

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

LCB File No. R078-12

Effective December 20, 2012

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

AUTHORITY: §1, NRS 449.0302 and 449.040; §§2-4, NRS 449.0302; §§5 and 6, NRS 449.448.

A REGULATION relating to applications submitted to the Health Division of the Department of Health and Human Services; revising the information required to be included in various applications to the Health Division; and providing other matters properly relating thereto.

Section 1. NAC 449.011 is hereby amended to read as follows:

449.011 An application for a license that is filed with the Health Division pursuant to NRS 449.040:

1. Must be complete and ~~[notarized.]~~ *include proof of the identity of the applicant that is acceptable to the Health Division.*
2. In accordance with NRS 449.050, must be accompanied by the appropriate application fee specified in NAC 449.002 to 449.99939, inclusive.
3. In establishing that the applicant is of reputable and responsible character as required by NRS 449.040, must include personal references and information concerning the applicant's financial status and business activities and associations in and out of this State during the immediately preceding 3-year period. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, such references and information must be

provided with respect to the members thereof and the person in charge of the facility or program for which application is made.

4. In addition to the information required by NRS 449.040 and any other information specifically required for a particular license, must include:

(a) Full, complete and accurate information regarding the ownership of the facility or program and all changes to that ownership that occur while the application is pending. The information must include the name of:

(1) Each natural person who is an owner of the facility or program;

(2) Each person who has a direct or indirect ownership interest in the facility or program of 10 percent or more and who is the owner, in whole or in part, of any mortgage, deed of trust, note or other obligation secured in whole or in part by the facility or program or any of the property or assets of the facility or program;

(3) If the applicant is a corporation, each officer and director; and

(4) If the applicant is a partnership, each partner.

(b) The address of the applicant's principal office.

(c) Evidence satisfactory to the Health Division that the facility or program meets all applicable federal, state and local laws and complies with all safety, health, building and fire codes. If there are any differences between the state and local codes, the more restrictive standards apply.

(d) If required by NRS 439A.100, a copy of a letter of approval issued by the Director of the Department of Health and Human Services.

(e) A copy of the certificate of occupancy, a copy of the applicant's business license and a copy of any special use permits obtained in connection with the operation of the facility or program.

(f) A copy of any property lease or rental agreements concerning the facility or program.

(g) If the applicant is a corporation, a copy of its bylaws and articles of incorporation.

Sec. 2. NAC 449.0112 is hereby amended to read as follows:

449.0112 1. Upon receipt of a properly completed ~~[and notarized]~~ application, *proof of the identity of the applicant that is acceptable to the Health Division* and the appropriate fee, the Health Division shall conduct an investigation concerning the premises, facilities, qualifications of personnel, methods of operation and policies of the applicant and perform a prelicensure survey of:

(a) The applicant; and

(b) The facility, program plan and management plan, as appropriate.

2. Before issuing a license, the Health Division must receive a satisfactory report of inspection of the facility from the State Fire Marshal or the local fire department.

Sec. 3. NAC 449.4526 is hereby amended to read as follows:

449.4526 1. A person who has sustained damages as a result of the bankruptcy of or any breach of contract by a facility may file an application for indemnification with the Administrator of the Health Division. The Administrator of the Health Division shall return an incomplete application to the applicant.

2. An application filed pursuant to subsection 1 must include a copy of the court order or settlement agreement which indicates a determination that the patient sustained damages as a result of a breach of contract or bankruptcy of a facility, *proof of the identity of the patient or*

patient's legal representative that is acceptable to the Health Division and a ~~notarized~~

statement of the patient or patient's legal representative which includes the following information:

(a) A brief description of the damages sustained by the patient as a result of the bankruptcy of or any breach of contract by the facility;

(b) The date that the damages were sustained and the amount of damages claimed; and

(c) The name and address of the facility in which the patient sustained damage.

3. The Health Division may bring an action for interpleader against all claimants upon the surety bond or substitute thereof filed or deposited pursuant to NRS 449.068 or 449.069, as applicable. If the Health Division brings such an action, the Health Division shall publish notice of the action at least once each week for 2 weeks in a newspaper of general circulation in the county in which the facility has its principal place of business. The Health Division may deduct its costs of the action, including the costs of publication of the notices, from the amount of the surety bond or substitute thereof.

4. All claims against the surety bond or substitute thereof have equal priority. If the surety bond or substitute thereof is insufficient to pay all the claims in full, the claims must be paid pro rata.

5. If no claims have been filed against the surety bond or substitute thereof deposited with the Health Division within 12 months after the license of the facility expires or is revoked, the Health Division shall release the surety bond or substitute thereof to the facility and shall not consider any claim filed by a patient against the surety bond or substitute thereof after that time.

6. If one or more claims have been filed against the surety bond or substitute thereof within 12 months after the license of the facility expires or is revoked, the proceeds must not be released

to the facility or distributed to any patient earlier than 18 months after the license of the facility expires or is revoked.

Sec. 4. NAC 449.9755 is hereby amended to read as follows:

449.9755 After it receives a properly completed ~~[and notarized]~~ application, ~~[accompanied by]~~ *proof of the identity of the applicant that is acceptable to the Division and* the appropriate fee, the Division shall conduct an investigation of the applicant and inspect the proposed center.

Sec. 5. NAC 449.99942 is hereby amended to read as follows:

449.99942 1. Before offering to a patient a service of general anesthesia, conscious sedation or deep sedation, an outpatient facility shall submit to the Health Division an application for a permit to offer those services at the outpatient facility on a form prescribed by the Health Division.

2. An application for a permit must:

(a) Be complete and ~~[notarized.]~~, *if the applicant is a natural person, include proof of the identity of the applicant that is acceptable to the Health Division.*

(b) Be accompanied by the appropriate application fee as prescribed in subsection 3.

(c) Include:

(1) The name of the applicant and, if a natural person, evidence that the applicant has attained the age of 21 years.

(2) The location of the outpatient facility.

(3) In specific terms, the nature of services and type of care to be offered.

(4) The name of the person in charge of the outpatient facility.

(5) Such other information as may be required by the Health Division for the proper administration and enforcement of NRS 449.435 to 449.448, inclusive, and NAC 449.9994 to 449.999489, inclusive.

(6) Evidence satisfactory to the Health Division that the applicant is of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, similar evidence must be submitted as to the members thereof, and the person in charge of the outpatient facility for which application is made. If the applicant is a political subdivision of the State or other governmental agency, similar evidence must be submitted as to the person in charge of the outpatient facility for which application is made.

(7) Evidence satisfactory to the Health Division of the ability of the applicant to comply with the standards and regulations adopted by the Board.

(8) Evidence satisfactory to the Health Division that the outpatient facility:

(I) Conforms to the zoning regulations of the local government within which the outpatient facility will be operated; or

(II) Has applied for an appropriate reclassification, variance, permit for special use or other exception for the outpatient facility.

(d) Be accompanied by:

(1) Except as otherwise provided in subparagraph (2), proof of accreditation by a nationally recognized organization approved by the Board pursuant to NAC 449.999424; or

(2) If the application is for an initial permit, evidence that the outpatient facility has applied for accreditation by a nationally recognized organization approved by the Board pursuant to NAC 449.999424.

3. An applicant for a permit must pay to the Health Division a nonrefundable fee of \$3,570.

4. An application for a permit is valid for 1 year after the date on which the application is submitted. If an applicant does not meet the requirements for a permit within 1 year after the date on which the application was submitted, the applicant must submit a new application and pay the required fee to be considered for a permit.

5. An application for a permit must be submitted for each location of the outpatient facility where a service of general anesthesia, conscious sedation or deep sedation will be offered.

Sec. 6. NAC 449.999421 is hereby amended to read as follows:

449.999421 1. Upon receipt of a properly completed ~~[and notarized]~~ application for a permit, *proof of the identity of the applicant, if applicable, that is acceptable to the Health Division* and the appropriate fee, the Health Division shall conduct an investigation of the applicant and the outpatient facility pursuant to the provisions of NRS 449.446. During the investigation, the Health Division shall determine whether the outpatient facility is in compliance with the provisions of NRS 449.435 to 449.448, inclusive, and NAC 449.9994 to 449.999489, inclusive.

2. Before issuing a permit, the Health Division must receive a satisfactory report of inspection of the outpatient facility from the State Fire Marshal or the local fire department.

HEALTH DIVISION
Bureau of Healthcare Quality and Compliance
December 14, 2012

LCB File # R078-12

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 expressed concern that proof of identity was a very broad term. Explanation was provided that the actual application process includes a lot of documentation that would help ensure the validity of the identity of the individual applying for licensure including but not limited to: a business license, certificates of insurance, lease agreements, partnership agreements, articles of incorporation or of organization, resumes, certificates of compliance from the state fire marshal and fingerprint criminal history investigations of owners. During testimony it was explained that not all of these are required for every application and are applicable in accordance to the requirements of each facility type but this gives them an idea of the supporting documentation that helps to establish identity. In addition, the Health Division conducts onsite visits of the facilities it licenses. Although verification of the identity of the individual who signed the application may not be checked, personnel files are reviewed to ensure the individuals working at the facility are qualified to do so, observations and interviews, as well as documentation review is done to ensure compliance with licensing requirements before a license is issued therefore ensuring legitimacy of these new facilities. Due to the amount of supporting documentation that helps establish identity the proposed language provides flexibility to the Health Division in establishing what further form of identification may be needed including allowing the Health Division to seek additional information in case there is any dispute of identity.

A summary of the Hearing for Amendment of Nevada Administrative Code (NAC) 449, LCB File No. R078-12 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, draft regulations and proposed changes to the 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 20 responses were received. The following is a summary of the 20 responses:

Summary of Response

Summary Of Comments Received (20 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 – 17 responses Yes – 0 responses Left Blank – 3 responses	No – 14 responses Yes – 4 responses Left Blank – 2 responses	No – 17 responses Yes – 0 responses Left Blank – 3 responses	No – 15 responses Yes – 2 responses Left Blank – 3 responses
<u>Comments:</u> Skipping the step of notarization makes application a bit easier.	<u>Comments:</u> The regulations, as stipulated will have beneficial effect upon our business in the sense that, they (written NAC regulations) will facilitate the smooth running of our agency, and also, activities of the agency being regulated in order to reach maximal heights according to the State Board of Health.	<u>Comments:</u> We just provide medical staff.	<u>Comments:</u> We anticipate that, with these regulations stipulated, our business will maintain an optimal level of consciousness and compliance, as we keep constantly reviewing and getting familiarized with the frequent updates available by Nevada State

	We just provide medical staff. Proof of identity is easier than getting for notarized.	Board of Health on LCB File No. R 001-11. We just provide medical staff. I don't know yet.
--	---	--

Number of Respondents out 1,103	Adverse economic effect?	Beneficial effect?	Indirect adverse effects?	Indirect beneficial effects?
20	0	4	0	2

A summary of the Hearing for Amendment of Nevada Administrative Code (NAC) 449, LCB File No. R078-12 can be obtained by contacting the Bureau of Health Care Quality and Compliance, 727 Fairview Drive, Suite E, Carson City, Nevada 89701.

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. The small impact summary statement did not reveal an economic burden and therefore no change was required from an economic stand point. As noted in Section 1 the application process requires a lot of supporting documentation that would help establish identity. In addition, the Health Division conducts onsite visits of the facilities it licenses. Although verification of the identity of the individual who signed the application may not be checked, personnel files are reviewed to ensure the individuals working at the facility are qualified to do so, observations and interviews, as well as documentation review is done to ensure compliance with licensing requirements before a license is issued therefore ensuring legitimacy of these new facilities. The Secretary of State's office successfully removed all language related to notarization from their statutes. Due to the amount of supporting documentation that helps establish identity the proposed language provides flexibility to the Health Division in establishing what further form of identification may be needed including allowing the Health Division to seek additional information in case there is any dispute of identity. Therefore, no changes were made to the proposed regulations.

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: Easier and quicker application process with a minimal cost reduction through the avoidance of notary fees, if applicable, once new licensing processes are implemented.
- Adverse effects: None anticipated.
- No negative economic impact on the public is anticipated.

b. Both immediate and long term effects.

- Immediate effects: Easier and quicker application process with a minimal cost reduction through the avoidance of notary fees, if applicable, once new licensing processes are implemented.
- Long term effects: Easier and quicker application process with a minimal cost reduction through the avoidance of notary fees, if applicable, once new licensing processes are implemented.
- No negative economic impact on the public is anticipated.

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

There is no estimated cost to the agency for enforcement of 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 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.

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

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.