

**ADOPTED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R155-10

Effective December 16, 2010

(The provisions of this regulation were split out from
LCB File No. R060-10 for separate consideration.)

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

AUTHORITY: §1, NRS 439.150 and 439.200; §§2-5 and 7-11, NRS 449.037; §6, NRS 439.150, 439.200 and 449.037.

A REGULATION relating to public health; providing that the Health Division of the Department of Health and Human Services may charge and collect fees relating to the costs of investigating certain complaints against licensees; revising provisions relating to the resurvey of residential facilities; and providing other matters properly relating thereto.

Section 1. Chapter 449 of NAC is hereby amended by adding thereto a new section to read as follows:

1. The Health Division may charge and collect a fee from any licensee who is involved in a complaint submitted to the Health Division by a consumer to recover the costs of investigating the complaint after the investigation is completed and the complaint is substantiated. The fee will be based upon the hourly rate established for each surveyor of health facilities as determined by the budget of the Health Division.

2. As used in this section, “substantiated” means supported or established by evidence or proof.

Sec. 2. NAC 449.147 is hereby amended to read as follows:

449.147 1. Facilities must serve at least three meals or their equivalent daily, at regular times, with not more than 14 hours between a substantial evening meal and breakfast. A second serving must be provided for those clients who desire one.

2. Menus must be planned and followed to meet the nutritional needs of the clients in accordance with the recommended dietary allowances of the Food and Nutrition Board of the ~~[National Research Council,]~~ *Institute of Medicine of the* National Academy of Sciences.

3. Therapeutic menus must be planned by a registered dietitian or must be reviewed and approved by the client's attending or staff physician.

4. Menus must be in writing, planned in advance, dated and posted, and kept on file for 90 days. Any substitution must be noted on the written menus so that the menu on file reflects what was actually served.

5. Adequate facilities and equipment for the preparation, serving, refrigeration and storage of food in a sanitary manner must be provided.

6. A facility with more than 10 clients must:

(a) Comply with all applicable provisions of chapter 446 of NRS and the regulations adopted pursuant thereto;

(b) Obtain the necessary permits from the ~~[Bureau of Health Protection Services of the]~~ Health Division;

(c) Maintain a report of each inspection concerning the sanitation of the facility for at least 1 year after the date of the inspection; and

(d) Maintain a report of each corrective action taken to address a deficiency noted in a report described in paragraph (c) for at least 1 year after the date of the corrective action.

7. Clients needing special equipment, implements or utensils to assist them while eating must have such items provided.

8. If a facility operates on the cottage plan, provision must be made for food service that assures hot, palatable meals.

9. A qualified person must be used as a consultant on planning meals and serving food. Consultation each month is required. A qualified person may be a person meeting the requirements for registration with the Commission on Dietetic Registration as either a registered dietitian or a registered dietetic technician.

10. All facilities that contract with food management companies must comply with the applicable regulations of the Health Division as provided in chapter 446 of NAC.

Sec. 3. NAC 449.15351 is hereby amended to read as follows:

449.15351 1. Facilities shall serve at least three meals or their equivalent daily, at regular times, with not more than 14 hours between a substantial evening meal and breakfast. A second serving must be provided for those clients who desire one.

2. Menus must be planned and followed to meet the nutritional needs of the clients in accordance with the recommended dietary allowances recommended by the Food and Nutrition Board of the ~~[National Research Council,]~~ *Institute of Medicine of the* National Academy of Sciences.

3. Therapeutic menus must be planned by a registered dietitian or must be reviewed and approved by the attending physician of the client or a staff physician.

4. Menus must be in writing, planned in advance, dated and posted, and kept on file at the facility for at least 90 days. Any substitution must be noted on the written menu so that the menu on file reflects what was actually served.

5. Adequate facilities and equipment for the preparation, serving, refrigeration and storage of food in a sanitary manner must be provided.

6. A facility with more than 10 clients shall:

(a) Comply with all applicable provisions of chapter 446 of NRS and the regulations adopted pursuant thereto;

(b) Obtain the necessary permits from the ~~[Bureau of Health Protection Services of the]~~ Health Division;

(c) Maintain a report of each inspection concerning the sanitation of the facility for at least 1 year after the date of the inspection; and

(d) Maintain a report of each corrective action taken to address a deficiency noted in a report described in paragraph (c) for at least 1 year after the date of the corrective action.

7. Clients needing special equipment, implements or utensils to assist them while eating must have such items provided.

8. If a facility operates on the cottage plan, provision must be made for food service that ensures hot, palatable meals.

9. A professional, qualified person must be used as a consultant on planning meals and serving food. At least 4 hours of consultation each month is required. A person is qualified only if he meets the requirements for registration with the Commission on Dietetic Registration as a dietitian or dietetic technician.

10. A facility that contracts with a food management company shall comply with all applicable regulations of the State Board of Health.

Sec. 4. NAC 449.154979 is hereby amended to read as follows:

449.154979 1. The kitchen in a facility and the equipment in the kitchen must be clean and must allow for the sanitary preparation of food. The equipment must be in good working condition.

2. Perishable food must be refrigerated at a temperature of 40 degrees Fahrenheit or less. Frozen food must be kept at a temperature of 0 degrees Fahrenheit or less.

3. Food must not be stored in any area in which cleaning or pest control products are stored.

4. A facility with more than 10 residents must:

(a) Comply with applicable provisions of chapter 446 of NRS and the regulations adopted pursuant thereto; and

(b) Obtain the necessary permits from the ~~[Bureau of Health Protection Services of the]~~ Health Division.

5. The equipment used for cooking and storing food in a facility with more than 10 residents must be inspected and approved by the ~~[Bureau of Health Protection Services of the]~~ Health Division and the state and local fire safety authorities.

Sec. 5. NAC 449.217 is hereby amended to read as follows:

449.217 1. The equipment in a kitchen of a residential facility and the size of the kitchen must be adequate for the number of residents in the facility. The kitchen and the equipment must be clean and must allow for the sanitary preparation of food. The equipment must be in good working condition.

2. Perishable foods must be refrigerated at a temperature of 40 degrees Fahrenheit or less. Frozen foods must be kept at a temperature of 0 degrees Fahrenheit or less.

3. Sufficient storage must be available for all food and equipment used for cooking and storing food. Food that is stored must be appropriately packaged.

4. The administrator of a residential facility shall ensure that there is at least a 2-day supply of fresh food and at least a 1-week supply of canned food in the facility at all times.

5. Pesticides and other toxic substances must not be stored in any area in which food, kitchen equipment, utensils or paper products are stored. Soaps, detergents, cleaning compounds and similar substances must not be stored in any area in which food is stored.

6. A residential facility with more than 10 residents shall:

(a) Comply with the standards prescribed in chapter 446 of NAC; and

(b) Obtain the necessary permits from the ~~[Bureau of Health Protection Services of the]~~ *Health* Division.

7. The equipment used for cooking and storing food and for washing dishes in a residential facility with more than 10 residents must be inspected and approved by the ~~[Bureau of Health Protection Services of the]~~ *Health* Division and the state and local fire safety authorities.

Sec. 6. NAC 449.27706 is hereby amended to read as follows:

449.27706 1. If the Bureau issues a placard to a residential facility that includes a grade of “B,” the administrator may submit an application to the Bureau for a resurvey of the facility not later than 30 days after the facility receives the placard. The fee for an application for a resurvey is ~~[\$300]~~ *\$400* and must accompany the application.

2. If the Bureau issues a placard to a residential facility that includes a grade of “C” or “D,” the administrator must submit an application to the Bureau for a resurvey of the facility not later than 30 days after the facility receives the placard. The fee for an application for a resurvey is ~~[\$500]~~ *\$600* and must accompany the application.

3. The Bureau may revoke the license of a residential facility that is required to submit an application for a resurvey pursuant to subsection 2 if the facility fails to submit the application in accordance with the provisions of that subsection.

4. As used in this section, “resurvey” has the meaning ascribed to it in NAC 449.99838.

Sec. 7. NAC 449.338 is hereby amended to read as follows:

449.338 1. A hospital shall provide for the general dietary needs of its patients, including the preparation of modified special diets.

2. Adequate space for the preparation and service of food must be provided. Equipment for the preparation and service of food must be placed to provide aisles of sufficient width to permit easy movement of personnel, mobile equipment and supplies.

3. Well-ventilated food storage areas of adequate size must be provided.

4. Adequate space must be maintained to accommodate equipment, personnel and procedures necessary for the proper cleaning and sanitizing of dishes and other utensils.

5. Office or other suitable space must be provided for the dietitian and dietetic service supervisor.

6. In providing for the preparation and serving of food, a hospital shall:

(a) Comply with the standards prescribed in chapter 446 of NRS and the regulations adopted pursuant thereto;

(b) Obtain the necessary permits from the ~~Bureau of Health Protection Services of the~~ Health Division;

(c) Maintain a report of each inspection concerning the sanitation of the hospital for at least 1 year after the date of the inspection; and

(d) Maintain a report of each corrective action taken to address a deficiency noted in a report described in paragraph (c) for at least 1 year after the date of the corrective action.

Sec. 8. NAC 449.716 is hereby amended to read as follows:

449.716 1. At least three meals or their equivalent must be served daily at regular times with not more than 14 hours between a substantial evening meal and breakfast. A second serving must be provided for those residents who desire one.

2. Therapeutic diet menus must be planned by a qualified dietitian or be reviewed and approved by the attending or staff physician.

3. Menus must be planned and followed to meet the nutritional needs of the residents in accordance with the orders of a physician and, to the extent medically possible, in accordance with the recommended dietary allowances of the Food and Nutrition Board of the Institute of Medicine ~~of the~~ National Academy of Sciences. Menus must be in writing, planned at least a week in advance, dated, posted and kept on file for 90 days. Any substitutions on a menu must be noted on the written menu so that the menu on file reflects what was actually served.

4. Adequate facilities and equipment for the preparation, serving, refrigeration and storage of food in a sanitary manner must be provided.

5. A facility with more than 10 clients shall:

(a) Comply with all applicable provisions of chapter 446 of NRS and the regulations adopted pursuant thereto;

(b) Obtain the necessary permits from the ~~Bureau of Health Protection Services of the~~ Health Division;

(c) Maintain a report of each inspection concerning the sanitation of the facility for at least 1 year after the date of the inspection; and

(d) Maintain a report of each corrective action taken to address a deficiency noted in a report described in paragraph (c) for at least 1 year after the date of the corrective action.

6. Residents needing special equipment, implements or utensils to assist them when eating must have those items provided.

7. Where a facility operates on the cottage plan, provision must be made for food service that ensures hot, palatable meals. If the cottage plan provides for a central dining area, walkways to the dining area providing protection from the elements must be provided.

8. A qualified professional person must be used as a consultant on meal planning and food service. Four hours of consultation each month is the minimum requirement. A qualified person is:


(a) A person who is registered as a dietician with the Commission on Dietetic Registration of the American Dietetic Association; or

(b) A graduate from an accredited college with a major in food and nutrition who has 2 years of supervisory experience in health care institutions or who has participated in a food service supervisor's course.

Sec. 9. NAC 449.74359 is hereby amended to read as follows:

449.74359 1. Each facility shall serve at least three meals or their equivalent daily, at regular times, with not more than 14 hours between a substantial evening meal and breakfast.

2. Additional food and between-meal nourishment must be provided to a patient when needed, based on an assessment of the medical condition of the patient.

3. Menus must be planned and followed to meet the nutritional needs of the patients in accordance with the recommended dietary allowances of the Food and Nutrition Board of the Institute of Medicine  of the National Academy of Sciences.

4. Therapeutic menus must be planned by a registered dietitian or must be reviewed and approved by the attending physician of the patient or the medical director of the facility.

5. Menus must be in writing, planned in advance, dated and posted, and kept on file at the facility for at least 90 days. Any substitution must be noted on the written menu so that the menu on file reflects what was actually served.

6. A person who meets the requirements for registration with the Commission on Dietetic Registration as a dietitian or dietetic technician must be used as a consultant on planning meals and serving food. This person shall consult at least monthly with the staff of the facility.

7. The facility shall provide:

(a) Adequate facilities and equipment for the preparation, serving, refrigeration and storage of food in a sanitary manner;

(b) Storage space for dry foods, refrigerated food and frozen food;

(c) Any special equipment, implements or utensils that are needed by a patient to assist the patient in eating;

(d) Dining space for ambulatory patients, staff and visitors that is separate from sleeping areas, food preparation areas and distribution areas;

(e) Tables and chairs in the dining space that are sturdy and cleanable; and

(f) In each kitchen area:

(1) Sinks for washing hands with blade-type faucets, soap and paper towels for drying hands; and

(2) A separate janitors' closet for the storage of housekeeping chemicals and supplies which contains a floor sink with backflow prevention.

8. A facility with more than 10 patients shall:

(a) Comply with all applicable provisions of NRS and the regulations adopted pursuant thereto;

(b) Obtain the necessary permits from the ~~[Bureau of Health Protection Services of the]~~ Health Division;

(c) Maintain a report of each inspection concerning the sanitation of the facility for at least 1 year after the date of the inspection; and

(d) Maintain a report of each corrective action taken to address a deficiency noted in a report described in paragraph (c) for at least 1 year after the date of the corrective action.

9. A facility that contracts with a food management company shall comply with all applicable regulations of the State Board of Health.

Sec. 10. NAC 449.74525 is hereby amended to read as follows:

449.74525 1. A facility for skilled nursing shall employ full time, part time or as a consultant, a person who is registered as a dietitian by the Commission on Dietetic Registration of the American Dietetic Association. If a registered dietitian is not employed full time, the facility shall designate a person to serve as the director of food service who receives frequently scheduled consultations from a registered dietitian.

2. A facility shall employ an adequate number of qualified and competent personnel to provide food service to the patients in the facility.

3. Menus must be planned in advance and followed to meet the nutritional needs of the patients in the facility in accordance with the recommended dietary allowances of the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences.

4. A facility shall provide to each patient in the facility:

(a) Food that is prepared to conserve the nutritional value and flavor of the food.

(b) Food that is nourishing, palatable, attractive and served at the proper temperature.

(c) A well-balanced diet that meets the daily nutritional and special dietary needs of the patient.

(d) Who refuses the food that is regularly served by the facility, a substitute of similar nutritional value.

5. A therapeutic diet served to a patient by a facility must be prescribed by the attending physician of the patient.

6. A facility shall serve to each patient in the facility at least three meals daily, at such times as are comparable to regular mealtimes within the community in which the facility is located. A snack must be offered to each patient daily at bedtime. Except as otherwise provided in this subsection, breakfast must be served not more than 14 hours after the previous evening meal. If a nourishing snack is served at bedtime, breakfast may be served not more than 16 hours after the previous evening meal if approved by a group of patients organized pursuant to NAC 449.74499.

7. A facility shall provide special eating equipment and utensils to each patient who requires them.

8. A facility shall:

(a) Comply with the applicable provisions of chapter 446 of NRS and the regulations adopted pursuant thereto and obtain such permits as are necessary from the ~~[Bureau of Health Protection Services of the]~~ Health Division for the preparation and service of food;

(b) Maintain a report of each inspection concerning the sanitation of the hospital for at least 1 year after the date of the inspection;

(c) Maintain a report of each corrective action taken to address a deficiency noted in a report described in paragraph (b) for at least 1 year after the date of the corrective action;

(d) Procure food from sources that are approved or considered satisfactory by federal, state and local authorities;

(e) Store, prepare and serve food under sanitary conditions; and

(f) Dispose of refuse and garbage properly.

Sec. 11. NAC 449.9937 is hereby amended to read as follows:

449.9937 1. An ambulatory surgical center may operate an extended recovery unit.

2. An extended recovery unit must:

(a) Be located in an area of the center that is separate from the other operations of the center;

(b) Provide audio and visual privacy for each patient in the unit;

(c) Be supervised by at least one physician who is recommended for the position by the members of the medical staff and approved by the governing body;

(d) Have at least one physician on the premises or immediately available by telephone at all times when there is a patient in the unit;

(e) Except as otherwise provided in paragraph (f), have at least one nurse who is trained in advanced cardiac life support on duty for every two patients in the unit;

(f) Have at least two nurses who are trained in advanced cardiac life support on duty at all times when there is a patient in the unit; and

(g) Be equipped with:

(1) A system for making emergency calls;

(2) Oxygen;

(3) A cardiac defibrillator;

(4) A manual breathing bag;

(5) Suction equipment; and

(6) Such other emergency equipment as is needed to provide care to patients in the unit.

3. A patient must be admitted and discharged from an extended recovery unit only upon the order of the physician of record. If a patient is admitted to the unit, the time he remains in the unit for treatment, when added to the time he remains in any other area of the ambulatory surgical center for treatment, may not exceed 23 hours and 59 minutes.

4. The center shall adopt policies and procedures for the extended recovery unit that include, without limitation:

- (a) Clinical criteria for determining a patient's eligibility for admission into the unit;
- (b) Clinical criteria for determining a patient's eligibility for being discharged from the unit;
- (c) Procedures for providing emergency services; and
- (d) Procedures for transferring a patient in need of other health care services.

5. An ambulatory surgical center shall provide food to meet the needs of patients in an extended recovery unit. A patient on a special diet must be served food that conforms to the patient's prescribed diet. If the food is prepared by the center, the center shall:

(a) Comply with the applicable provisions of chapter 446 of NRS and the regulations adopted pursuant thereto; and

(b) Obtain such permits as are necessary from the ~~[Bureau of Health Protection Services of the]~~ Health Division to prepare the food.

HEALTH DIVISION
Bureau of Healthcare Quality and Compliance
December 7, 2010
LCB File #R155-10

Information Statement per NRS 233B.066

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Public comment was solicited by the Notice of Public Hearing posted at Health Division locations, State Library and Archives, county libraries and mailed notification of the Notice of Public Hearing to affected stakeholders. The public comment for this LCB File was received as part of a more comprehensive revisions found in LCB File #R060-10. The following is a summary of the testimony provided during the State Board of Health Public Hearing on August 13, 2010 regarding those revisions contained in LCB File #R155-10:

There was support expressed for the Bureau of Health Care Quality and Compliance (HCQC) and the need for its services, although the majority of those that testified, testified in opposition to fee increases, however, some comments were in support of alternative methods found in LCB File #R155-10 to offset increases to fees. The following comments represent alternative methods:

- Substantiated complaints should be billed to a provider and that a method should be looked at to diminish unsubstantiated complaint investigations through a better screening process of complaints HCQC receives.
- The Bureau should increase efficiency and enact a policy to conduct less frequent surveys on facilities that have good records or no deficiencies on a previous survey.

A summary of the Hearing for Amendment of Nevada Administrative Code, Chapter 449 can be obtained by contacting the Bureau of Health Care Quality and Compliance, 1550 College Parkway, Suite 158, Carson City, NV 89706

2. The number of persons who:

- (a) Attended the hearing;
- (b) Testified at each hearing; and
- (c) Submitted to the agency written statements.

- 140 people were present at the hearing.
- 19 individuals provided testimony. A summary of the testimony regarding the revisions discussed in LCB File #155-10 appears in number item 1 above.
- 1,074 small business impact questionnaires were distributed. Only twenty-two (22) of the 1,074 questionnaires (2%) were returned.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary.

Comments were solicited from the regulated community through mailing 1,074 notices of the regulation changes and small business impact questionnaires prior to February 24, 2010. Notice of proposed changes were posted in HCQC offices and sent to main county libraries and facilities on the Health Division listing for posting of proposed regulations. All the above were notified by direct mailing of scheduled workshops. Notice of the workshop was published the week of February 22, 2010 in the Reno Gazette-Journal and the Las Vegas Review-Journal, and posted on the main web page of the Health Division, www.health.nv.gov, and on the HCQC website, www.health.nv.gov/hcqc.htm. Additionally, all interested persons who contacted HCQC offices were provided with copies of the proposed regulations.

Summary of Response:

- Ten (10) telephone calls were received relating to proposed changes to NAC 449.
- 1,074 small business impact questionnaires were distributed. Only twenty-two of the 1,074 questionnaires (2%) were returned. Eighteen of the twenty-two respondents stated the proposed regulations will have an adverse economic effect on their business. Eighteen of the twenty-two respondents stated the proposed regulations will not have a beneficial effect on their business. Sixteen of the twenty-two respondents stated the proposed regulations will have an indirect adverse effect on their business. All of the twenty-two 22 respondents indicated there will be no indirect beneficial effect on their business. It should be noted that these responses were for the fee increases found in LCB File #R060-10 and not necessarily for the alternative method discussed in LCB File #R155-10.
- One of the few positive comments received, indicated that the survey process helps maintain high industry standards.

A summary of the Hearing for Amendment of Nevada Administrative Code, Chapter 449 can be obtained by contacting the Bureau of Health Care Quality and Compliance, 1550 College Parkway, Suite 158, Carson City, NV 89706.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change. The statement should also explain the reasons for making any changes to the regulation as proposed.

Changes were made to the regulations based on comments received during the public workshops. Language was crafted to allow for the collection of fees for the workload associated with substantiated complaints.

5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long term effects.

The majority of the feedback from the questionnaires indicates that the revised fees will have an adverse economic affect. A beneficial economic benefit is that the residents and patients of licensed facilities will have reduced medical costs due to safer facilities and medical procedures resulting from HCQC surveys and investigations. The immediate effect would be increased fees.

6. The estimated cost to the agency for enforcement of the proposed regulation.

Estimated cost to the agency for enforcement of the proposed regulations is minimal.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, name the regulatory federal agency.

The proposed regulations do not duplicate federal, state or local standards regulating the same activity.

8. The regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

This is not applicable as there are no known federal regulations that require the same activity.

9. If the 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.

The regulations proposed in LCB File #R155-10, allows for charging for the investigation costs of substantiated complaints and changes fees associated with the re-inspection of residential facilities for groups when a facility receives a B, C or D grade. The total amount the agency expects to collect for substantiated complaints and re-inspection fees is \$265,040.30 for the remainder of SFY 2011. This money will be used to offset the costs of the operation of HCQC to fulfill our mission in promoting quality healthcare through regulation, enforcement and education within the healthcare facility industry. HCQC licenses approximately 30 different types of medical and dependent care facilities.

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formulation, operation or expansion of a small business. What methods did the agency use in determining the impact of the regulation on a small business?

As part of the development of these revisions, a small business impact questionnaire was provided to each licensee in order to solicit information about how the proposed changes would affect small businesses.

The results of the small business impact questionnaires were then summarized into a small business impact statement. HCQC held public workshops and recorded comments regarding the

impact of the revisions in the minutes. HCQC received e-mailed comments and phone contacts concerning the impact of the fee revisions. HCQC set up a telephone conference and sent notice via a list-serve to interested parties so that additional comments could be heard by the agency concerning the impact of the revisions.