

**PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R010-12

July 5, 2012

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

AUTHORITY: §1, NRS 432A.077 and 432A.190; §2, NRS 432A.077.

A REGULATION relating to children; establishing the amount and the procedure for the imposition of certain administrative fines by the Health Division of the Department of Health and Human Services upon certain persons for violating certain statutes and regulations governing child care facilities; and providing other matters properly relating thereto.

Section 1. Chapter 432A of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3 or 4, if an inspection of a facility conducted pursuant to NRS 432A.180 reveals that the person who operates the facility is in violation of any provision of this chapter or chapter 432A of NRS, the Health Division shall issue a notice of violation to the person who operates the facility. The notice of violation must:

- (a) Be in writing and describe with particularity the nature of the violation;*
- (b) Include the time permitted to correct the violation;*
- (c) Inform the person who operates the facility that if the violation is not corrected, the*

Health Division may:

- (1) Issue a citation; and*
- (2) Impose an administrative fine pursuant to subsection 6; and*
- (d) Inform the person who operates the facility of the provisions of subsection 8.*

2. If the person who operates the facility does not correct a violation within the time to correct the violation set forth by the Health Division in the notice of violation, the Health Division may issue a citation to the person who operates the facility.

3. The Health Division may, without first issuing a notice of violation, issue a citation to the person who operates the facility if:

(a) The Health Division determines that the health or safety of any child in the facility appears to be in danger; or

(b) The violation is for operating a facility without a license and:

(1) The unlicensed operator of the facility refuses to cooperate with the Health Division's investigation or an attempt by the Health Division to license the operator of the facility; or

(2) The Health Division or an agency for the licensing of child care facilities established by a county or city has previously explained to the unlicensed operator, in a manner that is verifiable, that Nevada law requires the operator to be licensed.

4. If the violation is for operating a facility without a license and the unlicensed operator of the facility agrees to permanently cease operation of the facility or temporarily cease operation of the facility until the operator becomes licensed, the Health Division may issue a notice of violation. If the Health Division issues such a notice of violation and a subsequent investigation reveals that the operator of a facility operated the facility without a license after the facility received the notice of violation, the Health Division shall issue a citation to the person who operates the facility.

5. A citation issued pursuant to this section must:

(a) Be in writing and describe with particularity the nature of the violation;

(b) Inform the person who operates the facility that the Health Division may impose an administrative fine pursuant to subsection 6 and of the amount of that administrative fine;

(c) Inform the person who operates the facility of the date, time and location for a hearing on the violation; and

(d) Inform the person who operates the facility of the provisions of subsection 8.

6. Except as otherwise provided by subsection 8, if the Health Division issues a citation pursuant to this section, the Health Division may require a person to pay an administrative fine in the amount set forth in this subsection for each violation of a provision of this chapter or chapter 432A of NRS which concerns:

Violation

For Each

Offense

Operating a facility without a license issued pursuant to NRS

*432A.131 to 432A.220, inclusive..... \$250 plus \$10 per child
cared for in the facility*

Providing care for a greater number of children than the

number of children for whom care is authorized to be

*provided pursuant to the license issued to the licensee..... \$100 plus \$25 per child
cared for in the facility*

beyond the limit authorized

in the license

<i>Violation</i>	<i>For Each Offense</i>
<i>Providing care for children who are younger or older than the ages of the children for whom care is authorized to be provided pursuant to the license issued to the licensee.....</i>	<i>50</i>
<i>Operating a facility during different or more hours than the hours of operation set forth on the license issued to the licensee.....</i>	<i>50</i>
<i>Allowing a child to be removed from a facility in an unauthorized manner or by an unauthorized person</i>	<i>200</i>
<i>Operating a facility in a manner that is detrimental to the health, safety or welfare of a child in the facility</i>	<i>100</i>
<i>Subjecting a child cared for in the facility to punishment which violates the provisions of NAC 432A.400</i>	<i>200</i>
<i>Lack of or inadequate supervision of a child in the facility</i>	<i>100</i>
<i>Insufficient ratio of staff to children in the facility</i>	<i>100 per each member of staff deficient pursuant to the required ratio</i>
<i>Any other violation of a provision of this chapter or chapter 432A of NRS not specified in this subsection</i>	<i>50</i>

7. The Health Division may add \$200 to the amount of any administrative fine prescribed by subsection 6 if the violation of the provision of this chapter or chapter 432A of NRS resulted in an injury to any person.

8. The Health Division may not impose an administrative fine pursuant to subsection 6 unless the person against whom the administrative fine will be imposed has been provided with:

(a) The amount of the administrative fine, and the date, time and location for a hearing on the violation; and

(b) A reasonable opportunity to contest the violation at the hearing.

Sec. 2. NAC 432A.190 is hereby amended to read as follows:

432A.190 1. Inspections of any building or premises of a facility pursuant to NRS 432A.180 may be unannounced and must be made at least two times during the 12-month licensing period or once every 6 months. Any authorized member or employee of the ~~[Bureau]~~ *Health Division* may enter and inspect any building or premises of a facility at any time pursuant to NRS 432A.180 to secure compliance with or prevent a violation of any provision of this chapter or chapter 432A of NRS.

2. In conducting inspections and investigations, the ~~[Bureau]~~ *Health Division* may call upon political subdivisions and governmental agencies for assistance. The licensee or applicant shall cooperate with the person conducting the investigation by providing access to the buildings, records and staff of the facility. Failure to provide such access is a ground for revocation of a license or denial of an application for a license.

3. On confirmation of the operation of an unlicensed operator of a facility ~~[, the Bureau]~~ :

(a) The Health Division shall issue a notice of violation or citation, as appropriate, pursuant to section 1 of this regulation; and

(b) The Health Division or the local licensing agency shall investigate and attempt to license the operator of the facility, force discontinuance of the operation of the facility or prosecute the violation.