

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

LCB File No. R114-10

February 8, 2011

(Certain sections previously contained in this regulation have been removed for separate consideration; see LCB File No. R001-11)

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

AUTHORITY: §1, NRS 439.890; §2, NRS 439.865 and 439.890, §§3-8, NRS 439.885, 439.890 and 449.160; §9, NRS 441A.167; §10, NRS 449.171; §11, NRS 449.037 and 449.160.

A REGULATION relating to public health; prescribing the provisions which must be included in a patient safety plan; prescribing the monetary penalties which may be imposed on a medical facility for violations of provisions governing sentinel events; requiring certain public agencies and political subdivisions to share certain information concerning investigations relating to infectious disease or exposure to certain agents; providing penalties; and providing other matters properly relating thereto.

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this regulation.

Sec. 2. 1. *Each patient safety plan developed pursuant to NRS 439.865 must include, without limitation:*

(a) A method for:

- (1) Identifying and preventing infections;*
- (2) Maintaining a sanitary environment in the medical facility;*
- (3) Reporting to the appropriate authority any problems concerning infection or sanitation, as required by state or federal laws and the regulations adopted pursuant thereto;*
- (4) Reporting sentinel events and maintaining records of such reports;*

- (5) Educating the members of the staff of the medical facility on the patient safety plan;*
- (6) Identifying, preventing and correcting errors in the labeling, storing, prescription or administration of medications; and*
- (7) Ensuring that prescription drugs, controlled substances, pharmaceutical services and other medications are administered in a safe and effective manner;*
- (b) A disaster preparedness plan which provides for the emergency care of patients, of members of the staff of and other persons in the medical facility in the event of a fire, natural disaster, equipment failure or any other event that is likely to threaten the health and safety of persons in the medical facility;*
- (c) A plan for fire safety;*
- (d) The date on which the patient safety plan was approved by the governing board of the medical facility; and*
- (e) The date on which the patient safety plan was most recently evaluated by the governing board of the medical facility.*
- 2. The administrator of a medical facility shall ensure that the patient safety plan of the medical facility is carried out.*
- 3. The governing board of each medical facility shall:*
 - (a) Evaluate the patient safety plan of the medical facility at least annually; and*
 - (b) Update the patient safety plan of the medical facility as needed to meet the most current needs and reflect the most current standards of practice for the medical facility.*
- 4. Each medical facility shall provide to the Health Division a copy of its patient safety plan and, annually thereafter, a copy of any changes to the patient safety plan.*

Sec. 3. 1. *If a medical facility fails to report a sentinel event pursuant to NRS 439.835 or NAC 439.915, the Health Division shall impose the following administrative sanctions for each day after the date on which the sentinel event was required to be reported:*

(a) For the first violation, a monetary penalty of not more than \$25;

(b) For the second violation, a monetary penalty of not more than \$50; and

(c) For the third violation and any subsequent violation, a monetary penalty of not more than \$100.

2. A monetary penalty imposed pursuant to this section must be computed beginning on the day after the date on which the medical facility failed to report the sentinel event and ending on the date on which compliance is verified or the medical facility is sent a notice of disciplinary action for the termination of its license or provisional license pursuant to NAC 439.345.

3. The Health Division may reduce the amount of a monetary penalty imposed pursuant to this section if the medical facility has complied with the requirements of NRS 439.800 to 439.890, inclusive, and NAC 439.900 to 439.920, inclusive, and sections 2 to 7, inclusive, of this regulation for not less than 2 years immediately preceding the violation.

4. If the Health Division verifies compliance with the requirements of NRS 439.835 and NAC 439.915, the Health Division shall send a notice to the medical facility containing:

(a) The number of days which elapsed after the date on which the sentinel event was required to be reported and for which the medical facility is being assessed a monetary penalty;

(b) The due date of the monetary penalty;

(c) A statement that the Health Division will reduce the total amount due by 25 percent if the medical facility:

(1) Waives the right to a hearing; and

(2) Pays the reduced amount within 15 days after receipt of notice of the penalty; and

(d) The total amount due and the amount reduced pursuant to paragraph (c).

Sec. 4. 1. *If a medical facility fails to adopt and implement a patient safety plan pursuant to NRS 439.865, the Health Division shall impose the following administrative sanctions for each month in which a patient safety plan was not in effect:*

(a) For the first violation, a monetary penalty of not more than \$100;

(b) For the second violation, a monetary penalty of not more than \$500; and

(c) For the third violation and any subsequent violation, a monetary penalty of not more than \$1,000.

2. A monetary penalty imposed pursuant to this section must be computed beginning on the date on which the medical facility failed to adopt and implement a patient safety plan and ending on the date on which the Health Division verifies compliance or the medical facility is sent a notice of disciplinary action for the termination of its license or provisional license pursuant to NAC 439.345.

3. The Health Division may reduce the amount of a monetary penalty imposed pursuant to this section if the medical facility has complied with the requirements of NRS 439.800 to 439.890, inclusive, and NAC 439.900 to 439.920, inclusive, and sections 2 to 7, inclusive, of this regulation for not less than 2 years immediately preceding the violation.

4. If the Health Division verifies compliance with the requirements of NRS 439.865, the Health Division shall send a notice to the medical facility containing:

(a) The number of months for which a patient safety plan was not in effect and for which the medical facility is being assessed a monetary penalty;

(b) The due date of the monetary penalty;

(c) A statement that the Health Division will reduce the total amount due by 25 percent if the medical facility:

(1) Waives the right to a hearing; and

(2) Pays the reduced amount within 15 days after receipt of notice of the penalty; and

(d) The total amount due and the amount reduced pursuant to paragraph (c).

Sec. 5. 1. *If a medical facility fails to establish a patient safety committee pursuant to NRS 439.875, the Health Division shall impose a monetary penalty of \$500. If such a patient safety committee fails to meet pursuant to the requirements of NRS 439.875 or NAC 439.920, the Health Division shall impose the following administrative sanctions for each violation of those sections:*

(a) For the first violation, a monetary penalty of not more than \$500;

(b) For the second violation, a monetary penalty of not more than \$1,000; and

(c) For the third violation and any subsequent violation, a monetary penalty of not more than \$2,000.

2. *The Health Division may reduce the amount of a monetary penalty imposed pursuant to this section if the medical facility has complied with the requirements of NRS 439.800 to 439.890, inclusive, and NAC 439.900 to 439.920, inclusive, and sections 2 to 7, inclusive, of this regulation for not less than 2 years immediately preceding the violation.*

3. *If the Health Division verifies compliance with the requirements of NRS 439.875 and NAC 439.920, the Health Division shall send a notice to the medical facility containing:*

(a) The type of violation and, if the violation was for the failure of the patient safety committee to meet, the number of such violations for which the medical facility is being assessed a monetary penalty;

(b) The due date of the monetary penalty;

(c) A statement that the Health Division will reduce the total amount due by 25 percent if the medical facility:

(1) Waives the right to a hearing; and

(2) Pays the reduced amount within 15 days after receipt of notice of the penalty; and

(d) The total amount due and the amount reduced pursuant to paragraph (c).

Sec. 6. 1. *Except as otherwise provided in subsection 2, a monetary penalty is due within 15 days after the medical facility receives notice of the monetary penalty pursuant to section 3, 4 or 5 of this regulation.*

2. If the medical facility has appealed a decision imposing a monetary penalty pursuant to NRS 439.885, the penalty is due and must be paid after the final administrative decision is rendered against the medical facility and 15 days after the medical facility receives notice of the amount of the total penalty.

3. If a medical facility fails to pay a monetary penalty within 3 months after the monetary penalty is due, the Health Division may suspend or revoke the license or provisional license of the medical facility pursuant to NAC 449.0118.

Sec. 7. *Any costs, including attorney's fees, incurred by the Health Division in the collection of any monetary penalty assessed pursuant to section 3, 4 or 5 of this regulation may be recovered from the medical facility.*

Sec. 8. NAC 439.900 is hereby amended to read as follows:

439.900 As used in NAC 439.900 to 439.920, inclusive, *and sections 2 to 7, inclusive, of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 439.902 to 439.912, inclusive, have the meanings ascribed to them in those sections.

Sec. 9. Chapter 441A of NAC is hereby amended by adding thereto a new section to read as follows:

1. For the purposes of NRS 441A.167, each:

(a) Local law enforcement agency;

(b) Division within the Department of Public Safety;

(c) Health authority; and

(d) Division within the Department of Health and Human Services,

↪ shall share the information set forth in this section and subsection 1 of NRS 441A.167 in accordance with those provisions.

2. If a health authority requests information, medical records or reports from a public agency, law enforcement agency or political subdivision pursuant to subsection 1 of NRS 441A.167, the public agency, law enforcement agency or political subdivision shall provide the information, medical records or reports to the health authority within 10 calendar days after receiving the request.

3. A health authority that receives information, medical records or reports from a public agency, law enforcement agency or political subdivision shall ensure that any protected health information remains confidential to the extent required by state and federal law and the regulations adopted pursuant thereto.

4. A public agency, law enforcement agency or political subdivision that shares information, medical records or reports with a health authority shall ensure that any protected

health information remains confidential to the extent required by state and federal law and the regulations adopted pursuant thereto.

5. As used in this section “local law enforcement agency” means:

- (a) The sheriff’s office of a county;*
- (b) A metropolitan police department; or*
- (c) A police department of an incorporated city.*

Sec. 10. Chapter 449 of NAC is hereby amended by adding thereto a new section to read as follows:

1. If the Health Division takes control of the medical records of a medical facility or a facility for the dependent pursuant to NRS 449.171, the Health Division:

(a) May remove any or all of the medical records and store them in a manner that ensures the safety of the medical records.

(b) May contract with a person or governmental entity to ensure the safety of the medical records of the medical facility or facility for the dependent.

(c) Shall determine the amount of the costs for maintaining the medical records and require the medical facility or facility for the dependent, as applicable, to pay those costs. The medical facility or facility for the dependent, as applicable, shall pay the costs within 30 days after receipt of notice of the amount owed.

2. If the Health Division contracts with a person or governmental entity pursuant to paragraph (b) of subsection 1, the Health Division shall ensure that the person or governmental entity complies with the provisions of subsection 2 of NRS 449.171.

3. If a medical facility or facility for the dependent fails to pay the amount owed pursuant to paragraph (c) of subsection 1, the Health Division may suspend or revoke the license of the medical facility or facility for the dependent pursuant to NAC 449.0118.

Sec. 11. NAC 449.0118 is hereby amended to read as follows:

449.0118 In addition to the grounds set forth in NRS 449.160 and any other grounds specifically applicable to a particular license, the Health Division may deny an application for a license or may suspend or revoke a license upon any of the following grounds:

1. The failure or refusal of an applicant or licensee to comply with any of the provisions of chapter 449 of NRS or the regulations adopted by the State Board of Health.
2. The failure or refusal of an applicant or licensee to comply with a reasonable order from the Health Division to remove a resident from a facility or program.
3. Operating a facility or program without a license, if a license is required before operating.
4. Accepting for care, at any given time, more residents than the number specified in the license.
5. The failure or refusal of a licensee to return an adequate plan of correction to the Health Division within 10 days after the receipt by the licensee of a statement of deficiencies.
6. The failure or refusal to cooperate fully with an investigation or inspection by the Bureau.
7. Misappropriation of the property of a resident of a facility.
8. Abuse, neglect or exploitation of an infirm, mentally retarded or disabled person, or of a person who is 60 years of age or older.

9. The failure of a hospital, obstetric center, surgical center for ambulatory patients or independent center for emergency medical care to:

(a) Comply with the requirements of NRS 439.800 to 439.890, inclusive; or

(b) Pay a monetary penalty imposed by the Health Division pursuant to section 3, 4 or 5 of this regulation.

10. The failure of a medical facility or facility for the dependent to pay the costs for the maintenance of medical records of the facility pursuant to paragraph (c) of subsection 1 of section 10 of this regulation.