assessed if the facility:
 - (a) alleges compliance and the ~~[Bureau]~~ **Health Division** finds on a survey that at the time compliance was alleged the deficiencies continued to exist.
 - (b) *was aware of the deficient practice and allowed it to continue, thus increasing the duration of the threat.*
 - (c) *had 50% or more of patients/residents/clients at risk of or harmed by the deficient practice for a severity level 3 or 4.*
 - (d) *had 3 or more substantiated complaints with at least one deficiency cited in each complaint within the preceding 12 months.*
 - (e) *had received 2 or more sanction notices within the preceding 12 months.*

(Added to NAC by Bd. of Health, eff. 8-1-91; A by R051-02, 7-24-2002)

Sec. 13: NAC 449.99906 is hereby amended to read as follows:

NAC 449.99906 Daily penalty: Date and period of computation; notice to facility. (NRS 449.037, 449.165)

1. Daily penalties and interest must be computed after compliance has been verified or the provider has been sent notice of termination of a license or provisional license. *Computation of daily penalties and interest will begin on the effective beginning date in accordance with NAC 449.99905 through the termination of daily penalties in accordance with NAC 449.99907, including the time period to correct a deficiency under an acceptable plan of correction.* A

daily monetary penalty must end on the effective date of compliance or termination of the license of the facility.

2. If a provider achieves compliance, the ~~[Bureau]~~ *Health Division* shall send a separate notice to the facility containing:

- (a) The amount of the penalty per day;
- (b) The number of days involved;
- (c) The due date of the penalty; and
- (d) The total amount due.

3. If the license of a facility is to be terminated, the ~~[Bureau]~~ *Health Division* shall send the information required by subsection 2 in the notice of termination.

4. If the ~~[Bureau's]~~ *Health Division's* decision of noncompliance is upheld on appeal or the facility waives its right to a hearing, the monetary penalty must be imposed for the number of days between the effective date of the penalty and the date of correction of the deficiencies or, if applicable, the date the license of the facility is terminated.

(Added to NAC by Bd. of Health, eff. 8-1-91)

Sec. 14: NAC 449.99912 is hereby amended to repeal the following:

~~[NAC 449.99912 Disposition of money collected. (NRS 449.037)]~~

~~—1. Unless otherwise required by federal law, money collected by the Health Division as administrative sanctions must be deposited into a separate fund and applied to the protection of the health, safety, well-being and property of recipients, including residents of facilities that the Health Division finds deficient.~~

~~—2. Any of the following applications of money collected, without limitation, are permissible:~~

~~—(a) Reimbursement of costs related to the operation of a facility pending correction of deficiencies or closure;~~

~~—(b) Reimbursement of residents for personal money lost; and~~

~~—(c) Payment of the cost of relocating residents to other facilities.]~~

Sec. 15: Chapter 449 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If the Health Division takes control of medical records pursuant to NRS 449.171, it may contract with a qualified entity to maintain and ensure the safety of any medical records under its control. The Health Division shall ensure that this entity complies with the provisions of subsection 2 of NRS 449.171; or

2. If the Health Division takes control of medical records pursuant to NRS 449.171, it may enter the facility at anytime in order to ensure the safety of the medical records stored at the facility; or

3. If the Health Division takes control of medical records pursuant to NRS 449.171, it may remove any or all of the medical records and store them in a manner to ensure the safety of the medical records.

4. If the Health Division takes control of the medical records of a medical facility or facility for the dependent, that facility shall pay to the Health Division the actual cost of maintaining the medical records. The Health Division will prepare a bill for the maintenance of medical records and submit it to the facility. The facility shall pay the bill within 30 days after receipt of the bill.

5. Any facility or principal corporation that does not pay its bill pursuant to subsection 4 of Section 17 will not be eligible to apply for a future license.