

Errata – LCB File No. R001-11P.

Blue italic = Proposed language found in LCB File No. R001-11P.

[Red in brackets] = Proposed omitted material found in LCB File No. R001-11P.

~~Strikethrough any color~~ = New omitted material proposed in errata.

Green italic = New language proposed in Errata.

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.

Justification: The stricken language is unnecessary and is not an accurate reflection of the statutory intent. It's better to let the statutory language speak for itself in this case.

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~~ *may* 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.

Justification: The new language still allows for imposition of a limitation on occupancy, but also recognizes those situations where a severity level 4 is assigned due to the inspection/investigation team informing the facility regarding an immediate jeopardy (IJ). When that IJ is abated and never actually caused harm, we should have discretion as to whether we want to impose a limitation on occupancy.

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~~ **may** 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~~ **may** 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.

Justification: The new language still allows for imposition of a ban on admissions, but also recognizes those situations where a severity level 4 is assigned due to the inspection/investigation team informing the facility regarding an immediate jeopardy (IJ). When that IJ is abated and never actually caused harm, we should have discretion as to whether we want to impose a ban on admissions.

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** ~~**[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 and in accordance with subsection 2 of NRS 449.163 .**
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.

Justification: The stricken language is unnecessary and is not an accurate reflection of the statutory intent. It's better to let the statutory language speak for itself in this case. The new language emphasizes the need to refer to the statutory language whenever imposing monetary penalties. Depending on the circumstances, the statutory language may set the fine, or the language in NAC 449.99899 to 449.99908 may set the fine.

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 or four deficiency related to health or safety*, 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 or four deficiency related to health or safety*, 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 rated with a severity level of four a monetary penalty of \$10,000 per violation must be imposed.

3. For initial deficiencies rated with a severity level of three related to health or safety, a monetary penalty of \$5,000 per violation must be imposed.

~~2~~ *4. [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 not related to health or safety and [and a scope level of three,] that involve more than one violation, a monetary penalty of \$800 per [deficiency] violation deficiency must be imposed.*

~~[4.]~~ ~~3~~ *5. For initial deficiencies with a severity level of three not related to health or safety and [and a scope level of two or less,] that involve not more than one violation, an initial monetary penalty of \$400 per [deficiency] violation deficiency must be imposed.*

6. For initial deficiencies rated with a severity level of two related to health or safety, a monetary penalty of \$1,000 per violation must be imposed. The payment of this monetary penalty must be suspended if the facility has corrected the deficiencies within the time specified in the plan of correction approved by the Bureau.

~~[5.]~~ ~~4~~ *7. For initial deficiencies with a severity level of two not related to health or safety and [and a scope level of three,] that involve more than one violation, an initial monetary penalty of \$200 per [deficiency] violation deficiency may be imposed. The payment of this monetary penalty [must] may must be suspended if the facility has corrected the deficiencies within the time specified in the plan of correction approved by the Bureau.*

8. For initial deficiencies with a severity level of two not related to health or safety and that involve not more than one violation, an initial monetary penalty of \$100 per deficiency may be imposed. The payment of this monetary penalty must be suspended if the facility has corrected the deficiencies within the time specified in the plan of correction approved by the Bureau.

~~[6.]~~ ~~5~~ ~~9~~. 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~~ ~~10~~. *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~~ ~~or~~ ~~four~~.*

~~7~~ ~~11~~. *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.*

Justification: In an effort to be responsive to comments received during the public workshop and in the small business impact study these changes have been made. They will accomplish the following: 1) align the regulations with the statutory intent regarding provision of less severe sanctions for lesser violations, 2) provide clear and unambiguous fine amounts based on all eligible severity levels and whether a violation is related to health or safety, or not, 3) allows for relief from penalties when harm has not actually occurred and the facility corrects deficiencies and 4) corrects language to recognize that severity level 1 violations are considered de minimis and are therefore not eligible for monetary fines.

New section. To exchange the term “*Division of Public and Behavioral Health*” for the term “Bureau”, wherever the term “Bureau” is used in the in the following sections of NAC chapter 449, but not including NAC 449.9985:

449.99827, 449.99835, 449.99837, 449.99841, 449.99851, 449.99852, 449.99853, 449.99854, 449.99855, 449.99856, 449.99857, 449.99858, 449.9986, 449.99863, 449.99864, 449.99865, 449.99866, 449.9987, 449.99875, 449.99876, 449.99878, 449.9988, 449.99881, 449.99883, 449.99885, 449.99895, 449.99896, 449.99897, 449.99898, 449.99899, 449.99902, 449.99906, 449.99907, 449.9991, 449.99915, 449.9992, 449.99921, 449.99925, 449.99926, 449.99927, 449.99928, 449.99929, 449.99935, 449.99937, 449.99938 and 449.99939.

New section. To exchange the term “*Division of Public and Behavioral Health*” for the term “Health Division”, in NAC 449.9985.

Justification: These changes align terms used in these regulations with the newly created Division of Public and Behavioral Health, as defined in AB 488 of the 2013 legislative session.