

LCB File No. R078-06

**PROPOSED REGULATION OF THE HEALTH DIVISION OF THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Hearing scheduled June 16, 2006

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

AGENCY TO PROVIDE PERSONAL CARE SERVICES IN THE HOME

General Provisions

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as section 2 to 15, inclusive, of these regulations.

Sec. 2. *Definitions:*

1. *“Agency” means an agency to Provide Personal Care Services in the Home as defined in NRS 449.0021.*
2. *“Client”. For the purpose of this chapter, a client is an elderly person or a person with disabilities that desires the provision of personal care services in the home or in another residential location in which they live.*
3. *“Client’s representative”. A client’s representative, for the purposes of this chapter, are those individuals who are legally responsible to provide medical support including: spouses of clients, parents of minor clients including stepparents, legal guardians, or other individuals authorized by law.*
4. *“Activities of Daily Living (ADL’S)” has the meaning ascribed to it in NRS 449.0021.*
5. *“Attendant” is an individual who is employed or contracted by an agency to provide services as described in NRS 449.0021.*
6. *“Service Plan” for the purpose of this chapter a service plan is the written description of a client’s personal care service needs and an outline of specific tasks which the attendant is authorized to provide for the client.*
7. *“Work station” for the purposes of this chapter, means a satellite office that is established for the sole purpose of ensuring copies of records are sent to the licensed agency, and where attendant(s) may work from to serve another geographic area.*

Applicability of provisions.

Sec. 3. *For the purpose of section 1 of Assembly Bill 337 of the 2005 Legislative Session, a microboard means a small group of family or friends of a person needing services who employ or contract with persons to provide non-medical services related to personal care as described in section 1 of Assembly Bill 337 of the 2005 Legislative Session with the following requirements:*

- a) The organization is created in a written document that is made available for review by the Health Division upon request; and*
- b) The services provided are limited to one individual or family who reside in the same residence or in another facility.*

Licensing

Sec. 4.

- 1. Each license is separate and distinct, and is issued to an applicant to operate an agency at a specific location. An agency is not required to have a separate license for multiple work stations as long as the agency maintains all required client, staff and agency operational records at the specific location identified on the license. The name of the person who is designated as responsible for its conduct must appear on the face of the license.*
- 2. Each agency must have evidence that it is adequately covered against liabilities resulting from claims incurred in the course of operation and must verify this coverage upon its initial application and during future periodic onsite surveys.*

Agency Administration, Organization, and Personnel

Sec. 5. Administrator Qualifications and Responsibilities:

- 1. An administrator of an agency must:*
 - (a) Be at least 18 years of age,*
 - (b) Have a high school diploma or an equivalent,*
 - (c) Be responsible, mature and have the personal qualities which will enable him to understand the problems of the aged and disabled,*
 - (d) Understand the provisions of this chapter,*
 - (e) Demonstrate the ability to read, write, speak and understand the English language.*

2. *The administrator of an agency shall represent the licensee in the daily operation of the agency, and appoint a person to exercise his authority in his absence. The administrator's responsibilities include:*

- (a) Employing qualified personnel and arranging for their training;*
- (b) Ensuring only trained attendant(s) are providing services to a client of the agency in accordance with the functional assessment, service plan and agency policy;*
- (c) Developing and implementing an accounting and reporting system that reflects the fiscal experience and current financial position of the agency;*
- (d) Negotiating for services provided by contract in accordance with legal requirements and established policies of the agency;*
- (e) Providing oversight and direction for the members of the staff of the agency as necessary to ensure that clients receive needed services;*
- (f) Developing and implementing policies and procedures for the agency including termination of services; and*
- (g) Designate one or more individuals to be in charge of the agency during those times when the administrator is absent. Except as otherwise provided in this subsection, individuals designated to be in charge of the agency when the administrator is absent must have access to all records kept at the agency. Confidential information may be removed from the files to which the individuals in charge of the agency have access if the confidential information is maintained by the administrator.*

3. *The administrator of an agency shall ensure that clients are not abused, neglected or exploited by a member of the staff of the agency or any person who is visiting the client; and shall ensure that suspected cases of abuse, neglect or exploitation of a client is reported in accordance with NRS 200.5093 and/or NRS 432B.220.*

Sec. 6. Personnel Policies/Maintenance and Availability. *An agency shall maintain written policies and procedures concerning the responsibilities and conditions of employment for each member of the staff. The written policies must be revised as needed. Current policies and procedures shall be provided to agency staff upon hire and whenever revisions are made. The policies and procedures shall at a minimum provide for:*

- 1. attendant duties and responsibilities;*
- 2. attendant prohibited activities including:*

- (a) *Making personal long-distance telephone calls on the client's telephone or while on duty providing personal care services;*
 - (b) *Loaning, borrowing or accepting gifts of money or personal items from the client;*
 - (c) *Accepting or retaining money or gratuities for any reason other than that needed for the purchase of groceries or medications for the client; and*
 - (d) *May not become a legal guardian or power of attorney for the client.*
3. *Client's rights;*
 4. *Ethics, including confidentiality of client information;*
 5. *The agency's infection control policies;*
 6. *A description of the services provided by the agency to clients;*
 7. *Assignment and supervision of services;*
 8. *Documentation of client needs and services provided;*
 9. *The agency's policies related to medical and non-medical emergency response;*
 10. *The roles of, and coordination with other community service agencies;*
 11. *Other appropriate subject matter based on the needs of the special populations served by the agency;*
 12. *Periodic evaluations of the performance of members of the staff;*
 13. *Maintenance of current personnel records, which confirm that the policies are followed.*

Sec. 7. Personnel Files.

1. *A separate personnel file must be kept for each member of the staff including the administrator of an agency and must include:*
 - (a) *The name, address and telephone number of the individual*
 - (b) *The date on which the individual began their employment at the agency;*
 - (c) *The documentation required pursuant to Chapter 441A of NAC for the individual;*
 - (d) *Evidence that the references supplied by the individual were checked by the agency;*

(e) Evidence of compliance that each applicant for a license to operate an agency submitted to the Central Repository for Nevada Records of Criminal History two complete sets of fingerprints for submission to the Federal Bureau of Investigation for its report;

(f) Within the first six months of employment a certificate in first aid and cardio pulmonary resuscitation (CPR) issued by the American Red Cross or an equivalent certificate will be accepted as proof of that training;

(g) Proof that the attendant is 18 years of age or older; and

(h) Proof of automobile liability insurance coverage if the attendant will be transporting clients in a motor vehicle.

2. Documentation of all training and performance evaluations shall be included in the attendant's personnel file. The documentation shall include, but not be limited by the following:

(a) The content of the training, date(s) when the training was attended and the number of hours of each training session, name(s) and signature(s) of the instructor(s); and

(b) Certificate indicating successful completion of training.

3. Attendants that provide written proof of current or previous training shall have their competency in each required content area evaluated by an agency administrator or designee. Any additional training may be limited to areas requiring improvement after the evaluation.

4. The agency administrator may keep the personnel files for the agency in a locked cabinet and may, except as otherwise provided in this subsection, restrict access to this cabinet by other individuals of the agency. The administrator shall make the personnel files available for inspection by the Health Division during any inspection and upon request, including electronic records.

Sec. 8. Supervision. *The agency administrator or designee shall conduct supervisory home visits or telephone calls to the client's residence for monitoring as needed to assure quality care is provided.*

1. Each supervisory visit shall be documented, dated, signed, and shall consist of an evaluation of:

(a) Whether appropriate and safe techniques have been used in the provision of care;

- (b) Whether the service plan has been followed as written;*
- (c) Whether the service plan is meeting the client's need;*
- (d) Whether the attendant has received sufficient training for the service; and*
- (e) Whether appropriate follow-up of any service or service plan problems*

identified as a result of the supervisory visit will be necessary.

2. If services are provided in a non-residential setting, supervisory visits must also be conducted at the non-residential location.

Minimum Qualifications and Training for Attendants

Sec. 9. Minimum Qualifications:

- 1. Be at least 18 years of age;*
- 2. Be responsible, mature and have the personal qualities which will enable him to understand the problems of the aged and disabled;*
- 3. Demonstrate the ability to read, write, speak and communicate effectively with the client;*
- 4. Demonstrate the ability to meet the needs of the client, and have the ability to communicate with the clients of the agency; and*
- 5. Receive annually not less than eight hours of training related to providing for the needs of the clients of an agency.*

Sec. 10. Training:

- 1. Attendant(s) of an agency must have a working knowledge of the provisions of NAC that govern the licensing of agencies, and be provided a copy of NAC before providing care.*
- 2. Attendant(s) shall participate in, and complete training before independently providing services to clients. The training program shall include provisions for the attendant to receive on-the-job instruction provided by the client, as long as the administrator or designee provides supervision during this training to determine the attendant is able to successfully provide services to the client.*
- 3. Attendant(s) shall receive training in written documentation of services provided to the client and time verification records.*
- 4. Attendant(s) shall receive training in client's rights including protecting client confidentiality pursuant to state and federal regulations.*

5. *Attendant(s) shall receive training related to the special needs of the elderly and the disabled, and sensory, physical and cognitive changes related to the aging process.*
6. *Attendant(s) shall receive training related to communication skills including active listening, problem solving, conflict resolution skills, as well as alternative modes of communication techniques for individuals with communication or sensory impairments.*
7. *Attendant(s) shall be trained in first aid and cardiopulmonary resuscitation. The certificate in first aid and cardiopulmonary resuscitation issued by the American Red Cross or an equivalent certification will be accepted as proof of that training.*
8. *Attendant training shall be based on the services provided by the agency, including, as applicable, the following topics:*
 - (a) *Attendant duties, responsibilities, appropriate technique for providing personal care services;*
 - (b) *Recognizing and responding to emergencies, including medical and fire;*
 - (c) *Dealing with adverse behaviors;*
 - (d) *Nutrition and hydration, including special diets and meal preparation and service;*
 - (e) *Bowel and bladder care, including routine care associated with toileting, routine maintenance of indwelling catheter drainage system (emptying bag, positioning etc.); routine care of colostomies (emptying and changing bag); signs and symptoms of urinary tract infections; and common bowel problems such as constipation and diarrhea;*
 - (f) *Skin care, including interventions that prevent pressure sores, routine inspections of skin, and reporting skin redness, discoloration or breakdown to the client or the client's representative and administrator of the agency or administrator's designee;*
 - (g) *Methods and techniques to prevent skin breakdown, contractures and falls;*
 - (h) *Hand-washing and infection control;*
 - (i) *Body mechanics, mobility, and transfer techniques including simple non-prescribed range of motion; and*
 - (j) *Maintenance of a clean and safe environment.*
9. *Each attendant(s) must be evaluated and determined to be competent by the agency, in the required content areas identified in sections 1 through 8.*

10. *Each attendant must have evidence of successful completion of a training program that includes the areas identified in sections 1 through 8, within the immediately preceding 12 months, before providing care to a client.*

11. *Written documentation of successful completion of training shall be maintained in each attendant's personnel file.*

Disclosure, Screening, and Acceptance of Clients

Sec. 11. Disclosure Statement:

1. *When an individual is accepted for agency service, a written disclosure statement shall be signed by the potential client or the client's representative, and a copy shall be incorporated into the client record.*

2. *All existing clients of the agency at the time of initial licensure must receive the disclosure statement within 1 year of initial licensure of the agency.*

3. *The disclosure statement must include a description of the services offered by the agency, including but not limited to the following:*

(a) *A statement easily understandable by the client, indicating that it is not within the scope of the agency's license to manage the medical and health conditions of clients, should they become unstable or unpredictable;*

(b) *The qualifications and training requirements for attendant(s) providing services to clients;*

(c) *The charges for the services provided by the agency;*

(d) *A description of billing methods, payment systems and due dates; the policy for client notification of increases in the costs of services;*

(e) *Criteria, circumstances, or conditions which may result in termination of services by the agency and client notification of such;*

(f) *Procedures for contacting the agency administrator or designee during all hours during which services are provided, the on-call policy of the agency; and*

(g) *Client's rights information and grievance procedure.*

Sec. 12. Rights of Client: Procedure for filing a grievance, complaint or report of an incident, investigation and response.

1. *The administrator of an agency shall ensure that a client is not prohibited from speaking to any person who advocates for the rights of the client.*
2. *The administrator of an agency shall provide a procedure to respond to grievances, incidents and complaints in accordance with the agency's written procedure. The procedure must include a method for ensuring that the administrator or a person designated by the administrator is notified of the grievance, incident or complaint. The administrator or a person designated by the administrator shall personally investigate the matter timely. A client who files a grievance or complaint or reports an incident pursuant to this subsection must be notified of the action taken in response to the grievance, complaint or report or be given a reason why no action needs to be taken.*
3. *The agency shall be in compliance with NRS 449.700 to 449.730.*
4. *The agency shall develop a written description of clients' rights, and provide a copy to the client upon initiation of the service plan. A signed and dated copy of receipt of this information by the client or the client's representative shall be maintained in the client's record.*
5. *The written description of clients' rights shall include, but not be limited to the following:*
 - (a) *The client has the right to receive considerate and respectful care that recognizes the inherent worth and dignity of each individual;*
 - (b) *The client has the right to participate in the development of the service plan and receive an explanation of services provided, and to receive a copy of the service plan;*
 - (c) *The client shall receive the telephone number of the Bureau of Licensure and Certification offices which may be contacted for complaints;*
 - (d) *The client shall receive notification that the Health Division has the authority to examine client's records as part of the Division's regulation and evaluation of the agency;*
 - (e) *The client has the right to receive from all agencies, within the limits set by the service plan and within program criteria, reasonable requests for assistance; and*
 - (h) *Receive information upon request regarding agency policies and procedures, including information on charges, reimbursements and service plan determinations.*

PERSONAL CARE SERVICE INITIATION

Sec. 13.

- 1. The Agency Administrator or designee shall conduct an initial screening to evaluate a prospective client's service requests, and develop or accept a service plan.**
- 2. The screening and service plan shall be documented, dated and signed by the individual who conducted it.**
- 3. The agency shall complete the following tasks prior to providing the services outlined in the service plan, and as often as necessary if the service plan is revised:**
 - (a) Demonstrate they have sufficient resources and capability to meet the in-home Activities of Daily Living (ADL) requests of the client as described in the service plan;**
 - (b) Review with the client the service plan, the schedule for the provision of services, specifying days and times, identification of the attendant(s) who will provide the service, the procedure to follow if the attendant(s) fails to provide the service in accordance with the approved service plan, the agency's hiring and training policies, agency responsibilities, complaint and grievance procedure and the non-covered services/tasks of the agency.**
 - (c) The procedure to be followed when the attendant(s) does not appear for a scheduled visit or when an additional visit is required.**
 - (d) Ensure that the client's needs meet the ADL's as defined in Section 2 and the agency is able to coordinate its services with the care and services provided by other organizations and individuals.**

Personal Care Services Not Permitted

Sec. 14. The agency is responsible to ensure that all attendants are working within their scope of service, and conduct themselves in a professional manner at all times. The list of activities that are not within the scope of attendants includes but is not limited to:

- 1. Skilled services:**
 - (a) Insertion and sterile irrigation of catheters;**
 - (b) Irrigation of any body cavity. This includes both sterile and non sterile procedures, such as, ear irrigation, vaginal douches, and enemas;**
 - (c) Application of dressings involving prescription medications and aseptic techniques, including treatment of moderate or severe skin problems;**

- (d) Administration of injections of fluids into veins, muscles, or skin;*
- (e) Administration of medication, including, but not limited to, the insertion of rectal suppositories, the application of prescribed skin lotions, or the instillation of prescribed eye drops;*
- (f) Physical assessments;*
- (g) Monitoring vital signs;*
- (h) Specialized feeding techniques;*
- (i) Rectal digital stimulation;*
- (j) Trimming or cutting toenails;*
- (k) Massage;*
- (l) Specialized range of motion;*
- (m) Medical case management, such as accompanying a client to a physician's office for the purpose of providing or receiving medical information; and*
- (n) Any task identified within the Nurse Practice Act as requiring skilled nursing, including Certified Nursing Assistants services.*

SMALL BUSINESS IMPACT STATEMENT

AGENCY TO PROVIDE PERSONAL CARE SERVICES IN THE HOME

PROPOSED REGULATIONS for Agency to provide personal care services in the home. The regulations may impose a burden upon small businesses and may directly restrict the formation, operation, or expansion of a small business in Nevada. A small business is defined in Nevada Revised Statutes (NRS) 233B as a “business conducted for profit which employs fewer than 150 full-time or part-time employees.” This small business impact statement complies with the requirements of NRS 233B.0609.

Background

In the last few years there has been a rapid increase in businesses that provide personal care to people in their homes. Those who receive Medicaid reimbursement for their services receive training for their aides from the Division of Health Care Financing and Policy (Nevada Medicaid). There has been no oversight for those agencies who do not receive Medicaid Reimbursement. The 2005 Legislative Session defined these agencies and placed them under the jurisdiction of the Health Division.

1. A description of the manner in which comment was solicited from affected small businesses, a summary and an explanation of the manner in which other interested parties may obtain a copy of the summary.

The 1999 legislature amended Nevada Revised Statutes (NRS) Chapter 233B to require that state agencies assess the impact of regulation changes or development on small businesses. In keeping with this requirement, a review of advertising information, yellow pages, and the white pages was conducted both in northern and southern Nevada. All identified facilities were sent a small business impact questionnaire (See attachment #A) and a copy of the draft regulations to allow them to express their concerns over the economic impact of these proposed regulations on their businesses. In addition, a list of providers was obtained from DHCFP and all of these agencies were provided with the questionnaire and a copy of the draft regulations. A total of 220 questionnaires were sent out and thirty-one (31) were returned. The comments received are summarized as follows:

Nine (9) questionnaires were returned with no comments.

Five questionnaires (5) were returned indicating there would be no adverse effect or beneficial effect on the businesses.

One questionnaire indicated the regulations would have a beneficial effect on the business but failed to give specific details.

One questionnaire was returned indicating there would be adverse economic effects and indirect adverse effects on the business, but failed to give specific details.

One respondent wrote that because of these new regulations “we will not be able to utilize our C.N.A. services anymore and “it will definitely affect the context of our business”, but offered no further explanation.

Eleven (11) commented on the negative impact of licensure fees. Of this group five (5) had generally favorable comments about the regulations, four (4) had unfavorable comments, and two (2) had no comments except regarding fees.

Two (2) felt the regulations would be beneficial “to be more prepare for the small businesses and employees of the small businesses”.

One respondent wrote that the regulations would slightly increase the costs of home health agencies, but also felt the regulations would lead to more home health referrals and keep out some of the “fly by night agencies and force others to clean up their acts”.

One respondent wrote the regulations would allow their patients to maintain an independent lifestyle, prevent exacerbation of their illness and keep them away from the emergency room. Also, patients “have a better outlook and sense of well-being when more people show support, love and affection”. This respondent stated that well trained PCAs will help keep patients healthy.

One respondent stated the whole concept would have a stabilizing effect on the lives of patients and would provide for better exchange of information about the patient’s home life.

One respondent felt that PCA agencies are already audited by Division of Aging, county services, and Medicaid and felt the additional fees and survey would be burdensome to their business.

One respondent failed to understand why the State of Nevada was going to great lengths to regulate PCA businesses as opposed to other states, and failed to understand why the fees were as high as those for a Dialysis facility when the Health Division anticipates it will incur no additional cost for enforcement.

One respondent was concerned about the length of time it would take for the Health Division to complete the licensing of these new agencies.

Copies of the summaries of these questionnaires are available from the office of the Bureau of Licensure and Certification 1550 E. College Parkway, Suite 158, Carson City, Nevada 89706, (775) 687-4475 or 4220 South Maryland Parkway, Building D, Suite 810, Las Vegas, Nevada 89119. (702) 486-6515

2. The estimated economic effect of the proposed regulation on the small business which it is to regulate including without limitation both adverse and beneficial effects.

The beneficial effect of these regulations is to ensure uniform quality and safety of care and to establish a level of quality control that would be standard for all facilities. The adverse effect on a small business would be the licensing fees.

3. A description of the methods the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The agency reviewed the suggestions for changes that would lessen the economic impact. Wherever possible, in keeping with existing state laws, these changes will be made.

4. The estimated cost to the agency for enforcement of proposed regulations.

The estimated cost to the agency for each facility is \$2,748.00. This includes surveyor time, supervisory time, and clerical time.

5. If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

Since July of 1993, all state licensure activities have been supported by fees charged to those health facilities seeking licensure. The agency expects to collect \$2,748.00 for each. The money will be utilized to cover the cost of agency time to educate providers, the clerical and supervisory time required to complete the application process, the surveyor time and supervisory time for inspection, and the clerical time required to issue the license.

6. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

There are no existing state or federal regulations for facilities for Agencies that Provide Personal Care Services in the Home.