

Joe Lombardo
Governor



Richard Whitley, MS
Director

**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical Officer

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the Board of Health
LCB File No. R043-22 relating to Alzheimer's Endorsements and application and approval of medication management training programs.

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 449 of Nevada Administrative Code (NAC), "Medical Facilities and other related entities." This public hearing is to be held in conjunction with the State Board of Health meeting on June 2, 2023.

The State Board of Health will be conducted in person and via videoconference beginning at 9 am on June 2, 2023, at the following locations:

Physical Meeting Locations:

Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard
Las Vegas, NV 89107

Division of Public and Behavioral Health (DPBH)
Hearing Room 303
4150 Technology Way
Carson City, NV 89701

Virtual Meeting Information:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NGY3ZGM2ZjUtMmQ5NC00MzI2LWFhMDMtNmJhZmRjNzk1MWE3%40thread.v2/0?context=%7b%22Tid%22%3a%22e4a340e6-b89e-4e68-8eaa-1544d2703980%22%2c%22Oid%22%3a%22e2f9f008-841c-437d-b037-927c30ea003e%22%7d

Please Note: If you experience technical difficulties connecting online, please call into the meeting to participate by phone.

Join By Phone:

+1 (775) 321-6111
Phone Conference ID: 286 562 031

The proposed changes to NAC 449 include the following:

Existing law requires the State Board of Health to adopt regulations for the licensing and regulation of residential facilities for groups, including separate regulations for the licensing and regulation of such facilities that provide care to persons with Alzheimer’s disease or other severe dementia. (NRS 449.0302)

- Existing regulations require a caregiver of a residential facility for groups to receive at least 8 hours of annual training related to providing for the needs of residents of the facility. (NAC 449.196) Existing regulations also prescribe specific training requirements for a caregiver at a residential facility for groups whose residents are elderly persons or persons with disabilities or an employee of a residential facility for groups who provides care to persons with dementia. (NAC 449.2758, 449.2768) **Sections 7, 19, 36 and 38** of this regulation revise requirements governing training for such caregivers or employees without changing the total amount of training required. **Section 20** of this regulation prescribes specific requirements concerning the documentation of such training that a residential facility for groups is required to maintain for each employee. **Section 37** of this regulation deems current employees of residential facilities for groups who have received certain training required by existing regulations to meet the training requirements revised by **sections 19 and 36** of this regulation.
- Existing law requires the administrator of a residential facility for groups to cause a qualified provider of health care to conduct: (1) an annual physical examination of each resident of the facility; and (2) an assessment of the conditions and needs of each resident of the facility upon admission and at certain other times. (NRS 449.1845) **Section 8** of this regulation interprets the term “qualified provider of health care” for that purpose, and **section 29** of this regulation revises provisions of existing regulations concerning physical examinations to conform to existing law.
- Existing law requires an employee of a residential facility for groups who assists residents in the administration of controlled substances or dangerous drugs to: (1) complete training approved by the Division of Public and Behavioral Health of the Department of Health and Human Services; and (2) pass an examination approved by the Division. (NRS 449.0302) **Sections 10 and 11** of this regulation define certain terms relating to such training. **Section 12** of this regulation generally requires a person or entity that proposes to offer a course of training in the administration of medication to apply to the Division. **Section 12** authorizes the Division to approve a nationally recognized organization to offer a course without an application if it determines that the course meets the applicable requirements. **Section 12** provides that the approval of a course is valid for 2 years. **Section 13** of this regulation prescribes the required content of such a course. **Section 13** requires a participant in such a course to achieve a passing score of at least 80 percent on a written examination. **Sections 19 and 30** of this regulation eliminate duplicative requirements. **Section 12** requires an application for the approval of a course of training in the administration of medication to include proof that the instructor has been approved by the Division. **Section 14** of this regulation: (1) prescribes the requirements to apply for approval as an instructor; and (2) provides that the approval of an instructor is valid for 2 years. **Section 15** of this regulation prescribes the required qualifications and ethical duties of a person who teaches a course of training in the administration of medication. **Section 16** of this regulation authorizes the Division to revoke the approval of a course or instructor under certain circumstances. **Section 27** of this regulation makes a conforming change to indicate that a caregiver who administers medication to a resident with diabetes must complete training and an examination approved by the Division.
- **Section 27** also updates the name of a publication adopted by reference pertaining to food substitutions for special diets and establishes a process for the incorporation of future revisions to that publication.
- Existing regulations prohibit the administration of medication to a resident of a residential facility for groups without the approval of a physician. (NAC 449.231) **Sections 21, 24 and 30-33** of this regulation

authorize a physician assistant or advanced practice registered nurse to prescribe medication for a resident. **Section 18** of this regulation makes a conforming change to update terminology used to refer to advanced practice registered nurses.

- Existing regulations require: (1) a residential facility for groups to provide certain supervision for residents and permit a resident to engage in certain activities; and (2) caregivers of the facility to provide each resident with a written program of activities. (NAC 449.259, 449.260) **Section 22** of this regulation requires a residential facility for groups to develop a person-centered service plan for each resident in collaboration with the resident, his or her family and other persons who provide care to the resident. **Section 22** prescribes the required contents of a person-centered service plan, which include required supervision, authorized activities, the written program of activities for the resident and, if the resident has Alzheimer’s disease or another form of dementia, measures to address the dementia and ensure the safety of the resident in the facility. **Section 4** of this regulation defines the term “person-centered service plan,” and **sections 23, 28 and 34** of this regulation make conforming changes related to such a plan.
- Existing regulations require the administrator of a residential facility for groups to provide certain information concerning the services of the facility and the cost of those services in writing upon request. (NAC 449.2704) **Section 26** of this regulation: (1) clarifies that such information must be provided to any person upon request; and (2) requires the administrator to provide a person paying for services or his or her representative with certain information concerning those services upon the admission of the resident receiving those services, upon a change to those services or their cost or upon request. Existing law requires a resident who suffers from dementia to an extent that the resident may be a danger to himself or herself or others under certain circumstances to be placed in a residential facility for groups that meets requirements prescribed by the Board. (NRS 449.1845)
- Existing regulations: (1) require a residential facility which offers or provides care for a resident with Alzheimer’s disease or related dementia to obtain an endorsement on its license; and (2) impose certain requirements governing the operations of such a facility. (NAC 449.2754, 449.2756) **Sections 34 and 35** of this regulation limit those requirements to only apply to a residential facility for groups that provides care to a resident with Alzheimer’s disease or another form of dementia to the extent that the resident may be a danger to himself or herself or others under the circumstances prescribed by existing law. **Section 35** also revises requirements governing equipment to alert the staff of a such a residential facility when a door used to exit the facility is opened. **Section 38** of this regulation repeals an unnecessary definition. Existing regulations authorize a residential facility that provides care to persons with Alzheimer’s disease to admit and retain a resident who requires containment in locked quarters. (NAC 449.2754) **Sections 25 and 34** of this regulation remove this authorization, thereby prohibiting a residential facility that provides care to persons with Alzheimer’s disease or other forms of dementia from admitting and retaining such a patient.
- Existing regulations require the administrator of a residential facility to maintain a record of the medication administered to each resident. (NAC 449.2744) **Section 31** of this regulation expands the information required to be included in such a record.
- Existing regulations require a residential facility which offers or provides care and protective supervision for a resident with a chronic illness or progressively debilitating disease to obtain an endorsement from the Division. (NAC 449.2766) **Section 38** of this regulation repeals that requirement.

The errata modify the following sections of the proposed regulations:

Section 6 – Verbiage “suffering from” was replaced with “with.”

Section 7 – Language was modified to include that training used by facilities that is listed on the Division’s website would be approved to meet requirements.

Section 13 - Removed “Medication Label, following instructions on a medication label” in the list and did not add any additional language regarding medication change orders so it is not overly specific. Other parts of the regulation already address administering medications as prescribed, which would include if an order was changed by the physician. Modified the language to “If there is a necessity of an ultimate user agreement...” to acknowledge that it may not be necessary in all cases and include consistent verbiage (ultimate user as used in NRS)

Section 20 - Updated to reflect 60 days which is consistent with the previous requirement when this training was noted in repealed text in 449.2758 noted at the end of the document. Verbiage was modified to clarify if training was from one listed on our website, no syllabus would be needed.

Section 22 - Modified to include scheduled and unscheduled verbiage.

Section 23 - Left language that had been previously removed that indicates the facility will provide at least 10 hours of facility wide activities. This covers the individually developed activities which can be scheduled or unscheduled to participate at individual’s leisure as well as ensure at least 10 hours of organized activities are provided to the facility as a whole.

1. Anticipated effects on the business which NAC 449 regulates:

- A. *Adverse effects*: It is anticipated that the following section may or will result in a minor adverse economic effect on small businesses. **Section 7** which requires Tier 2 training to be provided by nationally recognized organizations focused on dementia or accredited colleges/universities. Obtaining Tier 2 training that meets the regulatory criteria outlined may result in an adverse economic effect on some facilities if they are unable to find free or low-cost options to currently accepted dementia related training. Comments included: “If there is staff willing to do the training, it will be at the expense of the group home. The staff will not do the training if they have to pay for it. The estimated cost to me would depend on the cost of the training and endorsement, but with no additional income for me. Any time there is staff turnover, would be that much more cost to me.”; “Meeting Tier 2 training requirements will likely cost an additional \$100-200 per course annually for every caregiver, adding to an already overly burdensome list of training expenses.” The Division website will include links to free or low-cost training options that will be accepted to meet Tier 2 training requirements.
- B. *Beneficial*: **Section 34** removes the sole criteria for facilities being required to obtain an endorsement to provide care to residents with Alzheimer’s Disease and related forms of dementia and revises the requirement of the endorsement for facilities with residents who meet the criteria prescribed in paragraph (a) of subsection 2 of NRS 449.1845 which indicates if the provider of health care determines that the resident suffers from dementia to an extent that the resident may be a danger to himself or herself or others if the resident is not placed in a secure unit or a facility that assigns not less than one staff member for every six residents and if the health care provider assessment indicates the resident does not suffer from dementia as described in paragraph (a), the resident may be placed in any residential facility for groups. This may encourage the growth of small businesses in these facility types, as it reduces threshold for facilities who would require the endorsement.
- C. *Immediate*: Upon the proposed regulations becoming effective, the Division would develop the necessary procedures to implement the regulations and enforce them as necessary. This may result in

an immediate adverse or beneficial effect, as noted in the above adverse and beneficial effects sections.

- A. *Long-term*: It is anticipated that in the long-term the beneficial impacts may include improved staff training and increased admissions to facilities that no longer require an Alzheimer's endorsement to care for individuals diagnosed with Alzheimer's disease or dementia.

2. Anticipated effects on the public:

- A. *Adverse*: No adverse effects on the public are anticipated.
- B. *Beneficial*: Lowering the threshold for requiring facilities to obtain an endorsement to provide care to residents with Alzheimer's Disease and related forms of dementia could lead to indirect beneficial effects of more options open to consumers for facility choice and offering residents a less restrictive environment with respect to the varying levels and progression of dementia related conditions. Allowing residential facilities for groups to admit and retain residents with mild dementia in the absence of an endorsement for Alzheimer's disease, allows for provision of this level of care without the cost of regulatory compliance with the requirements necessary to obtain the endorsement. **Section 7** – Adding topic specific and requiring nationally recognized organizations focused on dementia and accredited colleges to provide Tier 2 dementia training could increase training quality and caregiver knowledge which could in turn, positively effect care provided to residents.
- C. *Immediate*: As soon as the proposed regulations become effective it would allow for more access to individuals with diagnoses of dementia or Alzheimer's disease to reside in a facility commensurate with the level of care and supervision required for their individual needs in the State of Nevada.
- D. *Long-term*: It is anticipated that in the long-term the beneficial impacts may include increased options to residential facilities for groups and increased quality of care.

3. The Division of Public and Behavioral Health determined the impact on small business by conducting a public workshop on Dec. 6, 2022, and sending small business impact questionnaires to licensed medical and non-medical providers.

4. There should be no additional costs to the agency to enforce the proposed regulations. It is anticipated that this workload can be incorporated into the Division's current workload to license and regulate medical and non-medical facilities.

5. The proposed regulations do not overlap or duplicate any other Nevada state or federal regulations.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence in excess of two typed, 8-1/2" x 11" pages must submit the material to the Board's Secretary, Lisa Sherych, to be received no later than May 28, 2023, at the following address:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706
stateBOH@health.nv.gov

Written comments, testimony, or documentary evidence in excess of two typed pages will not be accepted at the time of the hearing. The purpose of this requirement is to allow Board members adequate time to review the documents.

A copy of the notice and proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours:

- Nevada Division of Public and Behavioral Health: 4150 Technology Way, First Floor Lobby, Carson City, NV 89706
- Nevada Division of Public and Behavioral Health: 4220 S. Maryland Parkway, Building A, Suite 100, Las Vegas, NV 89119
- Nevada State Library and Archives: 100 Stewart Street, Carson City, NV

A copy of the regulations and small business impact statement can be found online by going to:

http://dpbh.nv.gov/Reg/HealthFacilities/State_of_Nevada_Health_Facility_Regulation_Public_Workshops/

A copy of the public hearing notice can also be found at Nevada Legislature's web page:

<https://www.leg.state.nv.us/App/Notice/A/>

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at the contact information listed below:

Tina Leopard, Health Facilities Inspection Manager
Bureau of Health Care Quality and Compliance
Division of Public and Behavioral Health
4220 Maryland Parkway, Building A, Suite 100
Las Vegas, NV 89119
(702) 486-6515
tleopard@health.nv.gov

Copies may also be obtained from the Nevada State Library at the address listed below:

Nevada State Library & Archives
100 N. Stewart Street
Carson City, NV 89701

Per NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.