

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

LCB File No. R077-04

Effective August 5, 2004

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

AUTHORITY: §§1-4, NRS 449.037.

A REGULATION relating to surgical centers for ambulatory patients; adopting by reference certain construction and maintenance standards; requiring surgical centers for ambulatory patients to comply with such construction and maintenance standards; requiring surgical centers for ambulatory patients 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 a new section to read as follows:

1. The State Board of Health hereby adopts by reference:

(a) NFPA 101: Life Safety Code, in the form most recently published by the National Fire Protection Association, unless the Board gives notice that the most recent revision is not suitable for this State pursuant to subsection 2. A copy of the code may be obtained from the National Fire Protection Association at 11 Tracy Drive, Avon, Massachusetts 02322, at the Internet address <<http://www.nfpa.org>> or by telephone at 800.344.3555, for the price of \$55.80 for members or \$62 for nonmembers, plus \$7.95 for shipping and handling.

(b) NFPA 99: Standard for Health Care Facilities, in the form most recently published by the National Fire Protection Association, unless the Board gives notice that the most recent revision is not suitable for this State pursuant to subsection 2. A copy of the standard may be

obtained from the National Fire Protection Association at 11 Tracy Drive, Avon, Massachusetts 02322, at the Internet address <<http://www.nfpa.org>> or by telephone at 800.344.3555, for the price of \$41.63 for members or \$46.25 for nonmembers, plus \$7.95 for shipping and handling.

(c) Guidelines for Design and Construction of Hospital and Health Care Facilities, in the form most recently published by the American Institute of Architects, unless the Board gives notice that the most recent revision is not suitable for this State pursuant to subsection 2. A copy of the guidelines may be obtained from the American Institute of Architects at the AIA Store, 1735 New York Avenue, NW, Washington, DC 20006-5292, at the Internet address <<http://www.aia.org>> or by telephone at 800.242.3837, for the price of \$52.50 for members or \$75 for nonmembers, plus \$9 for shipping and handling.

2. The State Board of Health will review each revision of the publications adopted by reference pursuant to subsection 1 to ensure its suitability for this State. If the Board determines that a revision is not suitable for this State, the Board will hold a public hearing to review its determination within 6 months after the date of the publication of the revision and give notice of that hearing. If, after the hearing, the Board does not revise its determination, the Board will give notice within 30 days after the hearing that the revision is not suitable for this State. If the Board does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

Sec. 2. NAC 449.9843 is hereby amended to read as follows:

449.9843 1. ~~Except as otherwise provided in this section:~~

~~—(a)~~ An ambulatory surgical center shall comply with *the provisions of NFPA 99: Standard for Health Care Facilities concerning medical gases, adopted by reference pursuant to section*

1 of this regulation, and the provisions of *NFPA 101: Life Safety Code*, adopted by reference pursuant to ~~[NAC 449.9841]~~.

~~—(b)] section 1 of this regulation.~~

2. Any *new* construction, ~~[or]~~ remodeling *or change in the use* of an ambulatory surgical center must comply with the *Guidelines for Design and Construction of Hospital and* ~~[Healthcare]~~ *Health Care* *Facilities*, adopted by reference pursuant to ~~[NAC 449.9841]~~:

~~—(1) Except for section 1.2 of the introduction to the guidelines governing renovations;~~

~~—(2) Unless]~~ *section 1 of this regulation, unless* the remodeling is limited to refurbishing an area within the center, including, without limitation, painting the area, replacing flooring ~~[]~~ *in the area*, repairing windows ~~[, or]~~ *in the area and* replacing window or wall coverings ~~[; and~~

~~—(3) Except for those provisions of the guidelines related to rooms for the use of lasers.~~

~~—(c) Any construction or remodeling of a room for the use of lasers in an ambulatory surgical center must comply with the provisions of “Standard 9.5F2” of the American Institute of Architects, adopted by reference pursuant to NAC 449.9841.~~

~~—2.] in the area.~~

3. An ambulatory surgical center shall be deemed to be in compliance with the provisions of subsection ~~[H]~~ *2 and subsection 2 of NAC 449.983* if:

(a) The center is licensed on February 1, 1999, the use of the physical space in the center is not changed and there are no deficiencies in the construction of the center that are likely to cause serious injury, harm or impairment to the public health and welfare; or

(b) The center has submitted building plans to the Bureau before February 1, 1999, and:

(1) The Bureau determines that the plans comply with standards for construction in effect before December 11, 1998;

- (2) The center is constructed in accordance with those standards;
- (3) Construction of the center is begun before August 1, 1999; and
- (4) There are no deficiencies in the construction of the center that are likely to cause serious injury, harm or impairment to the public health and welfare.

~~[3.]~~ **4.** An ambulatory surgical center shall comply with all applicable:

- (a) Federal and state laws;
- (b) Local ordinances, including, without limitation, zoning ordinances; and
- (c) Life safety, environmental, health, *fire and local* building ~~[and fire]~~ codes.

↪ If there is a difference between state and local requirements, the more stringent requirements apply.

~~[4.]~~ **5.** An ambulatory surgical center ~~[may]~~ *shall* submit building plans for new construction or remodeling to the entity designated to review such plans by the Health Division pursuant to NAC 449.0115. The entity's review of those plans is advisory only and does not constitute approval for the licensing of the center. *Before the construction or remodeling may begin, the plans for the construction or remodeling must be approved by the Health Division.* The Bureau shall not approve a center for licensure until all construction is completed and a survey is conducted at the site of the center.

Sec. 3. NAC 449.9935 is hereby amended to read as follows:

449.9935 1. The operating and recovery rooms of an ambulatory surgical center must be used exclusively for surgical procedures.

2. *Except as otherwise provided in subsection 3, surgical procedures must be conducted in a class A, B or C operating room in accordance with chapter 9 of the Guidelines for Design*

and Construction of Hospital and Health Care Facilities, adopted by reference pursuant to section 1 of this regulation.

*3. If an ambulatory surgical center is licensed to perform only endoscopic procedures, such procedures may be conducted in an endoscopy suite in accordance with chapter 9 of the *Guidelines for Design and Construction of Hospital and Health Care Facilities, adopted by reference pursuant to section 1 of this regulation.**

4. A registered nurse experienced in surgical procedures shall supervise the operating room.

~~{3.}~~ 5. Only a registered nurse may function as the circulating nurse in the operating room.

~~{4.}~~ 6. The operating room must be equipped with:

(a) A system for making emergency calls;

(b) Oxygen;

(c) Mechanical ventilatory assistance equipment, including, without limitation, a manual breathing bag and a ventilator;

(d) Cardiac monitoring equipment;

(e) Laryngoscopes and endotracheal tubes; and

(f) Suction equipment.

~~{5.}~~ 7. If the operating team consists of persons who are not physicians, such as a dentist, a podiatrist or a nurse, a physician must be on the premises and immediately available in case of an emergency. As used in this subsection, “immediately available” means the physician is sufficiently free from other duties to be able to respond rapidly to the emergency.

Sec. 4. NAC 449.9825 and 449.9841 are hereby repealed.

TEXT OF REPEALED SECTIONS

449.9825 Emergency electrical power. (NRS 449.037) The administrator shall ensure that the center has adequate emergency electrical power in accordance with NFPA 99: Standard for Health Care Facilities, adopted by reference pursuant to NAC 449.9841.

449.9841 Adoption by reference of standards for construction. (NRS 449.037)

1. The State Board of Health hereby adopts by reference:

(a) NFPA 101: Life Safety Code, in the form most recently published by the National Fire Protection Association, unless the Board gives notice that the most recent revision is not suitable for this State pursuant to subsection 2. A copy of the code may be obtained from the National Fire Protection Association, 11 Tracy Drive, Avon, Massachusetts 02322, or by telephone at 800.344.3555, for the price of \$45.50 for members or \$50.50 for nonmembers, plus \$6.95 for shipping and handling.

(b) NFPA 99: Standard for Health Care Facilities, in the form most recently published by the National Fire Protection Association, unless the Board gives notice that the most recent revision is not suitable for this State pursuant to subsection 2. A copy of the standard may be obtained from the National Fire Protection Association, 11 Tracy Drive, Avon, Massachusetts 02322, or by telephone at 800.344.3555, for the price of \$33.50 for members or \$37.25 for nonmembers, plus \$5.95 for shipping and handling.

(c) Guidelines for Design and Construction of Hospital and Healthcare Facilities, in the form most recently published by the American Institute of Architects, unless the Board gives notice that the most recent revision is not suitable for this State pursuant to subsection 2. A copy of the guidelines may be obtained from the AIA Rizzoli Bookstore, 1735 New York Avenue, N.W., Washington, D.C. 20006, or by telephone at 888.272.4115, for the price of \$60, plus \$5 for shipping and handling.

(d) “Standard 9.5F2,” governing the construction of rooms for the use of lasers, in the form most recently published by the American Institute of Architects, unless the Board gives notice that the most recent revision is not suitable for this State pursuant to subsection 2. A copy of the standard may be obtained from the AIA Rizzoli Bookstore, 1735 New York Avenue, N.W., Washington, D.C. 20006, or by telephone at 888.272.4115, for the price of \$60, plus \$5 for shipping and handling.

2. The State Board of Health shall review each revision of the publications adopted by reference pursuant to subsection 1 to ensure its suitability for the State. If the Board determines that the revision is not suitable for this State, it will hold a public hearing to review its determination and give notice of that hearing within 6 months after the date of the publication of the revision. If, after the hearing, the Board does not revise its determination, the Board will give notice that the revision is not suitable for this State within 30 days after the hearing. If the Board does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R077-04**

The Health Division of the Department of Human Resources adopted regulations assigned LCB File No. R077-04 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:

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 all Surgical Centers for Ambulatory Patients 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, Surgical Centers for Ambulatory Patients and interested parties on February 27, 2004. The small business impact summary was available at both workshops.

Larry Farr, City of Reno, Fire Department, stated that he was overall pleased with the uniform codes for plan review.

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, Surgical Centers for Ambulatory Patients and interested parties on May 25, 2004. The notice of public hearing was mailed to the Clark County Health District and the 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

No one in attendance testified on Surgical Centers for Ambulatory Patients regulations.

(C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

No written statements were provided to the agency.

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 proposed amendments to NAC 449, "Surgical Centers for Ambulatory Patients," LCB File No. R077-04, 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

Anticipated effects on the business which NAC 449 regulates.

Adverse: The plan review will have an associated fee as determined by the entity conducting the review on behalf of the state.

Beneficial: Regulations addressing plan review and disaster planning will be more consistent throughout all facility types.

Anticipated effects on the public:

Adverse: None

Beneficial: The proposed regulations will require the majority of facilities to have a plan review ensuring a safe environment for the public.

(B) BOTH IMMEDIATE AND LONG TERM EFFECTS.

Anticipated effects on the business which NAC 449 regulates.

Immediate: None

Long-term: Regulations addressing plan review and disaster planning will be more consistent throughout all facility types.

Anticipated effects on the public:

Immediate: None

Long-term: The proposed regulations will require the majority of facilities to have a plan review thus ensuring a safe environment for the public.

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

There will be additional staff time to register plans for the facilities that will now be required to have a plan review. The plan review will have an associated fee as determined by the entity conducting the review on behalf of the state. No other fee increases are associated with the proposed regulations.

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

Plan Review and Dietary Services

Background:

The purpose of the proposed revised regulations for plan review is to require a review of architectural plans for the majority of facility types.

The construction standards regulations were revised to adopt by reference the National Fire Protection Association's (NFPA) 101 Life Safety Code, and the NFPA 99 Health Facilities Standards and the American Institute of Architects Guidelines for Design and Construction of Hospitals and Health Care Facilities throughout all applicable facility types. The revisions included changing the "Uniform Building Code" to local building codes due to changes being made on a national level from the "Uniform Building Code" to the International Codes or the National Fire Protection 5000 codes. It is the intent of the Bureau of Licensure and Certification (BLC) to eliminate a conflict between the state requirements and the local requirements in the area of the building codes.

The regulations addressing the dietary personnel of hospitals were revised to allow the director of the dietetic services department to have professional qualifications in the area of professional chef, hotel-restaurant management, or is certified at minimum as a dietary manager and has additional work experience with medical-therapeutic diets.

The regulations addressing the requirement for a food establishment permit issued by the Bureau of Health Protection Services (BHPS), in Intermediate Care Facilities, Facilities for the Treatment of Alcohol and Drug Abuse, Modified Medical Detoxification Facilities were revised to require facilities with more than 10 clients/residents to have an inspection and permit.

Interested individuals 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

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

Pursuant to NRS 233B.0608 (2) (a), the BLC has requested input from operators of the following facility types:

- Obstetric Care
- Facilities for the Treatment of drug and Alcohol Abuse
- Facilities for Treatment of Irreversible Renal Disease
- Hospitals
- Independent Centers for Emergency Medical Care

Mobile Units
 Facilities for Modified Medical Detoxification
 Facilities for the Care of Adults During the Day
 Surgical Centers for Ambulatory Patients
 Intermediate Care Facilities

A Small Business Impact Statement Questionnaire was sent to the facilities in the table above along with written correspondence detailing the proposed amendments, including a copy of the proposed regulations, on February 27, 2004. The questions on the questionnaire were:

- 2) Will a specific regulation have an adverse economic effect upon your business?
- 3) Will the regulation(s) have any beneficial effect upon your business?
- 4) Do you anticipate any indirect adverse effects upon your business?
- 5) Do you anticipate any indirect beneficial effects upon your business?

Facility Type	Number of Responses
Ambulatory Surgery Center	3
Hospital	4
End Stage Renal Dialysis Center	1

Saint Rose Dominican Hospitals responded by indicating the regulations will have an adverse economic effect upon our business. A comment was included that stated they feel plan review should be conducted early in the process for identification of any potential oversight in the specifications before the licensing inspection is conducted.

This respondent states that NAC 449.3156(1) (d) should read ...the use of the physical space has not changed in such a way to not comply with the Guidelines for Design and Construction of Hospitals and Health Care Facilities or cause serious injury, serious harm or impairment to public health and welfare.

Additionally, this respondent stated that the regulations at NAC 449.3385(2) will have a beneficial effect upon the hospital because the changes in the regulation will make this position much easier to fill, and still contains the clinical dietetic advantages.

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 and both direct and indirect effects.

There will be an added economic effect to those facilities previously not required to submit architectural plans for review, however, the benefit in identifying potential non-compliance at a point where changes must be made to plans, rather than a constructed building, balance the costs of the plan review.

The proposed revisions to the dietary personnel requirements will not have additional economic effect on a facility.

The regulations revising the requirement for facilities with more than 10 clients/residents to have an inspection and permit issued by the Bureau of Health Protection Services (BHPS), in Intermediate Care Facilities, Facilities for the Treatment of Alcohol and Drug Abuse, Modified Medical Detoxification Facilities provides a cost saving in these facilities not being required to purchase commercial grade kitchen equipment to obtain a food establishment permit in a facility with less than 10 clients.

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

The BLC considered the impact of facilities in certain counties with populations over 50,000 of the potential of having multiple building codes adopted. The BLC revised the construction standards regarding building codes to eliminate duplicity and possible contradictory requirements.

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

The estimated cost to the agency for enforcement of the proposed amendments to NAC 449.016 and 449.0168 is negligible.

5. Total amount BLC expects to collect from any fees and the manner in which the money will be used.

The revisions to the plan review and dietary services regulations will not increase licensing fees.

6. An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

No duplication or more stringent provision are either created or already in existence.