

## NOTICE OF PUBLIC HEARING

Intent to Adopt Regulations

(LCB File No. R109-18)

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 Friday, December 7, 2018.

The State Board of Health will be conducted via videoconference beginning at 9:00 a.m. on Friday, December 7, 2018 at the following locations:

Division of Public and Behavioral Health 4150 Technology Way Room #303 Carson City, NV 89706	Grant Sawyer Office Building 555 E. Washington Ave Las Vegas, NV 89101
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The proposed changes to Nevada Administrative Code (NAC) Chapter 449, LCB File No. R109-18, include the following:

- Bring NAC Chapter 449 into compliance with Senate Bill's (SB) 71, 324, 388 and 482 of the 2017 legislative session as all the bills require the Board to adopt regulations to carry out the provisions of the bills.
- Outline the requirements to license and regulate employment agencies that contract with persons to provide nonmedical services related to personal care to elderly persons or persons with disabilities in the home. It also prescribes the fees for the issuance and renewal of a license of such an employment agency. (SB 388)
- Prescribe the posting requirements of the Centers for Medicare and Medicaid Services star rating that a medical facility or facility for the dependent that receives a star rating is required to post and clarifies that a facility which does not receive a star rating is not required to post a star rating. (SB 482)
- Authorizes an employee of a residential facility for groups, an agency to provide personal care services in the home, a facility for the care of adults during the day or an intermediary services organization to check vital signs, administer insulin using an auto-injection device and perform blood glucose testing, subject to certain requirements, to perform those tasks, as well as being able to weigh residents, upon the consent of the resident. The proposed regulations also require an employee who performs such tasks to receive certain training, adhere to the manufacturer's instructions for any device used in performing the task, and refrain from using a device for monitoring blood glucose on more than one person. (SB 324)
- Increases the amounts of monetary penalties which may be imposed on a medical facility, facility for the dependent or other facility required by the Board to be licensed, increases the maximum amount of the monetary penalty for a day of noncompliance, and establishes an administrative penalty to be imposed for a violation that causes harm or a risk of harm to more than one person. (SB 71)
- Authorizes a facility to request to use all or a portion of an initial monetary penalty to correct the deficiency for which the penalty was imposed in lieu of paying the penalty and authorizes the Bureau of

Health Care Quality and Compliance to approve such a request if the deficiency results from the facility's first violation of a particular provision of law or regulation.

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

*A. Adverse:* It will have an adverse economic effect on facilities that receive a monetary penalty although it is anticipated only a small percentage (2% to 4%) of facilities would be impacted. The following information is based on all health facilities that have received at least one severity 3 or 4 citation over a one-year period. Based on this information, 4% of health facilities received at least one severity level 3 or 4 citation in 2015, 3% in 2016 and only 2% in 2017. It is possible that of the small percentage of facilities that receive a severity level 3 or 4, some may have difficulties paying or using the monetary penalties to correct violations resulting in a negative financial impact on their business.

*B. Beneficial:* The proposed regulations carry out the provisions of Senate Bill (SB) 324 which may result in financial benefits to certain industry by removing the requirement that a resident's glucose testing be performed by a medical laboratory licensed pursuant to chapter 652 of NRS; therefore, eliminating licensure as a laboratory with all the associated fees and state specific requirements to serve as a director of a laboratory. Industry that may not have been able to accept certain residents/clients requiring care may now be able to do so, potentially increasing the number of residents they can accept, or allowing residents/clients that may have needed to be transferred to a higher level of care to remain at the facility.

*C. Immediate:* The adverse effects may be immediate, upon passage of the proposed regulations, for those that receive a monetary penalty shortly after the passage of the proposed regulations. Upon passage of the proposed regulations, certain facilities will be able to immediately begin performing the tasks noted previously, after certain criteria are met, such as performing glucose testing using a glucometer and vital signs in their facilities, possibly allowing them to admit additional resident/clients they were not able to in the past or retain residents that may otherwise have to be transferred out of the facility to a higher level of care.

*D. Long-term:* Possible revenue increase from being able to admit or retain more residents than possible in the past. Possible increased costs negatively impacting facilities that receive monetary penalties.

2. Anticipated effects on the public:

*A. Adverse:* No anticipated adverse effects on the public is anticipated.

*B. Beneficial:* Benefits to the public include adding training requirements to perform certain tasks, requiring manufacturer's instructions be followed, and utilizing nationally recognized infection control guidelines when carrying out such tasks, to help ensure these activities are carried out in a safe and effective manner.

*C. Immediate:* Ability for certain members of the public, such as diabetics, to have a wider range of choices as to where they receive care. Greater transparency to the public who will be able to see a facility's Centers for Medicare and Medicaid services star rating, if applicable, at the entrance of facilities.

*D. Long-term:* The long-term effects would be a continuation of the immediate effects over time.

3. The estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulations is estimated to cost \$1,400 to conduct an initial inspection for each employment agency to provide

non-medical services in the home and cost \$700 a year to continue to license and regulate each agency. As the Division does not know how many agencies would be licensed in accordance to this new rule, a total cost cannot be estimated at this time. Enforcement related to all other areas in the proposed regulations would be incorporated into current licensing and regulatory activities; therefore, it is not anticipated that these activities would result in additional costs to the Division.

There are no duplicative or more stringent provisions than federal, state or local standards regulating to the same activity.

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, Julie Kotchevar, to be received no later than November 27, 2018 at the following address:

Secretary, State Board of Health  
Division of Public and Behavioral Health  
4150 Technology Way, Suite 300  
Carson City, NV 89706

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  
727 Fairview Drive, Suite E  
Carson City, NV 89701

Nevada State Library  
100 Stewart Street  
Carson City, NV 89701

Nevada Division of Public and Behavioral Health  
4220 S. Maryland Parkway, Suite 810, Building D  
Las Vegas, NV 89119

A copy of the regulations and small business impact statement can be found on-line by going to:  
[http://dpbh.nv.gov/Reg/HealthFacilities/State\\_of\\_Nevada\\_Health\\_Facility\\_Regulation\\_Public\\_Workshops/](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 (775) 684-1030 in Carson City or (702) 486-6515 in Las Vegas.

Copies may also be obtained from any of the public libraries listed below:

Carson City Library  
900 North Roop Street

Churchill County Library  
553 South Main Street

Carson City, NV 89702

Fallon, NV 89406

Clark County District Library  
1401 East Flamingo Road  
Las Vegas, NV 89119

Douglas County Library  
1625 Library Lane  
Minden, NV 89423

Elko County Library  
720 Court Street  
Elko, NV 89801

Esmeralda County Library  
Corner of Crook and 4<sup>th</sup> Street  
Goldfield, NV 89013-0484

Eureka Branch Library  
80 South Monroe Street  
Eureka, NV 89316-0283

Henderson District Public Library  
280 South Green Valley Parkway  
Henderson, NV 89012

Humboldt County Library  
85 East 5<sup>th</sup> Street  
Winnemucca, NV 89445-3095

Lander County Library  
625 South Broad Street  
Battle Mountain, NV 89820-0141

Lincoln County Library  
93 Maine Street  
Pioche, NV 89043-0330

Lyon County Library  
20 Nevin Way  
Yerington, NV 89447-2399

Mineral County Library  
110 1<sup>st</sup> Street  
Hawthorne, NV 89415-1390

Pahrump Library District  
701 East Street  
Pahrump, NV 89041-0578

Pershing County Library  
1125 Central Avenue  
Lovelock, NV 89419-0781

Storey County Library  
95 South R Street  
Virginia City, NV 89440-0014

Tonopah Public Library  
167 Central Street  
Tonopah, NV 89049-0449

Washoe County Library  
301 South Center Street  
Reno, NV 89505-2151

White Pine County Library  
950 Campton Street  
Ely, NV 89301-1965

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.