

SENATE BILL NO. 210—COMMITTEE ON FINANCE

MARCH 4, 2015

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to inspections of certain medical facilities and offices. (BDR 40-1132)

FISCAL NOTE: Effect on Local Government: No.
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 health; requiring the Division of Public and Behavioral Health of the Department of Health and Human Services to extend the period between periodic inspections under certain circumstances; requiring the Division to reduce certain fees for certain facilities and offices regulated by the Division; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Division of Public and Behavioral Health of the Department of Health and Human Services to charge and collect a fee for a license to operate a medical facility or facility for the dependent in this State and to charge and collect a fee for a permit which authorizes certain facilities and offices to offer to patients the service of general anesthesia, conscious sedation or deep sedation. Existing law also authorizes the Division to inspect and investigate such facilities to ensure that the facilities are in compliance with certain federal and state laws, regulations and standards. Furthermore, existing law requires facilities and offices that offer patients the service of general anesthesia, conscious sedation or deep sedation and surgical centers for ambulatory patients to be inspected annually by the Division. (NRS 449.0307, 449.050, 449.080, 449.089, 449.131, 449.132, 449.435-449.448) If a medical facility or facility for the dependent passes a periodic inspection by the Division that is required by existing law, **section 2** of this bill requires the Division: (1) to conduct the next consecutive periodic inspection of the facility after the expiration of a period which is equal to one and one-half times the usual period between inspections that is required by state law or which is equal to the period that is required by federal law or regulation, whichever is shorter; and (2) to reduce by 25 percent the fee for the next consecutive renewal of the license of the facility. **Section 3** of this bill sets forth similar provisions for a surgical center for ambulatory patients, an office of a physician or a facility which is



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required to obtain a permit to offer patients the service of general anesthesia, conscious sedation or deep sedation.

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 the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *Notwithstanding any other provision of this chapter and except as otherwise provided in this section, if a medical facility or facility for the dependent passes a periodic inspection by the Division required by this chapter:*

(a) The Division shall conduct the next consecutive periodic inspection of the facility after the expiration of a period which is equal to one and one-half times the period between inspections that is otherwise required by state law or regulation or which is equal to the period between inspections that is required by federal law or regulation, whichever is shorter; and

(b) Notwithstanding the length of the period of the inspection required pursuant to paragraph (a), the Division shall reduce by 25 percent the amount of the fee charged by the Division for the next consecutive renewal of the license of the facility pursuant to NRS 449.089.

2. *The provisions of this section do not apply to an inspection of a medical facility or facility for the dependent if:*

(a) The inspection is conducted upon the receipt of an application for a license or upon the receipt of a complaint pursuant to NRS 449.0307;

(b) The inspection is conducted to allow the facility to correct any deficiencies discovered during a previous inspection;

(c) The inspection is conducted after a change is made to the license of the facility, including, without limitation, a change in the person who is licensed to operate or maintain the facility or in the ownership of the facility;

(d) The facility has had a substantiated complaint filed against it since the last periodic inspection of the facility; or

(e) The inspection is conducted pursuant to NRS 449.131 or 449.132.

3. *The Division shall establish by regulation the manner in which to determine whether a medical facility or facility for the dependent passes a periodic inspection for the purposes of subsection 1.*

4. *The provisions of this section do not exempt any medical facility or facility for the dependent from compliance with any*



1 applicable federal law or regulation governing the inspection or
2 investigation of such facilities.

3 **Sec. 3. 1.** Notwithstanding any other provision of this
4 chapter and except as otherwise provided in this subsection, if an
5 office of a physician or a facility which is required to obtain a
6 permit pursuant to NRS 449.442 or a surgical center for
7 ambulatory patients passes a periodic inspection by the Division
8 required by this chapter:

9 (a) The Division shall conduct the next consecutive periodic
10 inspection of the office, facility or surgical center for ambulatory
11 patients after the expiration of a period which is equal to one and
12 one-half times the period between inspections that is otherwise
13 required by state law or regulation, or which is equal to the period
14 between inspections that is required by federal law or regulation,
15 whichever is shorter; and

16 (b) Notwithstanding the length of the period of the inspection
17 required pursuant to paragraph (a), the Division shall reduce by
18 25 percent the amount of the fee charged by the Division for the
19 next consecutive renewal of:

20 (1) A permit issued to the office or facility pursuant to
21 NRS 449.444.

22 (2) A license issued to the surgical center for ambulatory
23 patients pursuant to NRS 449.050.

24 2. The provisions of this section do not apply to an inspection
25 of an office of a physician or a facility which is required to obtain
26 a permit pursuant to NRS 449.442 or a surgical center for
27 ambulatory patients if:

28 (a) The inspection is conducted upon the receipt of an
29 application for a license or permit or upon the receipt of a
30 complaint;

31 (b) The inspection is conducted to allow the office, facility or
32 surgical center for ambulatory patients to correct any deficiencies
33 discovered during a previous inspection;

34 (c) The inspection is conducted after a change is made to the
35 license or permit of the office, facility or surgical center for
36 ambulatory patients, including, without limitation, a change in the
37 person who has a license or permit to operate or maintain
38 the office, facility or surgical center for ambulatory patients or in
39 the ownership of the office, facility or surgical center for
40 ambulatory patients;

41 (d) The office, facility or surgical center for ambulatory
42 patients has had a substantiated complaint filed against it since
43 the last periodic inspection of the office, facility or surgical center
44 for ambulatory patients; or



(e) *The inspection is an unannounced on-site inspection conducted pursuant to NRS 449.446.*

3. *The Division shall establish by regulation the manner in which to determine whether an office of a physician or a facility which is required to obtain a permit pursuant to NRS 449.442 or a surgical center for ambulatory patients passes a periodic inspection for the purposes of subsection 1.*

4. *The provisions of this section do not exempt any office of a physician or a facility which is required to obtain a permit pursuant to NRS 449.442 or a surgical center for ambulatory patients from compliance with any applicable federal law or regulation governing the inspection or investigation of such an office, facility or surgical center for ambulatory patients.*

Sec. 4. NRS 449.0301 is hereby amended to read as follows:

449.0301 The provisions of NRS 449.030 to 449.2428, inclusive, *and section 2 of this act* do not apply to:

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

2. Foster homes as defined in NRS 424.014.

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

Sec. 5. NRS 449.0302 is hereby amended to read as follows:

449.0302 1. The Board shall adopt:

(a) Licensing standards for each class of medical facility or facility for the dependent covered by NRS 449.030 to 449.2428, inclusive, *and section 2 of this act* and for programs of hospice care.

(b) Regulations governing the licensing of such facilities and programs.

(c) Regulations governing the procedure and standards for granting an extension of the time for which a natural person may provide certain care in his or her home without being considered a residential facility for groups pursuant to NRS 449.017. The regulations must require that such grants are effective only if made in writing.

(d) Regulations establishing a procedure for the indemnification by the Division, from the amount of any surety bond or other obligation filed or deposited by a facility for refractive surgery pursuant to NRS 449.068 or 449.069, of a patient of the facility who



1 has sustained any damages as a result of the bankruptcy of or any
2 breach of contract by the facility.

3 (e) ~~{Any}~~ *Except as otherwise provided in section 2 of this act,*
4 *any* other regulations as it deems necessary or convenient to carry
5 out the provisions of NRS 449.030 to 449.2428, inclusive ~~{I}~~, *and*
6 *section 2 of this act.*

7 2. The Board shall adopt separate regulations governing the
8 licensing and operation of:

9 (a) Facilities for the care of adults during the day; and

10 (b) Residential facilities for groups,

11 ➤ which provide care to persons with Alzheimer's disease.

12 3. The Board shall adopt separate regulations for:

13 (a) The licensure of rural hospitals which take into consideration
14 the unique problems of operating such a facility in a rural area.

15 (b) The licensure of facilities for refractive surgery which take
16 into consideration the unique factors of operating such a facility.

17 (c) The licensure of mobile units which take into consideration
18 the unique factors of operating a facility that is not in a fixed
19 location.

20 4. The Board shall require that the practices and policies of
21 each medical facility or facility for the dependent provide
22 adequately for the protection of the health, safety and physical,
23 moral and mental well-being of each person accommodated in the
24 facility.

25 5. In addition to the training requirements prescribed pursuant
26 to NRS 449.093, the Board shall establish minimum qualifications
27 for administrators and employees of residential facilities for groups.
28 In establishing the qualifications, the Board shall consider the
29 related standards set by nationally recognized organizations which
30 accredit such facilities.

31 6. The Board shall adopt separate regulations regarding the
32 assistance which may be given pursuant to NRS 453.375 and
33 454.213 to an ultimate user of controlled substances or dangerous
34 drugs by employees of residential facilities for groups. The
35 regulations must require at least the following conditions before
36 such assistance may be given:

37 (a) The ultimate user's physical and mental condition is stable
38 and is following a predictable course.

39 (b) The amount of the medication prescribed is at a maintenance
40 level and does not require a daily assessment.

41 (c) A written plan of care by a physician or registered nurse has
42 been established that:

43 (1) Addresses possession and assistance in the administration
44 of the medication; and



(2) Includes a plan, which has been prepared under the supervision of a registered nurse or licensed pharmacist, for emergency intervention if an adverse condition results.

(d) The prescribed medication is not administered by injection or intravenously.

(e) The employee has successfully completed training and examination approved by the Division regarding the authorized manner of assistance.

7. The Board shall adopt separate regulations governing the licensing and operation of residential facilities for groups which provide assisted living services. The Board shall not allow the licensing of a facility as a residential facility for groups which provides assisted living services and a residential facility for groups shall not claim that it provides "assisted living services" unless:

(a) Before authorizing a person to move into the facility, the facility makes a full written disclosure to the person regarding what services of personalized care will be available to the person and the amount that will be charged for those services throughout the resident's stay at the facility.

(b) The residents of the facility reside in their own living units which:

(1) Except as otherwise provided in subsection 8, contain toilet facilities;

(2) Contain a sleeping area or bedroom; and

(3) Are shared with another occupant only upon consent of both occupants.

(c) The facility provides personalized care to the residents of the facility and the general approach to operating the facility incorporates these core principles:

(1) The facility is designed to create a residential environment that actively supports and promotes each resident's quality of life and right to privacy;

(2) The facility is committed to offering high-quality supportive services that are developed by the facility in collaboration with the resident to meet the resident's individual needs;

(3) The facility provides a variety of creative and innovative services that emphasize the particular needs of each individual resident and the resident's personal choice of lifestyle;

(4) The operation of the facility and its interaction with its residents supports, to the maximum extent possible, each resident's need for autonomy and the right to make decisions regarding his or her own life;

(5) The operation of the facility is designed to foster a social climate that allows the resident to develop and maintain personal



relationships with fellow residents and with persons in the general community;

(6) The facility is designed to minimize and is operated in a manner which minimizes the need for its residents to move out of the facility as their respective physical and mental conditions change over time; and

(7) The facility is operated in such a manner as to foster a culture that provides a high-quality environment for the residents, their families, the staff, any volunteers and the community at large.

8. The Division may grant an exception from the requirement of subparagraph (1) of paragraph (b) of subsection 7 to a facility which is licensed as a residential facility for groups on or before July 1, 2005, and which is authorized to have 10 or fewer beds and was originally constructed as a single-family dwelling if the Division finds that:

(a) Strict application of that requirement would result in economic hardship to the facility requesting the exception; and

(b) The exception, if granted, would not:

(1) Cause substantial detriment to the health or welfare of any resident of the facility;

(2) Result in more than two residents sharing a toilet facility; or

(3) Otherwise impair substantially the purpose of that requirement.

9. The Board shall, if it determines necessary, adopt regulations and requirements to ensure that each residential facility for groups and its staff are prepared to respond to an emergency, including, without limitation:

(a) The adoption of plans to respond to a natural disaster and other types of emergency situations, including, without limitation, an emergency involving fire;

(b) The adoption of plans to provide for the evacuation of a residential facility for groups in an emergency, including, without limitation, plans to ensure that nonambulatory patients may be evacuated;

(c) Educating the residents of residential facilities for groups concerning the plans adopted pursuant to paragraphs (a) and (b); and

(d) Posting the plans or a summary of the plans adopted pursuant to paragraphs (a) and (b) in a conspicuous place in each residential facility for groups.

10. The regulations governing the licensing and operation of facilities for transitional living for released offenders must provide for the licensure of at least three different types of facilities, including, without limitation:



(a) Facilities that only provide a housing and living environment;

(b) Facilities that provide or arrange for the provision of supportive services for residents of the facility to assist the residents with reintegration into the community, in addition to providing a housing and living environment; and

(c) Facilities that provide or arrange for the provision of alcohol and drug abuse programs, in addition to providing a housing and living environment and providing or arranging for the provision of other supportive services.

➤ The regulations must provide that if a facility was originally constructed as a single-family dwelling, the facility must not be authorized for more than eight beds.

11. As used in this section, "living unit" means an individual private accommodation designated for a resident within the facility.

Sec. 6. NRS 449.050 is hereby amended to read as follows:

449.050 1. ~~Each~~ *Except as otherwise provided in section 2 of this act, each* application for a license must be accompanied by such fee as may be determined by regulation of the Board. The Board may, by regulation, allow or require payment of a fee for a license in installments and may fix the amount of each payment and the date that the payment is due.

2. ~~The~~ *Except as otherwise provided in section 2 of this act, the* fee imposed by the Board for a facility for transitional living for released offenders must be based on the type of facility that is being licensed and must be calculated to produce the revenue estimated to cover the costs related to the license, but in no case may a fee for a license exceed the actual cost to the Division of issuing or renewing the license.

3. If an application for a license for a facility for transitional living for released offenders is denied, any amount of the fee paid pursuant to this section that exceeds the expenses and costs incurred by the Division must be refunded to the applicant.

Sec. 7. NRS 449.131 is hereby amended to read as follows:

449.131 1. Any authorized member or employee of the Division may enter and inspect any building or premises at any time to secure compliance with or prevent a violation of any provision of NRS 449.030 to 449.245, inclusive ~~H~~, *and section 2 of this act.*

2. The State Fire Marshal or a designee of the State Fire Marshal shall, upon receiving a request from the Division or a written complaint concerning compliance with the plans and requirements to respond to an emergency adopted pursuant to subsection 9 of NRS 449.0302:

(a) Enter and inspect a residential facility for groups; and



(b) Make recommendations regarding the adoption of plans and requirements pursuant to subsection 9 of NRS 449.0302, to ensure the safety of the residents of the facility in an emergency.

3. ~~[The]~~ *Except as otherwise provided in section 2 of this act, the* Chief Medical Officer or a designee of the Chief Medical Officer shall enter and inspect at least annually each building or the premises of a residential facility for groups to ensure compliance with standards for health and sanitation.

4. An authorized member or employee of the Division shall enter and inspect any building or premises operated by a residential facility for groups within 72 hours after the Division is notified that a residential facility for groups is operating without a license.

Sec. 8. NRS 449.160 is hereby amended to read as follows:

449.160 1. The Division may deny an application for a license or may suspend or revoke any license issued under the provisions of NRS 449.030 to 449.2428, inclusive, *and section 2 of this act* upon any of the following grounds:

(a) Violation by the applicant or the licensee of any of the provisions of NRS 439B.410 or 449.030 to 449.245, inclusive, *and section 2 of this act* or of any other law of this State or of the standards, rules and regulations adopted thereunder.

(b) Aiding, abetting or permitting the commission of any illegal act.

(c) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Nevada in the maintenance and operation of the premises for which a license is issued.

(d) Conduct or practice detrimental to the health or safety of the occupants or employees of the facility.

(e) Failure of the applicant to obtain written approval from the Director of the Department of Health and Human Services as required by NRS 439A.100 or as provided in any regulation adopted pursuant to NRS 449.001 to 449.430, inclusive, *and section 2 of this act* and 449.435 to 449.965, inclusive, *and section 3 of this act* if such approval is required.

(f) Failure to comply with the provisions of NRS 449.2486.

2. In addition to the provisions of subsection 1, the Division may revoke a license to operate a facility for the dependent if, with respect to that facility, the licensee that operates the facility, or an agent or employee of the licensee:

(a) Is convicted of violating any of the provisions of NRS 202.470;

(b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360, 244.3603 or 268.4124; or



(c) Is ordered by the appropriate governmental agency to correct a violation of a building, safety or health code or regulation but fails to correct the violation.

3. The Division shall maintain a log of any complaints that it receives relating to activities for which the Division may revoke the license to operate a facility for the dependent pursuant to subsection 2. The Division shall provide to a facility for the care of adults during the day:

(a) A summary of a complaint against the facility if the investigation of the complaint by the Division either substantiates the complaint or is inconclusive;

(b) A report of any investigation conducted with respect to the complaint; and

(c) A report of any disciplinary action taken against the facility.
➔ The facility shall make the information available to the public pursuant to NRS 449.2486.

4. On or before February 1 of each odd-numbered year, the Division shall submit to the Director of the Legislative Counsel Bureau a written report setting forth, for the previous biennium:

(a) Any complaints included in the log maintained by the Division pursuant to subsection 3; and

(b) Any disciplinary actions taken by the Division pursuant to subsection 2.

Sec. 9. NRS 449.435 is hereby amended to read as follows:

449.435 As used in NRS 449.435 to 449.448, inclusive, *and section 3 of this act*, unless the context otherwise requires, the words and terms defined in NRS 449.436 to 449.439, inclusive, have the meanings ascribed to them in those sections.

Sec. 10. NRS 449.441 is hereby amended to read as follows:

449.441 The provisions of NRS 449.435 to 449.448, inclusive, *and section 3 of this act* do not apply to an office of a physician or a facility that provides health care, other than a medical facility, if the office of a physician or the facility only administers a medication to a patient to relieve the patient's anxiety or pain and if the medication is not given in a dosage that is sufficient to induce in a patient a controlled state of depressed consciousness or unconsciousness similar to general anesthesia, deep sedation or conscious sedation.

Sec. 11. NRS 449.446 is hereby amended to read as follows:

449.446 1. ~~{The}~~ *Except as otherwise provided in section 3 of this act, the* Division shall conduct annual and unannounced on-site inspections of each office of a physician or a facility that provides health care, other than a medical facility, which holds a permit issued pursuant to NRS 449.443 and each surgical center for



1 ambulatory patients which holds a license issued pursuant to this
2 chapter.

3 2. An inspection conducted pursuant to this section must focus
4 on the infection control practices and policies of the surgical center
5 for ambulatory patients, the office or the facility that is the subject
6 of the inspection. The Division may, as it deems necessary, conduct
7 a more comprehensive inspection of a surgical center, office or
8 facility.

9 3. Upon completion of an inspection, the Division shall:

10 (a) Compile a report of the inspection, including each deficiency
11 discovered during the inspection, if any; and

12 (b) Forward a copy of the report to the surgical center for
13 ambulatory patients, the office of the physician or the facility where
14 the inspection was conducted.

15 4. If a deficiency is indicated in the report, the surgical center
16 for ambulatory patients, the office of the physician or the facility
17 shall correct each deficiency indicated in the report in the manner
18 prescribed by the Board pursuant to NRS 449.448.

19 5. The Division shall annually prepare and submit to the
20 Legislative Committee on Health Care and the Legislative
21 Commission a report which includes:

22 (a) The number and frequency of inspections conducted
23 pursuant to this section;

24 (b) A summary of deficiencies or other significant problems
25 discovered while conducting inspections pursuant to this section and
26 the results of any follow-up inspections; and

27 (c) Any other information relating to the inspections as deemed
28 necessary by the Legislative Committee on Health Care or the
29 Legislative Commission.

30 **Sec. 12.** NRS 449.447 is hereby amended to read as follows:

31 449.447 1. If an office of a physician or a facility that
32 provides health care, other than a medical facility, violates the
33 provisions of NRS 449.435 to 449.448, inclusive, **and section 3 of**
34 **this act** or the regulations adopted pursuant thereto, or fails to
35 correct a deficiency indicated in a report pursuant to NRS 449.446,
36 the Division, in accordance with the regulations adopted pursuant to
37 NRS 449.448, may take any of the following actions:

38 (a) Decline to issue or renew a permit;

39 (b) Suspend or revoke a permit; or

40 (c) Impose an administrative penalty of not more than \$1,000
41 per day for each violation, together with interest thereon at a rate not
42 to exceed 10 percent per annum.

43 2. The Division may review a report submitted pursuant to
44 NRS 630.30665 or 633.524 to determine whether an office of a
45 physician or a facility is in violation of the provisions of



1 NRS 449.435 to 449.448, inclusive, *and section 3 of this act* or the
2 regulations adopted pursuant thereto. If the Division determines that
3 such a violation has occurred, the Division shall immediately notify
4 the appropriate professional licensing board of the physician.

5 3. If a surgical center for ambulatory patients violates the
6 provisions of NRS 449.435 to 449.448, inclusive, *and section 3 of*
7 *this act* or the regulations adopted pursuant thereto, or fails to
8 correct a deficiency indicated in a report pursuant to NRS 449.446,
9 the Division may impose administrative sanctions pursuant to
10 NRS 449.163.

11 **Sec. 13.** NRS 449.448 is hereby amended to read as follows:

12 449.448 1. ~~The~~ *Except as otherwise provided in section 3*
13 *of this act, the* Board shall adopt regulations to carry out the
14 provisions of NRS 449.435 to 449.448, inclusive, *and section 3 of*
15 *this act*, including, without limitation, regulations which:

16 (a) Prescribe the amount of the fee required for applications for
17 the issuance and renewal of a permit pursuant to NRS 449.443
18 and 449.444.

19 (b) Prescribe the procedures and standards for the issuance and
20 renewal of a permit.

21 (c) Identify the nationally recognized organizations approved by
22 the Board for the purposes of the accreditation required for the
23 issuance of a:

24 (1) License to operate a surgical center for ambulatory
25 patients.

26 (2) Permit for an office of a physician or a facility that
27 provides health care, other than a medical facility, to offer to a
28 patient a service of general anesthesia, conscious sedation or deep
29 sedation.

30 (d) Prescribe the procedures and scope of the inspections
31 conducted by the Division pursuant to NRS 449.446.

32 (e) Prescribe the procedures and time frame for correcting each
33 deficiency indicated in a report pursuant to NRS 449.446.

34 (f) Prescribe the criteria for the imposition of each sanction
35 prescribed by NRS 449.447, including, without limitation:

36 (1) Setting forth the circumstances and manner in which a
37 sanction applies;

38 (2) Minimizing the time between the identification of a
39 violation and the imposition of a sanction; and

40 (3) Providing for the imposition of incrementally more
41 severe sanctions for repeated or uncorrected violations.

42 2. The regulations adopted pursuant to this section must require
43 that the practices and policies of each holder of a permit to offer to a
44 patient a service of general anesthesia, conscious sedation or deep
45 sedation and each holder of a license to operate a surgical center for



1 ambulatory patients provide adequately for the protection of the
2 health, safety and well-being of patients.

3 **Sec. 14.** This act becomes effective on July 1, 2015.

