

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

LCB FILE NO. R135-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/08/2018**

Child Care Sanction/Grading Regulations:

SB189 (2017)

Sec. 4.2. 1. The Division shall adopt regulations establishing: (a) A system for rating child care facilities based on inspections conducted pursuant to subsection 3 of NRS 432A.180. The rating system must provide for the assignment of a letter grade of A, B, C, D or F to each child care facility based on the facility's compliance with applicable laws and regulations and the severity of any violations. (b) Procedures by which a child care facility that is assigned a grade of C, D or F may request a follow-up inspection. 2. Not later than 60 days after an inspection of a child care facility pursuant to subsection 3 of 432A.180, the Division shall post on an Internet website maintained by the Division a report which must include: (a) The letter grade assigned to the child care facility based on the inspection; and (b) A report of each unresolved violation of an applicable law or regulation, proposed actions to correct the violation and the date by which the child care facility is expected to correct the violation. 3. After each inspection described in subsection 1, a child care facility shall post the letter grade assigned to the facility in a conspicuous place near each entrance to the facility that is regularly used by the public and inform any person of that letter grade upon request.

Sec. 4.5. 1. If a child care facility violates any law or regulation related to its licensure, including any provision of this chapter or any condition, standard or regulation adopted by the Board, the Division, in accordance with the regulations adopted pursuant to section 4.7 of this act, may: (a) Prohibit the facility from accepting additional children until it determines that the facility has corrected the violation; (b) Limit the number of children to which the facility may provide care until it determines that the facility has corrected the violation; (c) Impose an administrative penalty of not more than \$1,000 per day for each violation, together with interest thereon at a rate not to exceed 10 percent per annum; (d) Appoint temporary management to oversee the operation of the facility and to ensure the health and safety of the children to whom the facility provides care until: (1) It determines that the facility has corrected the violation and has management which is capable of ensuring continued compliance with the applicable statute, condition, standard or regulation; or (2) Improvements are made to correct the violation; or (e) Impose any combination of the sanctions prescribed in paragraphs (a) to (d), inclusive. 2. If the child care facility fails to pay any penalty imposed pursuant to paragraph (c) of subsection 1, the Division may: (a) Suspend the license of the facility until the penalty is paid; and (b) Collect court costs, reasonable attorney's fees and other costs incurred to collect the penalty. 3. The Division may require any child care facility that violates any provision of this chapter, or any condition, standard or regulation adopted by the Board to make any improvements necessary to correct the violation. 4. Any money collected as an administrative penalty pursuant to paragraph (c) of subsection 1 must be accounted for separately and used to administer and carry out the provisions of this chapter, to protect the health, safety, well-being and property of the children to which child care facilities provide care in accordance with applicable standards or for any other purpose authorized by the Legislature.

Sec. 4.7. The Board shall adopt regulations establishing the criteria for the imposition of each sanction prescribed by section 4.5 of this act. These regulations must: 1. Prescribe the circumstances and manner in which each sanction applies; 2. Minimize the time between identification of a violation and the imposition of a sanction; 3. Provide for the imposition of incrementally more severe sanctions for repeated or uncorrected violations; and 4. Provide for less severe sanctions for lesser violations of applicable statutes, conditions, standards or regulations.

Section 1. Chapter 432A of NAC is hereby amended by adding thereto the provisions set forth as sections x to xx, inclusive, of this regulation.

Sec. 2. *As used in sections x to xx, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections x to xx, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Deficiency” defined.*

1. “Deficiency” means noncompliance with any federal or state statute or of the rules or regulations of the Division.

2. The term includes an incident concerning a facility where there are no extenuating circumstances or where the facility has made an inappropriate response to a complaint, including the failure to:

(a) Prevent an incident from occurring, if the incident could have been avoided;

(b) Identify an incident;

(c) Take action to correct an incident before the identification of the incident by the Division; or

(d) Implement a contingency plan if permanent action to correct an incident has not been undertaken.

Sec.4. *“Sanction” defined. “Sanction” means a corrective measure or penalty that is imposed by the Division upon a facility.*

Sec.5. *For the purposes of any computation of time required by these regulations:*

1. Any prescribed period of more than 5 days includes Saturdays, Sundays and holidays.

2. Any prescribed period of 5 days or less does not include Saturdays, Sundays or holidays.

3. If the date on which any action required to be performed falls on a Saturday, Sunday or holiday, the time is extended until the next day that is not a Saturday, Sunday or holiday.

4. The day of any act or event or on which notice is received is not included in the computation.

Sec.6. *“Ban on admissions” defined. “Ban on admissions” means a prohibition to admit new children into the facility.*

Sec.7. *“Compliance” and “substantially correct the deficiency” defined. “Compliance” or “substantially correct the deficiency” means that no major deficiency is present and that effective steps have been taken to resolve all deficiencies.*

Sec.8. *“Costs” defined.*

1. “Costs” means the expenses of implementing and enforcing administrative sanctions and of bringing an action in a court of competent jurisdiction.

2. The term includes, without limitation, filing fees, fees for service of notices or process and all expenses of litigation recoverable as costs pursuant to chapter 18 of NRS.

Sec.9. “De minimis deficiency” defined. *“De minimis deficiency” means a deficiency rated at a severity level of 1 or 2 and at a scope level of 1 or 2.*

Sec.10. “Initial deficiency” defined.

- 1. “Initial deficiency” means the first occurrence of a deficiency recorded by the Division.*
- 2. The term includes any deficiency found during a survey or in response to a complaint.*

Sec.11. “Major deficiency” defined. *“Major deficiency” means a deficiency with a combined severity and scope rating of five or more.*

Sec.12. “Monitor” defined. *“Monitor” means to observe, advise or supervise a facility on an as-needed basis to ensure compliance with the plan of correction for the facility.*

Sec.13. “New admission” defined. *“New admission” means a child who is admitted to the facility on or after the effective date of a ban on admissions and who was not been admitted before the ban.*

Sec.14. “Plan of correction” defined. *“Plan of correction” means a plan developed by the facility and approved by the Division that:*

- 1. Describes the actions to be taken by the facility to correct one or more deficiencies; and*
- 2. Specifies the date by which those deficiencies will be corrected.*

Sec.15. “Repeated deficiency” defined. *“Repeated deficiency” means a deficiency found by the Division again within 18 months, including one found at a follow-up survey, an investigation of a complaint or the next periodic survey.*

Sec.16. “Resurvey” defined. *“Resurvey” means a subsequent survey conducted to evaluate compliance with a plan of correction.*

Sec.17. “Severity and scope score” defined. *“Severity and scope score” means the sum of the numerical levels of severity and scope assigned to a deficiency.*

Sec.18. “Subsequent deficiency” defined. *“Subsequent deficiency” means a deficiency found on a resurvey.*

Sec.19. “Temporary management” defined. *“Temporary management” means the temporary appointment by the Division or by a court of competent jurisdiction of a manager or administrator with authority to operate the facility and to hire, terminate or reassign staff, obligate money of the facility, alter procedures and manage the facility to correct the deficiencies found during a survey or visit identifying the deficiencies.*

Sec.20. The purposes of administrative sanctions are to:

- 1. Safeguard the rights, interests and well-being of recipients of child care services, including the protection of recipients from actual or potential harm resulting from deficiencies;*
- 2. Encourage and assist facilities to comply with the requirements of the Division, including those imposed by federal law; and*

3. *Promote the efficient use of resources to ensure appropriate care, treatment and services for recipients of child care services.*

Sec.21. *Administrative sanctions authorized by SB189, Section 4.5 and 4.7, of the 2017 legislative session, must be imposed by the Division through the Division.*

Sec.22. *At least one administrative sanction must be imposed for each deficiency in any facility with a severity level of 4 and for each deficiency in any facility with a combined severity and scope score of 6 or more. The Division may impose sanctions if deficiencies of a severity level 3 or less or a combined severity and scope score of less than 6 are identified.*

Sec.23. *The Division must impose at least one of the sanctions upon any facility that has a deficiency with a severity level of 4 or a combined severity and scope score of 6 or more. More than one of these sanctions may be imposed in the discretion of the Division.*

Sec.24. *The Division may apply one or more sanctions, but if the Division chooses to impose a particular sanction, it must be applied according to the severity and scope factors established in these regulations.*

Sec.25. *Sanctions may be imposed until substantial compliance is achieved or, if compliance is not achieved, until the day before termination of the license becomes effective.*

Sec.26. *Imposition in an emergency:*

1. *If necessary to protect the public health and safety, the Division may impose such sanctions as are necessary without notice to the facility or by oral notice to the facility.*

2. *If there is an immediate and serious threat to the health and safety of recipients served by a facility, the Division may appoint a temporary manager to remove the threat. A temporary manager may also be appointed without prior written notice on an emergency basis if a facility violates any ban on admissions. If there is an immediate and serious threat to the health and safety of recipients, the times provided for notice contained in this subsection govern. In all other respects, the provisions governing temporary management found in section **xx**, apply.*

3. *The Division may, in an emergency, impose a ban on admissions, a limitation on occupancy or may suspend the license of a facility without notice or upon oral notice as provided in this section.*

4. *In any case where sanctions are imposed without written notice, the Division shall provide written notice that complies with the requirements of NAC 439.345 within 48 hours after the imposition of the sanctions.*

Sec.27. *Basis for imposition:*

1. *The Division may apply one or more sanctions on the basis of deficiencies found during surveys or investigations of complaints conducted by the Division.*

2. *Deficiencies must be reported to the facility. The notice to the facility must specify the deficiencies found and the severity and scope score for each deficiency determined by the Division.*

3. *Any deficiency for which a severity and scope score is not specified is presumed to be a de minimis deficiency.*

Sec. 28. *In determining the sanctions to be imposed, the Division shall consider the severity and scope of the deficiencies according to the classifications of severity and scope described in these regulations.*

Sec.29. *Evaluation of representative sample of recipients; size of sample:*

1. In determining the scope of a violation, a survey of a facility must evaluate a representative sample of recipients. The sample must consist of at least the following size:

<i>Number of recipients</i>	<i>Minimum number of recipients in sample</i>
<i>1 – 9</i>	<i>All recipients</i>
<i>10 – 40</i>	<i>10</i>
<i>41 – 75</i>	<i>15</i>
<i>76 – 100</i>	<i>20</i>
<i>101 – 175</i>	<i>25</i>
<i>176 -250</i>	<i>30</i>
<i>251 – 350</i>	<i>35</i>
<i>351 – 450</i>	<i>40</i>
<i>451 – more</i>	<i>50</i>

2. The sample size used in identifying the scope of a deficiency in a resurvey must not be less than 60 percent of the sample size used in the initial survey.

3. The Division may review more than the minimum number of recipients. If it does so, the determination of scope must be based on the number of recipients actually reviewed.

4. If the Division investigates a complaint relating to a recipient, the Division may sample only that recipient. The scope of any deficiency cited pursuant to this subsection must be scope level one.

5. As used in this section, “recipient” means a child who:

(a) Is admitted to the facility at the time the Division surveys the facility; or

(b) Received services at the facility within the 30 days immediately preceding the date the Division surveys the facility.

Sec.30 . *Scope of deficiencies, basis:*

1. The scope scale must be used to assess the scope of each deficiency in the facility.

2. *The basis for the assessment is the number of recipients affected or with the potential to be affected by the deficiency as shown by:*

- (a) The frequency of the deficiency;*
- (b) The number or percentage of recipients affected;*
- (c) The number or percentage of staff involved; and*
- (d) The pattern or lack of pattern of the deficiencies.*

Sec.31 . Scope of deficiencies, criteria for evaluation:

1. *The scope of the deficiencies must be evaluated using the criteria prescribed in this section.*

2. *A deficiency of scope level 1 consists of one or an isolated number of unrelated incidents in the sample surveyed. A deficiency is of this scope if it involves 20 percent or less of the recipients sampled in a facility.*

3. *A deficiency is scope level 2 if the Division identifies a pattern of incidents at the facility. The number or percentage of recipients or staff involved in the incidents or the repeated occurrences of incidents in short succession may also establish a pattern by indicating a reasonable degree of predictability of similar incidents. A deficiency is also of this scope if it involves more than 20 percent but not more than 50 percent of the recipients sampled in a facility.*

4. *A deficiency is of scope level 3 if it occurs in a sufficient number or percentage of recipients or staff or with sufficient regularity over time that it may be considered systemic or pervasive in or by the facility. A deficiency is also of this scope if it involves more than 50 percent of the recipients sampled in a facility.*

Sec.32. Severity of deficiencies, basis for assessment:

1. *The severity scale must be used to assess the severity of each deficiency in the facility. The basis for the assessment is actual or potential harm to recipients.*

2. *Deficiencies of severity level 1 concern requirements promulgated primarily for administrative purposes. No harm is likely to occur to a recipient. No negative recipient impact has occurred or is likely to occur.*

3. *Deficiencies of severity level 2 indirectly threaten the health, safety, rights, security, welfare or well-being of a recipient. A potential for harm, as yet unrealized, exists. If continued over time, a negative impact on one or more recipients or a violation of one or more recipients' rights would occur or would be likely to occur.*

4. *Deficiencies of severity level 3 create a condition or incident in the operation or maintenance of a facility that directly or indirectly threatens the health, safety, rights, security, welfare or well-being of one or more recipients. A negative impact on the health, safety, rights, security, welfare or well-being of one or more recipients has occurred or can be predicted with substantial probability to occur, or the well-being of a recipient has been or is about to be compromised and requires intervention and correction of the deficiency. Violation of a partial or complete ban on admissions imposed on a facility, violation of a limitation on occupancy of a facility or failure to implement a directed plan of correction is presumed to be a deficiency of this level of severity.*

5. *Deficiencies of severity level 4 create a condition or incident that has resulted in or can be predicted with substantial probability to result in serious harm to a recipient. As used in this*

subsection, “serious harm” includes serious mental harm, serious impairment of bodily functions, serious dysfunction of any bodily organ or part, life-threatening harm or death.

Sec.33 . *If the same deficiency is found on a resurvey, there is a rebuttable presumption that the deficiency continued through the period between the survey and resurvey. A sanction may be imposed for a subsequent deficiency only if the resurvey is made and the deficiency is again actually found to be present.*

Sec.34 . *The sanctions available for all facilities include:*

- 1. The imposition of a plan of correction as directed by the Division;*
- 2. The issuance of a provisional license as provided by NRS 432A.160;*
- 3. The imposition of a limitation on the occupancy of a facility;*
- 4. The imposition of a ban on admissions;*
- 5. Monitoring of the facility by the Division;*
- 6. The assessment of monetary penalties;*
- 7. The requirement that the facility be managed temporarily by a person appointed by the Division; and*
- 8. The denial, suspension or revocation of the license of the facility or an endorsement on a license, if applicable.*

Sec.35 . *For determining the appropriate sanctions, the Division shall initially assess individual deficiencies according to the following initial factors:*

- 1. The presence or absence of an immediate and serious threat to the health and safety of residents;*
- 2. The severity of the deficiency; and*
- 3. The scope of the deficiency.*

Sec.36 . *After the initial assessment, the Division shall consider the following secondary factors in determining the appropriate sanction to impose:*

- 1. The history of previous compliance by the facility generally and specifically with reference to the deficiencies at issue;*
- 2. The corrective and long-term compliance outcomes desired.*

Sec.37 . *The selection of a sanction must be based upon the nature of the deficiencies and the sanction most likely to correct those deficiencies. Absent evidence to the contrary, restrictions upon service and monetary penalties are presumed to be the most effective sanctions for deficiencies that do not cause an immediate and serious threat to recipients.*

Sec.38 . *Plan of Correction:*

- 1. The facility shall develop a plan of correction for each deficiency and submit the plan to the Division for approval within 10 days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.*
- 2. If the plan is not acceptable to the Division, the Division may direct the facility to resubmit a plan of correction or the Division may develop a directed plan of correction with which the facility must comply.*

3. *Failure to submit the plan of correction to the Division within 10 days constitutes a separate deficiency subject to monetary penalties with severity and scope rated at the same levels as the highest deficiency identified on the notice of deficiencies.*

Sec.39 . Ban on admissions:

1. *A limitation on the occupancy of a facility may be imposed by the Division to safeguard the health, safety and well-being of recipients currently receiving care or services and to prevent the admission of child who cannot adequately be served by the facility. The Division may limit the occupancy to a number of children wherein safety is reasonably assured.*

2. *A limitation on occupancy may be imposed in addition to a ban on admissions if the facility is unable to provide adequate care or services.*

Sec.40. Limitation on occupancy, criteria for imposition:

1. *If the Division imposes a limitation on the occupancy of a facility, the limitation must be imposed as provided in this section.*

2. *For deficiencies with a combined severity and scope score of 6 or more, a limitation on occupancy may be imposed.*

3. *For deficiencies with a severity and scope score of less than 6, a limitation on occupancy may be imposed only if the deficiencies involve direct recipient care or services or the ability of occupants to exit the facility safely in case of a fire or other emergency.*

Sec.41 . A limitation on occupancy:

1. *Must be imposed for not less than 72 hours.*

2. *Must be terminated if the facility demonstrates that substantial improvements have been made to correct the deficiencies and that the health, safety and well-being of recipients are adequately safeguarded.*

Sec.42 . Effect of noncompliance with limitation on occupancy:

1. *If a limitation on occupancy is imposed, a notice of the limitation must be posted at all public entrances to the facility within 48 hours after the facility receives notice of the limitation. Each notice must be not less than 8.5 inches by 11 inches in size and include:*

(a) *The words "NOTICE OF LIMITATION ON OCCUPANCY" printed in boldface type not less than 1 inch in size;*

(b) *A statement specifying the number of children the facility is authorized to serve;*

(c) *A statement identifying a member of the staff of the facility who will provide additional information relating to the limitation on occupancy; and*

(d) *The telephone number of the Division.*

2. *Any person contacting the facility in writing or by telephone or any other means of telecommunication relating to a recipient seeking admission to the facility must be:*

(a) *Notified of the limitation on occupancy; and*

(b) *Provided with the information required by subsection 1.*

3. *The failure to post notice of a limitation on occupancy as required by this section, or the removal of such a notice, is a deficiency of severity level 3 and a scope level of 3. The failure to inform an inquirer as to the existence of a limitation on occupancy is a deficiency of severity level 2 and a scope level of 3.*

4. *In addition to the information required by subsection 1, the content of any notice required to be posted or published pursuant to this section must conform to the requirements set forth by the Division in the notice of sanction.*

Sec.43 . *A ban on admissions may be imposed by the Division to safeguard the health, safety and well-being of recipients receiving care or services and to prevent the admission of children who cannot adequately be served by the facility. If a ban is imposed, it applies to all new admissions.*

Sec.44 . *Criteria for imposition of ban on admissions:*

1. *If the Division imposes a ban on admissions, the ban must be imposed as provided in this section.*

2. *For deficiencies of severity level 4 and scope level 2 or more, a ban on admissions may be imposed.*

3. *For deficiencies of severity level 3 and scope level 3, a ban on admissions may be imposed.*

4. *For deficiencies with a severity level of 2 and a scope level of 3, a ban on admissions may be imposed only if the deficiencies directly affect the care or services furnished to recipients.*

Sec.45 . *A ban on admissions:*

1. *Must be imposed for not less than 72 hours.*

2. *Must be terminated if the facility demonstrates that substantial improvements have been made to correct the deficiencies and that the health, safety and well-being of recipients are adequately safeguarded.*

Sec.46 . *Effect of noncompliance with ban on admissions:*

1. *If a ban on admissions is imposed, a notice of the ban must be posted at all public entrances to the facility within 48 hours after the facility receives notice of the ban. Each notice must be not less than 8.5 inches by 11 inches in size and include:*

(a) *The words “NOTICE OF BAN ON ADMISSIONS” printed in boldface type not less than 1 inch in size;*

(b) *A statement identifying a member of the staff of the facility who will provide additional information relating to the ban on admissions; and*

(c) *The telephone number of the Division.*

2. *Any person contacting the facility in writing or by telephone or any other means of telecommunication relating to a recipient seeking admission must be:*

(a) *Notified of the ban; and*

(b) *Provided with the information required by subsection 1.*

4. *The failure to post or publish notice of a ban on admissions as required by this section, or the removal of such a notice, is a deficiency of severity level 3 and a scope of level 3. A failure to inform an inquirer as to the existence of the ban is a deficiency of severity level 2 and a scope of level 3.*

5. *In addition to the information required by subsection 1, the content of any notice required to be posted or published pursuant to this section must conform to the requirements set forth by the Division in the notice of sanction.*

Sec.47 . Authority of Division:

1. The Division may monitor the implementation of the plan of correction of the facility to determine whether the facility carries out the plan of correction.

2. The Division may also monitor the facility if the Division has reason to question the ongoing compliance of the facility with the requirements law or regulations.

Sec.48 . *The Division may impose a monetary penalty alone or in addition to other penalties. The purpose of a monetary penalty is to provide funding for protecting the health, safety, rights, welfare and well-being of recipients and to deter future deficiencies. If a monetary penalty is imposed, the criteria in these regulations must be applied.*

Sec.49 . Criteria for imposition of monetary penalties:

1. Except as otherwise provided in subsection 4 of this section, the Division may impose a monetary penalty including interest thereon on any facility that is not in compliance with any statutes or regulations, regardless of whether the deficiency constitutes an immediate and serious threat.

2. If a monetary penalty is imposed, the initial amount of the penalty must be based on the severity and scope score of the deficiency and must be imposed as provided in these regulations.

3. In addition to the initial monetary penalty, the Division may impose a monetary penalty for each day of noncompliance from the date the noncompliance occurs or is identified until compliance is verified.

4. A facility is not subject to a monetary penalty for a de minimis deficiency.

Sec.50 . Imposition of initial penalty pending hearing or appeal:

1. The Division must impose an initial monetary penalty pending a hearing or appeal. The payment of the initial penalty may be stayed during the pendency of any administrative appeal.

2. The payment of any daily monetary penalties or interest that accrue while the facility has a hearing pending on the determination of deficiencies leading to the imposition of sanctions must be stayed pending the appeal.

Sec.51 . *If the Division imposes a monetary penalty, the penalty must be imposed as provided in these regulations. In imposing the monetary penalty, the total penalty assessed against any facility bears interest at the rate of 10 percent per annum.*

Sec.52 . Determination of amount of penalties:

1. In determining the amount of an initial monetary penalty, the Division shall consider the severity alone if the severity level is 4. In determining the amount of the monetary penalty where the severity level is less than 4, both severity and scope must be considered. In determining whether to impose a daily monetary penalty, the Division shall consider the severity and scope and the factors indicated for increased and decreased penalties provided in these regulations.

2. For initial deficiencies with a severity level of 4, an initial monetary penalty of \$500 per deficiency must be imposed.

3. For initial deficiencies rated with a severity level of 3 and a scope level of 3, a monetary penalty of \$200 per deficiency must be imposed.

4. For initial deficiencies with a severity level of 3 and a scope level of 2 or less, an initial monetary penalty of \$100 per deficiency must be imposed.

5. For initial deficiencies with a severity level of 2 and a scope 3 of three, an initial monetary penalty of \$50 per deficiency may be imposed. The payment of this monetary penalty must be suspended if the facility has corrected the deficiencies within the time specified in the plan of correction approved by the Division.

6. In addition to any monetary penalty imposed pursuant to this section, the Division may impose a monetary penalty of not more than \$10 per day for each day the deficiency continues.

Sec.53 . In no event may the principal amount of the total daily monetary penalty assessed against any facility exceed \$100 per day.

Sec.54 . Increase in penalty for repeated deficiencies or false compliance:

1. Penalties must be increased if deficiencies are repeated or compliance is falsely alleged.

2. For each repeat deficiency present within 18 months after an initial deficiency, the monetary penalty must be computed at the rate of one and one-half times the rate that was or could have been assessed initially for a deficiency of that severity and scope.

3. The Division may double the daily monetary penalty that was or could have been assessed if the facility alleges compliance and the Division finds on a survey that at the time compliance was alleged the deficiencies continued to exist.

Sec.55 . There is a rebuttable presumption that deficiencies identified on a resurvey were present on each day between the date of the initial deficiency and the date of the resurveyed deficiency.

Sec.56 . If a facility against which a monetary penalty is imposed:

1. Waives the right to a hearing;
2. Corrects the deficiencies that were the basis for the sanction; and
3. Pays the monetary penalty within 15 days after receipt of the notice of the penalty, the penalty must be reduced by 25 percent and no interest may be charged.

Sec.57 . The effective beginning date of a daily monetary penalty is:

1. In the case of an immediate and serious threat, the date the deficiency occurred; or
2. In any other case, the day the deficiency is identified.

Sec.58 . Daily penalty, date and period of computation and notice to facility:

1. Daily penalties and interest must be computed after compliance has been verified or the provider has been sent notice of termination of a license or provisional license. A daily monetary penalty must end on the effective date of compliance or termination of the license of the facility.

2. If a provider achieves compliance, the Division shall send a separate notice to the facility containing:

- (a) *The amount of the penalty per day;*
- (b) *The number of days involved;*
- (c) *The due date of the penalty; and*
- (d) *The total amount due.*

3. *If the license of a facility is to be terminated, the Division shall send the information required by subsection 2 in the notice of termination.*

4. *If the Division's decision of noncompliance is upheld on appeal or the facility waives its right to a hearing, the monetary penalty must be imposed for the number of days between the effective date of the penalty and the date of correction of the deficiencies or, if applicable, the date the license of the facility is terminated.*

Sec.59 . Termination of daily penalties:

1. *The daily accrual of a monetary penalty must end if the facility demonstrates that substantial improvements have been made to correct the deficiencies and that the health, safety and well-being of recipients are adequately protected and safeguarded.*

2. *A monetary penalty may be imposed on a daily basis for not longer than 6 months, after which the Division shall deny, suspend or revoke the license of the facility.*

3. *If the facility can supply credible evidence that substantial compliance with requirements was attained on a date preceding that of a monitoring survey, monetary penalties accrue only until that date of correction for which there is credible evidence. As used in this subsection, "credible evidence" means actual documentation that compliance has been achieved.*

Sec.60. Time for payment of penalties:

1. *Initial monetary penalty assessment payments are due within 15 days after the notice of the penalty.*

2. *The daily monetary penalty is due and must be paid within 15 days after compliance is verified or termination of a license is effective and the facility is notified of the amount of the total daily monetary penalty and interest due.*

3. *If the facility has appealed a decision imposing a monetary penalty, the daily penalty is due and must be paid after the final administrative decision is rendered and 15 days after the facility has been notified of the amount of the total daily penalty and interest due.*

Sec.61 . *Unless it is waived as provided in these regulations, interest at the rate prescribed in SB 189 of the 2017 legislative session will be assessed on the unpaid balance of the penalty, beginning on the due date.*

Sec.62. *Any costs, including attorney's fees, incurred by the Division or the Division in the collection of any monetary penalty may be recovered from the facility.*

Sec.63. Failure to pay penalty:

1. *If the facility fails to pay a monetary penalty, the Division may suspend the license of the facility.*

2. *The Division shall, in accordance with the requirements of NAC 439.345, provide notice of its intention to suspend the license of the facility.*

3. *If the facility fails to pay the monetary penalty, including any additional costs incurred in collection of the penalty, within 10 days after receipt of the notice, the Division shall suspend the license of the facility. The suspension must not be stayed during the pendency of any administrative appeal.*

Sec. 64. *Money collected by the Division as administrative sanctions must be deposited into a separate fund and applied to the protection of the health, safety, well-being of recipients in accordance with SB189 of the 2017 legislative session.*

Sec.65. *Appointment of temporary manager, when an immediate and serious threat is identified:*

1. *If a temporary manager is to be appointed, the Division shall orally notify the facility of the appointment. Written notice that complies with the requirements of NAC 439.345 must be mailed within 48 hours after the oral notice.*

2. *If the facility does not accept the temporary manager or a temporary manager is not available within 10 days after the date of the deficiency, and the immediate and serious threat is not removed, the Division shall deny, suspend or revoke the license of the facility.*

3. *If the facility accepts the temporary manager, the Division shall, notify the facility that, unless it removes the immediate and serious threat, its license will be denied, suspended or revoked*

4. *If the immediate and serious threat is not removed on or before the 23rd day after the appointment of the temporary manager, the Division shall deny, suspend or revoke the license of the facility.*

Sec.66. *Appointment of a temporary manager where there is not an immediate and serious threat must be made in conformity with the provisions for notice contained in NAC 439.345.*

Sec.67. *Temporary manager: Qualifications.*

1. *The temporary manager must:*

(a) *Be a person qualified to operate the facility pursuant to the provisions of chapter 432A of NRS relating to the licensing of the facility;*

(b) *Demonstrate prior competency as a director of the particular type of facility or have other relevant experience pertinent to the deficiencies identified; and*

(c) *Have had no disciplinary action taken against him or her by any licensing board or professional society in any state.*

2. *The temporary manager may be an employee of the Division or a private person or agency that contracts with the Division to serve in that capacity.*

3. *The temporary manager must not be:*

(a) *An employee of the facility or an affiliated facility; or*

(b) *A person or agency that has served as a consultant to the facility or an affiliated facility within the 2 years preceding the appointment of the temporary manager.*

Sec.68. *The temporary manager may take such action as is required to mitigate the immediate danger at the facility.*

Sec.69. *If a facility fails to agree to the appointment of a temporary manager or fails to relinquish authority to the temporary manager, the Division of Public and Behavioral Health shall:*

- 1. Request the Attorney General to bring an action pursuant to NRS 439.565;*
- 2. Deny, suspend or revoke the license of the facility.*

Sec.70. *Events requiring termination of temporary management:*

1. Temporary management of a facility must be terminated if the Division determines that:

(a) The facility has substantially corrected the deficiency and has secured management capable of ensuring continued compliance with applicable statutes, regulations, conditions and standards; or

(b) The license of the facility has been denied, revoked or suspended.

2. If temporary management will be needed for more than 24 days, the Division shall request the Attorney General to initiate judicial proceedings as authorized by NRS 439.565.

Sec.71 . *The costs and expenses of temporary management, including the compensation of the manager, must be paid by the facility through the Division while the temporary manager is assigned to the facility.*

Sec.72. *The Division shall in an emergency deny, suspend or revoke the license of a facility. This sanction may be used only if other less drastic measures are inadequate to prevent or remove a serious threat to the health, safety and well-being of recipients.*

Sec.73. *Assignment of grades.*

1. The Division shall determine:

(a) The severity of a deficiency of a residential facility in accordance with the provisions of these regulations; and

(b) The scope of a deficiency of a residential facility in accordance with the provisions of these regulations.

2. After the Division conducts a survey or complaint investigation of a facility, the Division shall add the severity and scope scores for all deficiencies of the facility indicated in the survey and assign a grade to the facility as follows:

	<i>Grade</i>
<i>0 to 15 combined severity and scope scores for all deficiencies</i>	<i>A</i>
<i>16 to 24 combined severity and scope scores for all deficiencies, or any deficiency with a severity level 3 and a scope level 3</i>	<i>B</i>
<i>25 to 34 combined severity and scope scores for all deficiencies, or any deficiency with a severity level 4 and a scope level 1</i>	<i>C</i>
<i>35 to 44 combined severity and scope scores for all deficiencies, or any deficiency with a severity level 4 and a scope level 2</i>	<i>D</i>

Any deficiency with a severity level 4 and scope level 3, or whenever the license is suspended or revoked pursuant to NRS 432A.190.

F

Sec.74 . Grade placard:

1. After the Division assigns a grade to a facility, the Division shall issue a placard to the facility.

2. The director shall, within 24 hours after receipt of the placard, display or cause the placard to be displayed conspicuously in a public area of the facility.

3. If the placard is not displayed in accordance with the provisions of subsection 2, the Division will assess against the facility a deficiency with a severity and scope score equal to the highest severity and scope score indicated in the most recent survey or investigation of the facility conducted by the Division.

Sec.75 . Resurvey application and fee:

1. If the Division issues a placard to a facility that includes a grade of “B,” the director may submit an application to the Division for a resurvey of the facility not later than 30 days after the facility receives the placard. The fee for an application for a resurvey of a facility with a grade of “B” is \$100 and must accompany the application.

2. If the Division issues a placard to a residential facility that includes a grade of “C” or “D,” the director must submit an application to the Division for a resurvey of the facility not later than 30 days after the facility receives the placard. The fee for an application for a resurvey of a facility with a grade of “C” or “D” is \$200 and must accompany the application.

3. If the Division issues a placard to a residential facility that includes a grade of “F”, the director must submit an application to the Division for a resurvey of the facility not later than 30 days after the facility receives the placard. The fee for an application for a resurvey of a facility with a grade of “F” is \$300 and must accompany the application.

4. The Division may revoke the license of a residential facility that is required to submit an application for a resurvey pursuant to subsection 2 or 3 if the facility fails to submit the application in accordance with the provisions of that subsection.

Sec. 76 NAC 432A.280 is hereby amended to read as follows:

1. Each licensee shall develop an appropriate plan to ensure that the staff of his or her facility is prepared to respond in an emergency, including, without limitation, a fire or natural disaster. The plan must, at a minimum, be reviewed on a quarterly basis during a meeting of the staff of the facility. Each licensee shall ensure that the plan is, at a minimum, evaluated annually and is changed as necessary.

2. Each plan developed pursuant to subsection 1 must include, without limitation:

(a) The duties of the director and staff;

(b) A procedure for removing staff and children to a shelter within a building of the facility if the staff and children are instructed to do so by emergency personnel;

(c) the necessary accommodations and ensure that the needs are met for children and persons within the facility with disabilities;

~~(c)~~ (d) A procedure for evacuating the facility;

~~(d)~~ (e) A plan for transportation;

~~(e)~~ ~~(f)~~ A list of sites that may be used for relocation;

~~(f)~~ ~~(g)~~ A plan for the supervision of the children of the facility during the emergency;

~~(g)~~ ~~(h)~~ The manner in which children and staff from the facility will be accounted for during the emergency; and

~~(h)~~ ~~(i)~~ The method for contacting emergency personnel, including, without limitation, the fire department, a law enforcement agency or any other appropriate authority.

(j) A plan of reunification of children with their families

3. The licensee of a facility shall hold:

(a) A fire drill at least once every month; and

(b) A drill for natural disasters at least once every 3 months.

4. Appropriate plans for removing the staff and children of a facility to a shelter within a building of the facility and for the evacuation of the facility in case of emergency must be conspicuously posted in a public place in the facility.

5. The director of the facility shall maintain a daily sign-in sheet that includes:

(a) The first and last names of staff and children; and

(b) The times of arrival and departure for staff and children.

6. To maintain his or her license, the licensee must ensure that his or her facility meets all standards for fire safety which are established by the State Fire Marshal.

7. The State Fire Marshal or a designee thereof shall, at least annually:

(a) Enter and inspect every building or the premises of each facility; and

(b) Observe and make recommendations regarding the drills conducted pursuant to subsection 3.

8. Reports of the drills conducted pursuant to subsection 3 and the inspections concerning the fire safety of a facility conducted pursuant to subsection 7 must be maintained in a physical file at the facility and be available for review at the facility by a parent of a child who attends the facility or a parent who is considering enrolling his or her child at the facility for at least 2 years after the date of inspection.

Sec. 77 NAC 432A.300 is hereby amended to read as follows:

1. Except as otherwise provided in subsection 3, the licensee of a child care facility shall:

(a) Serve as the director of the facility, if the licensee has the qualifications set forth in [NRS 432A.1773](#); or

(b) Appoint a person who satisfies the qualifications set forth in [NRS 432A.1773](#) to serve as the director.

2. The licensee shall notify the Division of any appointment made pursuant to subsection 1 within 5 working days after the date of the appointment.

3. All facility directors must submit an application for approval with the Division.

4. Upon receiving approval of the director by the Division, the facility must retain copy of the approval within the current director file.

~~3.~~ ~~5.~~ If a person was approved as a director of a facility before May 28, 2013, and in accordance with regulations adopted by the State Board of Health, the person is not required to comply with the provisions of subsection 1:

(a) For the duration of a waiver obtained from the Division in accordance with section 3 of Assembly Bill No. 109, chapter 194, Statutes of Nevada 2013, at page 737; or

(b) If the person did not obtain such a waiver, until January 1, 2016.

Sec 78. NAC 432A.304 is hereby amended to read as follows:

1. The director, ***designated operator and owner(s)*** of a child care facility is responsible for screening, scheduling and supervising the staff of the facility and for the conduct of each member of the staff at the facility.

2. The director, *designated operator and owner(s)* shall:
 - (a) Provide a program for child care for the facility which meets the requirements of this chapter.
 - (b) Be physically present in the facility for a sufficient amount of time to ensure compliance with the provisions of this chapter and [chapter 432A](#) of NRS.
 - (c) Provide space for an office, the storage of records, conferences with parents, meetings of the staff and all other needs of the program for child care.
 - (d) Maintain organized separate records for each employee that include, without limitation, documents related to training. Such records must include, without limitation:
 - (1) Documents verifying that the employee has, if applicable:
 - (I) **Current Nevada Registry pursuant to NAC 432A.306**
 - (II) Completed the training required pursuant to [NRS 432A.177](#);
 - ~~(III)~~ (III) Received the orientation and basic training required pursuant to [NAC 432A.320](#);
 - ~~(IV)~~ (IV) Completed the training required pursuant to [NAC 432A.323](#); and
 - ~~(V)~~ (V) Completed the training required pursuant to [NAC 432A.326](#); and
 - (2) A copy of the documentation concerning, and the results of, the investigation of the employee's background and personal history which is conducted pursuant to [NRS 432A.170](#), including, without limitation, a clearance letter from the Division or a current child care work card, and a release form for this information completed by the employee.
 - (e) Ensure that each member of the staff of the facility who is not a caregiver, but whose job duties may directly impact children cared for in the facility, has the training necessary to protect the health and safety of the children and the health and safety of the other members of the staff, including, without limitation, training concerning proper nutrition, methods of sanitation and procedures for maintaining a safe environment in the facility.
 - (f) Work with parents and include them, whenever possible, in the programming and functioning of activities.
 - (g) Cooperate with the Division and other agencies of government to improve the quality of child care and the competence of caregivers.
 - (h) Designate a member of the staff who is responsible for the operation of the facility when the director is not present at the facility.
3. If the facility is in operation 25 hours or less per week, the director must be present in the facility during at least half the hours of operation.

Sec 79. NAC 432A.306 is hereby amended to read as follows:

1. Every caregiver in a child care facility must:
 - (a) Be at least 16 years of age;
 - (b) Be able to summon help in an emergency;
 - (c) Not be under the influence of drugs alcohol when caring for children;**
 - ~~(d)~~ (d) Be emotionally and physically qualified to carry out a program which places emphasis on the development of children; and
 - ~~(e)~~ (e) Except as otherwise provided in subsection 5, within 90 days after the caregiver commences employment in the child care facility, apply with The Nevada Registry or its successor organization, and annually renew his or her registration before the date on which it expires.
2. Not more than 50 percent of the caregivers in a child care center, a child care institution or an early care and education program may be under 18 years of age. Any caregiver who is under 18 years of age and is employed in such a facility must:
 - (a) Have completed a course in the development of children which is approved by:

(1) The Nevada Registry or its successor organization, or any other agency designated by the Director of the Department to approve such courses; or

(2) If the course has not been approved by The Nevada Registry or its successor organization, and the Director of the Department has not designated another agency to approve such courses, the Division or the local licensing agency; or

(b) Be currently enrolled in such a course.

3. A child care facility may not be operated unless a person who is 18 years of age or older is on the premises of the facility.

4. A volunteer for a child care facility, regardless of his or her age, and a member of the staff of the facility who is under 18 years of age may not provide direct care to a child at the facility unless the care is provided under the supervision of an employee of the facility who is 18 years of age or older.

5. A caregiver in a child care institution is not required to initially apply with or annually renew his or her registration with The Nevada Registry or its successor organization.

Sec 80. NAC 432A.323 is hereby amended to read as follows:

1. Except as otherwise provided in NAC 432A.521 and NRS 432A.177, within 120 days after commencing his or her employment or position in a child care facility, each person who is employed in a child care facility, other than a person employed in a facility that provides care for ill children, and each director of a child care facility shall complete:

(a) Any training required by the facility in which the director serves or in which the person is employed for the purposes of obtaining certification in the administration of cardiopulmonary resuscitation as required pursuant to NAC 432A.322;

(b) Three or more hours of training in child development or guidance and discipline specific to the age group served by the facility in which the director serves or in which the person is employed;

(c) Two or more hours of training in the administration of first aid;

(d) Two or more hours of training in the recognition of signs and symptoms of illness, which must include, without limitation, training in the prevention of exposure to bloodborne pathogens;

(e) Two or more hours of training in the recognition and reporting of child abuse and neglect;

(f) If the person or director works with infants under 12 months of age, at least:

(1) Two hours of training concerning Sudden Infant Death Syndrome; and

(2) One hour of training in the prevention of shaken baby syndrome and abusive head trauma;

(g) Two or more hours of training in the administration of medication, which must include, without limitation, training in the prevention of and response to food and other allergies;

(h) Two or more hours of training in building and physical premises safety, which must include, without limitation, training in the storage of biocontaminants and other hazardous materials;

(i) Two or more hours of training in emergency preparedness and response planning for emergencies resulting from a natural or man-made event;

(j) If the facility provides transportation, 1 or more hours of training in precautions to be taken when transporting children for each person who will provide such transportation; and

(k) Two or more hours of training in lifelong wellness, health and safety of children, which must include, without limitation, training relating to childhood obesity, nutrition and moderate or vigorous physical activity.

2. Except as otherwise provided in NAC 432A.521, within 12 months after commencing employment, each person described in subsection 1 shall, in addition to completing any training required pursuant to subsection 1 and completing any course in the development of children required pursuant to NAC 432A.306, complete at least the number of hours of training described in NAC

432A.326. A person may use training completed pursuant to subsection 1 to satisfy the training requirements set forth in NAC 432A.326.

~~3. Except as otherwise provided in NAC 432A.521, within 12 months after commencing employment as a member of the staff of a facility, each member of the staff of a facility shall complete a course in the development of children required pursuant to NAC 432A.306.~~

3. Initial trainings not taken within the previous 36 months must be retaken at the direction of the Division.

4. The training concerning the administration of first aid and the recognition of signs and symptoms of illness that is required to be completed pursuant to subsection 1 must be provided by one of the persons, agencies or institutions listed in NAC 432A.308 as qualified to provide such training.

5. The training required pursuant to subsections 1, 2 and 3 must be designed to:

- (a) Ensure the protection of the health and safety of each child enrolled in the facility; and
- (b) Promote the physical, moral and mental well-being of each child enrolled in the facility.

6. If the facility is a special needs facility, the training required pursuant to subsections 1, 2 and 3 must also be designed to provide information on the characteristics of handicapping conditions and appropriate programs for children with special needs. The training must be approved by:

(a) The Nevada Registry or its successor organization, or any other agency designated by the Director of the Department to approve such training; or

(b) If the training has not been approved by The Nevada Registry or its successor organization, and the Director of the Department has not designated another agency to approve such courses, the Division or the local licensing agency.

7. Evidence that an employee has completed the training required pursuant to subsections 1, 2 and 3 must be included in his or her personnel file and must be kept at the facility. With regard to training concerning the administration of first aid and the recognition of signs and symptoms of illness, the evidence listed in NAC 432A.308 as adequate evidence of compliance is adequate evidence of compliance for the purposes of this section.

Sec 81. NAC 432A.410 is hereby amended to read as follows:

If any person suspects that child abuse or neglect is occurring in a facility or *if suspected child abuse or neglect is reported to the facility, the facility shall immediately notify the Division of such suspicions.* Every licensee or employee of a facility who has reason to believe child abuse or neglect is occurring in the facility, in the child's home or elsewhere shall *also* report such beliefs to the appropriate authority as required in [NRS 432B.220](#).

Sec 82. NAC 432A.536 is hereby amended to read as follows:

1. Except as otherwise provided in [NAC 432A.546](#), a licensee of a group home shall abide by the following limits on the number of children in the group home and staffing levels:

Age of Child	Required Staff to Child Ratio	Group Size
Less than 1 year of age	1 caregiver for every 2 children	4
1 year of age or older but less than 3 years of age	1 caregiver for every 4 children	8
3 years of age or older	2 caregivers for every 6 children	12

↪ Three caregivers must be on duty whenever eight or more of the children in the facility are children with special needs.

2. If a licensee of a group home is:

(a) A natural person, the licensee shall:

- (1) Reside in the facility; and
- (2) Provide direct care to the children in the facility.

(b) Not a natural person, one of the persons listed on the license pursuant to NRS 432A.150 as a person authorized to operate the facility shall:

- (1) Reside in the facility; and
- (2) Provide direct care to the children in the facility.

3. Any children of the person who is required to reside in the facility who are less than 3 years of age will be counted for the purpose of the ratios set forth in this section.

NAC 432A.534 is hereby amended to read as follows:

1. Limits on the number of children in a family home are set forth in the following table:

Age of Child	Group Size
Less than 1 year of age	2
1 year of age or older but less than 3 years of age	4
3 years of age or older	6

2. Except as otherwise provided in [NAC 432A.546](#), a licensee of a family home shall:

- (a) Have one caregiver on duty at all times;
- (b) Not provide care for more than two children who are less than 1 year of age at any given time;
- (c) Have a second caregiver on duty whenever four or more of the children in the facility are children with special needs; and

(d) Provide an alternate caregiver in case of an emergency.

3. If a licensee of a family home is:

(a) A natural person, the licensee shall:

- (1) Reside in the facility; and
- (2) Provide direct care to the children in the facility.

(b) Not a natural person, one of the persons listed on the license pursuant to [NRS 432A.150](#) as a person authorized to operate the facility shall:

- (1) Reside in the facility; and
- (2) Provide direct care to the children in the facility.

4. Any children of the person who is required to reside in the facility who are less than 3 years of age will be counted for the purpose of the ratios set forth in this section.