

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

LCB File No. R119-10

October 11, 2010

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

AUTHORITY: §§1, 4-15 and 17, NRS 449.037; §§2, 3 and 16, NRS 449.037 and 449.165.

A REGULATION relating to medical facilities; revising provisions relating to the licensure and operation of a residential facility for groups; revising provisions relating to an endorsement on a license; revising provisions relating to the administration of medication in a residential facility; repealing certain provisions relating to facilities for refractive surgeries; 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 and 3 of this regulation.

Sec. 2. *In addition to the grounds set forth in NRS 449.160 and NAC 449.0118, 449.2751 and 449.27706, the Health Division may suspend or revoke a license to operate a residential facility, including any endorsement on the license, if the residential facility has been assigned, pursuant to NAC 449.27702, a grade of D on two or more consecutive surveys or resurveys, or both.*

Sec. 3. *In addition to the grounds set forth in NRS 449.160 and section 2 of this regulation, the Health Division may deny an application for an endorsement made pursuant to NAC 449.2751 to 449.2768, inclusive, on a license to operate a residential facility or may suspend or revoke an existing endorsement based 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.*
- 3. Providing services at the facility without an endorsement, if an endorsement is required before providing those types of services.*
- 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 a person who is infirm, a person with mental retardation, a person with a disability or a person who is 60 years of age or older.*
- 9. The residential facility has demonstrated an inability to care for residents adequately, as demonstrated by a history of deficiencies affecting the health or safety of residents or employees.*
- 10. The license has been revoked or suspended due to a failure to comply with the provisions of this chapter or chapter 449 of NRS and was subsequently reinstated within the immediately preceding year.*

Sec. 4. NAC 449.0119 is hereby amended to read as follows:

449.0119 An applicant or licensee who is aggrieved by an action of the Health Division relating to the denial, suspension or revocation of a license *or an endorsement* may appeal pursuant to the procedures set forth in NAC 439.300 to 439.395, inclusive.

Sec. 5. NAC 449.196 is hereby amended to read as follows:

449.196 1. A caregiver of a residential facility must:

(a) Be at least 18 years of age;

(b) Be responsible and mature and have the personal qualities which will enable him or her to understand the problems of the aged and disabled;

(c) Understand the provisions of NAC 449.156 to 449.27706, inclusive, *and sections 2 and 3 of this regulation* and sign a statement that he or she has read those provisions;

(d) Demonstrate the ability to read, write, speak and understand the English language;

(e) Possess the appropriate knowledge, skills and abilities to meet the needs of the residents of the facility; and

(f) Receive annually not less than 8 hours of training related to providing for the needs of the residents of a residential facility.

2. If a resident of a residential facility uses prosthetic devices or dental, vision or hearing aids, the caregivers employed by the facility must be knowledgeable of the use of those devices.

3. If a caregiver assists a resident of a residential facility in the administration of any medication, including, without limitation, an over-the-counter medication or dietary supplement, the caregiver must:

(a) ~~Receive, in addition to~~ *Before assisting a resident in the administration of a medication, receive* the training required pursuant to *paragraph (e) of subsection 6 of NRS 449.037, which must include* at least ~~3~~ *16* hours of training in the management of medication ~~]. The caregiver must receive the training at least every 3 years~~ *consisting of not less than 12 hours of classroom training and not less than 4 hours of practical training, and obtain a certificate acknowledging the completion of such training;*

(b) Receive annually at least 8 hours of training in the management of medication and provide the residential facility with satisfactory evidence of the content of the training and his or her attendance at the training;

(c) Complete the training program developed by the administrator of the residential facility pursuant to paragraph (e) of subsection 1 of NAC 449.2742; and

~~[(b) At least every 3 years.]~~

(d) Annually pass an examination relating to the management of medication approved by the Bureau.

Sec. 6. NAC 449.218 is hereby amended to read as follows:

449.218 1. ~~[A bedroom in a residential facility that is shared by two or three residents must have at least 60 square feet of floor space for each resident who resides in the bedroom. A resident may not share a bedroom with more than two other residents. A bedroom that is occupied by only one resident must have at least 80 square feet of floor space.~~

~~—2.]~~ Each bedroom in a residential facility must have one or more windows *to the outside* that can be opened from the inside *of the room* without the use of tools or a door to the outside which is at least 36 inches wide and can be opened from the inside.

~~[3.]~~ 2. The combined size of the windows in a bedroom in a facility that was issued a license on or after January 14, 1997, must equal not less than 10 percent of the floor space in the room. ~~[, and each bedroom window must:~~

~~—(a) Be not less than:~~

~~—(1) Twenty four inches in height; and~~

~~—(2) Twenty inches in width; and~~

~~—(b) Have a sill that is not more than 44 inches above the floor.~~

~~4.]~~ 3. The arrangement of the beds and other furniture in the bedroom must provide privacy for and promote the safety of the residents occupying the bedroom. Adjustable curtains, shades, blinds or similar devices must be provided for visual privacy.

~~5.]~~ 4. Each resident must be provided:

- (a) At least 10 square feet of space for storage in a bedroom for each bed in the bedroom; and
- (b) At least 24 inches of space in a permanent or portable closet for hanging garments.

~~6.]~~ 5. A separate bed with a comfortable and clean mattress must be made available for each resident. The bed must be at least 36 inches wide. Two clean sheets, a blanket, a pillow and a bedspread must be available for each bed. Linens must be changed at least once each week and more often if the linens become dirty. Additional bedding, including protective mattress covers, must be provided if necessary.

~~7.]~~ 6. Upon the request of a resident, a residential facility may authorize the resident to use personal furniture and furnishings that comply with the requirements of subsection ~~6]~~ 5 if their use does not jeopardize the health and safety of any of the residents of the facility.

~~8.]~~ 7. There must be a light outside the entrance to each bedroom to provide a resident with adequate lighting to reach safely a switch for turning on a light fixture inside the bedroom. Upon the request of a resident, bedside lighting must be provided.

Sec. 7. NAC 449.224 is hereby amended to read as follows:

449.224 1. Bedrooms must be provided for any members of the staff of a residential facility and their families who live at a residential facility. The bedrooms must comply with the provisions of ~~[subsections 2 to 8, inclusive, of]~~ NAC 449.218, ~~[and the provisions of NAC]~~ 449.220 and 449.221.

2. Members of the staff of the facility and their families who live at the facility shall be deemed residents of the facility for the purposes of determining the number of toilets, lavatories and tubs or showers the facility is required to have pursuant to NAC 449.222. All toilets, lavatories and tubs or showers used by the members of the staff of the facility or their families must comply with the provisions of NAC 449.222.

Sec. 8. NAC 449.229 is hereby amended to read as follows:

449.229 1. The administrator of a residential facility shall ensure that the facility complies with the regulations adopted by the State Fire Marshal pursuant to chapter 477 of NRS and all local ordinances relating to safety from fire. The facility must be approved for residency by the State Fire Marshal.

2. ~~[A residential facility shall have a plan for the evacuation of residents in case of fire or other emergency. The plan must be:~~

~~—(a) Understood by all employees;~~

~~—(b) Posted in a common area of the facility; and~~

~~—(c) Discussed with each resident at the time of his or her admission.~~

~~—3.— A drill for evacuation must be performed monthly on an irregular schedule, and a written record of each drill must be kept on file at the facility for not less than 12 months after the drill.~~

~~—4.— Portable fire extinguishers must be inspected, recharged and tagged at least once each year by a person certified by the State Fire Marshal to conduct such inspections.~~

~~—5.— A portable heater or space heater must not be used in a residential facility unless the heater:~~

~~—(a) Is located 2 feet or more from any combustible material;~~

~~—(b) Is plugged directly into a wall socket;~~

- ~~—(c) Turns off automatically if tipped over; and~~
- ~~—(d) Has no exposed heating elements.~~
- ~~—6. A fireplace must be equipped with glass doors or a metal screen to prevent ashes or burning wood from falling outside the fireplace.~~
- ~~—7. The administrator shall ensure that a written policy on smoking is developed and carried out by the facility. The policy must be:~~
 - ~~—(a) Developed with the purpose of preventing a fire caused by smoking in the facility; and~~
 - ~~—(b) Posted in a common area of the facility.~~
- ~~—8. The windows and doors of a residential facility must not be covered with security bars.~~
- ~~—9. Smoke detectors must be maintained in proper operating condition at all times and must be tested monthly. The results of the tests conducted pursuant to this subsection must be recorded and maintained at the facility.~~
- ~~—10.] *The Bureau shall notify the State Fire Marshal or the appropriate local government, as applicable, if, during an inspection of a residential facility, the Bureau knows of or suspects the presence of a violation of a regulation of the State Fire Marshal or a local ordinance relating to safety from fire.*~~

3. An exit door in a residential facility must not be equipped with a lock that requires a key to open it from the inside unless approved by the State Fire Marshal or his or her designee.

Sec. 9. NAC 449.2742 is hereby amended to read as follows:

449.2742 1. The administrator of a residential facility that provides assistance to residents in the administration of medications shall:

(a) Ensure that a physician, pharmacist or registered nurse who does not have a financial interest in the facility:

(1) Reviews for accuracy and appropriateness, at least once every 6 months, the regimen of drugs taken by each resident of the facility, including, without limitation, any over-the-counter medications and dietary supplements taken by a resident; and

(2) Provides a written report of that review to the administrator of the facility . ~~§~~

(b) Include a copy of each report submitted to the administrator pursuant to paragraph (a) in the file maintained pursuant to NAC 449.2749 for the resident who is the subject of the report . ~~§~~
~~and~~

(c) Make and maintain a report of any actions that are taken by the caregivers employed by the facility in response to a report submitted pursuant to paragraph (a).

(d) Develop and maintain a plan for managing the administration of medications at the residential facility, including, without limitation:

(1) Preventing the use of outdated, damaged or contaminated medications;

(2) Managing the medications for each resident in a manner which ensures that any prescription medications, over-the-counter medications and nutritional supplements are ordered, filled and refilled in a timely manner to avoid missed dosages;

(3) Verifying that orders for medications have been accurately transcribed in the record of the medication administered to each resident in accordance with NAC 449.2744;

(4) Monitoring the administration of medications and the effective use of the records of the medication administered to each resident;

(5) Ensuring that each caregiver who administers a medication is in compliance with the requirements of subsection 6 of NRS 449.037 and NAC 449.196;

(6) Ensuring that each caregiver who administers a medication is adequately supervised;

(7) Communicating routinely with the prescribing physician or other physician of the resident concerning issues or observations relating to the administration of the medication; and

(8) Maintaining reference materials relating to medications at the residential facility, including, without limitation, a current drug guide or medication handbook, which must not be more than 2 years old or providing access to websites on the Internet which provide reliable information concerning medications.

(e) Develop and maintain a training program for caregivers of the residential facility who administer medication to residents, including, without limitation, an initial orientation on the plan for managing medications at the facility for each new caregiver and an annual training update on the plan. The administrator shall maintain documentation concerning the provision of the training program and the attendance of caregivers.

(f) In his or her first year of employment as an administrator of the residential facility, receive, from a program approved by the Bureau, at least 16 hours of training in the management of medication consisting of not less than 12 hours of classroom training and not less than 4 hours of practical training and obtain a certificate acknowledging completion of such training.

(g) After receiving the initial training required by paragraph (f), receive annually at least 8 hours of training in the management of medication and provide the residential facility with satisfactory evidence of the content of the training and his or her attendance at the training.

(h) Annually pass an examination relating to the management of medication approved by the Bureau.

2. Within 72 hours after the administrator of the facility receives a report submitted pursuant to paragraph (a) of subsection 1, a member of the staff of the facility shall notify the resident's physician of any concerns noted by the person who submitted the report. The report must be reviewed and initialed by the administrator.

3. Before assisting a resident in the administration of any medication, including, without limitation, any over-the-counter medication or dietary supplement, a caregiver must obtain written information describing the side effects, possible adverse reactions, contraindications and toxicity of the medication.

4. Except as otherwise provided in this subsection, a caregiver shall assist in the administration of medication to a resident if the resident needs the caregiver's assistance. A caregiver may assist the ultimate user of controlled substances or dangerous drugs only if the conditions prescribed in subsection 6 of NRS 449.037 are met.

5. An over-the-counter medication or a dietary supplement may be given to a resident only if the resident's physician has approved the administration of the medication or supplement in writing or the facility is ordered to do so by another physician. The over-the-counter medication or dietary supplement must be administered in accordance with the written instructions of the physician. The administration of over-the-counter medications and dietary supplements must be included in the record required pursuant to paragraph (b) of subsection 1 of NAC 449.2744.

6. Except as otherwise provided in this subsection, a medication prescribed by a physician must be administered as prescribed by the physician. If a physician orders a change in the amount or times medication is to be administered to a resident:

- (a) The caregiver responsible for assisting in the administration of the medication shall:
 - (1) Comply with the order;

(2) Indicate on the container of the medication that a change has occurred; and

(3) Note the change in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744;

(b) Within 5 days after the change is ordered, a copy of the order or prescription signed by the physician must be included in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744; and

(c) If the label prepared by a pharmacist does not match the order or prescription written by a physician, the physician, registered nurse or pharmacist must interpret that order or prescription and, within 5 days after the change is ordered, the interpretation must be included in the record maintained pursuant to paragraph (b) of subsection 1 of NAC 449.2744.

7. If a resident refuses, or otherwise misses, an administration of medication, a physician must be notified within 12 hours after the dose is refused or missed.

8. An employee of a residential facility shall not draw medication into a syringe or administer an injection unless authorized by law to do so.

9. If the medication of a resident is discontinued, the expiration date of the medication of a resident has passed, or a resident who has been discharged from the facility does not claim the medication, an employee of a residential facility shall destroy the medication, by an acceptable method of destruction, in the presence of a witness and note the destruction of the medication in the record maintained pursuant to NAC 449.2744. ~~Flushing contents of vials, bottles or other containers into a toilet shall be deemed to be an acceptable method of destruction of medication.~~

10. The administrator of a facility is responsible for any assistance provided to a resident of the residential facility in the administration of medication, including, without limitation, ensuring that all medication is administered in accordance with the provisions of this section.

Sec. 10. NAC 449.2751 is hereby amended to read as follows:

449.2751 1. Each residential facility that wishes to provide assisted living services must apply to the Health Division to obtain an endorsement on its license authorizing the residential facility to provide assisted living services.

2. The Health Division may deny an application for an endorsement that is made pursuant to subsection 1 or *suspend or* revoke an existing endorsement granted pursuant to subsection 1 ~~if~~ :

(a) *Based upon the grounds set forth in section 2 or 3 of this regulation; or*

(b) *If* the residential facility for which the applicant is applying or the residential facility which has an endorsement does not satisfy the requirements set forth in this section or subsections 7 and 8 of NRS 449.037.

3. If a residential facility provides assisted living services, the written policies that the residential facility is required to develop pursuant to NAC 449.258 must include, without limitation, procedures to be followed:

(a) To ensure that the residential facility complies with the requirements set forth in subsections 7 and 8 of NRS 449.037;

(b) By the administrator to ensure that residents of the residential facility whose physical or mental condition is significantly changing over time are identified;

(c) To obtain a medical professional to assess and monitor, as necessary, but not less than once every quarter in each calendar year, each resident of the residential facility whose physical or mental condition is declining over time; and

(d) To provide services to residents of the residential facility pursuant to the assessment and monitoring performed pursuant to paragraph (c).

4. The administrator of a residential facility that provides assisted living services shall ensure that:

(a) A medical professional is notified whenever there has been a significant change in the physical or mental condition of a resident of the residential facility whose physical or mental condition is declining over time; and

(b) The residential facility maintains a list of resources for financial assistance and other social services that may decrease the need for a resident of the residential facility whose physical or mental condition is declining over time to move out of the residential facility.

5. The services provided by a residential facility that provides assisted living services must include, without limitation, services that will enable the residential facility to retain residents who have the medical needs or conditions described in NAC 449.2712 to 449.2734, inclusive, and 449.275.

Sec. 11. NAC 449.2754 is hereby amended to read as follows:

449.2754 1. A residential facility which offers or provides care for a resident with Alzheimer's disease or related dementia must obtain an endorsement on its license authorizing it to operate as a residential facility which provides care to persons with Alzheimer's disease. *The Health Division may deny an application for an endorsement or suspend or revoke an existing endorsement based upon the grounds set forth in section 2 or 3 of this regulation.*

2. If a residential facility is authorized to operate as a residential facility which provides care to persons with Alzheimer's disease and as another type of facility, the entire facility must comply with the requirements of this section or the residents who suffer from Alzheimer's disease or other related dementia must be located in a separate portion of the facility that complies with the provisions of this section.

3. A residential facility which provides care to persons with Alzheimer's disease may admit or retain a resident who requires confinement in locked quarters.

4. A residential facility which provides care to persons with Alzheimer's disease must be administered by a person who:

(a) Has not less than 3 years of experience in caring for residents with Alzheimer's disease or related dementia in a licensed facility; or

(b) Has a combination of education and training that the Bureau determines is equivalent to the experience required pursuant to paragraph (a).

5. The administrator of such a facility shall prescribe and maintain on the premises of the facility a written statement which includes:

(a) The facility's policies and procedures for providing care to its residents;

(b) Evidence that the facility has established interaction groups within the facility which consist of not more than six residents for each caregiver during those hours when the residents are awake;

(c) A description of:

(1) The basic services provided for the needs of residents who suffer from dementia;

(2) The activities developed for the residents by the members of the staff of the facility;

(3) The manner in which the behavioral problems will be managed;

(4) The manner in which the medication for residents will be managed;

(5) The activities that will be developed by the members of the staff of the facility to encourage the involvement of family members in the lives of the residents; and

(6) The steps the members of the staff of the facility will take to:

(I) Prevent residents from wandering from the facility; and

(II) Respond when a resident wanders from the facility; and

(d) The criteria for admission to and discharge and transfer from the facility.

6. The written statement required pursuant to subsection 5 must be available for review by members of the staff of the facility, visitors to the facility and the Bureau.

7. The administrator shall ensure that the facility complies with the provisions of the statement required pursuant to subsection 5.

8. The members of the staff of the facility shall develop a program of activities that promotes the mental and physical enhancement of the residents. The following activities must be conducted at least weekly:

(a) Activities to enhance the gross motor skills of the residents;

(b) Social activities;

(c) Activities to enhance the sensory abilities of the residents; and

(d) Outdoor activities.

Sec. 12. NAC 449.2758 is hereby amended to read as follows:

449.2758 1. *A residential facility which offers or provides care for a resident who is elderly or a resident with a disability must obtain an endorsement on its license authorizing it to operate as a residential facility for persons who are elderly or disabled. The Health Division may deny an application for an endorsement or suspend or revoke an existing endorsement based upon the grounds set forth in section 2 or 3 of this regulation.*

2. Within 60 days after being employed by a residential facility for *persons who are* elderly or disabled, ~~[persons,]~~ a caregiver must receive not less than 4 hours of training related to the care of those residents.

~~[2.]~~ 3. As used in this section, “residential facility for *persons who are* elderly or disabled ” ~~[persons”]~~ means a residential facility that provides care to *persons who are* elderly or ~~[disabled persons]~~ *persons with disabilities* who require assistance or protective supervision because they suffer from infirmities or disabilities.

Sec. 13. NAC 449.2762 is hereby amended to read as follows:

449.2762 1. *A residential facility which offers or provides care and protective supervision for a resident with mental retardation or related disorders must obtain an endorsement on its license authorizing it to operate as a residential facility for adults with mental retardation. The Health Division may deny an application for an endorsement or suspend or revoke an existing endorsement based upon the grounds set forth in section 2 or 3 of this regulation.*

2. Within 60 days after being employed by a residential facility for ~~[mentally retarded]~~ adults ~~[]~~ *with mental retardation*, a caregiver must receive not less than 4 hours of training related to the care of ~~[mentally retarded]~~ persons ~~[]~~ *with mental retardation*.

~~[2.]~~ 3. If a resident ~~[who is mentally retarded]~~ *with mental retardation* is referred to the facility by a referring agency, the members of the staff of the facility may conduct a program to modify the behavior of the resident if that program is developed by the agency that referred the resident to the facility.

~~[3.]~~ 4. As used in this section, “residential facility for ~~[mentally retarded]~~ adults ~~[”]~~ *with mental retardation*” means a residential facility that provides care and protective supervision for persons with mental retardation or related disorders, including, without limitation, birth trauma, anoxia, brain trauma or other genetic or developmental disorders.

Sec. 14. NAC 449.2764 is hereby amended to read as follows:

449.2764 1. *A residential facility which offers or provides care and protective supervision for a resident with mental illness must obtain an endorsement on its license authorizing it to operate as a residential facility for persons with mental illnesses. The Health Division may deny an application for an endorsement or suspend or revoke an existing endorsement based upon the grounds set forth in section 2 or 3 of this regulation.*

2. A person who provides care for a resident of a residential facility for persons with mental illnesses shall, within 60 days after becoming employed at the facility, attend not less than 8 hours of training concerning care for residents who are suffering from mental illnesses.

~~2.~~ 3. As used in this section, “residential facility for persons with mental illnesses” means a residential facility that provides care and protective supervision for persons with mental illnesses, including, without limitation, schizophrenia, bipolar disorder, psychosis and other related disorders.

Sec. 15. NAC 449.2766 is hereby amended to read as follows:

449.2766 1. *A residential facility which offers or provides care and protective supervision for a resident with a chronic illness or progressively debilitating disease must obtain an endorsement on its license authorizing it to operate as a residential facility for persons with chronic illnesses. The Health Division may deny an application for an endorsement or suspend or revoke an existing endorsement based upon the grounds set forth in section 2 or 3 of this regulation.*

2. Within 60 days after being employed by a residential facility for persons with chronic illnesses, an employee of the facility shall obtain at least 4 hours of in-service training relating to the care provided to such persons and in the actions necessary to control infections.

~~[2.]~~ 3. Evidence of training received pursuant to subsection ~~[4.]~~ 2 must be included in the employee's personnel file.

~~[3.]~~ 4. As used in this section, "residential facility for persons with chronic illnesses" means a residential facility that provides care and protective supervision for persons with chronic illnesses or progressively debilitating diseases, including, without limitation, acquired immunodeficiency syndrome and cancer.

Sec. 16. NAC 449.99863 is hereby amended to read as follows:

449.99863 The sanctions available for all facilities include:

1. The imposition of a plan of correction as directed by the Bureau;
2. The issuance of a provisional license as provided by NRS 449.091;
3. The imposition of a limitation on the occupancy of a residential facility;
4. The imposition of a ban on admissions;
5. Monitoring of the facility by the Bureau;
6. The assessment of monetary penalties;
7. The requirement that the facility be managed temporarily by a person appointed by the Bureau; and
8. The denial, suspension or revocation of the license of the facility ~~[.]~~ *or an endorsement on a license, if applicable.*

Sec. 17. NAC 449.4502 is hereby repealed.

TEXT OF REPEALED SECTION

449.4502 Applicability of provisions. (NRS 449.037) The provisions of NAC 449.450 to 449.4526, inclusive, do not apply to an ophthalmologist licensed pursuant to chapter 630 of NRS or a doctor of osteopathy licensed pursuant to chapter 633 of NRS who provides other ophthalmological medical services in addition to the evaluation of refractive errors of the eye and the surgical treatment of patients by:

1. Photorefractive keratectomy;
2. Laser in situ keratomeleusis;
3. Conductive keratoplasty;
4. Implantation of an intraocular lens; or
5. Any other available technology, technique or procedure which surgically treats refractive errors of the eye and which has been approved by the United States Food and Drug Administration.