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SECOND REPRINT

S.B. 362

SENATE BILL NO. 362—SENATOR HARDY

MARCH 19, 2019

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions concerning the placement of persons with dementia in a residential facility for groups. (BDR 40-611)

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 residential facilities; requiring the administrator of a residential facility for groups to ensure that certain assessments of residents are conducted; requiring a resident with severe dementia to be placed in a facility that meets certain requirements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Health to adopt separate regulations governing the licensing of facilities for the care of adults during the day and residential facilities for groups which provide care to persons with Alzheimer's disease. (NRS 449.0302) **Section 4** of this bill requires those regulations to also apply to such facilities which provide care to persons with other severe dementia. **Section 1** of this bill requires the administrator of a residential facility for groups to annually: (1) cause a qualified provider of health care to conduct a physical examination of each resident of the facility; and (2) conduct an assessment of the history of each resident. If the physical examination, the assessment of resident history or the observations of certain persons indicate that a resident requires a secure facility or a facility with a high staff-to-resident ratio or the condition of a resident has significantly changed, **section 1** requires the administrator to cause a qualified provider of health care to conduct an assessment of the condition and needs of the resident. If the provider of health care determines that the resident suffers from dementia to an extent that the resident may be a danger to himself or herself or others if not placed in a secure unit or a facility with a high staff-to-resident ratio, **section 1** requires any residential facility in which the resident is placed to meet the requirements prescribed by the Board for a facility which provides care to persons with Alzheimer's disease or other severe dementia. **Sections 2, 3 and 5-8** of this bill make conforming changes.



* S B 3 6 2 R 2 *

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. The administrator of a residential facility for groups shall:

(a) Annually cause a qualified provider of health care to conduct a physical examination of each resident of the facility;

(b) Annually conduct an assessment of the history of each resident of the facility, which must include, without limitation, an assessment of the condition and daily activities of the resident during the immediately preceding year; and

(c) Cause a qualified provider of health care to conduct an assessment of the condition and needs of a resident of the facility to determine whether the resident meets the criteria prescribed in paragraph (a) of subsection 2:

(I) Upon admission of the resident to the facility; and

(2) If a physical examination, assessment of the history of the resident or the observations of the administrator or staff of the facility, the family of the resident or another person who has a relationship with the resident indicate that:

(I) The resident may meet those criteria; or

(II) The condition of the resident has significantly changed.

2. If, as a result of an assessment conducted pursuant to paragraph (c) of subsection 1, the provider of health care determines that the resident:

(a) Suffers from dementia to an extent that the resident may be a danger to himself or herself or others if the resident is not placed in a secure unit or a facility that assigns not less than one staff member for every six residents, any residential facility for groups in which the resident is placed must meet the requirements prescribed by the Board pursuant to subsection 2 of NRS 449.0302 for the licensing and operation of residential facilities for groups which provide care to persons with Alzheimer's disease or other severe dementia.

(b) Does not suffer from dementia as described in paragraph (a), the resident may be placed in any residential facility for groups.

3. As used in this section, "provider of health care" has the meaning ascribed to it in NRS 629.031.

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



1 facility” has the meaning ascribed to it in NRS 449.0151 and
2 includes a program of hospice care described in NRS 449.196.

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

4 449.0301 The provisions of NRS 449.029 to 449.2428,
5 inclusive, *and section 1 of this act* do not apply to:

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

13 2. Foster homes as defined in NRS 424.014.

14 3. Any medical facility, facility for the dependent or facility
15 which is otherwise required by the regulations adopted by the Board
16 pursuant to NRS 449.0303 to be licensed that is operated and
17 maintained by the United States Government or an agency thereof.

18 **Sec. 4.** NRS 449.0302 is hereby amended to read as follows:

19 449.0302 1. The Board shall adopt:

20 (a) Licensing standards for each class of medical facility or
21 facility for the dependent covered by NRS 449.029 to 449.2428,
22 inclusive, *and section 1 of this act* and for programs of hospice
23 care.

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

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

32 (d) Regulations establishing a procedure for the indemnification
33 by the Division, from the amount of any surety bond or other
34 obligation filed or deposited by a facility for refractive surgery
35 pursuant to NRS 449.068 or 449.069, of a patient of the facility who
36 has sustained any damages as a result of the bankruptcy of or any
37 breach of contract by the facility.

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

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

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

44 (b) Residential facilities for groups,



1 ➤ which provide care to persons with Alzheimer's disease ~~H~~ *or*
2 *other severe dementia, as described in paragraph (a) of subsection*
3 *2 of section 1 of this act.*

4 3. The Board shall adopt separate regulations for:

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

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

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

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

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

23 6. The Board shall adopt separate regulations regarding the
24 assistance which may be given pursuant to NRS 453.375 and
25 454.213 to an ultimate user of controlled substances or dangerous
26 drugs by employees of residential facilities for groups. The
27 regulations must require at least the following conditions before
28 such assistance may be given:

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

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

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

35 (1) Addresses possession and assistance in the administration
36 of the medication; and

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

40 (d) Except as otherwise authorized by the regulations adopted
41 pursuant to NRS 449.0304, the prescribed medication is not
42 administered by injection or intravenously.

43 (e) The employee has successfully completed training and
44 examination approved by the Division regarding the authorized
45 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. 5. 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. 6. 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



1 compliance with the applicable statutes, conditions, standards and
2 regulations; or

3 (2) Improvements are made to correct the violation.

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

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

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

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

15 4. Any money collected as administrative penalties pursuant to
16 paragraph (d) of subsection 1 must be accounted for separately and
17 used to administer and carry out the provisions of NRS 449.001 to
18 449.430, inclusive, *and section 1 of this act*, 449.435 to 449.530,
19 inclusive, and 449.760 and chapter 449A of NRS to protect the
20 health, safety, well-being and property of the patients and residents
21 of facilities in accordance with applicable state and federal standards
22 or for any other purpose authorized by the Legislature.

23 **Sec. 7.** NRS 449.240 is hereby amended to read as follows:

24 449.240 The district attorney of the county in which the facility
25 is located shall, upon application by the Division, institute and
26 conduct the prosecution of any action for violation of any provisions
27 of NRS 449.029 to 449.245, inclusive ~~H~~, *and section 1 of this act*.

28 **Sec. 8.** NRS 654.190 is hereby amended to read as follows:

29 654.190 1. The Board may, after notice and an opportunity
30 for a hearing as required by law, impose an administrative fine of
31 not more than \$10,000 for each violation on, recover reasonable
32 investigative fees and costs incurred from, suspend, revoke, deny
33 the issuance or renewal of or place conditions on the license of, and
34 place on probation or impose any combination of the foregoing on
35 any licensee who:

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

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

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

41 (d) Aids or abets any person in the violation of any of the
42 provisions of NRS 449.029 to 449.2428, inclusive, *and section 1 of*
43 *this act*, as those provisions pertain to a facility for skilled nursing,
44 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.

Sec. 9. This act becomes effective on July 1, 2019.

