

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

LCB File No. R001-11

February 8, 2011

(The provisions of this regulation were split out from LCB File No.
R114-10 for separate consideration.)

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

AUTHORITY: §1, NRS 449.037; §§2-38, NRS 449.037 and 449.165.

A REGULATION relating to public health; revising provisions governing the imposition of administrative sanctions on medical facilities; providing penalties; 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 6, inclusive, of this regulation.

Sec. 2. *“Resurvey” means a subsequent survey conducted to evaluate compliance with a plan of correction.*

Sec. 3. *“Violation” means each individual occurrence of a deficiency.*

Sec. 4. 1. *In determining the scope of a deficiency, a survey of a residential facility must include an evaluation of a representative sample of residents as described in the protocol for the survey of such a facility. Unless a sample of a different size is required for the survey by federal law, the sample must be of at least the following size:*

Number of residents

*Minimum number of residents in
sample*

<i>1 - 9.....</i>	<i>All residents</i>
<i>10 - 40.....</i>	<i>10</i>
<i>41 - 75.....</i>	<i>15</i>
<i>76 - 100.....</i>	<i>20</i>
<i>101 - 175.....</i>	<i>25</i>
<i>176 - 250.....</i>	<i>30</i>
<i>251 - 350.....</i>	<i>35</i>
<i>351 - 450.....</i>	<i>40</i>
<i>451 or more.....</i>	<i>50</i>

2. The sample size used in determining the scope of a deficiency in a resurvey must not be less than 60 percent of the sample size used in the initial survey.

3. The Bureau may review a sample size greater than the minimum number of residents set forth in subsection 1 if the determination of scope is based on the number of residents actually reviewed.

4. If the Bureau investigates a complaint relating to a resident, the Bureau may sample only that resident. The scope of any deficiency cited pursuant to this subsection must be scope level one.

Sec. 5. 1. *The scope level described in section 6 of this regulation must be used to assess the scope of a particular deficiency in or by a residential facility for the purposes of NAC 449.27702.*

2. The basis for the assessment is the actual or potential harm to residents shown by:

- (a) The frequency of the deficiency;*
- (b) The number or percentage of the residents affected;*
- (c) The number or percentage of the members of the staff involved; and*
- (d) The pattern or lack of pattern of the deficiencies.*

3. The Bureau shall not consider the scope level for the purposes of imposing administrative sanctions pursuant to NAC 449.9982 to 449.99939, inclusive.

Sec. 6. *1. The scope of a deficiency must be evaluated using the criteria prescribed in this section.*

2. A deficiency of scope level one consists of one or an isolated number of unrelated violations in the sample surveyed. A deficiency is of this scope if it involves 20 percent or less of the residents sampled in a residential facility.

3. A deficiency is scope level two if the Bureau identifies a pattern of violations at the residential facility, including any deficiencies involving residents who require particular kinds of care, treatment or service. The number or percentage of residents or members of the staff involved in the violations or the repeated occurrences of violations in short succession may also establish a pattern by indicating a reasonable degree of predictability of similar violations. A deficiency is also of this scope if it involves more than 20 percent but not more than 50 percent of the residents sampled in a residential facility.

4. A deficiency is scope level three if it occurs in a sufficient number or percentage of residents or members of the staff with such sufficient regularity over time that the deficiency may be considered systemic or pervasive in or by the residential facility. A deficiency is also of this scope if it involves more than 50 percent of the residents sampled in a residential facility.

Sec. 7. NAC 449.003 is hereby amended to read as follows:

449.003 1. “Deficiency” means *a practice which results in* noncompliance with any federal or state statute or of the rules or regulations of the Health Division or the Centers for Medicare and Medicaid Services or conditions and standards of or requirements for participation in the Medicare or Medicaid program pertaining to a facility.

2. The term includes an incident concerning a facility where there are no extenuating circumstances or where the facility has made an inappropriate response to a complaint, including the failure to:

- (a) Prevent an incident from occurring, if the incident could have been avoided;
- (b) Identify an incident;
- (c) Take action to correct an incident before the identification of the incident by the Bureau;

or

(d) Implement a contingency plan if permanent action to correct an incident has not been undertaken.

3. In determining whether an incident is a deficiency, the right of the recipient to refuse treatment, where applicable, shall be deemed an extenuating circumstance.

Sec. 8. NAC 449.156 is hereby amended to read as follows:

449.156 As used in NAC 449.156 to 449.27706, inclusive, *and sections 2, 4, 5 and 6 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 449.1565 to 449.178, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 9. NAC 449.175 is hereby amended to read as follows:

449.175 “Severity and scope score” ~~[has the meaning ascribed to it in NAC 449.99839.]~~ *means the sum of the numerical levels of severity and scope assigned to a deficiency.*

Sec. 10. NAC 449.27702 is hereby amended to read as follows:

449.27702 1. The Bureau shall determine:

(a) The severity of a deficiency of a residential facility in accordance with the provisions of NAC 449.99861; and

(b) The scope of a deficiency of a residential facility in accordance with the provisions of ~~NAC 449.9986.~~ *section 6 of this regulation.*

2. After the Bureau conducts a survey of a residential facility, the Bureau shall add the severity and scope scores for all deficiencies of the facility indicated in the survey and assign a grade to the facility as follows:

Sum of Severity and Scope Scores	Grade
0 to 15 points	A
At least 16 points but not more than 24 points, or any deficiency with a severity level of 3 and a scope level of 3	B
At least 25 points but not more than 34 points, or any deficiency with a severity level of 4 and a scope level of 1	C
At least 35 points, or any deficiency with a severity level of 4 and a scope level of at least 2	D

Sec. 11. NAC 449.27704 is hereby amended to read as follows:

449.27704 1. After the Bureau assigns a grade to a residential facility pursuant to NAC 449.27702, the Bureau shall issue a placard to the residential facility.

2. The administrator shall, within 24 hours after receipt of the placard, display or cause the placard to be displayed conspicuously in a public area of the residential facility.

3. If the placard is not displayed in accordance with the provisions of subsection 2, the Bureau will assess against the residential facility a deficiency with a severity ~~[and scope score]~~ *level* equal to the highest severity ~~[and scope score]~~ *level* indicated in the most recent survey of the facility conducted by the Bureau.

Sec. 12. NAC 449.9982 is hereby amended to read as follows:

449.9982 As used in NAC 449.9982 to 449.99939, inclusive, *and section 3 of this regulation*, unless the context otherwise requires, the words and terms defined in NAC 449.99821 to 449.99841, inclusive, *and section 3 of this regulation* have the meanings ascribed to them in those sections.

Sec. 13. NAC 449.99825 is hereby amended to read as follows:

449.99825 “De minimis deficiency” means a deficiency rated at a severity level of one . ~~[or two and at a scope level of one or two.]~~

Sec. 14. NAC 449.99828 is hereby amended to read as follows:

449.99828 “Major deficiency” means a deficiency ~~[with a combined severity and scope rating of five or more.]~~ *rated at a severity level of three or four.*

Sec. 15. NAC 449.99853 is hereby amended to read as follows:

449.99853 ~~[The]~~

1. Except as otherwise provided in subsection 2, the Bureau may apply one or more sanctions as provided in NAC 449.99863 and 449.99935. If the Bureau chooses to impose a particular sanction, it must be applied according to the severity ~~[and scope]~~ factors established in NAC ~~[449.99858 to]~~ 449.99861 . ~~[, inclusive.]~~

2. *If a deficiency is designated as a severity level four or otherwise required by subsection 2 of NRS 449.163, the Bureau shall assess a monetary penalty as provided in subsection 6 of NAC 449.99863 of \$1,000 per recipient for each violation of that deficiency and may apply one or more additional sanctions as provided in NAC 449.99863 and 449.99935. Notwithstanding the total number of violations found at a facility, the Bureau shall not assess a facility more than \$10,000 per recipient for any one deficiency.*

3. *A deficiency must be reported by the Bureau to the facility and, if applicable, to the Centers for Medicare and Medicaid Services. The notice to the facility must specify each deficiency found and the severity level for the deficiency as determined by the Bureau.*

4. *Any deficiency for which a severity level is not specified is presumed to be a de minimis deficiency.*

Sec. 16. NAC 449.99854 is hereby amended to read as follows:

449.99854 1. ~~[The]~~ *Except as otherwise provided in subsection 2 of NAC 449.99853, the Bureau may apply one or more of the sanctions specified in NAC 449.99863 in lieu of or in addition to a recommendation to the Division of Health Care Financing and Policy or the Centers for Medicare and Medicaid Services to terminate a provider agreement.*

2. ~~[Sanctions]~~ *Except for a monetary penalty imposed pursuant to subsection 2 of NAC 449.99853, sanctions applied pursuant to NAC 449.9982 to 449.99939, inclusive, and section 3 of this regulation may be imposed until substantial compliance is achieved or, if compliance is not achieved, until the day before termination of the license or provider agreement becomes effective.*

Sec. 17. NAC 449.99857 is hereby amended to read as follows:

449.99857 In determining the sanctions to be imposed, the Bureau shall consider the severity ~~[and scope]~~ *level* of the deficiencies according to the classifications of severity ~~[and scope]~~ *level* described in NAC ~~[449.99858 to]~~ 449.99861 ~~[, inclusive.]~~ *and shall follow the procedure set forth in NAC 449.99865.*

Sec. 18. NAC 449.99861 is hereby amended to read as follows:

449.99861 1. The severity ~~[scale]~~ *levels described in this section* must be used to assess the severity of a particular deficiency pertaining to the facility. ~~[The basis for the assessment must be the actual or potential harm to recipients.]~~

2. Deficiencies of severity level one concern requirements promulgated primarily for administrative purposes ~~[. No harm is likely to occur to a recipient. No]~~, *and no* negative recipient impact has occurred. ~~[or is likely to occur. The ability of a recipient to achieve the highest practicable physical, mental or psychosocial well-being has not been and is not likely to be compromised.]~~

3. Deficiencies of severity level two indirectly threaten the ~~[health, safety,]~~ rights, security, welfare or well-being of a recipient. ~~[A potential for harm, as yet unrealized, exists.]~~ If continued over time, a negative impact on one or more recipients or a violation of one or more recipients' rights would occur or would be likely to occur or the ability of one or more recipients to achieve the highest practicable physical, mental or psychosocial well-being would be, or would likely be, compromised.

4. Deficiencies of severity level three create a condition or incident in the operation or maintenance of a facility that directly or indirectly threatens the ~~[health, safety,]~~ rights, security, welfare or well-being of one or more recipients. A negative impact on the ~~[health, safety,]~~ rights, security, welfare or well-being of one or more recipients has occurred or can be predicted with

substantial probability to occur or the ability of recipients to achieve the highest practicable physical, mental or psychosocial well-being has been or is about to be compromised and requires intervention and correction of the deficiency. Violation of a partial or complete ban on admissions imposed on a facility, violation of a limitation on occupancy of a residential facility or failure to implement a directed plan of correction is presumed to be a deficiency of this level of severity.

5. Deficiencies of severity level four create a condition or incident that has resulted in or can be predicted with substantial probability to result in death or serious harm to a recipient. As used in this subsection, “serious harm” ~~[includes]~~ *means a serious negative impact on the health or safety of a patient, including, without limitation,* mental harm, serious impairment of bodily functions, serious dysfunction of any bodily organ or part, life-threatening harm or death.

Sec. 19. NAC 449.99862 is hereby amended to read as follows:

449.99862 **1.** If the same deficiency is found on a resurvey, there is a rebuttable presumption that the deficiency continued through the period between the survey and resurvey. ~~[A]~~ *Unless a sanction is required by subsection 2 of NAC 449.99853, a* sanction may be imposed for a subsequent deficiency only if the resurvey is made and the deficiency is again actually found to be present.

2. *As used in this section, “subsequent deficiency” means a deficiency found on a resurvey.*

Sec. 20. NAC 449.99865 is hereby amended to read as follows:

449.99865 **1.** The Bureau shall initially assess individual *violations and* deficiencies ~~for~~ ~~clusters of deficiencies]~~ according to the following initial factors:

~~{1.}~~ (a) The presence or absence of an immediate and serious threat to the health and safety of residents;

~~{2.}~~ and

(b) The severity of the deficiency . ~~{; and~~

~~3. The scope of the deficiency.}~~

2. If the Bureau finds during the initial assessment the presence of an immediate and serious threat to the health and safety of residents or determines the deficiency was a severity level four, the Bureau shall impose a monetary penalty as required by subsection 2 of NAC 449.99853 for each violation and shall consider the secondary factors pursuant to subsection 3 to determine whether additional sanctions should be imposed.

3. Unless the deficiency is a severity level four, after the initial assessment, the Bureau shall consider the following secondary factors in determining which sanction to impose for a deficiency of a severity level one, two or three:

(a) The relationship of one deficiency or cluster or pattern of deficiencies to other deficiencies;

(b) The history of previous compliance by the facility generally and specifically with reference to the deficiencies in issue;

(c) Whether the deficiency is directly related to the care, services or treatment received by persons from the facility; and

(d) The corrective and long-term compliance outcomes desired.

4. The selection of a sanction other than a monetary penalty imposed for a deficiency that is a severity level four must be based upon the nature of the deficiencies or clusters of deficiencies and the sanction most likely to correct those deficiencies. Absent evidence to the

contrary, restrictions upon service and monetary penalties are presumed to be the most effective sanctions for deficiencies that do not cause an immediate and serious threat to recipients.

5. As used in this section, “cluster” means a deficiency that involves the same or similar kinds of care, treatment or services as one or more other deficiencies.

Sec. 21. NAC 449.9987 is hereby amended to read as follows:

449.9987 1. The facility shall develop a plan of correction for each deficiency and submit the plan to the Bureau for approval within 10 days after receipt of the statement of deficiencies. The plan of correction must include specific requirements for corrective action, which must include times within which the deficiencies are to be corrected.

2. If the plan is not acceptable to the Bureau, the Bureau may direct the facility to resubmit a plan of correction or the Bureau may develop a directed plan of correction with which the facility must comply.

3. Failure to submit the plan of correction to the Bureau within 10 days constitutes a separate deficiency subject to monetary penalties . ~~[with severity and scope rated at the same levels as the highest deficiency identified on the notice of deficiencies.]~~

Sec. 22. NAC 449.99876 is hereby amended to read as follows:

449.99876 1. If the Bureau imposes a limitation on the occupancy of a residential facility, the limitation must be imposed as provided in this section.

2. For deficiencies with a ~~[combined]~~ severity ~~[and scope score of six or more,]~~ *level of four*, a limitation on occupancy must be imposed.

3. For deficiencies with a severity ~~[and scope score]~~ *level* of less than ~~[six,]~~ *four*, a limitation on occupancy may be imposed if the deficiencies involve direct recipient care, services

or treatment or the ability of residents to exit the facility safely in case of a fire or other emergency.

Sec. 23. NAC 449.99878 is hereby amended to read as follows:

449.99878 1. If a limitation on occupancy is imposed, a notice of the limitation must be posted at all public entrances to the facility within 48 hours after the facility receives notice of the limitation. Each notice must be not less than 15 inches by 20 inches in size and include:

(a) The words “NOTICE OF LIMITATION ON OCCUPANCY” printed in boldface type not less than 1 1/2 inches in size;

(b) A statement specifying the number of residents the facility is authorized to serve;

(c) A statement identifying a member of the staff of the facility who will provide additional information relating to the limitation on occupancy; and

(d) The telephone number of the Bureau.

2. Any person contacting the facility in writing or by telephone or any other means of telecommunication relating to a recipient seeking admission to the facility must be:

(a) Notified of the limitation on occupancy; and

(b) Provided with the information required by subsection 1.

3. The failure to post notice of a limitation on occupancy as required by this section, or the removal of such a notice, is a deficiency of severity level three. ~~{and a scope level of three.}~~ The failure to inform an inquirer as to the existence of a limitation on occupancy is a deficiency of severity level two. ~~{and a scope level of three.}~~

4. In addition to the information required by subsection 1, the content of any notice required to be posted or published pursuant to this section must conform to the requirements set forth by the Bureau in the notice of sanction.

Sec. 24. NAC 449.99881 is hereby amended to read as follows:

449.99881 1. If the Bureau imposes a ban on admissions, the ban must be imposed as provided in this section.

2. For deficiencies of severity level four ~~[and scope level two or more,]~~ *that involve more than one violation*, a ban on all new admissions must be imposed.

3. For deficiencies of severity level three ~~[and scope level three,]~~ *that involve more than one violation*, a ban on all new admissions must be imposed.

4. ~~[For deficiencies of severity level three and scope level two, a complete or partial ban on admissions may be imposed. If the deficiency is related to a discrete type of care, treatment or services, the ban may be limited to new admissions requiring the care, treatment or services for which the deficiency is found.~~

~~—5.]~~ For deficiencies with a severity level of three or four ~~[and a scope level of one,]~~ *that involve not more than one violation*, the Bureau may impose a partial ban on admissions, limited to persons needing the care, treatment or services affected by the deficiency.

~~[6.]~~ 5. For deficiencies with a severity level of two ~~[and a scope level of three,]~~ *that involve more than one violation*, a ban on admissions may be imposed if the deficiencies directly affect the care, treatment or services furnished to recipients. The ban may be limited to those persons requiring the kind or type of services affected by the deficiencies.

Sec. 25. NAC 449.99883 is hereby amended to read as follows:

449.99883 1. If a ban on admissions is imposed, a notice of the ban must be posted at all public entrances to the facility within 48 hours after the facility receives notice of the ban. Each notice must be not less than 15 inches by 20 inches in size and include:

(a) The words “NOTICE OF BAN ON ADMISSIONS” printed in boldface type not less than 1 1/2 inches in size;

(b) A statement identifying a member of the staff of the facility who will provide additional information relating to the ban on admissions; and

(c) The telephone number of the Bureau.

2. If the facility provides care, treatment or services at a site other than the location of the office of the facility, notice must be provided by publishing an announcement, identified as a “LEGAL NOTICE” and not less than 25 percent of a newspaper page in size, in a newspaper of general circulation in the geographic area served by the facility on two separate occasions. The first publication must occur within 7 days after the facility receives notice of the ban, and the second publication must occur within 14 days after that date. At least one publication must be in a Sunday edition of the publication. Each publication must include the information required by subsection 1.

3. Any person contacting the facility in writing or by telephone or any other means of telecommunication relating to a recipient seeking admission must be:

(a) Notified of the ban; and

(b) Provided with the information required by subsection 1.

4. The failure to post or publish notice of a ban on admissions as required by this section, or the removal of such a notice, is a deficiency of severity level three . ~~{and a scope of level three.}~~

A failure to inform an inquirer as to the existence of the ban is a deficiency of severity level two . ~~{and a scope of level three.}~~

5. In addition to the information required by subsection 1, the content of any notice required to be posted or published pursuant to this section must conform to the requirements set forth by the Bureau in the notice of sanction.

Sec. 26. NAC 449.99885 is hereby amended to read as follows:

449.99885 1. The Bureau may monitor the implementation of the plan of correction of the facility to determine whether the facility carries out the plan of correction.

2. The Bureau may also monitor the facility if the ~~scope~~ *severity* of the deficiencies identified is difficult to evaluate on a single visit. Such deficiencies include, without limitation, violations of recipients' rights, inappropriate use of restraints and cases in which the Bureau has reason to question the ongoing compliance of the facility with the requirements of federal or state law.

Sec. 27. NAC 449.99896 is hereby amended to read as follows:

449.99896 1. Except as otherwise provided in subsection 4, ~~of this section,~~ the Bureau ~~may~~ :

(a) Shall impose a monetary penalty pursuant to subsection 2 of NRS 449.163 including interest thereon on any facility that is not in compliance with any participation requirement if the deficiency constitutes a threat to the health or safety of a recipient; and

(b) May impose a monetary penalty including interest thereon on any facility that is not in compliance with any participation requirement, regardless of whether the deficiency constitutes an immediate and serious threat.

2. If a monetary penalty is imposed, ~~the initial amount of the penalty must be based on the severity and scope score of the deficiency and must be imposed as provided in NAC 449.99899.]~~ *the penalty must be imposed as provided in NAC 449.99899 to 449.99908, inclusive.*

3. In addition to the initial monetary penalty ~~[.]~~ *and except as otherwise required by subsection 2 of NAC 449.99853*, the Bureau may impose a monetary penalty for each day of noncompliance ~~[from]~~ *beginning on* the date the noncompliance occurs or is identified ~~[until]~~ *and ending on the date on which* compliance is verified.

4. A facility is not subject to a monetary penalty for a de minimis deficiency.

Sec. 28. NAC 449.99897 is hereby amended to read as follows:

449.99897 1. ~~[The]~~ *If the Bureau imposes a monetary penalty pursuant to subsection 2 of NAC 449.99853 or an initial monetary penalty pursuant to NAC 449.99899, the* Bureau shall impose ~~[an]~~ *the monetary penalty and the* initial monetary penalty pending a hearing or appeal. ~~[The]~~ *Except as otherwise provided in subsection 2, the* payment of the *monetary penalty and the* initial penalty must not be stayed during the pendency of any administrative appeal.

2. ~~[The]~~ *If the Bureau imposes a daily monetary penalty pursuant to subsection 5 of NAC 449.99899, the* payment of ~~[any]~~ *the* daily monetary penalties or interest that accrue while the facility has a hearing pending on the initial determination of deficiencies leading to the imposition of sanctions must be stayed pending the appeal.

Sec. 29. NAC 449.99899 is hereby amended to read as follows:

449.99899 1. ~~[In determining the amount of an initial monetary penalty, the Bureau shall consider the severity alone if the severity level is four.]~~ In determining the amount of the monetary penalty ~~[where the severity level is less than four,]~~ *for a severity level one, two or three*, both severity and ~~[scope]~~ *the number of violations* must be considered. In determining whether to impose a daily monetary penalty ~~[.]~~ *for a severity level one, two or three*, the Bureau

shall consider the severity ~~[and scope]~~ *level, the number of violations* and the factors indicated for increased and decreased penalties provided in NAC 449.99902 and 449.99904.

2. ~~[For initial deficiencies with a severity level of four, an initial monetary penalty of \$1,000 per deficiency must be imposed.~~

~~—3.]~~ For initial deficiencies rated with a severity level of three ~~[and a scope level of three,]~~ *that involve more than one violation*, a monetary penalty of \$800 per ~~[deficiency]~~ *violation* must be imposed.

~~[4.]~~ 3. For initial deficiencies with a severity level of three ~~[and a scope level of two or less,]~~ *that involve not more than one violation*, an initial monetary penalty of \$400 per ~~[deficiency]~~ *violation* must be imposed.

~~[5.]~~ 4. For initial deficiencies with a severity level of two ~~[and a scope level of three,]~~ *that involve more than one violation*, an initial monetary penalty of \$200 per ~~[deficiency]~~ *violation* may be imposed. The payment of this monetary penalty ~~[must]~~ *may* be suspended if the facility has corrected the deficiencies within the time specified in the plan of correction approved by the Bureau.

~~[6.]~~ 5. In addition to any monetary penalty imposed pursuant to this section, the Bureau may impose a monetary penalty of not more than \$10 per recipient per day for each day the deficiency continues.

6. *In no event may the principal amount of the total daily monetary penalty assessed against any facility pursuant to this section exceed \$1,000 per day for each violation for a severity level one, two or three.*

7. *If a monetary penalty is assessed pursuant to this section on a daily basis according to the number of recipients and the number of recipients fluctuates, the penalty must be*

computed based on the average daily number of recipients during the 3 months preceding the imposition of the penalty.

8. The total monetary penalty imposed pursuant to this section on a facility bears interest at the rate of 10 percent per annum.

Sec. 30. NAC 449.99902 is hereby amended to read as follows:

449.99902 1. ~~{Penalties}~~ *Except for a monetary penalty imposed pursuant to subsection 2 of NAC 449.99853, penalties* must be increased *pursuant to this section* if deficiencies are repeated or compliance is falsely alleged.

2. For each repeat deficiency present within 18 months after an initial deficiency, the monetary penalty must be computed at the rate of one and one-half times the rate that was or could have been assessed initially for a deficiency of that severity . ~~{and scope.}~~

3. The Bureau may double the daily monetary penalty that was or could have been assessed if the facility alleges compliance and the Bureau finds on a survey that at the time compliance was alleged the deficiencies continued to exist.

4. For the purposes of this section, a deficiency is repeated if the deficiency, including a deficiency found on a resurvey, is found again by the Bureau within 18 months after an investigation of a complaint or the next annual survey.

Sec. 31. NAC 449.99904 is hereby amended to read as follows:

449.99904 If a facility against which a monetary penalty is imposed ~~{:}~~ *pursuant to NAC 449.99899:*

1. Waives the right to a hearing;
2. Corrects the deficiencies that were the basis for the sanction; and

3. Pays the monetary penalty within 15 days after receipt of the notice of the penalty,
↳ the penalty must be reduced by 25 percent and no interest may be charged.

Sec. 32. NAC 449.99905 is hereby amended to read as follows:

449.99905 The effective beginning date of a daily monetary penalty *imposed pursuant to NAC 449.99899* is:

1. In the case of an immediate and serious threat, the date the deficiency occurred; or
2. In any other case, the day the deficiency is identified.

Sec. 33. NAC 449.99906 is hereby amended to read as follows:

449.99906 1. Daily penalties *imposed pursuant to NAC 449.99899* and interest *thereon* must be computed after compliance has been verified or the provider has been sent notice of termination of a license or provisional license. A daily monetary penalty must end on the effective date of compliance or termination of the license of the facility.

2. If a provider achieves compliance, the Bureau shall send a separate notice to the facility containing:

- (a) The amount of the penalty per day;
- (b) The number of days involved;
- (c) The due date of the *monetary* penalty; ~~and~~
- (d) *A statement that the Health Division will reduce the total amount due by 25 percent pursuant to NAC 449.99904 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

- (e) The total amount due ~~[]~~ *and the amount reduced pursuant to paragraph (d).*

3. If the license of a facility is to be terminated, the Bureau shall send the information required by subsection 2 in the notice of termination.

4. If the Bureau's decision of noncompliance is upheld on appeal or the facility waives its right to a hearing, the monetary penalty must be imposed for the number of days between the effective date of the penalty and the date of correction of the deficiencies or, if applicable, the date the license of the facility is terminated.

Sec. 34. NAC 449.99907 is hereby amended to read as follows:

449.99907 1. The daily accrual of a monetary penalty *imposed pursuant to NAC 449.99899* must end if the facility demonstrates that substantial improvements have been made to correct the deficiencies and that the health, safety and well-being of recipients are adequately protected and safeguarded.

2. ~~[A]~~ *Except for a monetary penalty imposed pursuant to subsection 2 of NAC 449.99853, a* monetary penalty may be imposed on a daily basis for not longer than 6 months, after which the Bureau shall deny, suspend or revoke the license of the facility and, if the facility is a Medicaid facility and major deficiencies remain, request the Division of Health Care Financing and Policy to terminate the Medicaid provider agreement of the facility.

3. If a deficiency in a Medicaid facility presents an immediate and serious threat and continues to exist on the 23rd day after the appointment of temporary management, the Bureau shall request the Division of Health Care Financing and Policy to terminate the Medicaid provider agreement of the facility.

4. If the provider can supply credible evidence that substantial compliance with participation requirements was attained on a date preceding that of the survey, monetary penalties , *except for monetary penalties imposed pursuant to subsection 2 of NAC 449.99853,*

accrue only until that date of correction for which there is credible evidence. As used in this subsection, “credible evidence” means actual documentation that compliance has been achieved.

Sec. 35. NAC 449.99908 is hereby amended to read as follows:

449.99908 1. ~~Initial~~ *Payments for monetary penalties imposed pursuant to subsection 2 of NAC 449.99853 and initial* monetary ~~penalty assessment payments~~ *penalties imposed pursuant to NAC 449.99899* are due within 15 days after *receipt of* the notice of the penalty and must be paid irrespective of any administrative appeal.

2. ~~The~~ *Payments for* daily monetary ~~penalty is~~ *penalties imposed pursuant to subsection 5 of NAC 449.99899 are* due and must be paid within 15 days after compliance is verified or termination of a license is effective and the facility is notified of the amount of the total daily monetary penalty and interest due.

3. If the facility has appealed a decision imposing a monetary penalty, the daily penalty is due and must be paid after the final administrative decision is rendered and 15 days after the facility has been notified of the amount of the total daily penalty and interest due.

Sec. 36. NAC 449.99909 is hereby amended to read as follows:

449.99909 Unless it is waived as provided in this chapter, interest at the rate prescribed in NRS 449.163 will be assessed on the unpaid balance of ~~the penalty,~~ *a monetary penalty, except a monetary penalty imposed pursuant to subsection 2 of NAC 449.99853*, beginning on the due date.

Sec. 37. NAC 449.99937 is hereby amended to read as follows:

449.99937 1. The Bureau may request the Division of Health Care Financing and Policy to deny Medicaid payment to a facility for new admissions if:

(a) The facility does not substantially correct the deficiencies within 90 days or within the time required by federal Medicaid law after the facility is notified by the Bureau of the deficiencies; or

(b) The Bureau has cited a facility with substandard quality of care (severity ~~[score of]~~ level *of* three or more ~~[and scope of level three])~~ *for more than one violation*) on two of the last three consecutive standard surveys.

2. If the facility achieves and maintains compliance with the requirements, the Bureau shall request the Division of Health Care Financing and Policy to resume payments to the facility prospectively, effective on the date compliance was achieved.

Sec. 38. NAC 449.99822, 449.99837, 449.99839, 449.9984, 449.99851, 449.99852, 449.99856, 449.99858, 449.99859, 449.9986, 449.99864, 449.99866, 449.99867, 449.99898, 449.999 and 449.99901 are hereby repealed.

TEXT OF REPEALED SECTIONS

449.99822 “Cluster” defined. (NRS 449.037) “Cluster” means a deficiency that involves the same or similar kinds of care, treatment or services as one or more other deficiencies.

449.99837 “Repeated deficiency” defined. (NRS 449.037) “Repeated deficiency” means a deficiency found by the Bureau again within 18 months, including one found at a follow-up survey, an investigation of a complaint or the next annual survey.

449.99839 “Severity and scope score” defined. (NRS 449.037) “Severity and scope score” means the sum of the numerical levels of severity and scope assigned to a deficiency.

449.9984 “Subsequent deficiency” defined. (NRS 449.037) “Subsequent deficiency” means a deficiency found on a resurvey.

449.99851 Requirement for imposition; optional imposition. (NRS 449.037, 449.165)
At least one administrative sanction must be imposed for each deficiency in any facility with a severity level of four and for each deficiency in any facility with a combined severity and scope score of six or more. The Bureau may impose sanctions if deficiencies of a severity level three or less or a combined severity and scope score of less than six are identified.

449.99852 Requirement for imposition; multiple sanctions. (NRS 449.037, 449.165)
The Bureau must impose at least one of the sanctions listed in NAC 449.99863 upon any facility that has a deficiency with a severity level of four or a combined severity and scope score of six or more. More than one of these sanctions may be imposed in the discretion of the Bureau.

449.99856 Deficiencies: Basis for imposition of sanctions; reporting; presumption of de minimis deficiency. (NRS 449.037, 449.165)

1. The Bureau may apply one or more sanctions on the basis of deficiencies found during surveys or investigations of complaints conducted by the Bureau.
2. Deficiencies must be reported to the facility and, if applicable, to the Centers for Medicare and Medicaid Services. The notice to the facility must specify the deficiencies found and the severity and scope score for each deficiency determined by the Bureau.
3. Any deficiency for which a severity and scope score is not specified is presumed to be a de minimis deficiency.

449.99858 Scope of violations: Evaluation of representative sample of recipients; size

of sample. (NRS 449.037, 449.165)

1. In determining the scope of a violation, a survey of a facility must evaluate a representative sample of recipients as described in the protocol for the survey of such a facility. Unless a sample of a different size is required for the survey by federal law, the sample must consist of at least the following size:

Number of recipients	Minimum number of recipients in sample
1 - 9	All recipients
10 - 40	10
41 - 75	15
76 - 100	20
101 - 175	25
176 - 250	30
251 - 350	35
351 - 450	40
451 or more	50

2. The sample size used in identifying the scope of a deficiency in a resurvey must not be less than 60 percent of the sample size used in the initial survey.

3. In determining the scope of a violation involving particular kinds of care, treatment or services, the survey must evaluate a representative sample of recipients receiving or requiring the

particular kinds of care, treatment or services. Unless a sample of a different size is required for the survey by federal law, the sample must consist of at least the following size:

Number of recipients needing or receiving a particular kind of care, treatment or services	Minimum number of recipients in sample
1 - 9	All recipients
10 - 40	10
41 - 75	15
76 - 100	20
101 - 175	25
176 - 250	30
251 - 350	35
351 - 450	40
451 or more	50

4. The Bureau may review more than the minimum number of recipients. If it does so, the determination of scope must be based on the number of recipients actually reviewed.

5. If the Bureau investigates a complaint relating to a recipient, the Bureau may sample only that recipient. The scope of any deficiency cited pursuant to this subsection must be scope level

one.

6. As used in this section, “recipient” means a person who:

(a) Is admitted to a licensed bed maintained by the facility at the time the Bureau surveys the facility; or

(b) Received services at the facility within the 30 days immediately preceding the date the Bureau surveys the facility, if the facility is not licensed to maintain beds.

449.99859 Scope of deficiencies: Use of scope scale; basis for assessment. (NRS 449.037, 449.165)

1. The scope scale must be used to assess the scope of a particular deficiency in or by the facility.

2. The basis for the assessment is the actual or potential harm to recipients as shown by:

(a) The frequency of the deficiency;

(b) The number or percentage of recipients affected;

(c) The number or percentage of staff involved; and

(d) The pattern or lack of pattern of the deficiencies.

449.9986 Scope of deficiencies: Criteria for evaluation. (NRS 449.037, 449.165)

1. The scope of the deficiencies must be evaluated using the criteria prescribed in this section.

2. A deficiency of scope level one consists of one or an isolated number of unrelated incidents in the sample surveyed. A deficiency is of this scope if it involves 20 percent or less of the recipients sampled in a facility.

3. A deficiency is scope level two if the Bureau identifies a pattern of incidents at the facility, including any deficiencies involving recipients who require particular kinds of care,

treatment or service. The number or percentage of recipients or staff involved in the incidents or the repeated occurrences of incidents in short succession may also establish a pattern by indicating a reasonable degree of predictability of similar incidents. A deficiency is also of this scope if it involves more than 20 percent but not more than 50 percent of the recipients sampled in a facility.

4. A deficiency is of scope level three if it occurs in a sufficient number or percentage of recipients or staff or with sufficient regularity over time that it may be considered systemic or pervasive in or by the facility. A deficiency is also of this scope if it involves more than 50 percent of the recipients sampled in a facility.

449.99864 Determination of appropriate sanction: Procedure. (NRS 449.037, 449.165)

To determine the appropriate sanction, the Bureau shall follow the procedure set forth in NAC 449.99864 to 449.99867, inclusive.

449.99866 Determination of appropriate sanction: Consideration of secondary factors. (NRS 449.037, 449.165) After the initial assessment, the Bureau shall consider the following secondary factors in determining the sanction to impose:

1. The relationship of one deficiency or cluster or pattern of deficiencies to other deficiencies;
2. The history of previous compliance by the facility generally and specifically with reference to the deficiencies in issue;
3. Whether the deficiencies are directly related to the care, services or treatment received by persons from the facility; and
4. The corrective and long-term compliance outcomes desired.

449.99867 Determination of appropriate sanction: Basis for selection; presumption.

(NRS 449.037, 449.165) The selection of a sanction must be based upon the nature of the deficiencies or cluster of deficiencies and the sanction most likely to correct those deficiencies. Absent evidence to the contrary, restrictions upon service and monetary penalties are presumed to be the most effective sanctions for deficiencies that do not cause an immediate and serious threat to recipients.

449.99898 Procedure for imposition; interest on total penalty assessed. (NRS 449.037, 449.165) If the Bureau imposes a monetary penalty, the penalty must be imposed as provided in NAC 449.99899 to 449.99908, inclusive. In imposing the monetary penalty, the total penalty assessed against any facility bears interest at the rate of 10 percent per annum.

449.999 Limitation on principal amount of total daily penalty. (NRS 449.037, 449.165) In no event may the principal amount of the total daily monetary penalty assessed against any facility exceed \$1,000 per deficiency per day.

449.99901 Daily penalty: Computation according to number of recipients. (NRS 449.037, 449.165) If a monetary penalty is assessed on a daily basis according to the number of recipients and the number of recipients fluctuates, the penalty must be computed on the basis of the average daily number of recipients during the 3 months preceding the imposition of the penalty.