

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

LCB File No. R051-02

Effective July 24, 2002

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

AUTHORITY: §§1-37, NRS 449.037, 449.163 and 449.165.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *“Centers for Medicare and Medicaid Services” means the Centers for Medicare and Medicaid Services of the Department of Health and Human Services.*

Sec. 3. *“Division of health care financing and policy” means the division of health care financing and policy of the department of human resources.*

Sec. 4. NAC 449.002 is hereby amended to read as follows:

449.002 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 449.0022 to 449.0074, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 5. NAC 449.003 is hereby amended to read as follows:

449.003 1. “Deficiency” means noncompliance with any federal or state statute or of the rules or regulations of the health division or the ~~{Health Care Financing Administration}~~ *Centers for Medicare and Medicaid Services* or conditions and standards of or requirements for participation in the Medicare or Medicaid program pertaining to a facility.

2. The term includes an incident concerning a facility where there are no extenuating circumstances or where the facility has made an inappropriate response to a complaint, including the failure to:

- (a) Prevent an incident from occurring, if the incident could have been avoided;
- (b) Identify an incident;
- (c) Take action to correct an incident before the identification of the incident by the bureau;

or

(d) Implement a contingency plan if permanent action to correct an incident has not been undertaken.

3. In determining whether ~~for not~~ an incident is a deficiency, the right of the recipient to refuse treatment, where applicable, shall be deemed an extenuating circumstance.

Sec. 6. NAC 449.0046 is hereby amended to read as follows:

449.0046 “Incident” means an action, practice or situation that appears to be inconsistent with a federal or state statute, rule or regulation of the health division or the ~~Health Care Financing Administration~~ *Centers for Medicare and Medicaid Services* or conditions and standards of or requirement for participation in Medicare or Medicaid.

Sec. 7. NAC 449.007 is hereby amended to read as follows:

449.007 1. “Survey” means a regularly scheduled inspection of a facility conducted by employees of the bureau to verify the facility’s compliance with the regulations of the health division, the ~~Health Care Financing Administration,~~ *Centers for Medicare and Medicaid Services*, eligibility for participation in the Medicare or Medicaid programs and eligibility for licensure.

2. The term includes a follow-up inspection to recertify a facility or evaluate compliance with a plan of correction or an inspection made in response to a complaint.

Sec. 8. NAC 449.963 is hereby amended to read as follows:

449.963 1. Each hospital shall prepare and submit to the department, for each patient discharged by the hospital during each month, a copy of the UB-82 form specified by the ~~Health Care Financing Administration.~~ *Centers for Medicare and Medicaid Services*. The hospital shall submit the required forms for each month within 45 days after the last day of the month, and include the following information on each form:

- (a) UB-82 field number 3, the Patient Control Number (Patient ID);
- (b) UB-82 field number 4, Type of Bill;
- (c) UB-82 field number 8, Medical Number (Hospital ID);
- (d) UB-82 field number 11, Patient Address (ZIP code only will be used by the department in its data system);
- (e) UB-82 field number 12, Birth Date;
- (f) UB-82 field number 13, Sex;
- (g) UB-82 field number 14, Marital Status;
- (h) UB-82 field number 15, Admission Date;
- (i) UB-82 field number 17, Admission Type;
- (j) UB-82 field number 18, Admission Source;
- (k) UB-82 field number 21, STAT (Discharge Status);
- (l) UB-82 field number 22, Discharge Date;
- (m) UB-82 field number 27, Admitting Diagnosis (Principal Diagnosis Code-ICD-9-CM);
- (n) UB-82 field numbers 51a through 51w, inclusive, Revenue Codes;

- (o) UB-82 field numbers 52a through 52w, inclusive, Service Units;
- (p) UB-82 field numbers 53a through 53w, inclusive, Total Charges;
- (q) UB-82 field numbers 57A through 57C, inclusive, Payer (including the 5-digit Payer Classification Code Number);
- (r) UB-82 field number 68, patient social security number (only last six digits will be used in the department's data system);
- (s) UB-82 field number 77, Principal Code (Principal Diagnosis Code-ICD-9-CM);
- (t) UB-82 field numbers 78 through 81, inclusive, Other Diagnosis Codes (ICD-9-CM);
- (u) UB-82 field number 84a, Principal Procedure CD (Procedure Code-ICD-9-CM);
- (v) UB-82 field numbers 85A through 86A, inclusive, Other Procedure Codes (ICD-9-CM);
- (w) UB-82 field number 92, Attending Physician ID; and
- (x) UB-82 field number 93, Other Physician ID.

2. The department and any person with whom the department may contract for the development and operation of its UB-82 data system shall not disclose any information from the data system which may be used to identify any patient of a hospital.

3. A hospital with more than 200 beds which submits the information required by this section by means other than a magnetic tape shall pay the costs of entering the data into the data system. The department will prepare a bill for such entry on a quarterly basis and submit it to the hospital. The hospital shall pay the bill within 30 days after receipt of the bill.

4. As used in this section, "hospital" has the meaning ascribed to it in NRS 449.012.

Sec. 9. NAC 449.9982 is hereby amended to read as follows:

449.9982 As used in NAC 449.9982 to 449.99939, inclusive, *and section 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC

449.99821 to ~~449.99842,~~ **449.99841**, inclusive, *and section 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 10. NAC 449.99828 is hereby amended to read as follows:

449.99828 “Major deficiency” means a deficiency ~~rated at a severity level of four or~~ *with* a combined severity and scope rating of ~~six~~ *five* or more.

Sec. 11. NAC 449.99829 is hereby amended to read as follows:

449.99829 “Medicaid facility” means a facility that has entered into an agreement to provide care, services or treatment paid under the joint federal-state Medicaid program described in 42 U.S.C. §§ 1396 et seq. ~~and NRS 422.234.~~

Sec. 12. NAC 449.99832 is hereby amended to read as follows:

449.99832 ~~“Monitoring” means on-site observation, advice and supervision of~~ *“Monitor” means to observe, advise or supervise* a facility on ~~a regular~~ *an* as-needed basis ~~to ensure compliance with the plan of correction for the facility.~~

Sec. 13. NAC 449.99836 is hereby amended to read as follows:

449.99836 “Provider agreement” means an agreement between a facility and:

1. The ~~Health Care Financing Administration in the case of~~ *Centers for Medicare and Medicaid Services, if the facility is* a Medicare facility; or
2. The ~~welfare division in the case of~~ *division of health care financing and policy, if the facility is* a Medicaid facility.

Sec. 14. NAC 449.99837 is hereby amended to read as follows:

449.99837 ~~+~~ “Repeated deficiency” means a deficiency found by the bureau again within 18 months, including one found at a follow-up survey, an investigation of a complaint or the next annual survey.

~~[2.— The term includes any major deficiency of a standard under a resident care related condition of or requirement for licensure or participation in the Medicare or Medicaid program if any other standard under the same condition was found out of compliance on the previous survey.]~~

Sec. 15. NAC 449.99854 is hereby amended to read as follows:

449.99854 1. The bureau may apply one or more of the sanctions specified in NAC 449.99863 in lieu of or in addition to a recommendation to the ~~[welfare]~~ division *of health care financing and policy* or the ~~[Health Care Financing Administration]~~ *Centers for Medicare and Medicaid Services* to terminate a provider agreement.

2. Sanctions applied pursuant to NAC 449.9982 to 449.99939, inclusive, may be imposed until substantial compliance is achieved or, ~~[where]~~ *if* compliance is not achieved, until the day before termination of the license or provider agreement becomes effective.

Sec. 16. NAC 449.99856 is hereby amended to read as follows:

449.99856 1. The bureau may apply one or more sanctions on the basis of deficiencies found during surveys or investigations of complaints conducted by the bureau.

2. Deficiencies must be reported to the facility and, ~~[where]~~ *if* applicable, to the ~~[Health Care Financing Administration.]~~ *Centers for Medicare and Medicaid Services*. The notice to the facility must specify the deficiencies found and the severity and scope score for each deficiency determined by the bureau.

3. Any deficiency for which a severity and scope score is not specified is presumed to be a de minimis deficiency.

Sec. 17. NAC 449.99858 is hereby amended to read as follows:

449.99858 1. In determining the scope of a violation, a survey of a facility must evaluate a representative sample of recipients as described in the protocol for the survey of such a facility. Unless a sample of a different size is required for the survey by federal law, the sample must consist of at least the following size:

Number of recipients	Minimum number of recipients in sample
1 - 9	All recipients
10 - 40	10
41 - 75	15
76 - 100	20
101 - 175	25
176 - 250	30
251 - 350	35
351 - 450	40
451 or more	50

2. The sample size used in identifying the scope of a deficiency in a ~~subsequent survey~~ *resurvey* must not be less than ~~that~~ *60 percent of the sample size* used in the initial survey.

3. In determining the scope of a violation involving particular kinds of care, treatment or services, the survey must evaluate a representative sample of recipients receiving or requiring the

particular kinds of care, treatment or services. Unless a sample of a different size is required for the survey by federal law, the sample must consist of at least the following size:

Number of recipients needing or receiving a particular kind of care, treatment or services	Minimum number of recipients in sample
1 - 9	All recipients
10 - 40	10
41 - 75	15
76 - 100	20
101 - 175	25
176 - 250	30
251 - 350	35
351 - 450	40
451 or more	50

4. The bureau may review more than the minimum number of recipients. If it does so, the determination of scope must be based on the number of recipients actually reviewed.

5. *If the bureau investigates a complaint relating to a recipient, the bureau may sample only that recipient. The scope of any deficiency cited pursuant to this subsection must be scope level one.*

6. *As used in this section, “recipient” means a person who:*

(a) *Is admitted to a licensed bed maintained by the facility at the time the bureau surveys the facility; or*

(b) *Received services at the facility within the 30 days immediately preceding the date the bureau surveys the facility, if the facility is not licensed to maintain beds.*

Sec. 18. NAC 449.9986 is hereby amended to read as follows:

449.9986 1. The scope of the deficiencies must be evaluated using the criteria prescribed in this section.

2. A deficiency of scope level one consists of one or an isolated number of unrelated incidents in the sample surveyed. A deficiency is of this scope if it involves ~~[-~~

~~—(a) Less than 10] 20~~ percent *or less* of the recipients sampled in a facility . ~~[with 50 or more recipients; or~~

~~—(b) Less than 20 percent of the recipients sampled in a facility with less than 50 recipients.]~~

3. A deficiency ~~[of]~~ *is* scope level two ~~[consists of more than a limited number]~~ *if the bureau identifies a pattern* of incidents ~~[from which no pattern can be identified with reliability.]~~ *at the facility, including any deficiencies involving recipients who require particular kinds of care, treatment or service. The number or percentage of recipients or staff involved in the incidents or the repeated occurrences of incidents in short succession may also establish a pattern by indicating a reasonable degree of predictability of similar incidents.* A deficiency is *also* of this scope if it involves ~~[-~~

~~—(a) Ten percent or~~ more *than 20 percent* but not more than ~~[20] 50~~ percent of the recipients sampled in a facility . ~~[with 50 or more recipients; or~~

~~—(b) Twenty percent or more but not more than 33.33 percent of the recipients sampled in a facility with less than 50 recipients.~~

FLUSH ~~Any deficiency of scope level two that is made as a subsequent deficiency or as a repeated deficiency is of scope level three because of its presence over time.]~~

4. A deficiency is of scope level three if ~~[a pattern of incidents is identified. A pattern of incidents includes deficiencies involving recipients who require particular kinds of care, treatment or services. The number or percentage of recipients or staff involved in the incidents or the repeated occurrences of incidents in short succession can also establish a pattern by indicating a reasonable degree of predictability of similar incidents. A deficiency is also of this scope if it involves:~~

~~—(a) Twenty percent or more but not more than 40 percent of the recipients sampled in a facility with 50 or more recipients;~~

~~—(b) Thirty three and one third percent or more but not more than 50 percent of the recipients sampled in a facility with less than 50 recipients; or~~

~~—(c) Thirty three and one third percent or more but not more than 50 percent of the recipients sampled in a facility of any size needing a particular type of care, treatment or services. Any deficiency of scope level three that is made as a subsequent deficiency or as a repeated deficiency is of scope level four because of its presence over time.~~

~~—5.—A deficiency is of scope level four if]~~ it occurs in a sufficient number or percentage of recipients or staff or with sufficient regularity over time that it ~~[can]~~ *may* be considered systemic or pervasive in or by the facility. A deficiency is also of this scope if it involves ~~[:~~

~~—(a) Forty percent or~~ more *than 50 percent* of the recipients sampled in a facility . ~~[with 50 or more recipients;~~

~~—(b) Fifty percent or more of the recipients sampled in a facility with less than 50 recipients; or~~

~~—(c) Fifty percent or more of the recipients sampled in a facility of any size needing a particular type of care, treatment or services.]~~

Sec. 19. NAC 449.99867 is hereby amended to read as follows:

449.99867 ~~[1.]~~ The selection of a sanction must be based upon the nature of the deficiencies or cluster of deficiencies and the sanction most likely to correct those deficiencies. Absent evidence to the contrary, restrictions upon service and monetary penalties are presumed to be the most effective sanctions for deficiencies that do not cause an immediate and serious threat to recipients.

~~[2.—The bureau shall document the rationale for the selection of a sanction.]~~

Sec. 20. NAC 449.99878 is hereby amended to read as follows:

449.99878 1. If a limitation on occupancy is imposed, a notice of the limitation must be posted at all public entrances to the facility within 48 hours after the facility receives notice of the limitation. Each notice must be not less than 15 *inches* by 20 inches in size ~~[with the]~~ *and include:*

(a) *The* words “NOTICE OF LIMITATION ON OCCUPANCY” printed in boldface type not less than 1 1/2 inches in size ~~[~~

~~—2.— All persons];~~

(b) *A statement specifying the number of residents the facility is authorized to serve;*

(c) *A statement identifying a member of the staff of the facility who will provide additional information relating to the limitation on occupancy; and*

(d) The telephone number of the bureau.

2. *Any person* contacting the facility ~~either~~ in writing or by telephone or *any* other means of telecommunication ~~with respect~~ *relating* to a recipient seeking admission to the facility must be ~~notified~~ :

(a) Notified of the limitation on occupancy ~~is~~; *and*

(b) Provided with the information required by subsection 1.

3. The failure to post notice of a limitation on occupancy as required by this section, or the removal of such a notice, is a deficiency of severity level three and a scope level of ~~four~~ *three*. The failure to inform an inquirer as to the existence of a limitation on occupancy is a deficiency of severity level two and a scope level of ~~four~~

~~4. The~~ *three*.

4. *In addition to the information required by subsection 1, the* content of any notice required to be posted or published pursuant to this section must conform to the requirements set forth by the bureau in the notice of sanction.

Sec. 21. NAC 449.99881 is hereby amended to read as follows:

449.99881 1. If the bureau imposes a ban on admissions, the ban must be imposed as provided in this section.

2. For deficiencies of severity level four and scope level two or more, a ban on all new admissions must be imposed.

3. For deficiencies of severity level three and scope level ~~four~~ *three*, a ban on all new admissions must be imposed.

4. For deficiencies of severity level three and scope level ~~three~~ *two*, a complete or partial ban on admissions may be imposed. If the deficiency is related to a discrete type of care,

treatment or services, the ban may be limited to new admissions requiring the care, treatment or services for which the deficiency is found.

5. For deficiencies with a severity level of three *or four* and a scope level of ~~[two or less,]~~ *one*, the bureau may impose a partial ban on admissions, limited to persons needing the care, treatment or services affected by the deficiency.

6. For deficiencies with a severity level of two and a scope level of three, ~~[or more,]~~ a ban on admissions may be imposed if the deficiencies directly affect the care, treatment or services furnished to recipients. The ban may be limited to those persons requiring the kind or type of services affected by the deficiencies.

Sec. 22. NAC 449.99883 is hereby amended to read as follows:

449.99883 1. If a ban on admissions is imposed, a notice of the ban must be posted at all public entrances to the facility within 48 hours after the facility receives notice of the ban. ~~[The notices]~~ *Each notice* must be not less than 15 *inches* by 20 inches ~~[of size with the]~~ *in size and include:*

(a) *The* words “NOTICE OF BAN ON ADMISSIONS” printed in boldface type not less than 1 1/2 inches in size ~~[.];~~

(b) *A statement identifying a member of the staff of the facility who will provide additional information relating to the ban on admissions; and*

(c) *The telephone number of the bureau.*

2. If the facility provides care, treatment or services at a site other than the location of the office of the facility, notice must be provided by publishing an announcement, identified as a “LEGAL NOTICE” and not less than 25 percent of a newspaper page in size, in a newspaper of general circulation in the geographic area served by the facility on two separate occasions. The

first ~~[such]~~ publication must occur within 7 days after the facility receives notice of the ban, and the second ~~[such]~~ publication must occur within 14 days after that date. At least one ~~[such]~~ publication must be in a Sunday edition of the publication. *Each publication must include the information required by subsection 1.*

3. Any person contacting the facility in writing or by telephone or any other means of telecommunication ~~[with respect]~~ *relating* to a recipient seeking admission must be ~~[notified]~~ :

(a) *Notified* of the ban ~~[]~~ ; and

(b) *Provided with the information required by subsection 1.*

4. The failure to post or publish notice of a ban on admissions as required by this section, or the removal of such a notice, is a deficiency of severity level three and a scope of level ~~[four.~~ ~~Failure]~~ *three. A failure* to inform an inquirer as to the existence of the ban is a deficiency of severity level two and a scope of level ~~[four.~~

~~—5.—The]~~ *three.*

5. *In addition to the information required by subsection 1, the* content of any notice required to be posted or published pursuant to this section must conform to the requirements set forth by the bureau in the notice of sanction.

Sec. 23. NAC 449.99885 is hereby amended to read as follows:

449.99885 1. The bureau may ~~[appoint a monitor to oversee]~~ *monitor* the implementation of the plan of correction of the facility ~~[if the combined severity and scope score is six or more or if the facility has failed to carry]~~ *to determine whether the facility carries* out the plan of correction . ~~[within the time specified.]~~

2. The bureau may also ~~[appoint a]~~ *monitor* *the facility* if the scope of the deficiencies identified is difficult to evaluate on a single visit. Such deficiencies include, without limitation,

violations of recipients' rights, inappropriate use of restraints and cases in which the bureau has reason to question the ongoing compliance of the facility with the requirements of federal or state law.

Sec. 24. NAC 449.99899 is hereby amended to read as follows:

449.99899 1. In determining the amount of an initial monetary penalty, the bureau shall consider the severity alone if the severity level is four. In determining the amount of the monetary penalty where the severity level is less than four, both severity and scope must be considered. In determining whether to impose a daily monetary penalty, the bureau 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, an initial monetary penalty of ~~[\$500]~~ **\$1,000** per deficiency must be imposed. ~~[In addition, a monetary penalty of \$10 per recipient per day may be imposed for each day the deficiency continues.]~~

3. For initial deficiencies rated with a severity level of three and a scope level of three, ~~for more,~~ a monetary penalty of ~~[\$400]~~ **\$800** per deficiency must be imposed. ~~[In addition, a monetary penalty of \$8 per recipient per day may be imposed for each day the deficiency continues.]~~

4. For initial deficiencies with a severity level of three and a scope level of two ~~[,] or less,~~ an initial monetary penalty of ~~[\$200]~~ **\$400** per deficiency must be imposed. ~~[In addition, a monetary penalty of \$4 per recipient per day may be imposed for each day the deficiency continues.]~~

5. For initial deficiencies with a severity level of two and a scope level of three, an initial monetary penalty of ~~[\$100]~~ **\$200** per deficiency may be imposed. 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. In addition ~~[]~~ *to any monetary penalty imposed pursuant to this section, the bureau may impose* a monetary penalty of ~~[\$2]~~ *not more than \$10* per recipient per day ~~[may be imposed]~~ for each day the deficiency continues.

Sec. 25. NAC 449.99902 is hereby amended to read as follows:

449.99902 1. Penalties must be increased if deficiencies are ~~[uncorrected or]~~ repeated or compliance is falsely alleged.

2. For each ~~[uncorrected deficiency present after the time specified by the bureau for correction of the 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.—~~ ~~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.

~~[4.]~~ 3. The bureau may double the daily monetary penalty that was or could have been assessed if the facility alleges compliance and the bureau finds on a survey that at the time compliance was alleged the deficiencies continued to exist.

Sec. 26. NAC 449.99903 is hereby amended to read as follows:

449.99903 There is a rebuttable presumption that deficiencies identified on a ~~[subsequent survey]~~ *resurvey* were present on each day between the date of the initial deficiency and the date of the ~~[subsequent]~~ *resurveyed* deficiency.

Sec. 27. NAC 449.99907 is hereby amended to read as follows:

449.99907 1. The daily accrual of a monetary penalty must end if the facility demonstrates that substantial improvements have been made to correct the deficiencies and that the health, safety and well-being of recipients are adequately protected and safeguarded.

2. A monetary penalty may be imposed on a daily basis for ~~no~~ *not* longer than 6 months, after which the bureau shall deny, suspend or revoke the license of the facility and, if the facility is a Medicaid facility and major deficiencies remain, request the ~~welfare~~ division *of health care financing and policy* to terminate the Medicaid provider agreement of the facility.

3. If a deficiency in a Medicaid facility presents an immediate and serious threat and continues to exist on the 23rd day ~~following~~ *after* the appointment of temporary management, the bureau shall request the ~~welfare~~ division *of health care financing and policy* to terminate the Medicaid provider agreement of the facility.

4. If the provider can supply credible evidence that substantial compliance with participation requirements was attained on a date preceding that of the survey, monetary penalties accrue only until that date of correction for which there is credible evidence. As used in this subsection, “credible evidence” means actual documentation that compliance has been achieved.

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 NAC 439.345 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 *of health care financing and policy* 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~~ *If* applicable, recommend to the ~~welfare~~ division *of health care financing and policy* 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 *of health care financing and policy* that the Medicaid provider agreement be terminated.

Sec. 29. NAC 449.99919 is hereby amended to read as follows:

449.99919 If a facility fails to agree to the appointment of a temporary manager or fails to relinquish authority to the temporary manager, the health division shall:

1. Request the attorney general to bring an action pursuant to NRS 439.565;
2. Deny, suspend or revoke the license of the facility; and
3. If applicable, request the ~~welfare~~ division *of health care financing and policy* to terminate the provider agreement of the facility in accordance with the requirements of the Medicaid program.

Sec. 30. NAC 449.99928 is hereby amended to read as follows:

449.99928 If a residential facility is to be closed, the bureau shall ~~appoint a monitor or~~ *supervise, or appoint* a temporary manager to ~~oversee~~ *supervise*, the orderly transfer of

residents. The bureau may also impose other appropriate sanctions as authorized by the regulations of the health division.

Sec. 31. NAC 449.99929 is hereby amended to read as follows:

449.99929 If the residents of a residential facility are to be transferred, the following criteria must be applied by the ~~monitor or~~ *bureau or* temporary manager responsible for ~~overseeing~~ *supervising* the orderly transfer of residents in the following order to determine the most appropriate placement of each resident:

1. The medical and psychological health of the resident and the suitability of the proposed facility to meet the resident's medical and psychosocial needs;
2. The facility, if any, where the spouse or immediate family member of the resident is a resident; and
3. The geographical proximity of the proposed facility to the immediate family or regular visitors of the resident.

Sec. 32. NAC 449.99935 is hereby amended to read as follows:

449.99935 For a facility that participates in Medicaid, in addition to imposing any sanction authorized by NAC 449.99863, the bureau may recommend to the ~~welfare division:~~ *division of health care financing and policy:*

1. That the provider agreement of the facility be terminated.
2. That Medicaid payment for new admissions be denied.
3. That Medicaid payment for certain diagnostic categories or certain types of specialized care be denied.
4. That all or part of the Medicaid payments to the facility be suspended.

5. That the facility be allowed to continue to participate as a Medicaid facility for 6 months after the date of the survey if:

- (a) The bureau finds that it is more appropriate to impose alternative sanctions than to recommend termination of the facility from the Medicaid program;
- (b) The facility has submitted an acceptable plan of correction;
- (c) The bureau approves the plan of correction; and
- (d) The facility agrees to repay the Federal Government for any payments received under the Medicare or Medicaid program if timely corrective action is not taken in accordance with the approved plan of correction.

FLUSH If the facility does not substantially correct the cited deficiencies within 6 months after the last day of the survey, the bureau shall recommend that the ~~[welfare]~~ division of *health care financing and policy* terminate the Medicaid agreement of any facility whose participation was continued under these conditions.

Sec. 33. NAC 449.99936 is hereby amended to read as follows:

449.99936 1. The amount of any monetary penalty owed by a Medicaid facility, if it has been determined, may be deducted from any money otherwise owed to the facility by the ~~[welfare division.]~~ *division of health care financing and policy*.

2. If the facility does not pay a monetary penalty by the date it is due and no extension of time to pay is granted, the administrator of the health division shall notify the administrator of the ~~[welfare]~~ division of *health care financing and policy* of the amount of the penalty due and owing and shall request withholding of the amount owed.

3. The administrator of the ~~[welfare division will]~~ *division of health care financing and policy shall* take the appropriate steps to withhold the amount of the monetary penalty owed,

including any interest and costs of collection, from the Medicaid payment otherwise due the facility. Money so withheld must be remitted to the health division for deposit in the special fund established pursuant to NAC 449.99912. Money withheld for costs of collection must be applied by the administrator of the health division to the account incurring the costs.

Sec. 34. NAC 449.99937 is hereby amended to read as follows:

449.99937 1. The bureau may request the ~~[welfare]~~ division *of health care financing and policy* to deny Medicaid payment to a facility for new admissions if:

(a) The facility does not substantially correct the deficiencies within 90 days or within the time required by federal Medicaid law after the facility is notified by the bureau of the deficiencies; or

(b) The bureau has cited a facility with substandard quality of care (severity score of level three or more and scope of level three) ~~[or more]~~ on two of the last three consecutive standard surveys.

2. If the facility achieves and maintains compliance with the requirements, the bureau shall request the ~~[welfare]~~ division *of health care financing and policy* to resume payments to the facility prospectively, effective on the date compliance was achieved.

Sec. 35. NAC 449.99938 is hereby amended to read as follows:

449.99938 1. The bureau may request the ~~[welfare]~~ division *of health care financing and policy* to deny payment to a facility for new admissions who have certain specified diagnoses or special care needs if:

(a) The facility is not currently able to provide appropriate care, services or treatment for ~~[these]~~ *those* persons; or

(b) Caring for ~~[these]~~ *those* persons will adversely affect care provided to other recipients.

2. If the facility achieves and maintains compliance with the requirements, the bureau must request the ~~[welfare]~~ division *of health care financing and policy* to resume payment to the facility prospectively, effective on the date compliance was achieved.

Sec. 36. NAC 449.99939 is hereby amended to read as follows:

449.99939 1. The bureau may request the ~~[welfare]~~ division *of health care financing and policy* to suspend all or part of the Medicaid payments to a facility for services furnished to a Medicaid recipient on or after the date of the deficiency, regardless of whether the recipient was admitted before, on or after the date of the deficiency.

2. If the facility achieves compliance with the requirements, the bureau shall request the ~~[welfare]~~ division *of health care financing and policy* to resume payments retroactively.

Sec. 37. NAC 449.0036, 449.99831, 449.99842, 449.99886, 449.99887, 449.99888, 449.99889 and 449.9989 are hereby repealed.

TEXT OF REPEALED SECTIONS

449.0036 “Health Care Financing Administration” defined. “Health Care Financing Administration” means the Health Care Financing Administration of the Department of Health and Human Services.

449.99831 “Monitor” defined. “Monitor” means a person appointed by the bureau to oversee compliance by a facility with a plan of correction or to identify deficiencies which are difficult to evaluate on a single visit.

449.99842 “Uncorrected deficiencies” defined. “Uncorrected deficiencies” means a deficiency identified in an initial survey and again identified on the resurvey.

449.99886 Appointment of monitors regarding multiple deficiencies. If deficiencies are cited in more than one area, the bureau may:

1. Appoint as monitor a person qualified in all deficient areas; or
2. Appoint a qualified monitor for each such area.

449.99887 Monitors: List of interested and qualified persons; experience; selection.

1. The health division may solicit applications from persons interested in serving as monitors.
2. The health division shall develop and maintain a list of persons who are interested and qualified to act as monitors.
3. The person or persons selected as monitors must have experience in the delivery of health care services and, if feasible, in the delivery of the type of care, treatment and services provided by the facility being monitored. If the primary deficiencies leading to the request for appointment of a monitor are related to the financial stability of the facility, the person or persons selected should have experience in financial management and, if feasible, in the financial management of health care facilities.
4. If the bureau appoints a monitor, the decision as to who serves as monitor must be made by the chief of the bureau. The bureau may appoint a monitor from a list maintained by the health division. A monitor may also be an employee or an independent contractor of the health division and may be an attorney, auditor or health professional. The selection of the monitor is in the sole discretion of the bureau.

449.99888 Monitors: Duties; qualifications.

1. The bureau's monitor must be present at the facility being monitored to oversee the correction of deficiencies within the time specified in the plan of correction.
2. The monitor must be professionally qualified to address the deficiency involved in the matter.
3. The monitor must not be:
 - (a) An employee of the facility or an affiliated facility; or
 - (b) A person or agency that has functioned as a consultant to the facility or an affiliated facility within 2 years preceding the appointment of the monitor.

449.99889 Monitors: Authority. A monitor may direct the facility to take such actions as are necessary to assure that the health, safety and well-being of recipients are protected. If the facility fails to comply with the directives of the monitor, the monitor shall notify the chief of the bureau, who shall evaluate whether other sanctions should be imposed or judicial proceedings should be brought as authorized by NRS 439.565.

449.9989 Compensation of monitors; bonding requirements; payment by facility; appeals. (NRS 233B.050, 449.037)

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 as provided in NAC 439.300 to 439.395, inclusive.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R051-02**

The Bureau of Licensure and Certification of the Health Division of the Department of Human Resources adopted regulations assigned LCB File No. R051-02 which pertain to administrative sanctions (chapter 449 of the Nevada Administrative Code) on June 14, 2002.

Notice date: May 14, 2002
Hearing date: June 14, 2002

Date of adoption by agency: June 14, 2002
Filing date: July 24, 2002

INFORMATIONAL STATEMENT

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

A Small Business Impact Questionnaire was mailed to Facilities for Alcohol and Drug Abuse, Facilities for Adult Day Care, Residential Facilities for Groups, Residential Facilities for Groups/Alzheimer's, Business that Provides Referrals, Homes for Individual Residential Care, Facilities for Treatment with Narcotics, Facilities for Modified Medical Detoxification, Surgical Centers for Ambulatory Patients, Facilities for the Treatment of Irreversible Renal Disease, Agencies to Provide Nursing in the Home, Agencies to Provide Nursing in the Home-Branch Office, Hospitals, Hospice Care-Program of Care, Independent Centers for Emergency Medical Care, Facilities for Intermediate Care for the Mentally Retarded, Nursing Pools, Rural Clinics, and Facilities for Skilled Nursing on April 1, 2002. Attached is a copy of the Small Business Impact Summary.

Notice of public workshops held on April 24, 2002, in Las Vegas and April 25, 2002, in Reno was published in the Las Vegas Review Journal and Reno Gazette Journal on or before April 8, 2002. Notices of public workshops, and proposed regulations were mailed to all county libraries in Nevada, Facilities for Alcohol and Drug Abuse, Facilities for Adult Day Care, Residential Facilities for Groups, Residential Facilities for Groups/Alzheimer's, Business that Provides Referrals, Homes for Individual Residential Care, Facilities for Treatment with Narcotics, Facilities for Modified Medical Detoxification, Surgical Centers for Ambulatory Patients, Facilities for the Treatment of Irreversible Renal Disease, Agencies to Provide Nursing in the Home, Agencies to Provide Nursing in the Home-Branch Office, Hospitals, Hospice Care-Program of Care, Independent Centers for Emergency Medical Care, Facilities for Intermediate Care for the Mentally Retarded, Nursing Pools, Rural Clinics, and Facilities for Skilled Nursing, and interested parties on April 1, 2002. The small business impact summary was available at both workshops.

Three individuals provided comments during the workshops. One person spoke on behalf of the Nevada Hospital Association and stated more input was needed. Subsequently information was provided and the Nevada Hospital Association has concurred with these proposed changes to the

administrative sanction regulations. Another person stated that she felt the administrative sanction regulations created an increased burden on the survey process. The third person stated that he was opposed to the sanction regulations.

Notice of public hearing regarding the Board's intent to adopt amendments was published in the Las Vegas Review Journal, Reno Gazette Journal on or before May 15, 2002. Notices of public hearing, proposed regulations and the small business impact summary were mailed to all county libraries in Nevada, Clark County Health District, Washoe County Health District, Facilities for Alcohol and Drug Abuse, Facilities for Adult Day Care, Residential Facilities for Groups, Residential Facilities for Groups/Alzheimer's, Business that Provides Referrals, Homes for Individual Residential Care, Facilities for Treatment with Narcotics, Facilities for Modified Medical Detoxification, Surgical Centers for Ambulatory Patients, Facilities for the Treatment of Irreversible Renal Disease, Agencies to Provide Nursing in the Home, Agencies to Provide Nursing in the Home-Branch Office, Hospitals, Hospice Care-Program of Care, Independent Centers for Emergency Medical Care, Facilities for Intermediate Care for the Mentally Retarded, Nursing Pools, Rural Clinics, and Facilities for Skilled Nursing, and interested parties on May 9, 2002.

2. THE NUMBER OF PERSONS WHO:

(A) ATTENDED THE HEARING;

Approximately 32 people attended the June 14, 2002, Board of Health hearing.

(B) TESTIFIED AT EACH HEARING; AND

No one in attendance testified on the Administrative Sanctions regulations.

(C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

No written statements were provided at the hearing.

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

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

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

None.

5. THE ESTIMATED ECONOMIC EFFECT OF THE REGULATION ON THE BUSINESS WHICH IT IS TO REGULATE AND ON THE PUBLIC. THESE MUST BE STATED SEPARATELY, AND IN EACH CASE MUST INCLUDE:

- (A) BOTH ADVERSE AND BENEFICIAL EFFECTS; AND**
- (B) BOTH IMMEDIATE AND LONG TERM EFFECTS.**

It is anticipated that affected businesses will see a long-term impact from this modification. Beneficial effects will include a reduction in the numbers of sanctions issued for deficient practices that are widespread potential for harm. Adverse effects would be experienced by facilities that do not comply with regulations, particularly causing actual harm to recipients, who could be subject to higher monetary sanction penalties. Long-term effects are anticipated for the public through streamlining of agency resources allowing better implementation of administrative sanctions that will impact on quality of care provided by licensed providers. The Bureau of Licensure and Certification has been implementing these regulations for the past nine years. Adoption of the proposed modifications will improve the agency's ability to streamline the imposition of sanctions.

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

There will be an economic impact to BLC based on the need for additional surveyor time and provider education.

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

These regulations do not overlap other state or local regulations. These regulations overlap the regulations of the Centers for Medicare and Medicaid Services that govern enforcement remedies in nursing homes. The existing regulations contain provisions to impose sanctions that limit occupancy or ban admissions of any recipient. This regulation is more stringent than the corresponding regulations found in the Centers for Medicare and Medicaid Services federal enforcement regulations for nursing homes. The federal regulations provide for the imposition of a ban on payment for new admissions or all admissions for Medicare or Medicaid recipients.

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

None.

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

The regulations will increase the amount of money collected as administrative penalties, and pursuant to NRS 449.163(4) must be accounted for separately and used to protect the health or property of the residents of the facility in accordance with applicable federal standards.

SMALL BUSINESS IMPACT STATEMENT
(Nevada Revised Statutes 233B.0608)

Proposed Amendment of Nevada Administrative Code (NAC) 449.9982 to 449.99939
Administrative Sanctions

Background

Administrative sanction regulations were added to NAC upon adoption by the state Board of Health in 1991. These regulations have not been amended since adoption in 1991. As defined in NAC 449.99843, the purpose of administrative sanctions is to 1) safeguard the rights, interest and well-being of recipients, including the protection of recipients from actual or potential harm resulting from deficiencies; 2) encourage and assist facilities to comply with the requirements of the health division, including those imposed by federal law; 3) promote the efficient use of resources to ensure appropriate care, treatment and services for recipients; and 4) protect Medicare beneficiaries and Medicaid recipients against health care of substandard quality. The proposed changes to administrative sanction regulations are designed to improve utilization of resources while continuing to protect healthcare recipients.

The Bureau of Licensure and Certification (BLC) has determined that revision of the regulations for NAC 449 Administrative Sanctions will not impose a direct and significant burden upon small businesses or directly restrict the formation, operation or expansion of a small business in Nevada. A small business is defined in Nevada Revised Statutes (NRS) 233B as a “business conducted for profit which employs fewer than 150 full-time or part-time employees.” This small business impact statement complies with the requirements of NRS 233B.0609.

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

Pursuant to NRS 233B.0608(2)(a), the Bureau of Licensure and Certification has requested comments from all licensed providers likely to be affected by the proposed regulation. On April 5, 2002 a small business impact questionnaire was mailed to all licensed providers (approximately 750 providers), with a copy of the proposed changes to administrative sanction regulations.

Fourteen responses were received from licensed facilities that met the definition of a small business. The following is a summary of their responses.

1. The Manor
2. Gaye Haven Intermediate Care Facility
3. New Life Medical Center
4. Emy’s Medical Staffing, Inc.
5. The Shepard Eye Center
6. Circle of Life Hospice
7. O&R Group Care Home

8. Surgical Arts Center

These eight facilities indicated their business would not experience adverse economic impact or beneficial impact, either directly or indirectly. Two additional respondents provided this same response though they did not meet the definition of a small business.

9. Eagle Valley Care Center stated that increases in monetary penalties would be passed on to elderly clients, drain their resources faster and cause them to become wards of the state. They also stated that monetary penalties do not ensure compliance with regulations, regulations should be reviewed and revised to be realistic and achievable.
10. Community Counseling Center stated monetary penalties are appropriate and did not identify an adverse economic impact. Beneficial impact results from deficiencies being objectified.
11. Interim Healthcare of Las Vegas, Inc. stated there is an adverse economic impact as a result of there being no means to recoup monetary penalties, and excessive bureaucratic paperwork is required to ensure quality of care, making it difficult to start a business with all the additional costs imposed.
12. American Therapeutic Association stated that the imposition of monetary penalties for identified deficiencies has an adverse effect on operating costs and impacts patient care. The monetary penalties provide incentive to correct those deficiencies quickly and avoid additional costs.
13. Billman House stated that increases in monetary penalties will require the facility to set aside operating funds in the event they incur a monetary sanction. They believe the industry is over-regulated and concern about sanctions does not provide any benefit. Increased cost of operations is generally passed on to residents, reducing the number of possible clients.
14. Just Like Home provided a letter with concerns and suggestions. This facility is concerned the BLC may not be pursuing collection of monetary sanctions and feels that this is important and should be done uniformly. Just Like Home states that failure to collect monetary penalties places an undue burden on well-operated homes that are then forced to carry the economic burden of regulating poor operators.

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

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

The proposed changes to NAC administrative sanction regulations are estimated to have an adverse economic effect for only those facilities that fail to comply with regulations and whose deficient practice causes harm to a recipient or continues uncorrected over time. The beneficial effects include a reduction in the number of required sanctions and streamlining of administrative processes, thereby reducing BLC staff resources required to comply with NAC.

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

When developing proposed revisions to the administrative sanction regulations BLC considered several elements that could impact small facilities.

- a) The impact of changes to sample sizes.
- b) The impact of various increases in monetary penalties for differing size facilities.

BLC reviewed the existing sampling regulation and determined not to make changes to the number of recipients to be selected in a given size facility. BLC evaluated the effect and intent of monetary penalties and determined to increase the per instance penalties but alter the regulations to provide for a range, up to \$10 per day per recipient, for daily penalties. This method recognizes the deterrent intent of monetary penalties but allows for discretion based on economic resources of smaller facilities when imposing daily penalties for repeat, uncorrected deficiencies.

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

The proposed changes to administrative sanction regulations will result in a large reduction to the number of required sanctions. As a result, BLC anticipates a reduction in program time. The proposed regulations eliminate the mandatory imposition of a sanction for widespread deficiencies that have a potential for harm. By allowing a sanction to be discretionary for this level of deficiency BLC will experience a reduction in time required to comply with NAC.

5. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

The changes to the administrative sanction regulations propose to increase only the amount of per instance monetary penalties. This will impact only those facilities that fail to comply with regulations and whose deficient practice causes harm to a recipient or continues uncorrected over time. Facilities that maintain compliance with regulations will be unaffected by this increase. The BLC does not have an estimate of the amount of monies to be collected as a result of penalties. The amount is directly dependent on the facilities' compliance with regulations. However, per NRS 449.163(4), any money collected as administrative penalties pursuant to this section must be accounted for separately and used to protect the health or property of the residents of the facility in accordance with applicable federal standards.

6. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

The federal regulations of the Centers for Medicare and Medicaid Services, found at 42 Code of Federal Regulations 488.400, impose enforcement remedies for skilled nursing facilities (SNF) and nursing facilities (NF). These federal regulations are applicable only to Medicare certified

facilities and federal regulations. NAC administrative sanction regulations are necessary to provide a range of enforcement capabilities for compliance with state regulations to assure patient health and safety.