

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

LCB File No. R114-10

Effective December 20, 2012

(Certain sections previously contained in this regulation have been removed for separate consideration; see LCB File No. R001-11)

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

AUTHORITY: §1, NRS 449.171; §2, NRS 449.0302 and 449.160.

A REGULATION relating to public health; prescribing provisions for the maintenance of medical records removed from certain medical facilities by the Health Division of the Department of Health and Human Services; providing for the period of retention of medical records in the control of the Health Division; providing penalties; 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. If the Health Division takes control of the medical records of a medical facility or a facility for the dependent pursuant to NRS 449.171, the Health Division:

(a) May remove any or all of the medical records and store them in a manner that ensures the safety of the medical records.

(b) May contract with a person or governmental entity to ensure the safety of the medical records.

(c) Shall determine the costs for maintaining the medical records and require the medical facility or facility for the dependent, as applicable, to pay those costs. The costs must be assessed beginning on the date on which the Health Division obtains control of the medical

records and ending on the date on which the medical records are destroyed or returned to the facility pursuant to subsection 3. The medical facility or facility for the dependent, as applicable, shall pay the costs within 30 days after receipt of notice of the amount owed.

2. If the Health Division contracts with a person or governmental entity pursuant to paragraph (b) of subsection 1, the Health Division shall ensure that the person or governmental entity complies with the provisions of subsection 2 of NRS 449.171.

3. The Health Division may:

(a) Unless a longer period is required by federal law, destroy a medical record upon expiration of the period of retention required by NRS 629.051; or

(b) Return a medical record to the medical facility or facility for the dependent, as applicable, if the license of the facility is reinstated or the facility restores its operation.

4. If the Health Division determines that a medical record in the control of the Health Division will be destroyed in accordance with subsection 3, the Health Division shall, for a period of not less than 30 days, post on an Internet website maintained by the Health Division and in other locations as determined by the Health Division a notice informing the patients of the medical facility or facility for the dependent, as applicable, how to obtain a medical record before it is destroyed.

5. If a medical facility or facility for the dependent fails to pay the amount owed pursuant to paragraph (c) of subsection 1, the Health Division may suspend or revoke the license of the medical facility or facility for the dependent pursuant to NAC 449.0118.

Sec. 2. NAC 449.0118 is hereby amended to read as follows:

449.0118 In addition to the grounds set forth in NRS 449.160 and any other grounds specifically applicable to a particular license, the Health Division may deny an application for a license or may suspend or revoke a license upon any of the following grounds:

1. The failure or refusal of an applicant or licensee to comply with any of the provisions of chapter 449 of NRS or the regulations adopted by the State Board of Health.
2. The failure or refusal of an applicant or licensee to comply with a reasonable order from the Health Division to remove a resident from a facility or program.
3. Operating a facility or program without a license, if a license is required before operating.
4. Accepting for care, at any given time, more residents than the number specified in the license.
5. The failure or refusal of a licensee to return an adequate plan of correction to the Health Division within 10 days after the receipt by the licensee of a statement of deficiencies.
6. The failure or refusal to cooperate fully with an investigation or inspection by the Bureau.
7. Misappropriation of the property of a resident of a facility.
8. Abuse, neglect or exploitation of an infirm, mentally retarded or disabled person, or of a person who is 60 years of age or older.
- 9. The failure of a medical facility or facility for the dependent to pay the costs for the maintenance of the medical records of the facility required pursuant to paragraph (c) of subsection 1 of section 1 of this regulation.***

HEALTH DIVISION
Bureau of Healthcare Quality and Compliance
December 14, 2012
LCB File # R114-10

Information Statement per NRS 233B.066

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Public comment was solicited by the Notice of Public Hearing posted at Health Division locations, State Library and Archives, county libraries and mailed notification of the Notice of Public Hearing to affected stakeholders. A public workshop was held in Carson City and Las Vegas via videoconference on September 19, 2012. The following is a summary of the testimony provided during the State Board of Health Public Hearing on December 14, 2012:

A Board Member asked if this was new ground for the Health Division. The answer was yes, although the legislation has been in place since 2009, the Health Division has not yet acted on taking control of medical records of a facility. Concerns were also expressed about storage of medical records and if most records would be stored electronically. It was explained that although we have facilities with advanced technologies such as hospitals, many facilities with less advanced technologies such as dependent care facilities are likely to have hard copy records which would need to be stored. The Health Division's plan would be to contract with a specialized medical record storage company that can assure the confidentiality and security of the records and which the Health Division could access if a patient needed a copy of their records. The burden of the cost would be on the impacted facility in accordance with statutes.

A summary of the Hearing for Amendment of Nevada Administrative Code (NAC) 449, LCB File No. R114-10 can be obtained by contacting the Bureau of Health Care Quality and Compliance, 727 Fairview Drive, Suite E, Carson City, Nevada, 89701.

2. The number of persons who:

- (a) Attended the hearing;
- (b) Testified at each hearing; and
- (c) Submitted to the agency written statements.

Fifty people attended the hearing. Leticia Metherell, Health Facilities Inspection Manager for the Bureau of Health Care Quality and Compliance presented the proposal to amend Nevada Administrative Code, (NAC) 449. No one else provided testimony at the public hearing. A summary of the testimony can be found in number 1 above. No one provided written statements at the public 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.

A small business impact questionnaire and workshop notice which included information on how to obtain a copy of the proposed regulations was sent to all medical facilities affected by the proposed regulations. The workshop notice and draft regulations were also posted on the Health Division’s website, distributed through the Health Division’s List Serv and posted in accordance with open meeting law. Out of 1,103 small business impact questionnaires distributed, only 16 responses were received. The following is a summary of the 16 responses:

Summary of Response

Summary Of Comments Received (16 responses were received out of 1,103 small business impact questionnaires distributed)			
Will a specific regulation have an adverse economic effect upon your business?	Will the regulation (s) have any beneficial effect upon your business?	Do you anticipate any indirect adverse effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?
No – 10 responses Yes – 3 responses Left Blank – 3 responses	No – 12 responses Yes – 1 response Left Blank – 3 responses	No – 11 responses Yes – 2 responses Left Blank – 3 responses	No – 13 responses Yes – 0 responses Left Blank – 3 responses
<p><u>Comments:</u> Provision for defining penalties.</p> <p>I do not believe you should be able to charge penalties/fees for storage of confiscated records. The facility did not ask you to store them. You should be paying the facility a rental fee for holding those records that belong to the facility.</p>	<p><u>Comments:</u> Penalties can improve quality of services for all clients we serve.</p> <p>We just provide medical staff.</p>	<p><u>Comments:</u> The physical/original records should not legally leave the facility. If you require the records, you should request copies. Copies are admissible and sufficient in every other situation, including in court. Removing the original records leaves the facility defenseless and violates both liability insurance contracts and the laws requiring us to maintain the records on the premises of the facility.</p> <p>We just provide medical staff.</p>	<p><u>Comments:</u> We just provide medical staff.</p> <p>We are not a medical facility.</p>

Number of Respondents out 1,103	Adverse economic effect?	Beneficial effect?	Indirect adverse effects?	Indirect beneficial effects?
14	3	1	2	0

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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. The statement should also explain the reasons for making any changes to the regulation as proposed.

The regulations were adopted without change. No suggestions for changes were made at the public workshop or public hearing. In accordance with NRS 449.171 the facility would bear the cost of maintaining the medical records. Therefore no changes to the proposed regulations were made.

These proposed regulations were approved by the State Board of Health on December 14, 2012.

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:

- Beneficial effects: The beneficial effects would be to the patients of closed facilities that would continue to have access to their medical records despite the fact that the facility is closed. The medical records would be available as long as they are retained for the period of time specified in NRS 629.051.
- Adverse effects: If the Health Division suspends the license of a facility or if a facility otherwise ceases to operate and the Health Division decided to take control of the medical records an economic burden would be placed on the small business. The amount of the burden would be dependent on how long the records were to be maintained as well as the costs associated to actually house the medical records.
- No negative economic impact on the public is anticipated.

b. Both immediate and long term effects.

- Immediate effects: There would be no immediate effect unless the Health Division took over the records of a facility in accordance with NRS 449.171.
- Long term effects: There would be no long term effect unless the Health Division took over the records of a facility in accordance with NRS 449.171.
- No negative economic impact on the public is anticipated.

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 would be dependent on whether the Health Division took over the record of a facility in accordance with NRS 449.171.

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 regulatory federal agency.

There is no known overlap or duplication of the proposed regulations with other state, federal, or other government agencies regulations.

8. The regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

Not applicable, as there are no known federal regulations that require the same activity.

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.

Only if the Health Division took control of a facility's medical records would it collect payment for maintaining the medical records. The Health Division would need to determine what the costs were at the time it took control of the medical records. The money would be specifically used to pay for all of the associated costs to gain control of and maintain the medical records.

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formulation, operation or expansion of a small business. What methods did the agency use in determining the impact of the regulation on a small business?

These proposed regulations will not impose an economic burden upon a small business unless it ceases to operate and the Health Division determines there is a need to take over the medical records of a facility. In that case, a significant economic impact may be imposed depending on the length of time the Health Division would have to retain the records for.