

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

LCB File No. R111-12

Effective March 28, 2014

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

AUTHORITY: §§1-5, NRS 449.0302.

A REGULATION relating to medical and other related facilities; providing for background investigations of certain applicants for a license; requiring certain actions to be taken with respect to an employee, employee of a temporary employment service or independent contractor of certain facilities, hospitals, agencies, programs and homes pending completion of a background investigation or correction of information received as a result of such an investigation; providing for disciplinary action for failing to provide necessary information to complete a background investigation; 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, 3 and 4 of this regulation.

Sec. 2. *As used in sections 2, 3 and 4 of this regulation, unless the context otherwise requires, “Central Repository” means the Central Repository for Nevada Records of Criminal History.*

Sec. 3. 1. *If the Central Repository notifies the Division that it is unable to complete an investigation pursuant to NRS 449.122 because:*

(a) Additional information is required, the Division shall send a notice to the applicant or licensee directing the applicant or licensee to provide the Division and the Central Repository with the information or proof that the information cannot be obtained within 30 days after the date on which the notice was sent by the Division.

(b) Criminal charges against the applicant or licensee are pending, the Division shall notify the applicant or licensee that he or she is required to:

(1) Notify the Division of the date of each court proceeding relating to the charges; and

(2) Provide the Central Repository with any information relating to the final disposition of the charges as soon as the information is available.

2. The Division may deny an application for a license of an applicant or revoke the license of a licensee who fails to comply with the provisions of this section.

3. The Division may delay taking any action concerning an application until the Central Repository completes its investigation.

Sec. 4. 1. *If the Central Repository notifies the administrator of, or the person licensed to operate, a facility, hospital, agency, program or home that it is unable to complete an investigation pursuant to NRS 449.123 because:*

(a) Additional information is required, the administrator of, or the person licensed to operate, the facility, hospital, agency, program or home shall, within 10 working days after receiving the notice from the Central Repository, send a notice to the employee, employee of a temporary employment service or independent contractor directing the employee, employee of a temporary employment service or independent contractor to provide the administrator of, or the person licensed to operate, the facility, hospital, agency, program or home and the Central Repository with the information or proof that the information cannot be obtained within 30 days after the date on which the notice was sent by the administrator of, or the person licensed to operate, the facility, hospital, agency, program or home.

(b) Criminal charges against the employee, employee of a temporary employment service or independent contractor are pending, the administrator of, or the person licensed to operate,

the facility, hospital, agency, program or home shall notify the employee, employee of a temporary employment service or independent contractor that he or she is required to:

(1) Notify the administrator of, or the person licensed to operate, the facility, hospital, agency, program or home of the date of each court proceeding relating to the charges; and

(2) Provide the Central Repository with any information relating to the final disposition of the charges as soon as the information is available.

2. The administrator of, or the person licensed to operate, the facility, hospital, agency, program or home shall terminate the employment of an employee or the contract with an independent contractor or notify the temporary employment service that its employee is prohibited from providing services for the facility, hospital, agency, program or home upon determining that the employee, employee of a temporary employment service or independent contractor has willfully failed to comply with the provisions of this section.

3. Pending the completion of an investigation of an employee, employee of a temporary employment service or independent contractor of a facility, hospital, agency, program or home for which the Central Repository has provided notice pursuant to subsection 1 that it is unable to complete the investigation for a reason stated in subsection 1, and during any period in which an employee, employee of a temporary employment service or independent contractor has to correct information provided by the Central Repository pursuant to NRS 449.125, the administrator of, or the person licensed to operate, a facility, hospital, agency, program or home shall take actions to ensure the safety of its patients, residents or clients, including:

(a) Prohibiting the employee, employee of a temporary employment service or independent contractor from working at the facility, hospital, agency, program or home by placing the employee, employee of a temporary employment service or independent contractor on leave;

(b) Requiring the employee, employee of a temporary employment service or independent contractor to be under the direct supervision and observation of an employee of the facility, hospital, agency, program or home while caring for any patient, client or resident of the facility, hospital, agency, program or home;

(c) Conducting an investigation into the circumstances of the record of criminal history to determine and carry out any measures that the facility, hospital, agency, program or home identifies as necessary to ensure the safety of its patients, residents or clients if the employee, employee of a temporary employment service or independent contractor cares for patients, residents or clients; or

(d) Taking any combination of the actions set forth in paragraph (a), (b) or (c).

4. As used in this section, “facility, hospital, agency, program or home” has the meaning ascribed to it in NRS 449.119 and includes an intermediary service organization for the purpose of carrying out sections 2, 3 and 4 of this regulation.

Sec. 5. NAC 449.3971 is hereby repealed.

TEXT OF REPEALED SECTION

449.3971 Applicant required to submit fingerprints to Central Repository for Nevada Records of Criminal History for report on background. (NRS 239B.010, 449.0302)

1. In addition to the requirements set forth in NAC 449.011, each applicant for a license to operate an agency shall submit to the Central Repository for Nevada Records of Criminal

History two complete sets of fingerprints for submission to the Federal Bureau of Investigation for its report.

2. The Central Repository for Nevada Records of Criminal History shall determine whether the applicant has been convicted of a crime listed in paragraph (a) of subsection 1 of NRS 449.174 and immediately inform the administrator of the agency, if any, and the Health Division of whether the applicant has been convicted of such a crime.

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
LCB File # R111-12

Information Statement per NRS 233B.066

1. A clear and concise explanation of the need for the adopted regulation.

Certain facilities must background check their employees in accordance with the laws outlined in Nevada Revised Statutes, Chapter 449. Current law requires an individual be disqualified from employment if they have been convicted of one of the disqualifying crimes listed in the law. The proposed regulations are needed to resolve a current issue. The issue occurs when the Criminal History Repository has insufficient information to make a final determination of whether an employee of certain health facilities licensed by the Division has been convicted of a crime that would disqualify him from working in a health facility. It also establishes time frames for the employee and the facility to respond to provide information that would lead to a final determination of a person's criminal history. In addition, if an employee willfully fails to submit the information required in the proposed regulations, it requires the facility to terminate the employee.

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

Public comment was solicited through the Notice of Public Hearing which could be obtained at Division of Public and Behavioral Health locations, State Library and Archives, county libraries, and the Division's website. In addition, the Notice of Public Hearing was mailed to licensed Division of Public and Behavioral Health facilities that are required to conduct background investigations in accordance with NRS Chapter 449 as well as being sent out electronically through the Division's List Serv. Input was also requested from industry during advisory group meetings for homes for individual residential care facilities, skilled nursing facilities and residential facility for groups. Their input resulted in modifications to the proposed regulations during the drafting phase. A public workshop was also held in Carson City and Las Vegas via video conference.

The following is a summary of the testimony provided during the State Board of Health Public Hearing on March 14, 2014:

No testimony was provided at the public hearing for the proposed regulations.

A summary of the Hearing for Amendment of Nevada Administrative Code, Chapter 449 can be obtained by contacting the Bureau of Health Care Quality and Compliance, 727 Fairview Drive, Suite E, Carson City, NV 89701.

3. The number of persons who:

(a) Attended the hearing;

Although 150 individuals signed in at the March 14, 2014 Board of Health meeting it is unclear how many individuals came specifically to hear testimony on these proposed regulations.

(b) Testified at each hearing; and

No testimony was provided at the public hearing for the proposed regulations.

(c) Submitted to the agency written statements.

No one submitted written statements for the public hearing.

(d) For each person identified above, the following information if provided to the Division of Public and Behavioral Health: Name, telephone number, business address, business telephone number, electronic mail address and name of entity or organization represented. (Please see attached copies of sign-in sheet)

150 people were present at the hearing but it is unclear how many of those individuals came specifically to hear testimony on these proposed regulations. Leticia Metherell, Health Facilities Inspection Manager for the Bureau of Health Care Quality and Compliance presented the proposal to amend Nevada Administrative Code, Chapter 449. No one provided testimony at the hearing.

4. 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.

By June 28, 2013 a small business impact questionnaire and workshop notice which included information on how to obtain a copy of the proposed regulations was sent to impacted facilities. The workshop notice and draft regulations were also posted on the Division of Public and Behavioral Health's website, distributed through the Division of Public and Behavioral Health's List Serv and posted in accordance with open meeting law. Out of 973 small business impact questionnaires distributed, only 6 responses were received. The following is a summary of the 6 responses.

Summary of Response

Summary Of Comments Received (6 responses were received out of 973 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 - 6 Yes - 0	No -6 Yes - 0	No -6 Yes - 0	No -6 Yes - 0

Number of Respondents out 973	Adverse economic effect?	Beneficial effect?	Indirect adverse effects?	Indirect beneficial effects?
6	0	0	0	0

A summary of the Hearing for Amendment of Nevada Administrative Code, Chapter 449 can be obtained by contacting the Division of Public and Behavioral Health, 727 Fairview Drive, Suite E, Carson City, NV 89701.

5. 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.

As noted previously, the Division of Public and Behavioral Health (DPBH) requested input from industry. Based on the input from industry changes were made to the proposed regulations providing industry with increased flexibility related to the manner in which an employee or independent contractor may work pending completion of an investigation. This would minimize any adverse effects on facilities.

6. 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

A. Beneficial effects: This will result in increased public safety by ensuring that individuals with undetermined background investigations obtain a final determination as to whether they are eligible or not eligible to work in a facility.

- B. Adverse effects: There were concerns expressed by industry related to suspending employees or having them work under direct supervision as the only options available to them. This concern was addressed in the proposed regulations by adding language which would allow a facility to conduct an investigation into the circumstances of the criminal history record to determine and implement measures the facility identifies in order to ensure the safety of patients. This would minimize any adverse effects on facilities. Based on the Small Business Impact Questionnaire sent to industry impacted by the proposed regulations it was revealed that they did not anticipate an adverse economic effect upon their business.
- C. Immediate effects: Increased public safety.
- D. Long term effects: Increased public safety.

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

The estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulations is \$0.

8. 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 are no other regulations that overlap or duplicate the proposed regulations.

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

This section is not applicable to the proposed regulations.

10. 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 proposed regulations do not add a new fee or increase an existing fee.