

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

**LCB File No. R097-06**

Effective July 14, 2006

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

AUTHORITY: §§1 and 2, NRS 449.037.

A REGULATION relating to residential facilities for groups; requiring such a facility to obtain an endorsement from the Health Division of the Department of Health and Human Services before providing “assisted living services”; requiring such a facility that provides assisted living services to develop certain policies and procedures and to provide certain services; 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. Each residential facility that wishes to provide “assisted living services” must apply to the Health Division to obtain an endorsement on its license authorizing the residential facility to provide “assisted living services.”*

*2. The Health Division may deny an application for an endorsement that is made pursuant to subsection 1 or revoke an existing endorsement granted pursuant to subsection 1 if the residential facility for which the applicant is applying or the residential facility which has an endorsement does not satisfy the requirements set forth in this section or subsections 7 and 8 of NRS 449.037.*

*3. If a residential facility provides assisted living services, the written policies that the residential facility is required to develop pursuant to NAC 449.258 must include, without limitation, procedures to be followed:*

*(a) To ensure that the residential facility complies with the requirements set forth in subsections 7 and 8 of NRS 449.037;*

*(b) By the administrator to ensure that residents of the residential facility whose physical or mental condition is significantly changing over time are identified;*

*(c) To obtain a medical professional to assess and monitor, as necessary, but not less than once every quarter in each calendar year, each resident of the residential facility whose physical or mental condition is declining over time; and*

*(d) To provide services to residents of the residential facility pursuant to the assessment and monitoring performed pursuant to paragraph (c).*

*4. The administrator of a residential facility that provides assisted living services shall ensure that:*

*(a) A medical professional is notified whenever there has been a significant change in the physical or mental condition of a resident of the residential facility whose physical or mental condition is declining over time; and*

*(b) The residential facility maintains a list of resources for financial assistance and other social services that may decrease the need for a resident of the residential facility whose physical or mental condition is declining over time to move out of the residential facility.*

*5. The services provided by a residential facility that provides assisted living services must include, without limitation, services that will enable the residential facility to retain residents who have the medical needs or conditions described in NAC 449.2712 to 449.2734, inclusive, and 449.275.*

**Sec. 2.** NAC 449.156 is hereby amended to read as follows:

449.156 As used in NAC 449.156 to 449.2768, inclusive, *and section 1 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 449.1565 to 449.178, inclusive, have the meanings ascribed to them in those sections.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R097-06**

The State Board of Health adopted regulations assigned LCB File No. R097-06 which pertain to chapter 449 of the Nevada Administrative Code on June 16, 2006.

**Notice date:** 5/17/2006  
**Hearing date:** 6/16/2006

**Date of adoption by agency:** 6/16/2006  
**Filing date:** 7/14/2006

**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/Alzheimer's on April 5, 2005. 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 May 17, 2006, in Reno and on May 19, 2006, in Las Vegas was published in the Las Vegas Review Journal and Reno Gazette Journal on May 1, 2006. 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 April 25, 2006. On May 4, 2006, the Bureau of Licensure and Certification (BLC) was informed that they could no longer use the room at the Reno location. Notice of public workshop change of location was published in the Las Vegas Review Journal and Reno Gazette Journal on May 12, 2006. Notice of public workshops change of location were mailed to all county libraries in Nevada, Residential Facilities for Groups, Residential Facilities for Groups/Alzheimer's, and interested parties on May 11, 2006. The Small Business Impact Summary was available at both workshops.

During the Assisted Living Advisory Council (ALAC) meeting on May 16, 2006 there was discussion concerning the language that was mailed to residential facility providers and it was determined that changes should be made due to the impact the proposed language would have on many providers. This discussion was not an agenda item and fell under public comment, so the council did not make a formal recommendation to the Bureau; however, the Bureau immediately began work on modifying the language to accommodate some of the comments

BLC received numerous comments from operators of Residential Facility for Groups. The majority of providers expressed concern that the statute and regulations were forcing the assisted living industry into accepting and retaining higher acuity residents than the social model around which they are designed. There were concerns expressed about changing this basic premise of assisted living services. Comments also opposed language requiring an RN and social worker to support higher acuity resident needs. Providers indicated that this would drive up the cost of

services up, create a hardship in recruiting due to the existing nurse shortage, and drive up liability insurance rates if facilities are forced to increase the level of care they are required to provide.

During the workshops Ms. Pam Graham, BLC Chief, clarified that any facility wishing to remain a Residential Facility for Groups and not seek “Assisted Living” endorsement would not be required to meet these proposed regulations. There is a legislative action that occurred in 2005, that mandated this Bureau to write regulations based on endorsement for Assisted Living. If you want to call yourself assisted living and market yourself as assisted living, facility operators would have to follow these regulations. If you wish to remain a Residential Facility for Groups, and not provide the services set forth in this statute, the facility does not need to meet this regulation.

As a result of these comments, BLC made changes to the proposed regulations. These changes eliminated requirements for an RN and social worker and instead required that a residential facility for groups that provides assisted living services identify residents whose physical and/or mental conditions are declining over time and obtain the services of a medical professional. The medical professional must assess and monitor, at least quarterly, those residents whose conditions are declining. These requirements are proposed to provide safeguards for facilities providing assisted living services to residents whose condition is declining, but choose to continue residence in the residential facility for groups. It is not intended to have skilled nursing services provided in residential facilities for groups.

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 May 17, 2006. 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 11, 2006. The notice of public hearing was mailed to Southern Nevada Health District, and Washoe County District Health Department on May 11, 2006.

The Legislative Council Bureau (LCB) had not completed the review of the proposed regulations until June 7, 2006. The LCB version was mailed out to the above mentioned parties on or before June 9, 2006.

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 136 people attended the June 16, 2006, Board of Health hearing.

(B) TESTIFIED AT EACH HEARING; AND

Maureen Gresh, The Arbors, needed clarification on the cost to obtain the endorsement. She then referred to Section 1, subsection 5, and asked if a facility would have to keep clients who have the medical needs or conditions described in NAC 449.2712 to 449.2734, inclusive, and 449.275.

Mary Ellen Padgett, Riverview Manor, was concern about having to keep clients who require a higher level of medical care. She is afraid it will bring up the cost to the clients.

Eugene Gasataya, Summerdale Home, worked with BLC staff during the hearing and agreed with the changes to Section 1, subsection (3)(b) to delete the word declining and put in its place “significantly changing.”

(C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.

No written statements were submitted.

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.

Testimony was received to the proposed regulation which suggested changes to Section 1, subsection (3)(b) to delete the word [~~declining~~] and put in its place *significantly changing*. This was approved by the Board.

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 statute prohibits residential facilities from claiming they provide “assisted living services” unless they meet some undefined statutory standards. The regulatory changes can not address the undefined terms specified in the statutory criteria. The regulatory changes attempt to address the statutory language by requiring facilities to

obtain an endorsement on their license and establishing specific criteria for obtaining the endorsement. The changes will potentially confuse the industry, by adding additional specific criteria to the generic term “assisted living services”.

Beneficial: None

Anticipated effects on the public:

Adverse: Confusion may result from the undefined standards in the statute and this has the potential to be exacerbated by confusion in the industry. The regulatory changes can only address criteria for adding an endorsement to the license and these changes offer no clarification to the public.

Beneficial: None

(B) BOTH IMMEDIATE AND LONG TERM EFFECTS.

Anticipated effects on the business 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.

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.

The amendments do not establish any new fees or increase any existing fees.