

Errata – LCB File No. R111-12

Blue bolded italic = Proposed language found in LCB File No. R111-12.

~~Red, italic strikethrough~~ = Proposed omitted materials to proposed regulations LCB File No. R111-12.

~~[red strikethrough in brackets]~~ = Omitted material currently existing in LCB File No. R111-12.

Green bolded Italic = Proposed changes to language currently in LCB File No. R111-12.

Section 4: Amend section 4 by:

1. Omit the use of “agency, facility or home” in every instance that it is used and replace it with facility, hospital, agency, program or home.
2. Add employee of a temporary employment service in every instance which also applies to an employee and independent contractor.
3. In addition to what is provided above amend the following subsections:

Subsection 2:

Add language to provide a timeframe in which an individual would be terminated from employment for failing to comply with the provisions in Section 4.

Subsection 3:

Add language to subsection 3 which requires a facility to ensure the safety of patients, residents or clients pending the completion of a criminal history record investigation. It lists actions that may be taken by a facility to ensure the safety of the patients, residents or clients but provides flexibility for the facility to choose the necessary measures to protect patients, residents and clients. It clarifies that if a facility prohibits an individual from working they are to be put on a leave status (not terminated).

It adds a (c) to subsection 3 which allows the facility to investigate the circumstances of the criminal history record then determine and implement the measures it feels are necessary to ensure the safety of patients, residents or clients.

Subsection 4:

Omits the definition of agency, facility or home and replaces it with the meaning of facility, hospital, agency, program or home in accordance with Senate Bill 502 of the 2011 legislative session. It also adds an intermediary service organization.

Adds a Subsection 5: Defines direct supervision for the purposes of carrying out the provisions in Section 4.

Sec. 4. 1. *If the Central Repository notifies the administrator of, or the person licensed to operate, ~~an facility, hospital, agency, program or home~~ ~~agency, facility or home~~ that it is unable to complete an investigation pursuant to NRS 449.123 because:*

(a) Additional information is required, the administrator of, or the person licensed to operate, the facility, hospital, agency, program or home ~~agency, facility or home~~ shall, within 10 working days after receiving the notice from the Central Repository, send a notice to the employee, ~~employee of a temporary employment service or independent contractor~~ directing the employee, ~~employee of a temporary employment service or independent contractor~~ to provide the administrator of, or the person licensed to operate, the facility, hospital, agency,

program or home ~~agency, facility or home~~ and the Central Repository with the information or proof that the information cannot be obtained within 30 days after the date on which the notice was sent by the facility, hospital, agency, program or home ~~agency, facility or home~~.

(b) Criminal charges against the employee, employee of a temporary employment service or independent contractor are pending, the administrator of, or the person licensed to operate the facility, hospital, agency, program or home ~~agency, facility or home~~ shall notify the employee, employee of a temporary employment service or independent contractor that he or she is required to:

(1) Notify the administrator of, or the person licensed to operate, the facility, hospital, agency, program or home ~~agency, facility or home~~ of the date of each court proceeding relating to the charges; and

(2) Provide the Central Repository with any information relating to the final disposition of the charges as soon as the information is available.

2. The administrator of, or the person licensed to operate, the facility, hospital, agency, program or home ~~agency, facility or home~~ shall terminate the employment of an employee, employee of a temporary employment service or the contract with an independent contractor upon determining that the employee, employee of a temporary employment service or independent contractor ~~who~~ willfully failed to comply with the provisions of this section.

3. Pending the completion of an investigation of an employee, employee of a temporary employment service or independent contractor of a ~~facility, hospital, agency, program or home~~ ~~agency, facility or home~~ for which the Central Repository has provided notice pursuant to subsection 1 that it is unable to complete the investigation for the reasons stated in subsection 1 and during any period in which an employee, employee of a temporary employment service or independent contractor has to correct information provided by the Central Repository pursuant to NRS 449.125, the administrator of, or the person licensed to operate, a ~~facility, hospital, agency, program or home~~ ~~agency, facility or home~~ shall ensure the safety of its patients, residents or clients by implementing one or a combination of the following:

(a) Prohibiting the employee, employee of a temporary employment service or independent contractor from working by putting him or her on a leave status at the facility, hospital, agency, program or home ~~agency, facility or home~~; or

(b) Requiring the employee, employee of a temporary employment service or independent contractor to work at the facility, hospital, agency, program or home ~~agency, facility or home~~ under direct supervision while caring for a patient, client or resident of the facility, hospital, agency, program or home ~~agency, facility or home~~; or

(c) Conducting an investigation into the circumstances of the criminal history record to determine and implement measures the facility, hospital, agency, program or home identifies in order to ensure the safety of its patients, residents or clients if the employee, employee of a temporary employment service or independent contractor's criminal history record investigation is pending completion or correction cares for patients, residents or clients.

4. As used in this section, “facility, hospital, agency, program or home” has the meaning ascribed in Section 9 of Senate Bill 502 of the 2013 legislative session. Facility, hospital, agency, program or home also includes an intermediary service organization for the purposes of carrying out these proposed regulations. ~~“agency, facility or home” means an agency to provide personal care services in the home, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing, a residential facility for groups or a home for individual residential care or, if residential services are provided to children, a medical facility or a facility for the treatment of abuse of alcohol or drugs.~~

5. As used in this section, direct supervision means an employee of the facility, hospital, agency, program or home observes the employee, employee of a temporary employment service or independent contractor whose criminal history record investigation is pending completion or correction while he or she provides direct patient, resident or client care.

Rationale:

Subsection 2 changes: Industry input requested that clarification be provided as to when an individual was to be terminated. Language was added to make this clarification.

Subsection 3 changes: Industry expressed concern that prohibiting an individual from working or requiring the individual to work under direct supervision may cause issues related to wrongful terminations and/or costs to carry out the provisions of the regulations. Language was added which would allow facilities flexibility to choose the measures required to keep patients, residents and client’s safe based on an investigation of the circumstances of the criminal history record by the facility.

Subsection 4 changes: Brings the regulations in alignment with the provisions of Senate Bill 502 of the 2013 legislative session which becomes effective on July 1, 2013 by adding employee of a temporary employment service. It will also include the additional facilities that are required to background check their employees by referring to the definition of facility, hospital, agency, program or home in the bill. In addition, it adds an intermediary service organization.

Subsection 5 changes: Industry expressed that they wanted a definition of direct supervision so it was clear what was meant by that reference. Subsection 5 adds language defining direct supervision for the purposes of carrying out the provisions of Section 4.