

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

LCB File No. R081-24

May 29, 2024

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

AUTHORITY: §§ 1-8, NRS 449.0302 and 449.0305; §§ 9 and 10, NRS 439.150, 449.0302, 449.0305 and 449.050.

A REGULATION relating to referral agencies; prescribing requirements governing licensure to operate a senior living community referral agency and certain fees associated with such licensure; prescribing certain requirements governing the employees of a senior living community referral agency; prescribing certain requirements governing the referral of a person who is aged by a senior living community referral agency; prohibiting a senior living community referral agency from receiving certain compensation or providing certain incentives; expanding the applicability of requirements governing certain referral agencies; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires a person to obtain a license from the State Board of Health if the person operates a business that provides referrals to residential facilities for groups or any other group housing arrangement that provides assistance, food, shelter or limited supervision to a person with a mental illness, intellectual disability, developmental disability or physical disability or who is aged or infirm. (NRS 449.0305) Senate Bill No. 260 (S.B. 260) of the 2023 Legislative Session establishes specific requirements governing the operation of senior living community referral agencies while maintaining the requirement that a senior living community referral agency obtain a license from the Board. (Sections 4 and 5 of Senate Bill No. 260, chapter 109, Statutes of Nevada 2023, at pages 564 and 565 (NRS 449.114, 449.1145)) S.B. 260 defines the terms: (1) “senior living community referral agency” to mean a business that refers persons who are aged to senior living communities for a fee paid by the senior living community, the person who is aged or the representative of the person; and (2) “senior living community” to mean certain residential facilities and other housing arrangements that provide assistance, food, shelter or limited supervision to persons who are aged. (Sections 2 and 3 of Senate Bill No. 260, chapter 109, Statutes of Nevada 2023, at page 564 (NRS 449.0179, 449.0181))

Section 2 of this regulation prescribes the required contents of an application for a license to operate a senior living community referral agency. **Section 2** also requires the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health of the Department of Health and Human Services to inspect a senior living community referral agency before issuing a license. **Sections 9 and 10** of this regulation prescribe the fees for the issuance and renewal of a license to operate a senior living community referral agency and the modification of such a license in certain circumstances.

Section 3 of this regulation requires that an employee of a senior living community referral agency have certain knowledge necessary to successfully perform his or her duties. **Section 3** also requires a senior living community referral agency to terminate an employee who has been convicted of certain crimes. **Section 4** of this regulation requires a senior living community referral agency to conduct assessments of the needs and ability to pay of a person who is aged before referring the person to a senior living community.

If a referral to a senior living community by a senior living community referral agency is determined to be inappropriate within 30 days after the admission of a person who is aged, **section 5** of this regulation requires the senior living community referral agency to refund any fee paid by the person or his or her representative or refer the person to an appropriate senior living community for no additional fee. **Section 5** also prohibits a senior living community referral agency from: (1) receiving certain fees or other compensation; or (2) providing certain incentives to an employee or independent contractor of a senior living community. **Section 6** of this regulation requires a senior living community referral agency to: (1) maintain a file on each person referred by the senior living community referral agency; and (2) provide certain records to the Board upon request of the Board.

Existing regulations prescribe requirements governing the licensing and operation of a referral agency, which is defined as a business that provides referrals to residential facilities for groups. (NAC 449.0061, 449.27823-449.27831) **Section 8** of this regulation expands the definition of the term “referral agency” to include a business that provides referrals to group housing arrangements, thereby subjecting such businesses to those requirements. **Section 8** also excludes from those provisions senior living community referral agencies that do not provide referrals beyond the scope authorized for senior living community referral agencies, as senior living communities are now separately regulated by the provisions of S.B. 260 and **sections 2-6**.

Existing regulations define the term “facility” to refer to certain entities regulated by the Board, including referral agencies, for purposes relating to the licensing and operation of such entities. (NAC 449.0034) **Section 7** of this regulation adds senior living community referral agencies to that definition so that the provisions governing such facilities continue to apply to senior living community referral agencies after the exclusion of senior living community referral agencies from the definition of “referral agency” in **section 8**.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.

Sec. 2. 1. An applicant for a license to operate a senior living community referral agency must submit to the Division a completed application on a form provided by the Division. The application for the initial license must include, without limitation:

(a) Evidence that the applicant has obtained liability insurance as required by NRS 449.1145; and

(b) The physical address where the senior living community referral agency will maintain the records of the senior living community referral agency.

2. Before issuing a license to operate a senior living community referral agency, the Bureau shall inspect the senior living community referral agency to ensure that the agency is in compliance with this chapter and chapter 449 of NRS.

Sec. 3. 1. An employee of a senior living community referral agency must have sufficient knowledge of the provisions of law and regulations that govern the licensing of senior living communities to successfully perform the duties of his or her employment with the senior living community referral agency.

2. If a senior living community referral agency discovers that an employee or prospective employee has been convicted of crime listed in NRS 449.174 after conducting an investigation into the criminal background of the employee pursuant to NRS 449.1145, the senior living community referral agency shall terminate the employment or deny the prospective employment, as applicable.

Sec. 4. 1. A senior living community referral agency may refer a person who is aged only to a senior living community that appropriately meets the physical, psychosocial and

financial needs and wishes of the person, as determined based on the assessment required by subsection 2.

2. Before referring a person who is aged to a senior living community, a senior living community referral agency shall complete:

(a) An assessment of the needs of the person that:

(1) Documents his or her ability to function independently; and

(2) Includes, without limitation, a complete list of the areas in which the person requires assistance; and

(b) An assessment of the ability of the person to pay for the services provided by a senior living community for at least the first 6 months in which the person resides at the senior living community, including, without limitation, a determination of whether the person is eligible to participate in Medicaid or Medicare.

3. Upon referring a person who is aged to a senior living community, a senior living community referral agency shall provide to the senior living community a copy of the assessment completed pursuant to paragraph (a) of subsection 2.

Sec. 5. 1. If, within 30 days after a person is admitted to a senior living community as the result of a referral by a senior living community referral agency, the senior living community, the Board or a physician licensed to practice in this State determines that the referral was inappropriate, the senior living community referral agency shall:

(a) Refund the full amount of the fee, if the fee was paid by the person or his or her representative; or

(b) Refer the person to an appropriate senior living community for no additional fee.

2. A senior living community referral agency may not receive:

(a) More than one fee from a person who is aged or his or her representative within any 6-month period, unless, during that period, the person or his or her representative requests another referral from the senior living community referral agency.

(b) Fees from both a person referred to a senior living community and the senior living community for the same referral.

(c) Any fee or compensation from a senior living community, except as provided in a contract entered into pursuant to paragraph (e) of subsection 1 of NRS 449.1145.

3. A senior living community referral agency shall not provide any incentive to an employee or independent contractor of a senior living community, including, without limitation, a discharge planner, case manager, social worker or any other person who is wholly or partially responsible for discharge planning, for any action relating to:

(a) The acceptance of, provision of care or services by the senior living community to a person who is aged; or

(b) The discharge of a person who is aged by the senior living community.

Sec. 6. 1. A senior living community referral agency shall:

(a) Except as otherwise required by subsection 2 of NRS 449.114, maintain an organized file for each person whom the agency refers to a senior living community until at least 5 years after the date on which the senior living community referral agency makes the referral.

(b) Maintain a copy of each contract entered into pursuant to paragraph (e) of subsection 1 of NRS 449.1145, for at least 5 years after the date on which the contract expires.

2. The file maintained pursuant to paragraph (a) of subsection 1 must include, without limitation:

(a) A copy of each assessment of the person to whom the file pertains completed by the senior living community referral agency pursuant to subsection 2 of section 4 of this regulation;

(b) A copy of each statement of disclosure or consent provided to the person to whom the file pertains pursuant to subsection 1 of NRS 449.114; and

(c) Information outlining the process used by the senior living community referral agency to determine the appropriate referral of the person to whom the file pertains.

3. A senior living community referral agency shall provide to the Board, upon request:

(a) A copy of each statement of disclosure or consent maintained pursuant to subsection 2 of NRS 449.114; and

(b) A copy of each contract maintained pursuant to paragraph (b) of subsection 1.

Sec. 7. NAC 449.0034 is hereby amended to read as follows:

449.0034 Except as otherwise defined in section 6 of LCB File No. R016-20, “facility” means a medical facility, facility for the dependent, an employment agency that contracts with persons in this State to provide certain nonmedical services described in subsection 1 of NRS 449.03005, a facility which is otherwise required by regulations adopted by the Board pursuant to NRS 449.0303 to be licensed, ~~or~~ a referral agency ~~or~~ *or a senior living community referral agency.*

Sec. 8. NAC 449.0061 is hereby amended to read as follows:

449.0061 “Referral agency” means a business that provides referrals to ~~residential facilities for groups~~ *group housing arrangements* which is subject to regulation pursuant to NRS 449.0305, including, without limitation, any business entity that engages in the process of referring clients for compensation to ~~residential facilities for groups~~ *group housing arrangements. The term does not include a senior living community referral agency, as defined in NRS 449.0181, that does not provide such referrals, except as described in that section.*

Sec. 9. 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 Division of Public and Behavioral Health the following nonrefundable fees:

(a) An ambulatory surgical center.....	\$9,784
(b) A home office 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) A freestanding birthing 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
(o) A facility for the care of adults during the day allowed to be occupied by not more than 50 clients at one time	1,164
(p) A facility for the care of adults during the day allowed to be occupied by more than 50 clients at one time	1,753
(q) A community health worker pool.....	1,000
(r) An employment agency to provide nonmedical services.....	1,400
<i>(s) A senior living community referral agency.....</i>	<i>2,708</i>

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

(a) An ambulatory surgical center.....	\$4,892
(b) A home office 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) A freestanding birthing 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
(o) A facility for the care of adults during the day allowed to be occupied by not more than 50 clients at one time	814
(p) A facility for the care of adults during the day allowed to be occupied by more than 50 clients at one time	1,227
(q) A community health worker pool	500
(r) An employment agency to provide nonmedical services	700
<i>(s) A senior living community referral agency</i>	<i>1,354</i>

3. Upon the issuance or renewal of a license to operate an ambulatory surgical center, program of hospice care, agency to provide personal care services in the home or rural clinic, the licensee shall pay to the Division a nonrefundable fee equal to 6 percent of the renewal fee set forth in subsection 2. The Division shall use the fees collected pursuant to this subsection during the immediately following fiscal year to support the system for the reporting of information on cancer and other neoplasms.

4. 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. 10. NAC 449.0168 is hereby amended to read as follows:

449.0168 1. Except as otherwise provided in subsection 2, a holder of a license to operate a medical facility, facility for the dependent, program of hospice care , *senior living community referral agency* or referral agency who wishes or is required pursuant to NAC 449.190, 449.307, 449.7473 or 449.758 to modify his or her license to reflect:

- (a) A change in the name of the facility, program or agency;
 - (b) A change of the administrator of the facility, program or agency;
 - (c) A change in the number of beds in the facility;
 - (d) A change in the type of facility licensed or the addition of another type of facility to be licensed;
 - (e) A change in the category of residents who may reside at the facility;
 - (f) A change in the designation of a staging area for a mobile unit or, if the mobile unit is operated by an independent facility, a change in the address of the independent facility; or
 - (g) A change in any of the services provided by an agency to provide nursing in the home,
- ↪ must submit an application for a new license to the Division and pay to the Division a fee of \$250.

2. An applicant who applies for a license pursuant to paragraph (c) of subsection 1 because of an increase in the number of beds in the facility must pay to the Division:

- (a) A fee of \$250; and
- (b) A fee for each additional bed as follows:

(1) If the facility is an intermediate care facility for persons with an intellectual disability or persons with a developmental disability.....	\$280
(2) If the facility is a residential facility for groups	184
(3) If the facility is a facility for the treatment of alcohol or other substance use disorders.....	190
(4) If the facility is a facility for hospice care	352
(5) If the facility is a home for individual residential care.....	266
(6) If the facility is a facility for modified medical detoxification.....	494
(7) If the facility is a hospital, other than a rural hospital	110
(8) If the facility is a rural hospital.....	62
(9) If the facility is a skilled nursing facility	108
(10) If the facility is an intermediate care facility, other than an intermediate care facility for persons with an intellectual disability or persons with a developmental disability	92
(11) If the facility is a facility for the treatment of irreversible renal disease.....	120
(12) If the facility is a halfway house for persons recovering from alcohol or other substance use disorders.....	368
(13) If the facility is a facility for transitional living for released offenders.....	146

3. If the address of the home office of a home health agency has not changed, a holder of a license to operate a branch office of the home health agency who wishes or is required pursuant to NAC 449.758 to modify his or her license to reflect a change in the address of the branch office of the home health agency must:

- (a) Submit an application for a new license to the Division; and
 - (b) Pay to the Division a fee of \$250.
4. A fee paid pursuant to this section is nonrefundable.
5. As used in this section:
- (a) “Administrator” means the person who is responsible for the daily management of a medical facility, facility for the dependent or program of hospice care.
 - (b) “Independent facility” has the meaning ascribed to it in NAC 449.9701.
 - (c) “Staging area” has the meaning ascribed to it in NAC 449.97018.