

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

LCB File No. R122-05

Effective November 17, 2005

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

AUTHORITY: §§1-6, 9 and 10; NRS 449.037; §§7 and 8, NRS 439.150 and 449.037.

A REGULATION relating to residential facilities for groups; requiring certain residential facilities for groups to submit applications for resurveys of those facilities; establishing the fee for such a resurvey; requiring a residential facility for groups to display in a conspicuous place in a public area of the facility a placard issued by the Bureau of Licensure and Certification of the Health Division of the Department of Health and Human Services; 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 7, inclusive, of this regulation.

Sec. 2. *“Grade” means a letter that is assigned to a residential facility by the Bureau based on the severity and scope scores of the facility as determined by the Bureau.*

Sec. 3. *“Placard” means a certificate issued to a residential facility by the Bureau that includes the grade assigned to the facility by the Bureau.*

Sec. 4. *“Severity and scope score” has the meaning ascribed to it in NAC 449.99839.*

Sec. 5. 1. *The Bureau shall determine:*

(a) The severity of a deficiency of a residential facility in accordance with the provisions of NAC 449.99861; and

(b) The scope of a deficiency of a residential facility in accordance with the provisions of NAC 449.9986.

2. *After the Bureau conducts a survey of a residential facility, the Bureau shall add the severity and scope scores for all deficiencies of the facility indicated in the survey and assign a grade to the facility as follows:*

<i>Sum of Severity and Scope Scores</i>	<i>Grade</i>
<i>0 to 15 points</i>	<i>A</i>
<i>At least 16 points but not more than 24 points, or any deficiency with a severity level of 3 and a scope level of 3</i>	<i>B</i>
<i>At least 25 points but not more than 34 points, or any deficiency with a severity level of 4 and a scope level of 1</i>	<i>C</i>
<i>At least 35 points, or any deficiency with a severity level of 4 and a scope level of at least 2</i>	<i>D</i>

Sec. 6. 1. *After the Bureau assigns a grade to a residential facility pursuant to section 5 of this regulation, the Bureau shall issue a placard to the residential facility.*

2. *The administrator shall, within 24 hours after receipt of the placard, display or cause the placard to be displayed conspicuously in a public area of the residential facility.*

3. *If the placard is not displayed in accordance with the provisions of subsection 2, the Bureau will assess against the residential facility a deficiency with a severity and scope score equal to the highest severity and scope score indicated in the most recent survey of the facility conducted by the Bureau.*

Sec. 7. 1. *If the Bureau issues a placard to a residential facility that includes a grade of “B,” the administrator may submit an application to the Bureau for a resurvey of the facility*

not later than 30 days after the facility receives the placard. The fee for an application for a resurvey is \$300 and must accompany the application.

2. If the Bureau issues a placard to a residential facility that includes a grade of “C” or “D,” the administrator must submit an application to the Bureau for a resurvey of the facility not later than 30 days after the facility receives the placard. The fee for an application for a resurvey is \$500 and must accompany the application.

3. The Bureau may revoke the license of a residential facility that is required to submit an application for a resurvey pursuant to subsection 2 if the facility fails to submit the application in accordance with the provisions of that subsection.

4. As used in this section, “resurvey” has the meaning ascribed to it in NAC 449.99838.

Sec. 8. NAC 449.0114 is hereby amended to read as follows:

449.0114 1. Upon receipt of a license, the licensee shall display the license at a conspicuous location within the facility.

2. During the term of the license, the licensee shall continuously maintain the facility in conformance with the provisions of this chapter and chapter 449 of NRS.

3. If there is a transfer of the real property on which the facility is located, but no change in the operator of the facility, the licensee shall, within 10 days, notify the Health Division of the transfer in writing and provide the Health Division with a copy of any lease agreement relating to the transfer.

4. If there is a change in the administrator of the facility, the licensee shall notify the Health Division of the change within 10 days. The notification must provide evidence that the new administrator is currently licensed pursuant to chapter 654 of NRS and the regulations adopted pursuant thereto. *If the licensee fails to notify the Health Division and submit an application*

for a new license within 10 days after the change, the licensee shall pay to the Health Division a fee in an amount equal to 150 percent of the fee required for a new application set forth in subsection 1 of NAC 449.0168.

5. A licensee shall notify the Health Division immediately of any change in the ownership of, the location of, or the services provided at, the facility.

Sec. 9. NAC 449.0115 is hereby amended to read as follows:

449.0115 1. An applicant for a license or the renewal of a license to operate a medical facility ~~[]~~ *or* facility for the dependent ~~[or program of hospice care]~~ who wishes or is required ~~[pursuant to NAC 449.15359, 449.4063, 449.6114, 449.6135, 449.74543 or 449.97026]~~ to have building plans for new construction or remodeling reviewed by the Health Division must:

(a) Submit to the Health Division or have on file a current application for a license or renewal of a license;

(b) Pay to the Health Division any fees required for the issuance or renewal of a license pursuant to NAC 449.013 or 449.016; and

(c) Submit two complete sets of building plans for new construction or remodeling prepared by a registered architect, registered residential designer or licensed general contractor to the entity designated to review such plans by the Health Division.

2. All costs incurred for the review of building plans and any changes or revisions made to the plans must be borne by the applicant and paid directly to the designee of the Health Division conducting the review of the plans.

3. The costs required to be paid pursuant to subsection 2 are not refundable and are in addition to the fees charged for the issuance or renewal of the license pursuant to NAC 449.013 or 449.016.

Sec. 10. NAC 449.156 is hereby amended to read as follows:

449.156 As used in NAC 449.156 to 449.2768, inclusive, *and sections 2 to 7, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 449.1565 to 449.178, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R122-05**

The State Board of Health adopted regulations assigned LCB File No. R122-05 which pertain to chapter 449 of the Nevada Administrative Code on October 14, 2005.

Notice date: 9/14/2005
Hearing date: 10/14/2005

Date of adoption by agency: 10/14/2005
Filing date: 11/17/2005

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.

In the beginning when the draft regulations were mailed out for regulations workshops the proposed amendments for grading facilities was titled "General Provisions", the proposed amendments for the definition of "Grade and Placard" was titled "General Requirements for Licensure", and the fee that Residential Facilities for Groups must pay for the bureau to re-inspect the facility following the bureau's assignment of a grade of C or D, was under the title of "General Requirements for Licensure and Fees". LCB combined all of them under "General Requirements for Licensure." Therefore, three Small Business Impact Questionnaire Summaries and three Small Business Impact Statements are included in the attachments.

A Small Business Impact Questionnaire was mailed to the all Bureau of Licensure and Certification licensed health and medical facilities on April 5, 2005. Attachment A is the Small Business Impact Statement Questionnaires. Attachment B is a copy of the Small Business Impact Summaries.

Notice of public workshops held on April 28, 2005, in Las Vegas and on April 29, 2005, in Reno was published in the Las Vegas Review Journal and Reno Gazette Journal on April 11, 2005. Notices of public workshops, and proposed regulations were mailed to all county libraries in Nevada, all Bureau of Licensure and Certification licensed health and medical facilities, and interested parties on April 5, 2005. The Small Business Impact Summary was available at both workshops.

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 or before September 14, 2005. Notices of public hearing, and proposed regulations were mailed to all county libraries in Nevada, all Bureau of Licensure and Certification licensed health and medical facilities, and interested parties on September 8, 2005. The notice of public hearing was mailed to Clark County Health District, and Washoe County District Health Department on September 8, 2005.

The Legislative Council Bureau (LCB) had not completed the review of the proposed regulations until September 28, 2005. The LCB version was mailed out to the above mentioned parties on or before October 3, 2005.

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 62 people attended the October 14, 2005, Board of Health hearing.

(B) TESTIFIED AT EACH HEARING; AND

Lynn Homnick, President of the Southern Nevada Coalition of Assisted Residential Environments (CARE) of the Southern Nevada Chapter, stated she was in support of the regulations as proposed.

Dr. David Udy, eElders.org, stated that he was not particularly concerned with the grading concept; however, his organization had several concerns associated with the technical structure and methodologies used to establish the SCOPE scale.

Martha Hilario, Golden Home Care, indicated she was not opposed to the survey fees; however, she felt the fees were too high.

(C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

Dr. David Udy submitted a written statement.

Lynn Homnick submitted a written statement.

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.

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: Poorly performing Residential Facilities for Groups will be revealed publicly. Facilities who file delinquent change of administrator applications will pay an increased fee. Poorly performing Residential Facilities for Groups will be required to pay a fee for re-inspection.

Beneficial: The changes are designed to encourage Residential Facilities for Groups to comply with regulatory requirements and to reward facilities that maintain high standards. The changes will define two terms necessary for the eventual grading of Residential Facilities for Groups.

Anticipated effects on the public:

Adverse: None

Beneficial: Increased public awareness concerning Residential Facilities for Groups levels of compliance based on easily identifiable grades. Residents should benefit from facilities making an assignment of a qualified administrator in a timely fashion. Increased regulatory compliance.

(B) BOTH IMMEDIATE AND LONG TERM EFFECTS.

Anticipated effects on the business which NAC 449 regulates.

Immediate: None

Long-term: Increased regulatory compliance.

Anticipated effects on the public:

Immediate: None

Long-term: The public should eventually benefit from being able to identify those Residential Facilities for Groups with a record of compliance vs. those Residential Facilities for Groups that have performed poorly. The public should eventually benefit from Residential Facilities for Groups maintaining a high level of regulatory compliance.

6. THE ESTIMATED COST TO THE AGENCY 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.

These 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.

These amendments do establish any new fees for poorly performing Residential Facilities for Groups.

These amendments do not establish any new fees, but do increase existing fees when an application is delinquent.

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

GENERAL REQUIREMENTS FOR LICENSURE

Background:

The purpose of the proposed revised regulations for residential facilities is to add sections for the assignment of a “grade” by the bureau to each residential facility following a survey. Grades “A”, “B”, “C” or “D” will be assigned in accordance with the facility’s level of compliance with the regulations. The proposed language at NAC 449.0114 will require licensees that file delinquent applications for a change of administrator to pay an increased fee. The proposed changes at NAC 449.0115 will ensure an applicant for a license or the renewal of a license who wishes or is required to have building plans reviewed for new construction or remodeling to submit the plans as required.

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 IV, 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 all facilities.

A Small Business Impact Questionnaire was sent to the facilities along with written correspondence detailing the proposed amendments, including a copy of the proposed regulation changes, on April 5, 2005. The questions on the questionnaire were:

- 1) How many employees are currently employed by your business?
- 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?

The specific responses to these questions may be found in the attached document titled: “Small Business Impact Questionnaire Summary – General Requirements for Licensure”. Below is a table indicating the number of responses.

Total Number of Responses:	57	
Q2- # having Direct Adverse Effect:	14	Economic Effect
Q3- # having Direct Beneficial Effect:	13	General Effect
Q4- # having Indirect Adverse Effect:	9	General Effect
Q5- # having Indirect Beneficial Effect:	15	General Effect

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

There will be an economic effect to those residential facilities that only achieve a grade of “C” or “D”, however, these poorly performing facilities will be responsible for paying the cost for workload required to conduct re-surveys which will eventually decrease the burden for those facilities that attain higher standards. In the past the entire workload was distributed evenly among all facilities.

There will only be a minimal economic effect to facilities concerning the increased fees for filing a delinquent change of administrator application. This cost is minimized by the ability of facilities to file within the 10 day window allowed and pay only the standard fee for the administrator change application.

There will be an 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 can be made to plans, rather than a constructed building, balance the costs of the plan review.

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 conducted a pilot test of the grading system to determine where grade delineations should be set in order to ensure that residential facilities with minimal to moderate deficiencies would not be impacted by fees for re-survey. Based on interpretation of the results from the pilot surveys, the grade delineations were set at levels that should render the following results, >50% of facilities should score an “A” grade, approximately 25% of the facilities should score a “B” grade and the remaining <25% should score “C” or “D” grades and would require a fee for re-survey.

Facilities have the ability to minimize the impact of increased change of administrator fees, by filing within a 10 day window.

In order to minimize the economic effect of plan review fees on small businesses, The BLC considered the consequences of non-compliant construction vs. the cost of plan review.

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 is negligible, since the fees collected should pay for the anticipated additional workload.

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

The revisions to the general requirements for licensure will only generate new revenue for BLC when an applicant is delinquent in filing for a change of administrator. Other fees to be collected for re-surveys of poorly performing residential facilities total approximately \$34,000 and should only serve to offset the cost of the additional workload. Fees paid for the plan review process go directly to the contractor who conducts the reviews (P & D Consultants).

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.

GENERAL PROVISIONS

Background:

The purpose of the proposed revised regulations for general provisions is to establish definitions for the terms “Grade” and “Placard”. The proposed language will ensure clear terminology for the grading system within residential facilities for groups.

Interested individuals can obtain a copy of the information packet, including the Small Business Impact Questionnaire, sent to all licensed residential facilities for groups, from Shirley Rains, Administrative Assistant IV, 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 Residential Facilities for Groups.

A Small Business Impact Questionnaire was sent to the facilities along with written correspondence detailing the proposed amendments, including a copy of the proposed regulation changes, on April 5, 2005. The questions on the questionnaire were:

- 1) How many employees are currently employed by your business?

- 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?

The specific responses to these questions may be found in the attached document titled: “Small Business Impact Questionnaire Summary – Residential Facilities For Groups”. Below is a table indicating the number of responses.

Total Number of Responses:	21	
Q2- # having Direct Adverse Effect:	7	Economic Effect
Q3- # having Direct Beneficial Effect:	9	General Effect
Q4- # having Indirect Adverse Effect:	6	General Effect
Q5- # having Indirect Beneficial Effect:	7	General Effect

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

There will be no economic effect to the facilities pertinent to these proposed changes. These changes only establish definitions for terms.

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.

There is no negative impact on small businesses.

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

There is no cost to the agency for enforcement of the proposed amendments.

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

No new fees will be collected pursuant to these revisions.

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.

FEES

Background:

The purpose of the proposed revised regulations for fees is to establish fees for resurvey of residential facilities for groups receiving a grade of “C” or “D”. The language at NAC 449.0168(1)(g) is being added in order to charge home health agencies the standard \$250 fee that is charged to other facilities when making changes to licenses.

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 IV, 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 Residential Facilities for Groups and Home Health Agencies.

A Small Business Impact Questionnaire was sent to the facilities along with written correspondence detailing the proposed amendments, including a copy of the proposed regulation changes, on April 5, 2005. The questions on the questionnaire were:

- 1) How many employees are currently employed by your business?
- 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?

The specific responses to these questions may be found in the attached document titled: “Small Business Impact Questionnaire Summary – Fees”. Below is a table indicating the number of responses.

Total Number of Responses:	26	
Q2- # having Direct Adverse Effect:	12	Economic Effect
Q3- # having Direct Beneficial Effect:	7	General Effect
Q4- # having Indirect Adverse Effect:	8	General Effect
Q5- # having Indirect Beneficial Effect:	5	General Effect

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

There will be an economic effect to those residential facilities that only achieve a grade of “C” or “D”, however, these poorly performing facilities will be responsible for paying the cost for workload required to conduct re-surveys which will eventually decrease the burden for those facilities that attain higher standards. In the past the entire workload was distributed evenly among all facilities.

There will only be a minimal economic effect to home health agencies concerning fees to be charged for changes to services offered on a license. This fee will only affect those agencies that make such a change and this fee is based on the cost associated with processing the application and issuing the new license and is in accordance with that which is charged to other facility types for similar changes.

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 conducted a pilot test of the grading system to determine where grade delineations should be set in order to ensure that residential facilities with minimal to moderate deficiencies would not be impacted by fees for re-survey. Based on interpretation of the results from the pilot surveys, the grade delineations were set at levels that should render the following results, >50% of facilities should score an “A” grade, approximately 25% of the facilities should score a “B” grade and the remaining <25% should score “C” or “D” grades and would require a fee for re-survey.

Only Home Health Agencies making changes to the services indicated on their license will be required to pay the new fee.

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 is negligible.

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

The revisions requiring fees to be collected for re-survey of residential facilities scoring a “C” or “D” will allow the BLC to collect approximately \$34,000. (based on 25% of 270 total facilities or 68 times \$500 = \$34,000)

The revisions requiring a fee to be collected whenever a Home Health Agency changes services listed on its license will allow the BLC to collect approximately \$750. (based on an estimate of 3 agencies making such changes per year, 3 times \$250 = \$750)

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.