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State of Nevada
Department of Health and
Human Services

Enforcement Action in NRS 449

Division of Public and Behavioral Health

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Helping people. It's who we are and what we do.



Cody Phinney is not an attorney and can not provide legal advice. Nothing in this presentation should be considered legal advice. We strongly encourage you to consult your own legal counsel with specific questions.



Definitions

- NRS 449.0021 “Agency to provide personal care services in the home” defined.
 - 1. “Agency to provide personal care services in the home” means any person, other than a natural person, which provides in the home the services authorized pursuant to NRS 449.1935 to elderly persons or persons with disabilities.
 - 2. The term does not include:
 - (a) An independent contractor who provides nonmedical services specified in NRS 449.1935 without the assistance of employees;
 - (b) An organized group of persons composed of the family or friends of a person needing personal care services that employs or contracts with persons to provide nonmedical services specified in NRS 449.1935 for the person if:
 - (1) the organization of the group of persons is set forth in a written document that is made available for review by the Division upon request; and
 - (2) The personal care services are provided to only one person or one family who resides in the same residence;
 - (c) An intermediary service organization; or
 - (d) A person or agency that contracts with the Aging and Disability Services Division of the Department of Health and Human Services to provide temporary respite services.
 - 3. As used in this section:
 - (a) “Intermediary service organization” has the meaning ascribed to it in NRS 449.4304.
 - (b) “Temporary respite services” means services provided through a contract with the Aging and Disability Services Division of the Department of Health and Human Services to a natural person on a periodic basis to provide a respite for a regular provider of services.



Definitions

- NRS 449.0045 “Facility for the dependent” defined.
 - 1. A facility for the treatment of alcohol or other substance use disorders;
 - 2. A halfway house for persons recovering from alcohol or other substance use disorders;
 - 3. A facility for the care of adults during the day;
 - 4. A residential facility for groups;
 - 5. An agency to provide personal care services in the home;
 - 6. A facility for transitional living for released offenders;
 - 7. A home for individual residential care;
 - 8. A peer support recovery organization;
 - 9. A community health worker pool; and
 - 10. A provider of community-based living arrangement services.



Definitions

- NRS 449.0025 “Board” defined.
 - “Board” means the State Board of Health.
- NRS 449.0032 “Division” defined.
 - “Division” means the Division of Public and Behavioral Health of the Department of Health and Human Services
- HCQC enforces regulation in Chapter 449, generally.
- Inspectors can report other issues, for example, labor law violations to enforcement bodies that have authority to take action on those issues.
- Unless we receive a complaint, we inspect 1 time every 6 years.



Powers and Duties of the Division

- NRS 449.0307 Powers of Division. The Division may:
 - 1. Upon receipt of an application for a license, conduct an investigation into the premises, facilities, qualifications of personnel, methods of operation, policies and purposes of any person proposing to engage in the operation of a medical facility, a facility for the dependent or facility which is required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed. The facility is subject to inspection and approval as to standards for safety from fire, on behalf of the Division, by the State Fire Marshal.
 - 2. Upon receipt of a complaint against 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, except for a complaint concerning the cost of services, conduct an investigation into the premises, facilities, qualifications of personnel, methods of operation, policies, procedures and records of that facility or any other 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 which may have information pertinent to the complaint.
 - 3. Employ such professional, technical and clerical assistance as it deems necessary to carry out the provisions of NRS 449.029 to NRS 449.245, inclusive.



Penalty Process

- NRS 449.170 Denial, suspension or revocation of license or imposition of sanctions: Notice; appeal; adoption of regulations.
 - 1. When the Division intends to deny, suspend or revoke a license, or impose any sanction prescribed by NRS 449.163, it shall give reasonable notice to all parties by certified mail. The notice must contain the legal authority, jurisdiction and reasons for the action to be taken. Notice is not required if the Division finds that the public health requires immediate action. In that case, it may order a summary suspension of a license pursuant to this section and NRS 233B.127 or impose any sanction prescribed by NRS 449.163, pending proceedings for revocation or other action.
 - 2. If a person wants to contest the action of the Division, the person must file an appeal pursuant to regulations adopted by the Board.
 - 3. Upon receiving notice of an appeal, the Division shall hold a hearing pursuant to regulations adopted by the Board.
 - 4. The Board shall adopt such regulations as are necessary to carry out the provisions of this section.





Penalty Process – NRS 449.210

NRS 449.210 Penalties for unlicensed operation of medical facility, facility for the dependent or other facility required to be licensed by Division; cease and desist order; authority of Division to bring action; penalty for operating without a license; use of money collected.



Penalty Process – NRS 449.210

1. In addition to the payment of the amount required by NRS 449.0308 and any civil penalty imposed pursuant to subsection 4, a person who operates a medical facility, facility for the dependent or a facility which is required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed without a license issued by the Division is guilty of a misdemeanor.



Penalty Process – NRS 449.210

- 2. If the Division believes that a person is operating a medical facility, facility for the dependent or a facility which is required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed without such a license, the Division may issue an order to cease and desist the operation of the facility. The order must be served upon the person by personal delivery or by certified or registered mail, return receipt requested. The order is effective upon service.

Penalty Process – NRS 449.210

- 3. If a person does not voluntarily cease operating a medical facility, facility for the dependent or a facility which is required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed without a license or apply for licensure within 30 days after the date of service of the order pursuant to subsection 2, the Division may bring an action in a court of competent jurisdiction pursuant to NRS 449.220.

Penalty Process – NRS 449.210

- 4. Upon a showing by the Division that a person is operating a medical facility, facility for the dependent or a facility which is required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed without a license, a court of competent jurisdiction may:
 - (a) Enjoin the person from operating the facility.
 - (b) Impose a civil penalty on the operator to be recovered by the Division of not more than \$10,000 for the first offense or not less than \$10,000 or more than \$25,000 for a second subsequent offense.

Penalty Process – NRS 449.210

- 5. Unless otherwise required by federal law, the Division shall deposit all civil penalties collected pursuant to paragraph (b) of subsection 4 into a separate account in the State General Fund to be used to administer and carry out the provisions of NRS 449.001 to 449.430, inclusive, and to protect the health, safety, well-being and property of the patients and residents of facilities in accordance with applicable state and federal standards.

Penalty Process

- NRS 449.240 Institution and conduct of prosecutions.
 - The district attorney of the county in which the facility is located shall, upon application by the Division, institute and conduct the prosecution of any action for violation of any provisions of NRS 449.029 to 449.245, inclusive.

Report Concerns

- HCQC complaints: HCQCComplaint@health.nv.gov
- Nevada Equal Rights Commission complaints: <https://detr.nv.gov/nerc/forms/DiscriminationIntakeForm>
- Labor Commissioner's Office, Employee complaints: https://labor.nv.gov/About/Forms/FORMS_FOR_EMPLOYEES/





Questions?

