
ASSEMBLY BILL NO. 337—COMMITTEE ON COMMERCE AND LABOR

(ON BEHALF OF THE DIVISION OF HEALTH CARE
FINANCING AND POLICY)

MARCH 21, 2005

Referred to Committee on Health and Human Services

SUMMARY—Requires licensure of agencies which provide personal care services in homes of elderly persons and persons with disabilities. (BDR 40-375)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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

AN ACT relating to public welfare; requiring the licensure of agencies which provide personal care services in the homes of elderly persons and persons with disabilities; requiring such agencies to file a surety bond or deposit other security to provide indemnification to certain persons; requiring the periodic investigation of the criminal histories of employees and independent contractors of such agencies; requiring a person who maintains or is employed by such an agency to report the abuse, neglect or isolation of an older person and to report certain misconduct of nurses and nursing assistants; authorizing a person who receives nonmedical services from such an agency to submit a claim for damages to the property of the person by a person who maintains or is employed by the agency to the Aging Services Division of the Department of Human Resources; providing penalties; and providing other matters properly relating thereto.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 449 of NRS is hereby amended by adding thereto a new section to read as follows:

1. "Agency to provide personal care services in the home" means any person, other than a natural person, which provides in the home, through its employees or by contractual arrangement with other persons, nonmedical services related to personal care to elderly persons or persons with mental or physical disabilities to assist those persons with activities of daily living, including, without limitation:

- (a) The elimination of wastes from the body;*
- (b) Dressing and undressing;*
- (c) Bathing;*
- (d) Grooming;*
- (e) The preparation and eating of meals;*
- (f) Laundry;*
- (g) Shopping;*
- (h) Cleaning;*
- (i) Transportation; and*
- (j) Any other minor needs related to the maintenance of personal hygiene.*

2. The term does not include:

(a) An independent contractor who provides nonmedical services specified by subsection 1 without the assistance of employees; or

(b) A microboard, as defined by regulations adopted by the Board.

Sec. 2. NRS 449.001 is hereby amended to read as follows:

449.001 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 449.0015 to 449.019, inclusive, *and section 1 of this act* have the meanings ascribed to them in those sections.

Sec. 3. NRS 449.0045 is hereby amended to read as follows:

449.0045 "Facility for the dependent" includes ~~the~~:

1. A facility for the treatment of abuse of alcohol or drugs ~~the~~;

2. A halfway house for recovering alcohol and drug abusers ~~the~~;

3. A facility for the care of adults during the day ~~for~~;

4. A residential facility for groups ~~the~~; and

5. An agency to provide personal care services in the home.

Sec. 4. NRS 449.060 is hereby amended to read as follows:

449.060 1. Each license issued pursuant to NRS 449.001 to 449.240, inclusive, *and section 1 of this act* expires on



1 December 31 following its issuance and is renewable for 1 year
2 upon reapplication and payment of all fees required pursuant to
3 NRS 449.050 unless the Health Division finds, after an
4 investigation, that the facility has not:

5 (a) Satisfactorily complied with the provisions of NRS 449.001
6 to 449.240, inclusive, *and section 1 of this act*, or the standards and
7 regulations adopted by the Board;

8 (b) Obtained the approval of the Director of the Department of
9 Human Resources before undertaking a project, if such approval is
10 required by NRS 439A.100; or

11 (c) Conformed to all applicable local zoning regulations.

12 2. Each reapplication for *an agency to provide personal care*
13 *services in the home*, an agency to provide nursing in the home, a
14 residential facility for intermediate care, a facility for skilled nursing
15 or a residential facility for groups must include, without limitation, a
16 statement that the facility or agency is in compliance with the
17 provisions of NRS 449.173 to 449.188, inclusive.

18 **Sec. 5.** NRS 449.065 is hereby amended to read as follows:

19 449.065 1. Except as otherwise provided in subsections 6 and
20 7 and NRS 449.067, each facility for intermediate care, facility for
21 skilled nursing, residential facility for groups, *agency to provide*
22 *personal care services in the home* and agency to provide nursing
23 in the home shall, when applying for a license or renewing a license,
24 file with the Administrator of the Health Division a surety bond:

25 (a) If the facility or agency employs less than 7 employees, in
26 the amount of \$5,000;

27 (b) If the facility or agency employs at least 7 but not more than
28 25 employees, in the amount of \$25,000; or

29 (c) If the facility or agency employs more than 25 employees, in
30 the amount of \$50,000.

31 2. A bond filed pursuant to this section must be executed by
32 the facility or agency as principal and by a surety company as
33 surety. The bond must be payable to the Aging Services Division of
34 the Department of Human Resources and must be conditioned to
35 provide indemnification to an older patient who the specialist for the
36 rights of elderly persons determines has suffered property damage as
37 a result of any act or failure to act by the facility or agency to protect
38 the property of the older patient.

39 3. Except when a surety is released, the surety bond must cover
40 the period of the initial license to operate or the period of the
41 renewal, as appropriate.

42 4. A surety on any bond filed pursuant to this section may be
43 released after the surety gives 30 days' written notice to the
44 Administrator of the Health Division, but the release does not
45 discharge or otherwise affect any claim filed by an older patient for



1 property damaged as a result of any act or failure to act by the
2 facility or agency to protect the property of the older patient alleged
3 to have occurred while the bond was in effect.

4 5. A license is suspended by operation of law when the facility
5 or agency is no longer covered by a surety bond as required by this
6 section or by a substitute for the surety bond pursuant to NRS
7 449.067. The Administrator of the Health Division shall give the
8 facility or agency at least 20 days' written notice before the release
9 of the surety or the substitute for the surety, to the effect that the
10 license will be suspended by operation of law until another surety
11 bond or substitute for the surety bond is filed in the same manner
12 and amount as the bond or substitute being terminated.

13 6. The Administrator of the Health Division may exempt a
14 residential facility for groups from the requirement of filing a surety
15 bond pursuant to this section if the Administrator determines that
16 the requirement would result in undue hardship to the residential
17 facility for groups.

18 7. The requirement of filing a surety bond set forth in this
19 section does not apply to a facility for intermediate care, facility for
20 skilled nursing, residential facility for groups , *agency to provide*
21 *personal care services in the home* or agency to provide nursing in
22 the home that is operated and maintained by the State of Nevada or
23 an agency thereof.

24 **Sec. 6.** NRS 449.067 is hereby amended to read as follows:

25 449.067 1. As a substitute for the surety bond required
26 pursuant to NRS 449.065, a facility for intermediate care, a facility
27 for skilled nursing, a residential facility for groups , *an agency to*
28 *provide personal care services in the home* and an agency to
29 provide nursing in the home may deposit with any bank or trust
30 company authorized to do business in this State, upon approval from
31 the Administrator of the Health Division:

32 (a) An obligation of a bank, savings and loan association, thrift
33 company or credit union licensed to do business in this State;

34 (b) Bills, bonds, notes, debentures or other obligations of the
35 United States or any agency or instrumentality thereof, or
36 guaranteed by the United States; or

37 (c) Any obligation of this State or any city, county, town,
38 township, school district or other instrumentality of this State, or
39 guaranteed by this State, in an aggregate amount, based upon
40 principal amount or market value, whichever is lower.

41 2. The obligations of a bank, savings and loan association,
42 thrift company or credit union must be held to secure the same
43 obligation as would the surety bond required by NRS 449.065. With
44 the approval of the Administrator of the Health Division, the
45 depositor may substitute other suitable obligations for those



1 deposited, which must be assigned to the Aging Services Division
2 of the Department of Human Resources and are negotiable only
3 upon approval by the Administrator of the Aging Services Division.

4 3. Any interest or dividends earned on the deposit accrue to the
5 account of the depositor.

6 4. The deposit must be an amount at least equal to the surety
7 bond required by NRS 449.065 and must state that the amount may
8 not be withdrawn except by direct and sole order of the
9 Administrator of the Aging Services Division.

10 **Sec. 7.** NRS 449.070 is hereby amended to read as follows:

11 449.070 The provisions of NRS 449.001 to 449.240, inclusive,
12 *and section 1 of this act* do not apply to:

13 1. Any facility conducted by and for the adherents of any
14 church or religious denomination for the purpose of providing
15 facilities for the care and treatment of the sick who depend solely
16 upon spiritual means through prayer for healing in the practice of
17 the religion of the church or denomination, except that such a
18 facility shall comply with all regulations relative to sanitation and
19 safety applicable to other facilities of a similar category.

20 2. Foster homes as defined in NRS 424.014.

21 3. Any medical facility or facility for the dependent operated
22 and maintained by the United States Government or an agency
23 thereof.

24 **Sec. 8.** NRS 449.179 is hereby amended to read as follows:

25 449.179 1. Except as otherwise provided in subsection 2,
26 within 10 days after hiring an employee or entering into a contract
27 with an independent contractor, the administrator of, or the person
28 licensed to operate, *an agency to provide personal care services in*
29 *the home*, an agency to provide nursing in the home, a facility for
30 intermediate care, a facility for skilled nursing or a residential
31 facility for groups shall:

32 (a) Obtain a written statement from the employee or independent
33 contractor stating whether he has been convicted of any crime listed
34 in NRS 449.188;

35 (b) Obtain an oral and written confirmation of the information
36 contained in the written statement obtained pursuant to
37 paragraph (a);

38 (c) Obtain from the employee or independent contractor two sets
39 of fingerprints and a written authorization to forward the
40 fingerprints to the Central Repository for Nevada Records of
41 Criminal History for submission to the Federal Bureau of
42 Investigation for its report; and

43 (d) Submit to the Central Repository for Nevada Records of
44 Criminal History the fingerprints obtained pursuant to paragraph (c).



2. The administrator of, or the person licensed to operate, *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 or a residential facility for groups is not required to obtain the information described in subsection 1 from an employee or independent contractor who provides proof that an investigation of his criminal history has been conducted by the Central Repository for Nevada Records of Criminal History within the immediately preceding 6 months and the investigation did not indicate that the employee or independent contractor had been convicted of any crime set forth in NRS 449.188.

3. The administrator of, or the person licensed to operate, *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 or a residential facility for groups shall ensure that the criminal history of each employee or independent contractor who works at the agency or facility is investigated at least once every 5 years. The administrator or person shall:

(a) If the agency or facility does not have the fingerprints of the employee or independent contractor on file, obtain two sets of fingerprints from the employee or independent contractor;

(b) Obtain written authorization from the employee or independent contractor to forward the fingerprints on file or obtained pursuant to paragraph (a) to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(c) Submit the fingerprints to the Central Repository for Nevada Records of Criminal History.

4. Upon receiving fingerprints submitted pursuant to this section, the Central Repository for Nevada Records of Criminal History shall determine whether the employee or independent contractor has been convicted of a crime listed in NRS 449.188 and immediately inform the Health Division and the administrator of, or the person licensed to operate, the agency or facility at which the person works whether the employee or independent contractor has been convicted of such a crime.

5. The Central Repository for Nevada Records of Criminal History may impose a fee upon an agency or a facility that submits fingerprints pursuant to this section for the reasonable cost of the investigation. The agency or facility may recover from the employee or independent contractor not more than one-half of the fee imposed by the Central Repository. If the agency or facility requires the employee or independent contractor to pay for any part of the fee imposed by the Central Repository, it shall allow the employee or



independent contractor to pay the amount through periodic payments.

Sec. 9. NRS 449.182 is hereby amended to read as follows:

449.182 Each *agency to provide personal care services in the home*, agency to provide nursing in the home, facility for intermediate care, facility for skilled nursing and residential facility for groups shall maintain accurate records of the information concerning its employees and independent contractors collected pursuant to NRS 449.179, and shall maintain a copy of the fingerprints submitted to the Central Repository for Nevada Records of Criminal History and proof that it submitted two sets of fingerprints to the Central Repository for its report. These records must be made available for inspection by the Health Division at any reasonable time and copies thereof must be furnished to the Health Division upon request.

Sec. 10. NRS 449.185 is hereby amended to read as follows:

449.185 1. Upon receiving information from the Central Repository for Nevada Records of Criminal History pursuant to NRS 449.179, or evidence from any other source, that an employee or independent contractor of *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 or a residential facility for groups has been convicted of a crime listed in paragraph (a) of subsection 1 of NRS 449.188, the administrator of, or the person licensed to operate, the agency or facility shall terminate the employment or contract of that person after allowing him time to correct the information as required pursuant to subsection 2.

2. If an employee or independent contractor believes that the information provided by the Central Repository is incorrect, he may immediately inform the agency or facility. An agency or facility that is so informed shall give the employee or independent contractor a reasonable amount of time of not less than 30 days to correct the information received from the Central Repository before terminating the employment or contract of the person pursuant to subsection 1.

3. An agency or facility that has complied with NRS 449.179 may not be held civilly or criminally liable based solely upon the ground that the agency or facility allowed an employee or independent contractor to work:

(a) Before it received the information concerning the employee or independent contractor from the Central Repository;

(b) During any period required pursuant to subsection 2 to allow the employee or independent contractor to correct that information;



(c) Based on the information received from the Central Repository, if the information received from the Central Repository was inaccurate; or

(d) Any combination thereof.

➔ An agency or facility may be held liable for any other conduct determined to be negligent or unlawful.

Sec. 11. NRS 449.188 is hereby amended to read as follows:

449.188 1. In addition to the grounds listed in NRS 449.160, the Health Division may deny a license to operate a facility for intermediate care, facility for skilled nursing or residential facility for groups to an applicant or may suspend or revoke the license of a licensee to operate such a facility if:

(a) The applicant or licensee has been convicted of:

(1) Murder, voluntary manslaughter or mayhem;

(2) Assault with intent to kill or to commit sexual assault or mayhem;

(3) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;

(4) Abuse or neglect of a child or contributory delinquency;

(5) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS, within the past 7 years;

(6) A violation of any provision of NRS 200.50955 or 200.5099;

(7) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property, within the immediately preceding 7 years; or

(8) Any other felony involving the use of a firearm or other deadly weapon, within the immediately preceding 7 years; or

(b) The licensee has continued to employ a person who has been convicted of a crime listed in paragraph (a).

2. In addition to the grounds listed in NRS 449.160, the Health Division may deny a license to operate *an agency to provide personal care services in the home or* an agency to provide nursing in the home to an applicant or may suspend or revoke the license of a licensee to operate such an agency if the licensee has continued to employ a person who has been convicted of a crime listed in paragraph (a) of subsection 1.

Sec. 12. NRS 200.5093 is hereby amended to read as follows:

200.5093 1. Any person who is described in subsection 4 and who, in his professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated shall:



(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation or isolation of the older person to:

(1) The local office of the Aging Services Division of the Department of Human Resources;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging Services Division of the Department of Human Resources; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging Services Division, another division of the Department of Human Resources or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging Services Division of the Department of Human Resources.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant, psychiatrist, psychologist, marriage and family therapist, alcohol or drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every clergyman, practitioner of Christian Science or religious healer, unless he acquired the knowledge of abuse, neglect, exploitation or isolation of the older person from the offender during a confession.



(e) *Every person who maintains or is employed by an agency to provide personal care services in the home.*

(f) Every person who maintains or is employed by an agency to provide nursing in the home.

~~(g)~~ (g) Every attorney, unless he has acquired the knowledge of abuse, neglect, exploitation or isolation of the older person from a client who has been or may be accused of such abuse, neglect, exploitation or isolation.

~~(h)~~ (h) Any employee of the Department of Human Resources.

~~(i)~~ (i) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

~~(j)~~ (j) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

~~(k)~~ (k) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.

~~(l)~~ (l) Every social worker.

~~(m)~~ (m) Any person who owns or is employed by a funeral home or mortuary.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney and the Aging Services Division of the Department of Human Resources his written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging Services Division of the Department of Human Resources, must be forwarded to the Aging Services Division within 90 days after the completion of the report.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging Services Division of the Department of Human Resources or the



1 county's office for protective services may provide protective
2 services to the older person if he is able and willing to accept them.

3 9. A person who knowingly and willfully violates any of the
4 provisions of this section is guilty of a misdemeanor.

5 **Sec. 13.** NRS 427A.175 is hereby amended to read as follows:

6 427A.175 1. Within 1 year after an older patient sustains
7 damage to his property as a result of any act or failure to act by a
8 facility for intermediate care, a facility for skilled nursing, a
9 residential facility for groups, *an agency to provide personal care*
10 *services in the home* or an agency to provide nursing in the home in
11 protecting the property, the older patient may file a verified
12 complaint with the Division setting forth the details of the damage.

13 2. Upon receiving a verified complaint pursuant to subsection
14 1, the Administrator shall investigate the complaint and attempt to
15 settle the matter through arbitration, mediation or negotiation.

16 3. If a settlement is not reached pursuant to subsection 2, the
17 facility, agency or older patient may request a hearing before
18 the Specialist for the Rights of Elderly Persons. If requested, the
19 Specialist for the Rights of Elderly Persons shall conduct a hearing
20 to determine whether the facility or agency is liable for damages to
21 the patient. If the Specialist for the Rights of Elderly Persons
22 determines that the facility or agency is liable for damages to the
23 patient, he shall order the amount of the surety bond pursuant to
24 NRS 449.065 or the substitute for the surety bond necessary to pay
25 for the damages pursuant to NRS 449.067 to be released to the
26 Division. The Division shall pay any such amount to the older
27 patient or the estate of the older patient.

28 4. The Division shall create a separate account for money to be
29 collected and distributed pursuant to this section.

30 5. As used in this section:

31 (a) "Agency to provide nursing in the home" has the meaning
32 ascribed to it in NRS 449.0015;

33 (b) *"Agency to provide personal care services in the home" has*
34 *the meaning ascribed to it in section 1 of this act;*

35 (c) "Facility for intermediate care" has the meaning ascribed to
36 it in NRS 449.0038;

37 ~~(e)~~ (d) "Facility for skilled nursing" has the meaning ascribed
38 to it in NRS 449.0039;

39 ~~(d)~~ (e) "Older patient" has the meaning ascribed to it in NRS
40 449.063; and

41 ~~(e)~~ (f) "Residential facility for groups" has the meaning
42 ascribed to it in NRS 449.017.

43 **Sec. 14.** NRS 632.472 is hereby amended to read as follows:

44 632.472 1. The following persons shall report in writing to
45 the Executive Director of the Board any conduct of a licensee or



holder of a certificate which constitutes a violation of the provisions of this chapter:

(a) Any physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, nursing assistant, physician assistant, psychiatrist, psychologist, marriage and family therapist, alcohol or drug abuse counselor, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State.

(b) Any personnel of a medical facility or facility for the dependent engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a medical facility or facility for the dependent upon notification by a member of the staff of the facility.

(c) A coroner.

(d) *Any person who maintains or is employed by an agency to provide personal care services in the home.*

(e) Any person who maintains or is employed by an agency to provide nursing in the home.

~~(e)~~ (f) Any employee of the Department of Human Resources.

~~(f)~~ (g) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

~~(g)~~ (h) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

~~(h)~~ (i) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect or exploitation of an older person and refers them to persons and agencies where their requests and needs can be met.

~~(i)~~ (j) Any social worker.

2. Every physician who, as a member of the staff of a medical facility or facility for the dependent, has reason to believe that a nursing assistant has engaged in conduct which constitutes grounds for the denial, suspension or revocation of a certificate shall notify the superintendent, manager or other person in charge of the facility. The superintendent, manager or other person in charge shall make a report as required in subsection 1.

3. A report may be filed by any other person.

4. Any person who in good faith reports any violation of the provisions of this chapter to the Executive Director of the Board pursuant to this section is immune from civil liability for reporting the violation.



1 *5. As used in this section, “agency to provide personal care*
2 *services in the home” has the meaning ascribed to it in section 1*
3 *of this act.*

4 **Sec. 15.** This act becomes effective upon passage and approval
5 for the purpose of adopting regulations by the State Board of Health
6 and on July 1, 2005, for all other purposes.



