

LCB File No. R051-02

**PROPOSED REGULATION OF THE HEALTH DIVISION
OF THE DEPARTMENT OF HUMAN RESOURCES**

(Replaces Initial Draft posted on 4/09/02)

NOTICE OF PUBLIC WORKSHOPS

NOTICE IS HEREBY GIVEN that the State Health Division will hold public hearing and act on amendments to Nevada Administrative Code (NAC) 449. There will be two workshops held on the following dates, times, and locations:

<p>April 24, 2002 LAS VEGAS NEVADA</p> <p>Clark County District Health Department 625 Shadow Lane Clemens Room Las Vegas, Nevada Time: 8:30 a.m. – 10:00 a.m.</p> <p>Medical and Other Related Facilities Fees</p> <p>Facilities for Refractive Laser Surgery</p> <p>Administrative Sanctions</p> <p>Facilities for Treatment with Narcotics</p>	<p>April 25, 2002 RENO NEVADA</p> <p>Washoe County District Health Department 1001 E. 9th Street South Auditorium Reno, Nevada Time: 1:30 p.m. – 3:00 p.m.</p> <p>Medical and Other Related Facilities Fees</p> <p>Facilities for Refractive Laser Surgery</p> <p>Administrative Sanctions</p> <p>Facilities for Treatment with Narcotics</p>
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The regulations will be presented at the June 14, 2002, Board of Health meeting. It will be held at the Washoe County District Health Department, 1001 East 9th Street, South Auditorium, Reno, Nevada at 9:00 a.m.

FEES

The purpose of the proposed revised regulations for fees, Nevada Administrative Code (NAC) 449.013, NAC 449.016 and NAC 449.0168 is to amend existing regulations governing the amount of initial and annual renewal fees charged to certain medical facilities licensed pursuant to NRS 449.0151, facilities for the dependent licensed pursuant to NRS 440.0045, regulation of other facilities licensed pursuant to NRS 449.038, businesses that provide referrals to residential facilities for groups licensed pursuant to NRS 449.0305 and homes for individual residential care licensed pursuant to NRS 449.249. The proposed revised regulation also adds initial and annual renewal fees charged to mobile units and a facility for refractive laser surgery. The need for the

proposed revision to NAC 449.013, NAC 449.016 and NAC 449.0168 is directly related to the legislatively budgeted cost of the State agency to perform current state licensure activities in State Fiscal Year 03 (July 1, 2002 – June 30, 2003) pursuant to Nevada Revised Statutes (NRS) Chapter 449. The proposed fee increase is calculated to generate revenue sufficient to cover existing personnel and operating costs, without adding new staff or activities. Without the adoption of the proposed fee increases, the State Agency will collect approximately 556 thousand dollars less than the budgeted cost of conducting state licensure activities. Since State Fiscal Year 1994 (July 1, 1993- June 30, 1994) state licensure activities have been funded exclusively through licensure fees contained in NAC 449.013, NAC 449.016 and NAC 449.0168. The adverse economic effect identified as resulting from the proposed regulation changes is that the annual cost to obtain/renew a license to operate facilities will increase as identified in the table below:

FACILITY TYPE	Current Initial Fee/Per Bed Fee Charged for State Licensure	Proposed Initial Fee/Per Bed Fee to be Charged for State Licensure	Current Annual Renewal Fee/Per Bed Fee Charged for State Licensure	Proposed Annual Renewal Fee/ Per Bed Fee to be Charged for State Licensure
Facility for Skilled Nursing	\$1,200 /\$75	\$2,200 /\$90	\$1,100 /\$75	\$1,100 / \$45
Hospital	\$5,000 /\$77	\$10,000 /\$90	\$1,100/\$77	\$5,000 / \$45
Rural Hospital	\$750 /\$45	\$ 1,500/\$90	\$ 750/\$45	\$ 750 / \$45
Intermediate Care Facility for Persons with Mental Retardation or Developmental Disabilities	\$ 750 /\$50	\$1,300/\$80	\$ 600/\$35	\$ 650/ \$40
Intermediate Care Facility	\$1,200/\$75	\$1,200/\$90	\$600/\$75	\$600/ \$45
A Residential Facility for Groups	\$ 500/ \$50	\$2,130/\$260	\$ 300/\$35	\$1,065/\$130
A Facility for the Treatment of Abuse of Alcohol or Drugs	\$500/ \$50	\$ 500/ \$50	\$ 300/\$35	\$300/\$35
A Facility for Hospice Care	\$1,200/ \$50	\$1,540/ \$100	\$ 600/\$35	\$ 770/\$50
A Home for Individual Residential Care	\$ 100 /\$50	\$ 840/ \$320	\$ 100/\$35	\$ 420/\$160
A Facility for Modified Medical Detoxification	\$500/\$50	\$ 680/ \$90	\$300/\$35	\$ 340/ \$45
Ambulatory Surgery Center	\$1,200	\$1,580	\$ 600	\$790
Facility for the Treatment of Irreversible Renal Disease	\$1,200	\$1,650	\$ 600	\$ 825
Home Health Agency (or Subunit of a Home Health Agency)	\$1,200	\$2,170	\$ 600	\$1,085
Branch Office of a Home Health Agency	\$ 500	\$1,240	\$ 100	\$ 620
A rural clinic	\$1,200	\$1,710	\$ 600	\$ 855

An Obstetric Center	\$1,200	\$1,200	\$ 600	\$ 600
A Program of Hospice Care	\$1,200	\$1,540	\$ 600	\$ 770
An Independent Center for Emergency Medical Care	\$1,200	\$1,420	\$ 600	\$ 710
A Nursing Pool	\$ 750	\$1,540	\$ 600	\$ 770
A Facility for Treatment with Narcotics	\$ 750	\$1,340	\$ 600	\$ 670
A Medication Unit	\$ 500	\$ 500	\$ 100	\$ 100
A Referral Agency	\$ 750	\$1,420	\$ 600	\$ 710
A Halfway House for Recovering Alcohol and Drug Abusers	\$500	\$1,320	\$ 300	\$ 660
A Facility for Refractive Laser Surgery		\$3,545		\$3,000
A Mobile Unit		\$1,500		\$ 750

The proposed fees will have a beneficial economic effect on the facilities in that collection of the fee will allow the State Agency the ability to continue to perform state licensure activities in a timely manner. State licensure is a condition of federal participation in a hospital, rural hospital, skilled nursing and nursing facilities, a nursing pool, an intermediate care facility for persons with mental retardation or persons with developmental disabilities, ambulatory surgery centers, facilities for the treatment of irreversible renal disease, hospice and home health agencies, (the ability to be reimbursed for servicing Medicare and Medicaid clients) payment. Increased fees will ensure that facilities will be able to be reimbursed for serving Medicare and Medicaid clients in addition to being reimbursed for serving private pay patients and private insurance covered patients. Adverse and beneficial effects on the public, both immediate and long term: none identified. The proposed fee will have a beneficial economic effect on the public in that collection of the fee will allow the State Agency the ability to continue to perform state licensure activities in a timely manner and the quality of patient care being provided by facilities will continue to be monitored and complaints investigated. Additionally, with state licensure functions being performed, new facilities will be able to be licensed thereby increasing the public care options. The proposed amendments to the regulation will increase some of the facilities annual renewal fees to address the projected cost of completing NRS mandated surveys and priority one and priority two level complaints. There is no duplication or overlap of other state or local government agency's regulations. Additionally, there is no overlap or duplication of a federal agency's regulations.

FACILITIES FOR REFRACTIVE LASER SURGERY

Senate Bill 483, passed by the 2001 legislative session, requires the State Board of Health to adopt regulations for the licensure of facilities for refractive laser surgery. The bill also requires that these facilities file a surety bond to provide indemnification to certain patients. The proposed regulations were developed to meet the requirements of the bill and to set standards for the regulation of LASIK facilities. The proposed regulations include, in addition to the requirements for the surety bond, requirements for the administration of the facility, staff requirements, provisions for patient records, policies and procedures, quality improvement, and patient services. The proposed regulations also include regulations that govern patient rights,

safety requirements for equipment and lasers, and regulations for the maintenance of the physical environment. It is anticipated that there will be a beneficial effect on the businesses covered by these regulations. Facilities that provide quality service will have the added benefit of licensure to attest to their compliance with a set standard. Facilities that fall below this standard will be required to bring their services up to a community standard. The anticipated cost to the facilities will be the cost of the licensure fees. A small business impact statement is being prepared and will be distributed at local workshops. There will be an economic impact on Bureau of Licensure and Certification based on the need for provider education, administrative time for license application, surveyor time for licensure surveys and complaint investigations. The proposed regulations do not duplicate the regulations of any other state or federal agency.

ADMINISTRATIVE SANCTIONS

The regulations for Administrative Sanctions have had no revisions since their adoption in 1991. The revised regulation is needed to improve the enforcement mechanisms in place for medical facilities and facilities for the dependent. These regulations will allow for improved efficiency in implementing administrative sanctions and tracking those sanctions. The revised regulations will: i) Eliminate the mandatory imposition of sanctions for widespread deficiencies that are a potential harm to a recipient and allow imposition of such to be at the discretion of the agency. ii) Modify the terms and conditions for monitoring sanctions, allowing for monitoring to take place but not requiring the specific appointment of a monitor. iii) Add language to clarify sample size for current recipients, reduce the size of a sample during follow-up surveys, and allow for a sample of one for complaint investigations while limiting the scope score to a level of one. iv) Increase the amount of per-instance monetary penalties. v) Change from four different levels of scope to three levels of scope when assessing the number of recipients affected by a deficient practice. vi) Change language to reflect name changes from the federal Health Care Financing Administration to the Centers for Medicare and Medicaid Services (CMS), and the state Welfare Division to the Division for Health Care Financing and Policy (DHCFP). It is anticipated that affected businesses will see a long-term impact from this modification. Beneficial effects will include a reduction in the numbers of sanctions issued for deficient practices that are widespread potential for harm. Adverse effects would be experienced by facilities that do not comply with regulations, particularly causing actual harm to recipients, who could be subject to higher monetary sanction penalties. Long-term effects are anticipated for the public through streamlining of agency resources allowing better implementation of administrative sanctions that will impact on quality of care provided by licensed providers. The agency does not anticipate an increased cost to implement the proposed regulation changes. The Bureau of Licensure and Certification has been implementing these regulations for the past nine years. Adoption of the proposed modifications will improve the agency's ability to streamline the imposition of sanctions. These regulations do not overlap other state or local regulations. These regulations overlap the regulations of the Centers for Medicare and Medicaid Services that govern enforcement remedies in nursing homes. The existing regulations contain provisions to impose sanctions that limit occupancy or ban admissions of any recipient. This regulation is more stringent than the corresponding regulations found in the Centers for Medicare and Medicaid Services federal enforcement regulations for nursing homes. The federal regulations provide for the imposition of a ban on payment for new admissions or all admissions for Medicare or Medicaid recipients. The proposed regulation does not create any new fees. It does establish an increase in the amount of monetary penalties imposed on a one-time basis.

FACILITIES FOR TREATMENT WITH NARCOTICS; MEDICATION UNITS

On January 17, 2001, the Federal oversight of Narcotic Treatment Centers was moved from the Food and Drug Administration to the Substance Abuse and Mental Health Services Administration (SAMHSA). The Code of Federal Regulations (CFR) 21, Part 291 was repealed and replaced by 42 CFR Part 8. This change requires that all Facilities for Treatment with Narcotics must be certified by the Centers for Substance Abuse Treatment (CSAT) of SAMHSA in order to provide treatment. The Nevada Administrative Code (NAC) Chapter 449 regulations for Facilities for Treatment with Narcotics currently references the repealed section of the Code of Federal Regulations. The proposed changes to NAC Chapter 449 will change the references to the repealed CFR and add the newly adopted Code of Federal Regulations. There will be no economic impact on the Bureau of Licensure and Certification due to the fact that surveys are already being conducted in these facilities and licensing fees are already in place. There will be no increase to licensing fees due to the adoption of these proposed changes. The proposed regulations reference the regulations of the Substance Abuse and Mental Health Services Administration of Federal government but do not duplicate these regulations. A small business impact statement is being prepared and will be distributed at public workshops.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence in excess of two typed, 8-1/2" x 11" pages must submit the material to Shirley A. Rains, Administrative Assistant IV, no later than April 12, 2002, at the following address:

Bureau of Licensure and Certification
1550 E. College Parkway, Suite #158
Carson City, Nevada 89706

Members of the public who are disabled and require special accommodations or assistance at the workshop are to notify Shirley A. Rains, Administrative Assistant IV, in writing at the Bureau of Licensure and Certification, 1550 E. College Parkway, Suite 158, Carson City, Nevada 89706, no later than April 12, 2002.

A copy of this notice and the proposed regulation amendments are on file for inspection at the following locations during normal business hours:

Bureau of Licensure and Certification, 1550 E. College Pkwy, Suite 158, Carson City, Nevada (775) 687-4475.

Bureau of Licensure and Certification, 4220 S. Maryland Parkway, Suite 810, Las Vegas, Nevada (702) 486-6515.

Emergency Medical Services, 850 Elm Street, Elko, Nevada (775) 753-1154.

Emergency Medical Services, 100 Frankie, Tonopah, Nevada (775) 482-3722.

Copies may be obtained in person, by mail, or by calling (775) 687-4475. Copies are also available for review at all physical locations of program offices (see above) or the following main public libraries in each county:

Carson City Library, 900 North Roop St. Carson City, NV 89701
Churchill County Library, 533 S. Main St. Fallon, NV 89406
Clark County Library, 4020 Maryland Parkway, Las Vegas, NV 89119
Douglas County Library, 1625 Library Lane, (PO Box 337) Minden, NV 89423
Elko County Library, 720 Court St. Elko, NV 89801
Goldfield Public Library (Esmeralda Co), Corner of Crook and Ramsey, (PO Box 430) Goldfield, NV
Eureka Branch Library, 10190 Monroe St., Eureka, NV 89316
Humboldt County Library, 85 East 5th St., Winnemucca, NV 89445
Battle Mountain Branch Library (Lander Co.), 6255 Broad St., Battle Mountain, NV 89820
Lincoln County Library, 63 Maine St., (PO Box 330) Pioche, NV 89043
Lyon County Library, 20 Nevin Way, Yerington, NV 89447
Mineral County Library, 125 A St., (PO Box 1390) Hawthorne, NV 89415
Pershing County Library, 125 Central, (PO Box 781) Lovelock, NV 89419
Storey County Library, 95 South R St., (PO Box 14) Virginia City, NV 89440
Tonopah Public Library (Nye Co.), 171 Central, (PO Box 449) Tonopah, NV 89049
Washoe County Library, 301 South Center St., (PO Box 2151) Reno, NV 89505
White Pine County Library, 950 Campton St., Ely, NV 89301

Per NRS 233B.064(2), upon adoption of any regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

PROPOSED REGULATION OF THE HEALTH DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES

New material is *italicized*. Deleted material is in brackets .

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provision set forth as section 2, of this regulation.

Sec. 2. *“Current recipient” means a recipient admitted to a licensed bed at the time of the survey. For licensed facilities that do not maintain licensed in-patient beds, a current recipient means any recipient who received services in the 30 days immediately preceding the survey.*

Sec. 3. NAC 449.99828 is hereby amended to read as follows:

449.99828 “Major deficiency” defined. “Major deficiency” means a deficiency rated at a ~~[severity level of four or a]~~ combined severity and scope rating of *five* ~~[six]~~ or more.

Sec. 4. NAC 449.99832 is hereby amended to read as follows:

449.99832 “Monitor~~[ing]~~” means ~~[on-site]~~ observation, advice *or* ~~[and]~~ supervision of a facility on *an* ~~[a-regular]~~ as-needed basis *to insure compliance with the plan of correction.*

Sec. 5. NAC 449.99836 is hereby amended to read as follows:

449.99836 “Provider agreement” means an agreement between a facility and:

1. The *Centers for Medicare and Medicaid Services* ~~[Health Care Financing Administration]~~ in the case of a Medicare facility; or
2. The *Division of Health Care Financing and Policy* ~~[welfare division]~~ in the case of a Medicaid facility.

Sec. 6. NAC 449.99837 is hereby amended to read as follows:

NAC 449.99837 1. “Repeated deficiency” means a deficiency found by the bureau again within 18 months, including one found at a follow-up survey, an investigation of a complaint or the next annual survey.

~~[2. The term includes any major deficiency of a standard under a resident care related condition of or requirement for licensure or participation in the Medicare or Medicaid program if any other standard under the same condition was found out of compliance on the previous survey.]~~

Sec. 7. NAC 449.99854 is hereby amended to read as follows:

449.99854 1. The bureau may apply one or more of the sanctions specified in NAC 449.99863 in lieu of or in addition to a recommendation to the *Division of Health Care Financing and Policy* ~~[welfare division]~~ or the *Centers for Medicare and Medicaid Services* ~~[Health Care Financing Administration]~~ to terminate a provider agreement. Sanctions applied pursuant to NAC 449.9982 to 449.99939, inclusive, may be imposed until substantial compliance is achieved or, where compliance is not achieved, until the day before termination of the license or provider agreement becomes effective.

Sec. 8. NAC 449.99856 is hereby amended to read as follows:

449.99856 1. The bureau may apply one or more sanctions on the basis of deficiencies found during surveys or investigations of complaints conducted by the bureau.

2. Deficiencies must be reported to the facility and, where applicable, to the *Centers for Medicare and Medicaid Services* ~~[Health Care Financing Administration.]~~ The notice to the facility must specify the deficiencies found and the severity and scope score for each deficiency determined by the bureau.

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

Sec. 9. NAC 449.99858 is hereby amended to read as follows:

449.99858 1. In determining the scope of a violation, a survey of a facility must evaluate a representative sample of *current* recipients as described in the protocol for the survey of such a facility. Unless a sample of a different size is required for the survey by federal law, the sample must consist of at least the following size:

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

2. The sample size used in identifying the scope of a deficiency in a *resurvey* [~~subsequent survey~~] must not be less than *60 percent of* that used in the initial survey.

3. In determining the scope of a violation involving particular kinds of care, treatment or services, the survey must evaluate a representative sample of *current* recipients receiving or requiring the particular kinds of care, treatment or services. Unless a sample of a different size is required for the survey by federal law, the sample must consist of at least the following size:

Number of <i>current</i> recipients needing or receiving particular kind of care, treatment or services	Minimum number of a <i>current</i> recipients in sample
1 - 9.....	All recipients
10 - 40.....	10
41 - 75.....	15

76 - 100.....	20
101 - 175.....	25
176 - 250.....	30
251 - 350.....	35
351 - 450.....	40
451 or more.....	50

4. The bureau 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.

5. For investigation of a complaint regarding a specific recipient, the bureau may sample only that recipient. In such circumstances, the scope of any deficiency cited must be a scope score of level one.

Sec. 10. NAC 449.9986 is hereby amended to read as follows:

449.9986 1. The scope of the deficiencies must be evaluated using the criteria prescribed in this section.

2. A deficiency of scope level one consists of one or an isolated number of unrelated incidents in the sample surveyed. A deficiency is of this scope if it involves ~~[-~~:

~~—(a) Less than] 10 percent *or less* of the recipients sampled [in a facility with 50 or more recipients; or~~

~~—(b) Less than 20 percent of the recipients sampled in a facility with less than 50 recipients].~~

3. A deficiency *is* of scope level two *if a pattern of incidents is identified. A pattern of incidents includes deficiencies involving recipients who require particular kinds of care, treatment or services. The number or percentage of recipients or staff involved in the incidents or the repeated occurrences of incidents in short succession can also establish a pattern by indicating a reasonable degree of predictability of similar incidents.* ~~[consists of more than a limited number of incidents from which no pattern can be identified with reliability].~~ A

deficiency is *also* of this scope if it involves ~~[-~~:

~~—(a) *more than t*[T]en percent ~~[or more]~~ but not more than 50 ~~[20]~~ percent of the recipients sampled ~~[in a facility with 50 or more recipients; or~~~~

~~—(b) Twenty percent or more but not more than 33.33 percent of the recipients sampled in a facility with less than 50 recipients.~~

~~Any deficiency of scope level two that is made as a subsequent deficiency or as a repeated deficiency is of scope level three because of its presence over time].~~

4. A deficiency is of scope level three if *it occurs in a sufficient number or percentage of recipients or staff or with sufficient regularity over time that it can be considered systemic or pervasive in or by the facility.* ~~[a pattern of incidents is identified. A pattern of incidents includes deficiencies involving recipients who require particular kinds of care, treatment or services. The number or percentage of recipients or staff involved in the incidents or the repeated occurrences of incidents in short succession can also establish a pattern by indicating a reasonable degree of predictability of similar incidents.]~~ A deficiency is also of this scope if it involves ~~[:~~

~~—(a) Twenty percent or more but not more than 40 percent of the recipients sampled in a facility with 50 or more recipients;~~

~~—(b) Thirty three and one third percent or more but not more than 50 percent of the recipients sampled in a facility with less than 50 recipients; or~~

~~—(c) Thirty three and one third percent or more but not more than 50 percent of the recipients sampled in a facility of any size needing a particular type of care, treatment or services. Any deficiency of scope level three that is made as a subsequent deficiency or as a repeated deficiency is of scope level four because of its presence over time.~~

~~—5. A deficiency is of scope level four if it occurs in a sufficient number or percentage of recipients or staff or with sufficient regularity over time that it can be considered systemic or pervasive in or by the facility. A deficiency is also of this scope if it involves:~~

~~—(a) Forty percent or more of the recipients sampled in a facility with 50 or more recipients;~~

~~—(b) Fifty percent or~~ more *than fifty percent* of the recipients sampled in a facility ~~[with less than 50 recipients; or~~

~~—(c) Fifty percent or more of the recipients sampled in a facility of any size needing a particular type of care, treatment or services].~~

Sec. 11. NAC 449.99867 is hereby amended to read as follows:

449.99867 1. The selection of a sanction must be based upon the nature of the deficiencies or cluster of 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.

~~[2. The bureau shall document the rationale for the selection of a sanction.]~~

Sec. 12. NAC 449.99878 is hereby amended to read as follows:

449.99878 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 15 by 20 inches in size with the words “NOTICE OF LIMITATION ON OCCUPANCY” printed in boldface type not less than 1 1/2 inches in size. *The notice must also identify the number of residents the facility is allowed to serve, the facility staff member that may be contacted for additional information, and the telephone number for the Bureau of Licensure and Certification.*

2. All persons contacting the facility either in writing or by telephone or other means of telecommunication with respect to a recipient seeking admission to the facility must be notified of the limitation on occupancy *and be provided with the notice information required in 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 three and a scope level of *three [four]*. The failure to inform an inquirer as to the existence of a limitation on occupancy is a deficiency of severity level two and a scope level of *three [four]*.

4. The content of any notice required to be posted or published pursuant to this section must conform to the requirements set forth by the bureau in the notice of sanction.

Sec. 13. NAC 449.99881 is hereby amended to read as follows:

449.99881 1. If the bureau imposes a ban on admissions, the ban must be imposed as provided in this section.

2. For deficiencies of severity level four and scope level two or more, a ban on all new admissions must be imposed.

3. For deficiencies of severity level three and scope level *three [four]*, a ban on all new admissions must be imposed.

4. For deficiencies of severity level three and scope level *two [three]*, a complete or partial ban on admissions may be imposed. If the deficiency is related to a discrete type of care, treatment or services, the ban may be limited to new admissions requiring the care, treatment or services for which the deficiency is found.

5. For deficiencies with a severity level of *four or* three and a scope level of *one* ~~[two or less]~~, the bureau may impose a partial ban on admissions, limited to persons needing the care, treatment or services affected by the deficiency.

6. For deficiencies with a severity level of two and a scope level of three ~~[or more]~~, a ban on admissions may be imposed if the deficiencies directly affect the care, treatment or services furnished to recipients. The ban may be limited to those persons requiring the kind or type of services affected by the deficiencies.

Sec. 14. NAC 449.99883 is hereby amended to read as follows:

449.99883 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. The notices must be not less than 15 by 20 inches of size with the words “NOTICE OF BAN ON ADMISSIONS” printed in boldface type not less than 1 1/2 inches in size. *The notice must also identify the facility staff member that may be contacted for additional information, and the telephone number for the Bureau of Licensure and Certification.*

2. If the facility provides care, treatment or services at a site other than the location of the office of the facility, notice must be provided by publishing an announcement, identified as a “LEGAL NOTICE” and not less than 25 percent of a newspaper page in size, in a newspaper of general circulation in the geographic area served by the facility on two separate occasions. The first such publication must occur within 7 days after the facility receives notice of the ban, and the second such publication must occur within 14 days after that date. At least one such publication must be in a Sunday edition of the publication. *The notice must include all information required in subsection 1.*

3. Any person contacting the facility in writing or by telephone or any other means of telecommunication with respect to a recipient seeking admission must be notified of the ban *and be provided with the notice information required in 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 three and a scope of level *three* ~~four~~. Failure to inform an inquirer as to the existence of the ban is a deficiency of severity level two and a scope of level *three* ~~four~~.

5. The content of any notice required to be posted or published pursuant to this section must conform to the requirements set forth by the bureau in the notice of sanction.

Sec. 15. NAC 449.99885 is hereby amended to read as follows:

449.99885 1. The bureau may ~~appoint a~~ monitor to oversee the implementation of the plan of correction of the facility *to assess* ~~[if the combined severity and scope score is six or more or]~~ if the facility has ~~failed to~~ carried~~y~~ out the plan of correction ~~[within the time specified]~~.

2. The bureau may also ~~appoint a~~ monitor if the scope of the deficiencies identified is difficult to evaluate on a single visit. Such deficiencies include, without limitation, violations of recipients' rights, inappropriate use of restraints and cases in which the bureau has reason to question the ongoing compliance of the facility with the requirements of federal or state law.

Sec. 16. NAC 449.99899 is hereby amended to read as follows:

449.99899 1. In determining the amount of an initial monetary penalty, the bureau shall consider the severity alone if the severity level is four. In determining the amount of the monetary penalty where the severity level is less than four, both severity and scope must be considered. In determining whether to impose a daily monetary penalty, the bureau shall

consider the severity and scope and the factors indicated for increased and decreased penalties provided in NAC 449.99902 AND 449.99904.

2. For initial deficiencies with a severity level of four, an initial monetary penalty of **\$1,000** ~~[500]~~ per deficiency must be imposed. ~~[In addition, a monetary penalty of \$10 per recipient per day may be imposed for each day the deficiency continues.]~~

3. For initial deficiencies rated with a severity level of three and a scope level of three ~~[or more]~~, a monetary penalty of **\$800** ~~[400]~~ per deficiency must be imposed. ~~[In addition, a monetary penalty of \$8 per recipient per day may be imposed for each day the deficiency continues.]~~

4. For initial deficiencies with a severity level of three and a scope level of **one or** two, an initial monetary penalty of **\$400** ~~[200]~~ per deficiency must be imposed. ~~[In addition, a monetary penalty of \$4 per recipient per day may be imposed for each day the deficiency continues.]~~

5. For initial deficiencies with a severity level of two and a scope level of three, an initial monetary penalty of **\$200** ~~[100]~~ 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 bureau. ~~[In addition, a monetary penalty of \$2 per recipient per day may be imposed for each day the deficiency continues.]~~

6. In addition to the other monetary penalties provided in this section, a monetary penalty of not more than \$10 per recipient per day may be imposed for each day the deficiency continues.

Sec. 17. NAC 449.99902 is hereby amended to read as follows:

449.99902 1. Penalties must be increased if deficiencies are ~~[uncorrected or]~~ repeated or compliance is falsely alleged.

~~[2. For each uncorrected deficiency present after the time specified by the bureau for correction of the 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.]~~

2 [3]. 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 [4]. The bureau may double the daily monetary penalty that was or could have been assessed if the facility alleges compliance and the bureau finds on a survey that at the time compliance was alleged the deficiencies continued to exist.

Sec. 18. NAC 449.99903 is hereby amended to read as follows:

449.99903 There is a rebuttable presumption that deficiencies identified on a *resurvey* [subsequent survey] were present on each day between the date of the initial deficiency and the date of the subsequent deficiency.

Sec. 19. NAC 449.99909 is hereby amended to read as follows:

449.99909 Unless it is waived as provided in this chapter, interest at the rate prescribed in NRS 449.163 will be assessed on the unpaid balance of the penalty, beginning on the due date.

Sec. 20 NAC 449.99907 is hereby amended to read as follows:

449.99907 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 no longer than 6 months, after which the bureau shall deny, suspend or revoke the license of the facility and, if the facility is a

Medicaid facility and major deficiencies remain, request the *Division of Health Care Financing and Policy* [~~welfare division~~] to terminate the Medicaid provider agreement of the facility.

3. If a deficiency in a Medicaid facility presents an immediate and serious threat and continues to exist on the 23rd day following the appointment of temporary management, the bureau shall request the *Division of Health Care Financing and Policy* [~~welfare division~~] to terminate the Medicaid provider agreement of the facility.

4. If the provider can supply credible evidence that substantial compliance with participation requirements was attained on a date preceding that of the 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. 21. NAC 449.99915 is hereby amended to read as follows:

449.99915 1. If a temporary manager is to be appointed, the bureau 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 bureau shall deny, suspend or revoke the license of the facility and, if applicable, shall also recommend to the *Division of Health Care Financing and Policy* [~~welfare division~~] termination or suspension of the Medicaid provider agreement of the facility.

3. If the facility accepts the temporary manager, the bureau shall:

(a) Notify the facility that, unless it removes the immediate and serious threat, its license will be denied, suspended or revoked pursuant to NRS 449.160; and

(b) Where applicable, recommend to the *Division of Health Care Financing and Policy* ~~[welfare division]~~ that the Medicaid provider agreement of the facility be terminated, effective on the 23rd day after the date of appointment of the temporary manager.

4. If the immediate and serious threat is not removed on or before the 23rd day after the appointment of the temporary manager, the bureau shall deny, suspend or revoke the license of the facility and, if applicable, recommend to the *Division of Health Care Financing and Policy* ~~[welfare division]~~ that the Medicaid provider agreement be terminated.

Sec. 22. NAC 449.99919 is hereby amended to read as follows:

449.99919 If a facility fails to agree to the appointment of a temporary manager or fails to relinquish authority to the temporary manager, the health division 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; and
3. If applicable, request the *Division of Health Care Financing and Policy* ~~[welfare division]~~ to terminate the provider agreement of the facility in accordance with the requirements of the Medicaid program.

Sec. 23. NAC 449.99935 is hereby amended to read as follows:

449.99935 For a facility that participates in Medicaid, in addition to imposing any sanction authorized by NAC 449.99863, the bureau may recommend to the *Division of Health Care Financing and Policy* ~~[welfare division]~~:

1. That the provider agreement of the facility be terminated.
2. That Medicaid payment for new admissions be denied.
3. That Medicaid payment for certain diagnostic categories or certain types of specialized care be denied.

4. That all or part of the Medicaid payments to the facility be suspended.

5. That the facility be allowed to continue to participate as a Medicaid facility for 6 months after the date of the survey if:

(a) The bureau finds that it is more appropriate to impose alternative sanctions than to recommend termination of the facility from the Medicaid program;

(b) The facility has submitted an acceptable plan of correction;

(c) The bureau approves the plan of correction; and

(d) The facility agrees to repay the Federal Government for any payments received under the Medicare or Medicaid program if timely corrective action is not taken in accordance with the approved plan of correction.

If the facility does not substantially correct the cited deficiencies within 6 months after the last day of the survey, the bureau shall recommend that the *Division of Health Care Financing and Policy* ~~[welfare division]~~ terminate the Medicaid agreement of any facility whose participation was continued under these conditions.

Sec. 24. NAC 449.99936 is hereby amended to read as follows:

449.99936 1. The amount of any monetary penalty owed by a Medicaid facility, if it has been determined, may be deducted from any money otherwise owed to the facility by the *Division of Health Care Financing and Policy* ~~[welfare division]~~.

2. If the facility does not pay a monetary penalty by the date it is due and no extension of time to pay is granted, the administrator of the health division shall notify the administrator of the *Division of Health Care Financing and Policy* ~~[welfare division]~~ of the amount of the penalty due and owing and shall request withholding of the amount owed.

3. The administrator of the *Division of Health Care Financing and Policy* ~~[welfare division]~~ will take the appropriate steps to withhold the amount of the monetary penalty owed, including any interest and costs of collection, from the Medicaid payment otherwise due the facility. Money so withheld must be remitted to the health division for deposit in the special fund established pursuant to NAC 449.99912. Money withheld for costs of collection must be applied by the administrator of the health division to the account incurring the costs.

Sec. 25. NAC 449.99937 is hereby amended to read as follows:

449.99937 1. The bureau may request the ~~[welfare division]~~ to deny Medicaid payment to a facility for new admissions if:

(a) The facility does not substantially correct the deficiencies within 90 days or within the time required by federal Medicaid law after the facility is notified by the bureau of the deficiencies; or

(b) The bureau has cited a facility with substandard quality of care (severity score of level three or more and scope of level three ~~[or more]~~) on two of the last three consecutive standard surveys.

2. If the facility achieves and maintains compliance with the requirements, the bureau shall request the *Division of Health Care Financing and Policy* ~~[welfare division]~~ to resume payments to the facility prospectively, effective on the date compliance was achieved.

Sec. 26. NAC 449.99938 is hereby amended to read as follows:

449.99938 1. The bureau may request the *Division of Health Care Financing and Policy* ~~[welfare division]~~ to deny payment to a facility for new admissions who have certain specified diagnoses or special care needs if:

(a) The facility is not currently able to provide appropriate care, services or treatment for these persons; or

(b) Caring for these persons will adversely affect care provided to other recipients.

2. If the facility achieves and maintains compliance with the requirements, the bureau must request the *Division of Health Care Financing and Policy* ~~[welfare division]~~ to resume payment to the facility prospectively, effective on the date compliance was achieved.

Sec. 27. NAC 449.99939 is hereby amended to read as follows:

449.99939 1. The bureau may request the *Division of Health Care Financing and Policy* ~~[welfare division]~~ to suspend all or part of the Medicaid payments to a facility for services furnished to a Medicaid recipient on or after the date of the deficiency, regardless of whether the recipient was admitted before, on or after the date of the deficiency.

2. If the facility achieves compliance with the requirements, the bureau shall request the *Division of Health Care Financing and Policy* ~~[welfare division]~~ to resume payments retroactively.

TEXT OF REPEALED SECTIONS

449.99831 “Monitor” defined. “Monitor” means a person appointed by the bureau to oversee compliance by a facility with a plan of correction or to identify deficiencies which are difficult to evaluate on a single visit.

449.99842 “Uncorrected deficiencies” defined. “Uncorrected deficiencies” means a deficiency identified in an initial survey and again identified on the resurvey.

449.99886 Appointment of monitors regarding multiple deficiencies.

If deficiencies are cited in more than one area, the bureau may:

1. Appoint as monitor a person qualified in all deficient areas; or
2. Appoint a qualified monitor for each such area.

NAC 449.99887 Monitors: List of interested and qualified persons; experience; selection.

1. The health division may solicit applications from persons interested in serving as monitors.
2. The health division shall develop and maintain a list of persons who are interested and qualified to act as monitors.
3. The person or persons selected as monitors must have experience in the delivery of health care services and, if feasible, in the delivery of the type of care, treatment and services provided by the facility being monitored. If the primary deficiencies leading to the request for appointment of a monitor are related to the financial stability of the facility, the person or persons selected should have experience in financial management and, if feasible, in the financial management of health care facilities.
4. If the bureau appoints a monitor, the decision as to who serves as monitor must be made by the chief of the bureau. The bureau may appoint a monitor from a list maintained by the health division. A monitor may also be an employee or an independent contractor of the health division and may be an attorney, auditor or health professional. The selection of the monitor is in the sole discretion of the bureau.

NAC 449.99888 Monitors: Duties; qualifications.

1. The bureau's monitor must be present at the facility being monitored to oversee the correction of deficiencies within the time specified in the plan of correction.
2. The monitor must be professionally qualified to address the deficiency involved in the matter.
3. The monitor must not be:
 - (a) An employee of the facility or an affiliated facility; or
 - (b) A person or agency that has functioned as a consultant to the facility or an affiliated facility within 2 years preceding the appointment of the monitor.

NAC 449.99889 Monitors: Authority. A monitor may direct the facility to take such actions as are necessary to assure that the health, safety and well-being of recipients are protected. If the facility fails to comply with directives of the monitor, the monitor shall notify the chief of the bureau, who shall evaluate whether other sanctions should be imposed or judicial proceedings should be brought as authorized by [NRS 439.565](#).

NAC 449.9989 Compensation of monitors; bonding requirements; payment by facility; appeals. ([NRS 233B.050](#), [449.037](#))

1. If a monitor is not an employee of the health division, the bureau shall establish a reasonable compensation for him and shall require him to furnish a bond. The compensation of the monitor and the expense of the bond must be charged to the facility and paid from the revenues of the facility or, if necessary, from money collected from the assessment of monetary penalties.

2. The facility must be billed for these costs at the end of the period of monitoring. The bill is due and payable 15 days after receipt.

3. The necessity for a monitor and the costs of the monitoring may be appealed as provided in [NAC 439.300](#) to [439.395](#), inclusive.