

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

LCB File No. R071-04

Effective August 4, 2004

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

AUTHORITY: §§1-4 and 6-9, NRS 449.037; §5, NRS 449.0357 and 449.037.

A REGULATION relating to residential facilities for groups; defining certain terms relating to residential facilities for groups; requiring training of certain employees in providing care to residents of such facilities who suffer from dementia; requiring residential facilities for groups to obtain approval of building plans for new construction or remodeling from the Health Division; and providing other matters properly relating thereto.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. *“Discharge” means the release of a resident from a residential facility which does not involve a transfer.*

Sec. 3. *“Transfer” means the movement of a resident from a residential facility to another facility for inpatient or residential care.*

Sec. 4. *The transfer of a resident from a residential facility occurs:*

1. Except as otherwise provided in subsection 2, on the date that the resident is admitted to the facility to which he is moved; or

2. If the resident is moved to a unit or department of a hospital, other than the emergency department of the hospital, on the date that the resident is accepted at the hospital for care or observation.

Sec. 5. 1. *Except as otherwise provided in subsection 2, the administrator of a residential facility which provides care to persons with any form of dementia shall ensure that:*

(a) Each employee of the facility who has direct contact with and provides care to residents with any form of dementia, including, without limitation, dementia caused by Alzheimer's disease, successfully completes:

(1) Within the first 40 hours that such an employee works at the facility after he is initially employed at the facility, at least 2 hours of training in providing care, including emergency care, to a resident with any form of dementia, including, without limitation, Alzheimer's disease, and providing support for the members of the resident's family.

(2) In addition to the training requirements set forth in subparagraph (1), within 3 months after such an employee is initially employed at the facility, at least 8 hours of training in providing care to a resident with any form of dementia, including, without limitation, Alzheimer's disease.

(3) If such an employee is licensed or certified by an occupational licensing board, at least 3 hours of continuing education in providing care to a resident with dementia, which must be completed on or before the anniversary date of the first date the employee was initially employed at the facility. The requirements set forth in this subparagraph are in addition to those set forth in subparagraphs (1) and (2), may be used to satisfy any continuing education requirements of an occupational licensing board, and do not constitute additional hours or units of continuing education required by the occupational licensing board.

(4) If such an employee is a caregiver, other than a caregiver described in subparagraph (3), at least 3 hours of training in providing care to a resident with dementia, which must be completed on or before the anniversary date of the first date the employee was

initially employed at the facility. The requirements set forth in this subparagraph are in addition to those set forth in subparagraphs (1) and (2).

(b) The facility maintains proof of completion of the hours of training and continuing education required pursuant to this section in the personnel file of each employee of the facility who is required to complete the training or continuing education.

2. A person employed by a facility which provides care to persons with any form of dementia, including, without limitation, dementia caused by Alzheimer's disease, is not required to complete the hours of training or continuing education required pursuant to this section if he has completed that training within the previous 12 months.

Sec. 6. NAC 449.156 is hereby amended to read as follows:

449.156 As used in NAC 449.156 to 449.2766, inclusive, *and sections 2 to 5, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 449.1565 to 449.176, inclusive, *and sections 2 and 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 7. NAC 449.179 is hereby amended to read as follows:

449.179 1. Before an applicant for a license to operate a new residential facility begins construction of the facility or before an applicant for a license to operate an existing residential facility or a licensee begins a project to remodel an existing residential facility, the applicant or licensee must:

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

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

~~{};~~ *and*

(c) Obtain approval of the plan from the Health Division.

2. The plan for construction or remodeling must include a description of the materials that will be used to complete the project.

3. Before issuing a license to operate a residential facility, the Bureau shall inspect the facility to ensure that it complies with:

(a) The provisions of NAC 449.156 to 449.2766, inclusive; and

(b) The applicable zoning ordinances and regulations.

4. An applicant for a license to operate a residential facility must submit to the Bureau with his application evidence that the applicant and the facility are in compliance with the provisions of NRS 449.001 to 449.240, inclusive, and NAC 449.156 to 449.2766, inclusive.

5. The Bureau shall not perform the inspection required pursuant to subsection 3 until the applicant has submitted to the Bureau the application required pursuant to NRS 449.040, the fee required pursuant to NAC 449.016 and the evidence required pursuant to subsection 4.

Sec. 8. NAC 449.2756 is hereby amended to read as follows:

449.2756 1. The administrator of a residential facility which provides care to persons with Alzheimer's disease shall ensure that:

(a) Swimming pools and other bodies of water are fenced or protected by other acceptable means.

(b) Operational alarms, buzzers, horns or other audible devices which are activated when a door is opened are installed on all doors that may be used to exit the facility.

(c) At least one member of the staff is awake and on duty at the facility at all times.

(d) ~~[Within 3 months after an employee is first employed at the facility, the employee successfully completes at least 8 hours of training in providing care, including emergency care, to a resident who suffers from Alzheimer's disease or related dementia and providing support for the members of the resident's family.]~~ *Each employee of the facility who has direct contact with and provides care to residents with any form of dementia, including, without limitation, dementia caused by Alzheimer's disease, successfully completes the training and continuing education required pursuant to section 5 of this regulation.*

(e) Knives, matches, firearms, tools and other items that could constitute a danger to the residents of the facility are inaccessible to the residents.

(f) The facility has an area outside the facility or a yard adjacent to the facility that:

- (1) May be used by the residents for outdoor activities;
- (2) Has at least 40 square feet of space for each resident in the facility;
- (3) Is fenced; and
- (4) Is maintained in a manner that does not jeopardize the safety of the residents.

↪ All gates leading from the secured, fenced area or yard to an unsecured open area or yard must be locked and keys for gates must be readily available to the members of the staff of the facility at all times.

(g) All toxic substances are not accessible to the residents of the facility.

2. The training required pursuant to ~~[paragraph (d) of subsection 1 must be provided pursuant to a curriculum approved by the Bureau, the Board or the Nevada State Board of Examiners for Administrators of Facilities for Long Term Care. Such training]~~ *section 5 of this regulation* may be used to satisfy the requirement of paragraph (f) of subsection 1 of NAC 449.196 for the year in which the training is received.

Sec. 9. 1. Each person who on August 4, 2004, is employed by a residential facility for groups which provides care to persons with any form of dementia, including, without limitation, dementia caused by Alzheimer's disease, and who is required to complete the hours of training and continuing education related to dementia required pursuant to section 5 of this regulation shall complete at least 8 hours of training and continuing education related to dementia within 12 months after August 4, 2004, unless the person has completed the training or continuing education within the 12 months before August 4, 2004.

2. Evidence that such a person has completed the training or continuing education required pursuant to subsection 1 must be included in his personnel file and must be kept at the facility.

NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R071-04

The Health Division of the Department of Human Resources adopted regulations assigned LCB File No. R071-04 which pertain to chapter 449 of the Nevada Administrative Code on June 25, 2004.

Notice date: 5/25/2004
Hearing date: 6/25/2004

Date of adoption by agency: 6/25/2004
Filing date: 8/4/2004

INFORMATIONAL STATEMENT

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

A Small Business Impact Questionnaire was mailed to the Residential Facilities for Groups on February 27, 2004. Attachment A is the Small Business Impact Statement Questionnaire. Attachment B is a copy of the small business impact summary.

Notice of public workshops held on March 29, 2004, in Las Vegas and on April 1, 2004, in Reno was published in the Las Vegas Review Journal and Reno Gazette Journal on March 10, 2004. Notices of public workshops, and proposed regulations were mailed to all county libraries in Nevada, Residential Facilities for Groups, Residential Facilities for Groups/Alzheimer's, and interested parties on February 27, 2004. The small business impact summary was available at both workshops.

Lynn Homnick, CARE, stated that the regulations for residential facilities for groups are very well worded and they strongly recommend they be adopted as written.

Notice of public hearing regarding the Board's intent to adopt amendments was published in the Las Vegas Review Journal and Reno Gazette Journal on May 25, 2004. Notices of public hearing, and proposed regulations were mailed to all county libraries in Nevada, Residential Facilities for Groups, Residential Facilities for Groups/Alzheimer's, and interested parties on May 25, 2004. The notice of public hearing was mailed to the Clark County Health District and Washoe County District Health Department on May 25, 2004.

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

2. THE NUMBER OF PERSONS WHO:

(A) ATTENDED THE HEARING;

Approximately 69 people attended the June 25, 2004, Board of Health hearing.

(B) TESTIFIED AT EACH HEARING; AND

Larry Fry, Northern Region President, Coalition of Assisted Residential Environments- testified in support of the proposed regulation amendments to LCB File #R071-04.

Margaret McConnell, Administrator/Owner of Residential Facilities for Groups and Chairperson for the Assisted Living Advisory Council, testified in support of the proposed regulation amendments to LCB File #R071-04.

(C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

Larry Fry, Northern Region President, Coalition of Assisted Residential Environments, provided written testimony at the April 1, 2004, workshop in support of the proposed regulations for Residential Facilities for Groups.

Wendy Simons, Administrator/Owner of Park Place Assisted Living, provided written testimony at the April 1, 2004, workshop in support of the proposed regulations for Residential Facilities for groups.

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

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

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

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

The State Board of Health adopted the amendments to NAC 449, "Residential Facilities for Groups," LCB File No. R071-04, with errata, as presented.

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

The changes have an anticipated beneficial effect on the businesses, which NAC 449 regulates.

Adverse: None

Beneficial: The changes are not substantial and are designed to clarify issues and comply with new laws.

Anticipated effects on the public:

Adverse: The changes present no anticipated effect to the public.

Beneficial: The changes present no anticipated effect to the public.

(B) BOTH IMMEDIATE AND LONG TERM EFFECTS.

The changes have an anticipated beneficial effect on the businesses, which NAC 449 regulates.

Immediate: None

Long-term: None

Anticipated effects on the public:

Immediate: None

Long-term: None

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

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

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

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

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

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

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

None.

SMALL BUSINESS IMPACT STATEMENT

Residential Facilities for Groups

PROPOSED REVISIONS TO REGULATIONS for Residential Facilities for Groups have been generated by the Bureau of Licensure and Certification (BLC).

Background:

BLC licenses Residential Facilities for Groups as mandated by statutes (NRS 449.080). The regulations for residential facilities for groups were last revised 1/22/04. The 1/22/04 revisions were too far along in the process to make changes in accordance with new statutory requirements imposed during the 2003 legislative session. These latest proposed revisions accommodate certain statutory changes imposed by the 2003 legislature. The specific statutory changes can be traced back to Assembly Bill 326 (NRS 449.037(7)), requiring changes in regulations to add sections for an endorsement on a license to provide assisted living services and Assembly Bill 323 (NRS 449.0357), requiring continuing education for facility employees that are licensed or certified by an occupational licensing board and that provide care to persons with Alzheimer's disease. In addition, throughout the implementation of the regulations, certain requirements have been identified as requiring changes. The BLC has worked with representatives from the Assisted Living Advisory Council (ALAC), the American Association of Retired Persons (AARP), the Coalition of Assisted Residential Environments (CARE) and Medicaid to fashion language that will address the items in the statutes.

The proposed revisions will have a beneficial effect on the public. They clarify requirements and establish the regulatory framework to ensure that facilities meet minimum provisions to ensure the safety of Nevada's residents.

BLC has determined that the adoption of these regulations should not create an economic impact on licensed facilities because they do not establish any new fees and they do not require any significant operational changes. The regulations will not impose a burden upon small businesses and will not 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.

Provider comments have been solicited through ALAC from the beginning of the process to revise these regulations and workshops will be held. The 1999 legislature amended Nevada Revised Statutes (NRS) Chapter 233B to require that state agencies assess the impact of regulation changes or development on small businesses. In keeping with this requirement, all currently active and pending Residential Facilities for Groups were provided a questionnaire (See attachment #A) to allow them to express their concerns over the economic impact of these

proposed regulations on their businesses. Nevada currently has approximately 350 licensed residential facilities for groups. Almost all of these facilities meet the statutory definition of a small business, because the individual facilities employ less than 150 employees. All facilities were included and given the opportunity to express their concerns. 15 facilities responded to the questionnaire. All of the comments received were favorable.

Copies of the summaries of these questionnaires are available from the office of the Bureau of Licensure and Certification 4220 South Maryland Parkway, Building D, Suite 810, Las Vegas, Nevada 89119. (702) 486-6515.

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 revisions should not have an economic effect on facilities.

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.

The BLC provided questionnaires as well as forums for providers to comment and reviewed the suggestions for changes that would lessen the economic impact. Wherever possible, in keeping with existing state laws, these changes have been made.

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

There will be no increased cost to BLC because regulations for residential facilities for groups are currently enforced by BLC and surveys are scheduled according to statutory mandates (NRS 449.230(3)).

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.

There is no associated fee increase required by the adoption of the revisions.

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.

These regulations do not represent duplication on local or federal levels. The Nevada State BOH is responsible for generating regulations for this facility type pursuant to NRS 449.037(1) and there is no equivalent responsibility on the local or federal level.

Summary of Responses:

Question 1: Will a specific regulation have an adverse economic effect upon your business?

Answers: 15 of 15 “NO”

Question 2: Will the regulation(s) have any beneficial effect upon your business?

Answers: 13 of 15 “YES”

Comments included: With regard to chapter 449 of NAC, we approve of the use of the words “discharge” and “transfer” to specifically denote the difference. The more precise the terminology, the better able we are to keep professional files and trace the history of our residents. We further appreciate the definition of “living units” in a fewer than 11 residential group home and “living units” in a larger accommodation. This also allows us to define our special group niche. With regard to NAC 449.2756, we agree that caregivers need to be trained as early as possible so they can provide proper care to our residents. We agree that emergency care 2 hour training within 40 hours of hire is appropriate. We agree that caregivers need the 8 hour training module soon after employment and the three month window allows us to give a probationary time to assess the qualities of the employee before we invest the costly training.

Question 3: Do you anticipate any indirect adverse effects upon your business?

Answers: 15 of 15 “NO”

Question 4: Do you anticipate any indirect beneficial effects upon your business?

Answers: 13 of 15 “YES”

Comments included: The indirect beneficial effect is upon our entire group home industry. The goal of our group home is to provide a safe, skilled and compassionate environment for those entrusted to our care. We feel that the changes and additions the Bureau has set forth serves to professionalize the group homes.