

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

LCB File No. R022-14

Effective June 26, 2015

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 and 4, NRS 449.0302; §3, NRS 439.150, 439.200, 449.0302 and 449.050.

A REGULATION relating to facilities for the care of adults during the day; requiring a facility for the care of adults during the day to provide the maximum number of clients allowed to occupy the facility at one time in an application for a license and notify the Division of Public and Behavioral Health of the Department of Health and Human Services of any change to that number; requiring a facility for the care of adults during the day to pay a fee for an application for a license or renewal of a license; requiring a facility for the care of adults during the day to keep a separate personnel file for each employee of the facility that must include certain documentation concerning tuberculosis screening; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a person, state or local government or agency thereof desiring a license to operate a facility for the care of adults during the day to file an application with the Division of Public and Behavioral Health of the Department of Health and Human Services. (NRS 449.040) **Section 1** of this regulation requires such an application to provide the maximum number of clients allowed to occupy the facility at one time. **Section 2** of this regulation requires the licensee of a facility for the care of adults during the day to update that information if it changes. **Section 3** of this regulation requires an applicant for a license or to renew a license to operate a facility for the care of adults during the day to pay a fee, which varies depending on the number of clients allowed to occupy the facility at one time. **Section 4** of this regulation requires a facility for the care of adults during the day to keep a separate personnel file for each employee that must include documentation of tuberculosis screening for the employee.

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 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.

5. If the application is for a facility for the care of adults during the day, must include the maximum number of clients allowed to occupy the facility at one time.

Sec. 2. NAC 449.0114 is hereby amended to read as follows:

449.0114 1. Upon receipt of a license, the licensee shall display the license at a conspicuous location within the facility.

2. During the term of the license, the licensee shall continuously maintain the facility in conformance with the provisions of NAC 449.002 to 449.99939, inclusive, and chapter 449 of NRS.

3. If there is a transfer of the real property on which the facility is located, but no change in the operator of the facility, the licensee shall, within 10 days, notify the **[Health]** Division of the

transfer in writing and provide the ~~Health~~ Division with a copy of any lease agreement relating to the transfer.

4. If there is a change in the administrator of the facility, the licensee shall notify the ~~Health~~ Division of the change within 10 days. The notification must provide evidence that the new administrator is currently licensed pursuant to chapter 654 of NRS and the regulations adopted pursuant thereto. If the licensee fails to notify the ~~Health~~ Division and submit an application for a new license within 10 days after the change, the licensee shall pay to the ~~Health~~ Division a fee in an amount equal to 150 percent of the fee required for a new application set forth in subsection 1 of NAC 449.0168.

5. A licensee shall notify the ~~Health~~ Division immediately of any change in the ~~ownership~~ :

(a) *Ownership* of ~~the location of, or the services provided at,~~ the facility ~~;~~ ;

(b) *Location of the facility;*

(c) *Services provided at the facility; and*

(d) *If the facility is a facility for the care of adults during the day, the maximum number of clients allowed to occupy the facility at one time.*

Sec. 3. NAC 449.013 is hereby amended to read as follows:

449.013 1. Except as otherwise provided in NAC 449.0168, an applicant for a license to operate any of the following facilities, programs of hospice care or agencies must pay to the ~~Health~~ Division *of Public and Behavioral Health* the following nonrefundable fees:

- (a) An ambulatory surgical center..... \$9,784
- (b) A home office or subunit agency of a home health agency 5,168
- (c) A branch office of a home health agency 5,358

(d) A rural clinic.....	4,058
(e) An obstetric center.....	1,564
(f) A program of hospice care.....	7,054
(g) An independent center for emergency medical care.....	4,060
(h) A nursing pool.....	4,602
(i) A facility for treatment with narcotics.....	5,046
(j) A medication unit.....	1,200
(k) A referral agency.....	2,708
(l) A facility for refractive surgery.....	6,700
(m) A mobile unit.....	2,090
(n) An agency to provide personal care services in the home.....	1,374
<i>(o) A facility for the care of adults during the day allowed to be occupied by not more than 50 clients at one time.....</i>	<i>1,164</i>
<i>(p) A facility for the care of adults during the day allowed to be occupied by more than 50 clients at one time.....</i>	<i>1,753</i>

2. An applicant for the renewal of such a license must pay to the **[Health]** Division *of Public and Behavioral Health* the following nonrefundable fees:

(a) An ambulatory surgical center.....	\$4,892
(b) A home office or subunit agency of a home health agency.....	2,584
(c) A branch office of a home health agency.....	2,679
(d) A rural clinic.....	2,029
(e) An obstetric center.....	782

(f) A program of hospice care	3,527
(g) An independent center for emergency medical care	2,030
(h) A nursing pool	2,301
(i) A facility for treatment with narcotics	2,523
(j) A medication unit	600
(k) A referral agency	1,354
(l) A facility for refractive surgery	3,350
(m) A mobile unit.....	1,045
(n) An agency to provide personal care services in the home.....	687
<i>(o) A facility for the care of adults during the day allowed to be occupied by not more than 50 clients at one time.....</i>	<i>814</i>
<i>(p) A facility for the care of adults during the day allowed to be occupied by more than 50 clients at one time.....</i>	<i>1,227</i>

3. An application for a license is valid for 1 year after the date on which the application is submitted. If an applicant does not meet the requirements for licensure imposed by chapter 449 of NRS or the regulations adopted pursuant thereto within 1 year after the date on which the applicant submits his or her application, the applicant must submit a new application and pay the required fee to be considered for licensure.

Sec. 4. NAC 449.4072 is hereby amended to read as follows:

449.4072 1. Each facility must have the number and kind of employees required by the physical characteristics of the facility, the number of clients and the services provided.

2. The director of a facility:

(a) Must be responsible and mature and have the personal qualities which will enable him or her to understand the problems of aged and infirm adults.

(b) Must be at least 21 years of age.

(c) Must have a high school diploma or its equivalent.

(d) Shall designate an acting director, who is similarly qualified, to act when the director is absent from the facility.

3. Every employee of the facility ~~};~~

~~—(a) Must};~~ *must* be in good physical and mental health.

~~;(b) Shall provide the Division:~~

~~——(1) Upon his or her initial employment, with the results of a physical examination conducted within the preceding 6 months, or with a copy of the employee's medical records for the preceding 3 years, certified by a physician.~~

~~——(2) Upon his or her initial employment, with a negative report of a tuberculin test conducted within the preceding 6 months. Thereafter, a tuberculin test must be completed every 2 years. If the report of the tuberculin test is positive, the employee shall provide an X-ray film of his or her chest.}~~

4. The facility shall keep a separate personnel file for each employee of the facility that must include, without limitation, documentation that the employee has had the tests or obtained the certificates required by NAC 441A.375.

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

December 12, 2014

LCB File # R022-14

Information Statement per NRS 233B.066

(a) A clear and concise explanation of the need for the adopted regulation.

There are two purposes for the need to adopt the proposed regulations:

1) To collect fees to license and inspect adult day care facilities. The Division of Public and Behavioral Health is responsible for inspecting and licensing adult day care facilities. Prior to the 2011 Legislative Session, the Division did not have authority to collect fees to license and regulate adult day care facilities; therefore, this industry has never paid licensing fees to the Division. As a result of the 2011 Legislative Session statutes were passed giving the Division authority to collect fees to cover the operating costs to license and inspect adult day care facilities.

2) To bring adult day care facility's standards for tuberculosis screening of employees to the equivalent criteria set forth in NAC 441A, the Infectious Diseases and Toxic Agents chapter, replacing the screening standards outlined in the current adult day care regulations. This would bring adult day care facilities to the same standards used by other types of dependent care facilities that are required to screen their employees for tuberculosis.

(b) 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.

(c) The number of persons who:

(1) Attended the hearing;

(2) Testified at the hearing; and

(3) Submitted to the agency written statements.

- A total of 9 people attended the hearing.
- No one testified at the hearing on LCB File # R022-14
- No one submitted written statements on LCB File # R022-14 (except what was provided as responses to the small business impact questionnaire – please refer to the attached small business impact statement to review responses received).

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, proposed regulations and small business impact statement were mailed to each licensed adult day care facility by October 28, 2014. The Notice of Public Hearing was also sent out electronically through the Division's List Serv. A public workshop was also held in Carson City and Las Vegas via video conference. The proposed regulations were brought before the Adult Day Care Advisory Group for review and recommendations. Their recommendations were implemented as the following example describes. The Advisory Group did not feel that billing for unsubstantiated complaints separately, as is done with substantiated complaints, was a good idea; therefore, the unsubstantiated complaint workload was averaged in when developing the annual renewal fee.

The following is a summary of the testimony provided during the State Board of Health Public Hearing on December 12, 2014:

- No one testified in support or in opposition of 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.

(d) For each person identified in subparagraphs (2) and (3) of item (c), the following information if provided to the agency conducting the hearing:

- (1) Name;
- (2) Telephone number;
- (3) Business address;
- (4) Business telephone number;
- (5) Electronic mail address; and
- (6) Name of entity or organization represented

Please see the attached sign-in sheets (Carson City and Las Vegas) for the December 12, 2014 State Board of Health meeting.

(e) 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 was mailed out December 18, 2013 to all licensed adult day care facilities along with the proposed regulations. Out of 17 small business impact questionnaires distributed, only 4 responses were received. The following is a summary of the 4 responses.

Summary of Response

<p align="center">Summary of Comments Received (There were 4 responses received out of 17 small business impact questionnaires distributed)</p>			
<p>(Q#2) Will a specific regulation have an adverse economic effect upon your business?</p>	<p>(Q#3) Will the regulation(s) have any beneficial effect upon your business?</p>	<p>(Q#4) Do you anticipate any indirect adverse effects upon your business?</p>	<p>(Q#5) Do you anticipate any indirect beneficial effects upon your business?</p>
2 “Yes” Responses	0 “Yes” Responses	1 “Yes” Responses	0 “Yes” Responses
2 “No” Responses	4 “No” Responses	3 “No” Responses	4 “No” Responses
<p><u>Comments (Q#2):</u> New tax, no value added, extra cost \$1,227 per year</p> <p>Feel estimated amount is manageable for program. Appreciate the presentations to ADAC (adult day care advisory council) to keep adult day providers apprised of the process.</p> <p>We already comply with the annual TB for all employees but the annual fee would be a hardship for us financially since our funds are so low at this time and continue to be difficult to acquire.</p> <p><u>Comments (Q#3):</u> This would be a cost we don’t have at this time.</p> <p><u>Comments (Q#4):</u> Our rates must increase to compensate. Our seniors will have to pay more for the same service.</p> <p>This proposed requirement is for “small businesses” and we are a very small nonprofit organization and it hasn’t been imposed on us as of yet.</p> <p><u>Comments (Q#5):</u> None received for this question.</p>			

The small business impact summary regarding the proposed language in LCB File #R022-14 can be obtained by contacting the Division of Public and Behavioral Health, Bureau of HealthCare Quality and Compliance, 727 Fairview Drive, Suite E, Carson City, NV 89701; Phone: (775) 684-1030; Fax: (775) 684-1073.

(f) If the regulation was adopted with changes from the initial proposal, a summary of those changes.

There were no changes from the initial proposed regulations.

(g) 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:

(1) Both adverse and beneficial effects; and

(2) Both immediate and long-term effects.

- *Beneficial effects:* The proposed fees would support the activities necessary to continue licensing and conducting inspections of adult day care facilities to determine whether adult day care facilities are in compliance with state laws and regulations, ensuring clients are well cared for and safe. In addition, they bring adult day care facilities to the tuberculosis screening standards found in NAC Chapter 441A, the Infectious Diseases and Toxic Agents chapter, to help ensure the safety of adult day care clients.
- *Adverse effects:* There would be a fiscal impact on adult day care facilities upon initial application as well as with yearly renewals. Adult day care facilities that report to the Division of Public and Behavioral Health (DPBH) a maximum number of clients that can occupy the facility at one time to be 50 clients or less would pay a one-time initial application fee of \$1,164 and an annual renewal fee of \$814. A facility that reported 51 clients or more would pay a one-time initial application fee of \$1,753 and an annual renewal fee of \$1,227. Please refer to number 6 of the small business impact statement for a full breakdown on how DPBH arrived at these fees.
- *Immediate effects:* The immediate effects includes a financial impact on adult day care facilities as these facilities would go from paying no licensing fees to paying fees as noted above upon passage of the proposed regulations. Enforcement of the tuberculosis screening requirements for employees in accordance with NAC Chapter 441A would begin upon passage of the proposed regulations.
- *Long term effects:* There would be a continued financial impact on this facility type as renewal licensure fees would be collected annually.

(h) The estimated cost to the agency for enforcement of the proposed regulation.

As the Division of Public and Behavioral Health currently collects fees for all other facility types, the collection of adult day care fees would be incorporated into the current process and would result in minimal costs to the agency. Mailing costs would be estimated to be approximately \$20 per year, and existing licensing staff would collect the fees. In addition, there would be no cost (\$0) associated with enforcing the tuberculosis screening standards as screening is already a part of the enforcement process. The proposed regulations just revise the requirements to meet the standard in Chapter 441A.

Of note, this is just the estimated cost to collect fees which is what the proposed regulations allow DPBH to do. The cost to license and regulate adult day care facilities are reflected in the proposed fees noted in section 6 of the small business impact statement.

Not having the proposed regulations in place, may cost DPBH approximately \$20,885 per year to license and regulate adult day care facilities.

(i) 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 duplicative or more stringent standards regulating the same activity.

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

This is not applicable in this case.

(k) 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 total annual amount DPBH expects to collect is estimated to be \$20,885. The monies would be used to license and renew licenses, conduct initial inspections, periodic inspections and unsubstantiated complaint investigations and to provide technical support to the industry. As substantiated complaints are billed separately, the costs to fund that workload were not included in the above fee analysis.