

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

LCB File No. R078-06

May 18, 2006

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

AUTHORITY: §§1-10 and 13-24, NRS 449.037; §11, NRS 449.0021 and 449.037; §12, NRS 239B.010 and 449.037.

A REGULATION relating to health; defining the term “microboard” for the purpose of state statute concerning agencies which provide personal care services in the homes of elderly persons and persons with disabilities; establishing requirements governing the licensing and operations of such agencies; establishing the qualifications and duties of administrators of such agencies; establishing the qualifications and training required of attendants of such agencies; and providing other matters properly relating thereto.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 23, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 23, inclusive, of this regulation, the words and terms defined in sections 3 to 10, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Activities of daily living” means the activities listed in NRS 449.0021.*

Sec. 4. *“Agency” means an agency to provide personal care services in the home as defined in NRS 449.0021.*

Sec. 5. *“Attendant” means a person who is employed by or retained pursuant to a contract by an agency for the purpose of providing personal care services to a client.*

Sec. 6. *“Client” means an elderly person or a person with a mental or physical disability who desires the provision of personal care services in the home in which the person lives.*

Sec. 7. *“Personal care services” means the nonmedical services described in NRS 449.0021.*

Sec. 8. *“Representative of the client” means the spouse of a client, a parent or stepparent of a client who is a minor, the legal guardian of a client and any other person required by law to provide medical support to a client.*

Sec. 9. *“Service plan” means a plan which includes a written description of the needs of a client for personal care services and which specifies the tasks which an attendant is authorized to provide for the client.*

Sec. 10. *“Work station” means a satellite office of an agency that is established for the sole purposes of providing a location where copies of records may be sent to an agency and providing a location from which an attendant may work to serve a geographic area outside the geographic area in which the attendant normally works.*

Sec. 11. *As used in NRS 449.0021, the term “microboard” means an organized group of people comprised of the family or friends of a person needing personal care services that employs or contracts with persons to provide those services to assist the person if:*

1. The organization of the group of people is set forth in a written document that is made available for review by the Health Division upon request; and

2. The personal care services are provided to only one person or one family who resides in the same residence.

Sec. 12. *1. In addition to the requirements set forth in NAC 449.011, each applicant for a license to operate an agency shall submit 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.*

2. The Central Repository for Nevada Records of Criminal History shall determine whether the applicant has been convicted of a crime listed in paragraph (a) of subsection 1 of NRS 449.188 and immediately inform the administrator of the agency, if any, and the Health Division of whether the applicant has been convicted of such a crime.

Sec. 13. *1. Except as otherwise provided in this subsection, each license issued to operate an agency is separate and distinct and is issued to a specific person to operate the agency at a specific location. A person may operate an agency at multiple work stations if the agency maintains the records for the clients, attendants, other members of the staff of the agency and operations of the agency at the specific location designated on the license.*

2. The name of the person who is designated as responsible for the conduct of the agency must appear on the face of the license.

3. Each agency must retain:

(a) Proof that it is adequately covered against liabilities resulting from claims incurred in the course of operation; and

(b) Proof of compliance with NRS 449.065 and 449.067.

4. The proof of liability coverage and compliance with state statute required by subsection 3 must be verified at the time the agency submits its initial application to the Health Division for a license and upon request by the Health Division.

Sec. 14. *1. The administrator of an agency must:*

(a) Be at least 18 years of age;

(b) Have a high school diploma or its equivalent;

(c) Be responsible and mature and have the personal qualities which will enable him to understand the problems of elderly persons and persons with mental or physical disabilities;

(d) Understand the provisions of this chapter and chapter 449 of NRS; and

(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 shall appoint a person to exercise his authority in his absence. The responsibilities of the administrator include, without limitation:

(a) Employing qualified personnel and arranging for their training;

(b) Ensuring that only trained attendants are providing services to a client of the agency and that such services are provided in accordance with the functional assessment of the client, the service plan established for the client and the policies and procedures of the agency;

(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 attendants and other members of the staff of the agency as necessary to ensure that clients of the agency receive needed services;

(f) Developing and implementing policies and procedures for the agency, including, without limitation, policies and procedures concerning terminating the personal care services provided to a client;

(g) Designating one or more employees of the agency to be in charge of the agency during those times when the administrator is absent; and

(h) Demonstrating to the Health Division upon request that the agency has sufficient resources and the capability to satisfy the requests of each client of the agency related to the provision of the personal care services described in the service plan to the client.

3. *Except as otherwise provided in this subsection and subsection 4 of section 16 of this regulation, an employee 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 a file to which an employee designated to be in charge of the agency has access if the confidential information is maintained separately by the administrator.*

4. *The administrator of an agency shall ensure that:*

(a) *The clients of the agency are not abused, neglected or exploited by an attendant or another member of the staff of the agency, or by any person who is visiting the client when an attendant or another member of the staff of the agency is present; and*

(b) *Suspected cases of abuse, neglect or exploitation of a client are reported in the manner prescribed in NRS 200.5093 and 632.472.*

Sec. 15. *An agency shall maintain written policies and procedures concerning the qualifications, responsibilities and conditions of employment for each attendant and other member of the staff of the agency. The written policies and procedures must be reviewed and revised as needed. The written policies and procedures must be made available to the attendants and other members of the staff of the agency upon hire and whenever revisions are made to those policies and procedures. At a minimum, the policies and procedures must:*

1. *Provide descriptions of the duties and responsibilities of attendants;*

2. *Provide descriptions of any activities that attendants are prohibited from engaging in, including, without limitation:*

(a) *Making a long distance telephone call that is personal in nature:*

(1) *On a telephone owned by or provided by a client; or*

(2) *While on duty providing personal care services to a client;*

- (b) Loaning, borrowing or accepting gifts of money or personal items from a client;*
- (c) Accepting or retaining money or gratuities from a client, other than money needed for the purchase of groceries or medication for the client; and*
- (d) Becoming the legal guardian of a client or being named as an attorney-in-fact in a power of attorney executed by the client;*
- 3. Set forth the rights of clients;*
- 4. Set forth any requirements relating to ethics governing attendants and other members of the staff of the agency, including, without limitation, any requirements concerning the confidentiality of client information;*
- 5. Provide for the prevention, control and investigation of infections and communicable diseases;*
- 6. Provide a description of the personal care services that are provided by the agency to clients;*
- 7. Provide a description of the manner in which the agency assigns attendants to provide personal care services to clients and any supervision of those services that will be provided by the agency;*
- 8. Provide for documentation of the needs of each client and the personal care services that are provided to the client;*
- 9. Set forth the emergency responses of the agency to both medical and nonmedical situations;*
- 10. Set forth the roles of the agency and any coordination that the agency will provide with services provided by other community service agencies;*

11. Provide for periodic evaluations of the performance of attendants and other members of the staff of the agency;

12. Provide for the maintenance of current personnel records which confirm that the policies and procedures are being followed; and

13. Set forth any other specific information that is necessary based on the needs of any special populations served by the agency.

Sec. 16. 1. *A separate personnel file must be kept for each attendant of an agency and must include, without limitation:*

(a) The name, address and telephone number of the attendant;

(b) The date on which the attendant began working for the agency;

(c) Documentation that the attendant has had the tests or obtained the certificates required by NAC 441A.375;

(d) Evidence that the references supplied by the attendant were checked by the agency;

(e) Evidence of compliance with NRS 449.179 by the administrator or the person licensed to operate the agency with respect to the attendant;

(f) Proof that within 6 months after the attendant began working for the agency, the attendant obtained a certificate in first aid and cardiopulmonary resuscitation issued by the American Red Cross or an equivalent certificate approved by the Health Division;

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

(h) Proof of possession by the attendant of at least the minimum liability insurance coverage required by state law if the attendant will be providing transportation to a client in a motor vehicle; and

(i) Documentation of all training attended by and performance evaluations of the attendant.

2. The documentation described in paragraph (i) of subsection 1 must include, without limitation, for each training course attended by the attendant:

(a) A description of the content of the training course;

(b) The date on which the training course was attended;

(c) The number of hours of the training course;

(d) The name and signature of the instructor of the training course; and

(e) A certificate indicating that the training course was successfully completed by the attendant.

3. The administrator or his designee shall evaluate the competency of an attendant in each competency area required by the agency if the attendant provides written proof of his current or previous training in that competency area. After the initial evaluation, any additional training provided to the attendant may be limited to areas in which the attendant needs to improve his competency.

4. The administrator may keep the personnel files of the agency in a locked cabinet and may, except as otherwise provided in this subsection, restrict access to this cabinet by attendants and other members of the staff of the agency. The administrator shall make the personnel files, including, without limitation, any electronic files, available for review by the Health Division upon request.

Sec. 17. 1. *The administrator of an agency or his designee shall conduct supervisory home visits or telephone calls to the home of each client of the agency to ensure that quality personal care services are provided to the client.*

2. Each supervisory visit and each telephone call must be documented. The documentation must be dated and signed by the administrator or his designee. Each supervisory visit and each telephone call must consist of an evaluation of whether:

(a) Appropriate and safe techniques have been used in the provision of personal care services to the client;

(b) The service plan established for the client has been followed;

(c) The service plan established for the client is meeting the personal care needs of the client;

(d) The attendant providing personal care services to the client has received sufficient training relating to the services that the attendant is providing to the client; and

(e) It is necessary for the administrator or his designee to follow up with the attendant or client concerning any problems in the services being provided to the client or the service plan established for the client that are identified as the result of the supervisory visit or telephone call.

Sec. 18. *Each attendant of an agency must:*

1. Be at least 18 years of age;

2. Be responsible and mature and have the personal qualities which will enable him to understand the problems of elderly persons and persons with mental or physical disabilities;

3. Understand the provisions of this chapter and chapter 449 of NRS;

4. Demonstrate the ability to read, write, speak and communicate effectively with the clients of the agency;

5. Demonstrate the ability to meet the needs of the clients of the agency; and

6. Receive annually not less than 8 hours of training related to providing for the needs of the clients of the agency.

Sec. 19. 1. Each attendant of an agency shall:

(a) Obtain a working knowledge of the provisions of this chapter which govern the licensing of agencies before providing personal care services to the clients of the agency. The agency must provide a copy of those provisions to an attendant before the attendant may provide care to the clients of the agency.

(b) Participate in and complete a training program before independently providing services to clients of the agency. The training program must include an opportunity for the attendant to receive on-the-job instruction provided by clients of the agency, as long as the administrator or his designee provides supervision during this instruction to determine whether the attendant is able to successfully and independently provide services to the client.

(c) Receive training:

(1) In the written documentation of:

(I) Services provided to the clients of the agency; and

(II) Verification of time records.

(2) In the rights of clients, including, without limitation, training in methods to protect client confidentiality pursuant to state and federal regulations.

(3) Related to the special needs of elderly persons and persons with mental or physical disabilities, including, without limitation, training in the sensory, physical and cognitive changes related to the aging process.

(4) Related to communication skills, including, without limitation, active listening, problem solving, conflict resolution and techniques for communicating through alternative modes with persons with communication or sensory impairments.

(5) In first aid and cardiopulmonary resuscitation. A certificate in first aid and cardiopulmonary resuscitation issued by the American Red Cross or an equivalent certificate will be accepted as proof of that training.

(6) That is specifically related to the services provided by the agency, including, as applicable, training in the following topics:

(I) Attendant duties, responsibilities and appropriate techniques for providing personal care services;

(II) Recognizing and responding to emergencies, including, without limitation, fires and medical emergencies;

(III) Dealing with adverse behaviors;

(IV) Nutrition and hydration, including, without limitation, special diets and meal preparation and service;

(V) Bowel and bladder care, including, without limitation, routine care associated with toileting, routine maintenance of an indwelling catheter drainage system such as emptying the bag and positioning, routine care of colostomies such as emptying and changing the bag, signs and symptoms of urinary tract infections, and common bowel problems, including, without limitation, constipation and diarrhea;

(VI) Skin care, including, without limitation, interventions that prevent pressure sores, routine inspections of the skin and reporting skin redness, discoloration or breakdown

to the client or a representative of the client and to the administrator of the agency or his designee;

(VII) Methods and techniques to prevent skin breakdown, contractures and falls;

(VIII) Hand washing and infection control;

(IX) Body mechanics, mobility and transfer techniques, including, without limitation, simple nonprescribed range of motion; and

(X) Maintenance of a clean and safe environment.

2. Each attendant of an agency must be evaluated and determined to be competent by the agency in the required areas of training set forth in paragraph (c) of subsection 1.

3. Each attendant of an agency must have evidence of successful completion of a training program that includes the areas of training set forth in paragraph (c) of subsection 1 within the 12 months immediately preceding the date on which the attendant first begins providing care to a client.

Sec. 20. 1. When a person is accepted as a client by an agency, the agency shall:

(a) Provide a written disclosure statement to the client;

(b) Require the client or a representative of the client to sign the written disclosure statement; and

(c) Ensure that a copy of the written disclosure statement is incorporated into the record of the client.

2. The written disclosure statement must include a description of and information concerning the services offered by the agency, including, without limitation:

- (a) A statement easily understandable to the client indicating that it is not within the scope of the license of the agency to manage the medical and health conditions of clients should the conditions become unstable or unpredictable;*
- (b) The qualifications and training requirements for the attendants who provide services to the clients of the agency;*
- (c) The charges for the services provided by the agency;*
- (d) A description of billing methods, payment systems, due dates for bills for services and the policy for notifying clients of increases in the costs of services of the agency;*
- (e) Criteria, circumstances or conditions which may result in the termination of services by the agency and the policy for notifying clients of such termination of services;*
- (f) Procedures for contacting the administrator of the agency or his designee during all hours in which services are provided and the on-call policy of the agency; and*
- (g) Information concerning the rights of clients and the grievance procedure of the agency.*

Sec. 21. 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 clients of the agency.*

2. *The administrator of an agency shall establish and enforce a procedure to respond to grievances, incidents and complaints concerning the agency in accordance with the written policies and procedures of the agency. The procedure established and enforced by the administrator must include a method for ensuring that the administrator or his designee is notified of each grievance, incident or complaint. The administrator or his designee shall personally investigate the matter in a timely manner. A client who files a grievance or complaint or reports an incident concerning the agency must be notified of the action taken in*

response to the grievance, complaint or report or must be given a reason why no action was taken.

3. The administrator of an agency shall ensure that the agency is in compliance with NRS 449.700 to 449.730, inclusive.

4. The agency shall develop a written description of the rights of clients and provide a copy to each client upon initiation of the service plan established for the client. A signed and dated copy of the receipt of this information by the client or a representative of the client must be maintained in the record of the client.

5. The written description of the rights of clients developed pursuant to subsection 4 must include, without limitation, a statement that each client has the right:

(a) To receive considerate and respectful care that recognizes the inherent worth and dignity of each client;

(b) To participate in the development of the service plan established for the client and to receive an explanation of the services provided pursuant to the service plan and a copy of the service plan;

(c) To receive the telephone number of the Bureau of Licensure and Certification of the Health Division which may be contacted for complaints;

(d) To receive notification of any authority of the Health Division to examine the records of the client as related to the regulation and evaluation of the agency by the Health Division;

(e) To receive from the agency, within the limits set by the service plan established for the client and within the program criteria, responses to reasonable requests for assistance; and

(f) To receive information, upon request, concerning the policies and procedures of the agency, including, without limitation, the policies and procedures of the agency relating to charges, reimbursements and determinations concerning service plans.

Sec. 22. *1. The administrator of an agency or his designee shall conduct an initial screening to evaluate each prospective client's requests for personal care services and to develop a service plan for the client or to accept a service plan established for the client.*

2. The initial screening and the development or acceptance of a service plan must be documented. The documentation must be dated and signed by the person who conducted the initial screening and developed or accepted the service plan.

3. The agency shall complete the following tasks before providing the services outlined in the service plan established for the client and as often as necessary if the service plan is revised:

(a) Evaluate whether the agency has sufficient resources and the capability to satisfy the requests of the client and to provide the client with the personal care services described in the service plan;

(b) Review the service plan with the client, including, without limitation, the schedule for the provision of services to the client, the procedure to follow if an attendant fails to provide services in accordance with the service plan, the hiring and training policies of the agency, the responsibilities of the agency, the procedure for filing a grievance or complaint and any services that an attendant is prohibited from providing pursuant to section 23 of this regulation;

(c) Review the procedure to be followed if an attendant does not appear for a scheduled visit and the procedure to be followed if an additional visit from an attendant is required;

(d) Ensure that the personal care services requested by the client are services which assist the client with the activities of daily living; and

(e) Ensure that the agency is coordinating the personal care services that it will be providing to the client with the care and services available to the client from other organizations and persons.

Sec. 23. 1. *The administrator of an agency shall ensure that each attendant working for the agency is working within his scope of service and conducts himself in a professional manner. An attendant is prohibited from providing any of the services listed in subsection 2 to a client.*

2. The services an attendant must not provide to a client include, without limitation:

(a) Insertion or irrigation of a catheter;

(b) Irrigation of any body cavity, including, without limitation, irrigation of the ear, insertion of an enema or a vaginal douche;

(c) Application of a dressing involving prescription medication or aseptic techniques, including, without limitation, the treatment of moderate or severe conditions of the skin;

(d) Administration of injections of fluids into veins, muscles or the skin;

(e) Administration of medication, including, without limitation, the insertion of rectal suppositories, the application of a prescribed topical lotion for the skin and the administration of drops in the eyes;

(f) Performing physical assessments;

(g) Monitoring vital signs;

(h) Using specialized feeding techniques;

(i) Performing a digital rectal examination;

(j) Trimming or cutting toenails;

(k) Massage;

(l) Providing specialized services to increase the range of motion of a client;

(m) Providing medical case management, including, without limitation, accompanying a client to the office of a physician to provide medical information to the physician concerning the client or to receive medical information from the physician concerning the client; and

(n) Any task identified in chapter 632 of NRS and the regulations adopted by the State Board of Nursing as requiring skilled nursing care, including, without limitation, any services which require services that are within the scope and practice of a certified nursing assistant.

Sec. 24. 1. Notwithstanding the provisions of section 20 of this regulation, an agency to provide personal care services in the home that is engaged in the practice of providing personal care services to a client on the effective date of this regulation shall provide a written disclosure statement to each person who is a client of the agency on the effective date of this regulation within 6 months after the agency obtains its initial license.

2. As used in this section:

(a) “Agency to provide personal care services in the home” has the meaning ascribed to it in NRS 449.0021.

(b) “Client” means an elderly person or a person with a mental or physical disability who desires the provision of personal care services in the home in which the person lives.

(c) “Personal care services” means the nonmedical services described in NRS 449.0021.