

Amendment No. 2

Senate Amendment to Senate Bill No. 95	(BDR 40-445)
Proposed by: Senator Ratti	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the unfunded mandate not requested by the affected local government to S.B. 95 (§ 1).

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

EWR/RBL



Date: 4/1/2019

S.B. No. 95—Revises provisions governing diets that are ordered or prescribed for patients. (BDR 40-445)



SENATE BILL NO. 95—COMMITTEE ON
HEALTH AND HUMAN SERVICES(ON BEHALF OF THE LEGISLATIVE COMMITTEE
ON HEALTH CARE)

PREFILED JANUARY 24, 2019

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing diets that are ordered or prescribed for patients. (BDR 40-445)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.CONTAINS UNFUNDED MANDATE (§ 1)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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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 health care; requiring certain medical facilities to adhere to a diet that is ordered or prescribed for a patient; authorizing a hospital to grant clinical privileges to a dietitian; authorizing a dietitian to order a special diet or nutritional supplement for a patient in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines the term "medical facility" to include a surgical center for ambulatory patients, an obstetric center, an independent center for emergency medical care, an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing, a facility for hospice care, a hospital, a psychiatric hospital, a facility for the treatment of irreversible renal disease, a rural clinic, a nursing pool, a facility for modified medical detoxification, a facility for refractive surgery, a mobile unit, a community triage center and a program of hospice care. (NRS 449.0151, 449.029) **Section 1** of this bill requires a medical facility to take any actions necessary to adhere to a diet that is ordered or prescribed for a patient. **Section 1 also authorizes a hospital to grant clinical privileges to a licensed dietitian for the purposes of ordering diets, ordering laboratory tests to monitor the effectiveness of diets and making modifications to diets based on laboratory tests.** **Sections 2-9 and 11** of this bill make conforming changes.

Existing law authorizes a licensed dietitian to develop and manage operations to provide food, care and treatment programs prescribed by a physician, physician assistant, dentist, advanced practice registered nurse or podiatric physician. (NRS 640E.260) **Section 10** of this bill additionally authorizes a licensed dietitian to order a diet or nutritional supplement for a patient.

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. A medical facility shall take such actions as necessary to ensure that ~~the~~ the facility provides a diet for each patient for whom a special diet has been ordered by a licensed dietitian or prescribed by a physician, physician assistant, dentist, advanced practice registered nurse or podiatric physician that complies with the order or prescription. Such actions may include, without limitation, purchasing any food or beverage necessary to comply.

2. A medical facility shall maintain documentation which demonstrates that the facility is in compliance with the requirements of ~~this section~~ subsection 1 and make such documentation available to the Division upon request.

3. A hospital may grant clinical privileges to a licensed dietitian for the purposes of:

(a) Ordering special diets for patients;

(b) Ordering laboratory tests to monitor the effectiveness of special diets or other dietary plans; and

(c) Modifying special diets or other dietary plans based on the results of laboratory tests.

Sec. 2. NRS 449.029 is hereby amended to read as follows:

449.029 As used in NRS 449.029 to 449.240, inclusive, *and section 1 of this act*, unless the context otherwise requires, “medical facility” has the meaning ascribed to it in NRS 449.0151 and includes a program of hospice care described in NRS 449.196.

Sec. 3. NRS 449.0301 is hereby amended to read as follows:

449.0301 The provisions of NRS 449.029 to 449.2428, inclusive, *and section 1 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, facility for the dependent or facility which is otherwise required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed that is operated and maintained by the United States Government or an agency thereof.

Sec. 4. 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 449.029 to 449.2428, inclusive, *and section 1 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 has sustained any damages as a result of the bankruptcy of or any breach of contract by the facility.

(e) Any other regulations as it deems necessary or convenient to carry out the provisions of NRS 449.029 to 449.2428, inclusive ~~§~~, and *section 1 of this act*.

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

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

(b) Residential facilities for groups,

↳ which provide care to persons with Alzheimer's disease.

3. The Board shall adopt separate regulations for:

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

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

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

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

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

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

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

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

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

(1) Addresses possession and assistance in the administration 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) Except as otherwise authorized by the regulations adopted pursuant to NRS 449.0304, 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

1 groups which provides assisted living services and a residential facility for groups
2 shall not claim that it provides “assisted living services” unless:

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

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

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

9 (2) Contain a sleeping area or bedroom; and

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

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

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

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

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

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

24 (5) The operation of the facility is designed to foster a social climate that
25 allows the resident to develop and maintain personal relationships with fellow
26 residents and with persons in the general community;

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

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

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

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

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

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

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

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

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

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

50 (b) The adoption of plans to provide for the evacuation of a residential facility
51 for groups in an emergency, including, without limitation, plans to ensure that
52 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. 5. NRS 449.0306 is hereby amended to read as follows:

449.0306 1. Money received from licensing medical facilities and facilities for the dependent must be forwarded to the State Treasurer for deposit in the State General Fund to the credit of the Division.

2. The Division shall enforce the provisions of NRS 449.029 to 449.245, inclusive, *and section 1 of this act* and may incur any necessary expenses not in excess of money authorized for that purpose by the State or received from the Federal Government.

Sec. 6. 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 449.029 to 449.2428, inclusive, *and section 1 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 449.029 to 449.245, inclusive, *and section 1 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 1 of this act*, and 449.435 to 449.531, inclusive, and chapter 449A of NRS 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. 7. NRS 449.163 is hereby amended to read as follows:

449.163 1. In addition to the payment of the amount required by NRS 449.0308, if a medical facility, facility for the dependent or facility which is required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed violates any provision related to its licensure, including any provision of NRS 439B.410 or 449.029 to 449.2428, inclusive, *and section 1 of this act* or any condition, standard or regulation adopted by the Board, the Division, in accordance with the regulations adopted pursuant to NRS 449.165, may:

(a) Prohibit the facility from admitting any patient until it determines that the facility has corrected the violation;

(b) Limit the occupancy of the facility to the number of beds occupied when the violation occurred, until it determines that the facility has corrected the violation;

(c) If the license of the facility limits the occupancy of the facility and the facility has exceeded the approved occupancy, require the facility, at its own expense, to move patients to another facility that is licensed;

(d) Impose an administrative penalty of not more than \$5,000 per day for each violation, together with interest thereon at a rate not to exceed 10 percent per annum; and

(e) Appoint temporary management to oversee the operation of the facility and to ensure the health and safety of the patients of the facility, until:

(1) It determines that the facility has corrected the violation and has management which is capable of ensuring continued compliance with the applicable statutes, conditions, standards and regulations; or

(2) Improvements are made to correct the violation.

2. If the facility fails to pay any administrative penalty imposed pursuant to paragraph (d) of subsection 1, the Division may:

(a) Suspend the license of the facility until the administrative penalty is paid; and

(b) Collect court costs, reasonable attorney's fees and other costs incurred to collect the administrative penalty.

3. The Division may require any facility that violates any provision of NRS 439B.410 or 449.029 to 449.2428, inclusive, *and section 1 of this act* or any condition, standard or regulation adopted by the Board to make any improvements necessary to correct the violation.

4. Any money collected as administrative penalties pursuant to paragraph (d) of subsection 1 must be accounted for separately and used to administer and carry

1 out the provisions of NRS 449.001 to 449.430, inclusive, *and section 1 of this act*,
2 449.435 to 449.530, inclusive, and 449.760 and chapter 449A of NRS to protect the
3 health, safety, well-being and property of the patients and residents of facilities in
4 accordance with applicable state and federal standards or for any other purpose
5 authorized by the Legislature.

6 **Sec. 8.** NRS 449.220 is hereby amended to read as follows:

7 449.220 1. The Division may bring an action in the name of the State to
8 enjoin any person, state or local government unit or agency thereof from operating
9 or maintaining any facility within the meaning of NRS 449.029 to 449.2428,
10 inclusive ~~H~~, *and section 1 of this act*:

11 (a) Without first obtaining a license therefor; or

12 (b) After his or her license has been revoked or suspended by the Division.

13 2. It is sufficient in such action to allege that the defendant did, on a certain
14 date and in a certain place, operate and maintain such a facility without a license.

15 **Sec. 9.** NRS 449.240 is hereby amended to read as follows:

16 449.240 The district attorney of the county in which the facility is located
17 shall, upon application by the Division, institute and conduct the prosecution of any
18 action for violation of any provisions of NRS 449.029 to 449.245, inclusive ~~H~~,
19 *and section 1 of this act*.

20 **Sec. 10.** NRS 640E.260 is hereby amended to read as follows:

21 640E.260 1. A licensed dietitian shall provide nutrition services to assist a
22 person in achieving and maintaining proper nourishment and care of his or her
23 body, including, without limitation:

24 (a) Assessing the nutritional needs of a person and determining resources for
25 and constraints in meeting those needs by obtaining, verifying and interpreting data;

26 (b) Determining the metabolism of a person and identifying the food, nutrients
27 and supplements necessary for growth, development, maintenance or attainment of
28 proper nourishment of the person;

29 (c) Considering the cultural background and socioeconomic needs of a person
30 in achieving or maintaining proper nourishment;

31 (d) Identifying and labeling nutritional problems of a person;

32 (e) Recommending the appropriate method of obtaining proper nourishment,
33 including, without limitation, orally, intravenously or through a feeding tube;

34 (f) Providing counseling, advice and assistance concerning health and disease
35 with respect to the nutritional intake of a person;

36 (g) Establishing priorities, goals and objectives that meet the nutritional needs
37 of a person and are consistent with the resources of the person, including, without
38 limitation, providing instruction on meal preparation;

39 (h) Treating nutritional problems of a person and identifying patient outcomes
40 to determine the progress made by the person;

41 (i) Planning activities to change the behavior, risk factors, environmental
42 conditions or other aspects of the health and nutrition of a person, a group of
43 persons or the community at large;

44 (j) Developing, implementing and managing systems to provide care related to
45 nutrition;

46 (k) Evaluating and maintaining appropriate standards of quality in the services
47 provided;

48 (l) Accepting and transmitting verbal and electronic orders *required to meet*
49 *the nutritional needs of a patient* from a physician ; ~~[consistent with an established~~
50 ~~protocol to implement medical nutrition therapy; and]~~

51 (m) *Ordering a special diet or nutritional supplement, including, without*
52 *limitation, medical nutrition therapy, to address the nutritional needs of a*
53 *patient; and*

(n) Ordering medical laboratory tests relating to the therapeutic treatment concerning the nutritional needs of a patient when authorized to do so by a written protocol prepared or approved by a physician.

2. A licensed dietitian may use medical nutrition therapy to manage, treat or rehabilitate a disease, illness, injury or medical condition of a patient, including, without limitation:

(a) Interpreting data and ~~recommending~~ *making recommendations or issuing orders concerning* the nutritional needs of the patient through methods such as diet, feeding tube, intravenous solutions or specialized oral feedings;

(b) Determining the interaction between food and drugs prescribed to the patient; and

(c) Developing and managing operations to provide food, care and treatment programs ~~[prescribed by a physician, physician assistant, dentist, advanced practice registered nurse or podiatric physician]~~ that monitor or alter the food and nutrient levels of the patient.

3. A licensed dietitian shall not provide medical diagnosis of the health of a person.

Sec. 11. NRS 654.190 is hereby amended to read as follows:

654.190 1. The Board may, after notice and an opportunity for a hearing as required by law, impose an administrative fine of not more than \$10,000 for each violation on, recover reasonable investigative fees and costs incurred from, suspend, revoke, deny the issuance or renewal of or place conditions on the license of, and place on probation or impose any combination of the foregoing on any licensee who:

(a) Is convicted of a felony relating to the practice of administering a nursing facility or residential facility or of any offense involving moral turpitude.

(b) Has obtained his or her license by the use of fraud or deceit.

(c) Violates any of the provisions of this chapter.

(d) Aids or abets any person in the violation of any of the provisions of NRS 449.029 to 449.2428, inclusive, *and section 1 of this act*, as those provisions pertain to a facility for skilled nursing, facility for intermediate care or residential facility for groups.

(e) Violates any regulation of the Board prescribing additional standards of conduct for licensees, including, without limitation, a code of ethics.

(f) Engages in conduct that violates the trust of a patient or resident or exploits the relationship between the licensee and the patient or resident for the financial or other gain of the licensee.

2. If a licensee requests a hearing pursuant to subsection 1, the Board shall give the licensee written notice of a hearing pursuant to NRS 233B.121 and 241.034. A licensee may waive, in writing, his or her right to attend the hearing.

3. The Board may compel the attendance of witnesses or the production of documents or objects by subpoena. The Board may adopt regulations that set forth a procedure pursuant to which the Chair of the Board may issue subpoenas on behalf of the Board. Any person who is subpoenaed pursuant to this subsection may request the Board to modify the terms of the subpoena or grant additional time for compliance.

4. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

5. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

1 **Sec. 12.** The provisions of NRS 354.599 do not apply to any additional
2 expenses of a local government that are related to the provisions of this act.

3 **Sec. 13.** This act becomes effective on July 1, 2019.