

**PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R135-18

October 9, 2018

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

AUTHORITY: §§1-34, NRS 432A.077 and 432A.188; §35, NRS 432A.077 and 432A.180; §§36-38 and 40-42, NRS 432A.077; §39, NRS 432A.077 and 432A.177; §43, NRS 439.150; §44, NRS 432A.077, 432A.177, 432A.180, 432A.188 and 439.150.

A REGULATION relating to child care facilities; prescribing the procedure and criteria for imposing sanctions on a child care facility; requiring an emergency plan of a child care facility to include plans for certain actions; requiring the record maintained for a caregiver to include certain documentation; prohibiting a caregiver from caring for children while under the influence of alcohol or drugs; revising requirements concerning the training of employees of child care facilities; requiring certain persons to report suspected abuse or neglect within a child care facility; revising provisions relating to determining limits on group size and staffing levels in group homes and family homes; abolishing limits on group size in a group home; prescribing fees for the resurvey of a child care facility; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

If a child care facility violates any law or regulation relating to its licensure, existing law authorizes the Division of Public and Behavioral Health of the Department of Health and Human Services to: (1) prohibit the facility from accepting additional children until it determines that the facility has corrected the violation; (2) limit the number of children to whom the facility may provide care until it determines that the facility has corrected the violation; (3) impose an administrative penalty; or (4) appoint temporary management to oversee the operation of the facility. (NRS 432A.186) Existing law also requires the State Board of Health to adopt regulations establishing the criteria for imposing each of those sanctions. (NRS 432A.188) **Sections 3 and 4** of this regulation define terms used in provisions relating to sanctions. **Sections 5-34** of this regulation prescribe the criteria and procedure for imposing sanctions on child care facilities. **Section 5** of this regulation prescribes the manner in which the Division determines whether a child care facility is in substantial compliance for certain purposes. **Section 6** of this regulation prescribes the manner in which weekends, holidays and the date on which a notice is received will be counted with regard to requirements dependent upon time in provisions relating to the imposition of sanctions. **Section 7** of this regulation lists the purposes of sanctions imposed on child care facilities. **Section 8** of this regulation requires the Division to impose

sanctions on child care facilities for certain deficiencies and authorizes the Division to impose sanctions on child care facilities for other deficiencies. **Section 9** of this regulation authorizes the Division to impose certain sanctions on child care facilities without prior written notice if necessary to protect the health and safety of children in a facility. **Section 10** of this regulation authorizes the Division to impose sanctions on child care facilities for deficiencies found during surveys or investigations of complaints. If the Division finds a deficiency, **section 10** requires the Division to notify the child care facility. **Sections 11 and 12** of this regulation prescribe the manner in which the Division must assess the scope of a deficiency. **Section 13** of this regulation prescribes the scale that the Division must use to assess the severity of a deficiency. **Section 14** of this regulation: (1) provides that if the same deficiency is found on a resurvey of a child care facility, there is a rebuttable presumption that the deficiency continued through the period between the survey and the resurvey; and (2) authorizes the Division to impose a sanction for such a deficiency. **Section 15** of this regulation prescribes the factors that the Division is required to consider in determining which sanction to impose on a child care facility.

Section 16 of this regulation requires a child care facility to develop a plan of correction for each deficiency and requires each such plan to be approved by the Division. If the Division rejects a plan of correction, **section 16** authorizes the Division to require the resubmission of the plan of correction or impose a directed plan of correction on the facility. **Sections 17-33** of this regulation impose requirements relating to the imposition of a limitation on the number of children to whom a facility may provide care, prohibition on a facility accepting additional children, monetary penalty or temporary manager and the manner in which those sanctions must be carried out. **Section 34** of this regulation authorizes the Division to deny, suspend or revoke the license of a facility in an emergency.

Existing regulations require the licensee of a child care facility to develop a plan to ensure that the staff of the facility is prepared in an emergency. (NAC 432A.280) **Section 35** of this regulation requires such a plan to include a plan to: (1) ensure that the needs of persons with disabilities are met; and (2) reunify children with their families after the emergency.

Existing regulations require the licensee of a child care facility to serve as the director of the facility or appoint a director for the facility. (NAC 432A.300) **Section 36** of this regulation requires a director to apply to and be approved by the Division.

Existing regulations require a caregiver to be registered with The Nevada Registry or its successor organization. (NAC 432A.306) **Section 37** of this regulation requires the record maintained for a caregiver to include documents verifying such registration. **Section 38** of this regulation prohibits a caregiver from caring for children while he or she is using or under the influence of alcohol or psychoactive drugs.

Existing regulations require an employee of a child care facility to complete a course in the development of children not later than 12 months after commencing employment. (NAC 432A.323) **Section 39** of this regulation: (1) removes the requirement that such training must be completed not later than 12 months after commencing employment; and (2) authorizes the Division to require an employee of a child care facility to repeat certain other training that was completed more than 36 months before commencing employment.

Existing law requires a licensee or employee of a facility who, in his or her professional or occupational capacity, knows or has reasonable cause to believe that a child has been abused or neglected to report that abuse or neglect to a law enforcement agency or an agency which provides child welfare services. (NRS 432B.220) If the abuse or neglect occurs within a facility, **section 40** of this regulation requires such a person to also report the abuse or neglect to the Division.

Existing regulations: (1) impose limits on the group size for a family home and the group size and staffing levels of a group home; and (2) require a licensee or operator of a family home or group home to reside in the facility. (NAC 432A.534, 432A.536) **Sections 41 and 42** of this regulation provide that a child of a person who is required to reside in the facility only counts toward those limits if the child is less than 3 years of age. **Section 42** also abolishes the limits on group size of a group home. **Section 43** of this regulation prescribes fees for the resurvey of a facility.

Section 1. Chapter 432A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 34, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 34, inclusive, of this regulation, the words and terms defined in sections 3 and 4 of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Deficiency” means a violation of any federal or state statute or applicable regulation.*

Sec. 4. *“Initial deficiency” means the first occurrence of a deficiency identified by the Division and includes any deficiency found during a survey or the investigation of a complaint.*

Sec. 5. *For the purposes of sections 2 to 34, inclusive, of this regulation, the Division shall determine that a facility is in substantial compliance with those provisions if the Division determines that:*

- 1. No deficiency with a combined severity and scope score of five or more is present at the facility; and*
- 2. The facility has taken effective steps to resolve all deficiencies.*

Sec. 6. *For the purposes of any computation of time required by sections 2 to 34, inclusive, of this regulation:*

- 1. Any prescribed period of more than 5 days must include Saturdays, Sundays and holidays.*
- 2. Any prescribed period of 5 days or less must not include Saturdays, Sundays or holidays.*
- 3. If the date on which any action is required to be performed falls on a Saturday, Sunday or holiday, the date is extended until the next day that is not a Saturday, Sunday or holiday.*
- 4. The date on which any act or event occurred or on which notice is received must not be included in the computation.*

Sec. 7. *The purpose of any administrative sanction imposed by the Division pursuant to sections 2 to 34, inclusive, of this regulation must be to:*

- 1. Safeguard the rights, interests and well-being of children receiving child care services, including, without limitation, the protection of such children from actual or potential harm resulting from deficiencies;*
- 2. Encourage and assist facilities to comply with the requirements of the Division; and*
- 3. Promote the efficient use of resources to ensure appropriate care and services for children.*

Sec. 8. *The Division:*

- 1. Shall impose on a facility at least one administrative sanction for each deficiency identified by the Division in the facility with a severity score of four and for each deficiency identified by the Division in the facility with a combined severity and scope score of six or more.*

2. *May impose one or more sanctions if it identifies deficiencies of a severity score of three or less or a combined severity and scope score of less than six.*

Sec. 9. 1. *If necessary to protect the health and safety of children served by a facility, the Division may impose such sanctions as are necessary without prior written notice to the facility.*

2. *The Division may appoint a temporary manager to a facility without prior written notice on an emergency basis:*

(a) *If necessary to remove an immediate and serious threat to the health and safety of children served by the facility; or*

(b) *If the facility has violated any order of the Division issued pursuant to section 19 of this regulation prohibiting the facility from accepting additional children.*

3. *The Division may, in an emergency, prohibit a facility from accepting additional children, limit the number of children to whom a facility may provide care or may suspend the license of a facility without prior written notice as provided in this section.*

4. *If a sanction is imposed pursuant to this section without prior written notice, the Division shall provide written notice that complies with the requirements of NAC 439.345 within 48 hours after imposing the sanction.*

Sec. 10. 1. *The Division may impose one or more sanctions upon identifying a deficiency during a survey or an investigation of a complaint.*

2. *The Division shall provide notice to the applicable facility of each deficiency identified by the Division. Except as otherwise provided in subsection 3, the notice must specify each deficiency identified and the combined severity and scope score for each deficiency, as determined by the Division.*

3. Any deficiency for which a combined severity and scope score is not specified in the notice provided pursuant to subsection 2 is presumed to be a deficiency for which the facility is not subject to a monetary penalty pursuant to subsection 2 of section 21 of this regulation.

Sec. 11. 1. In determining the scope score of a deficiency, the Division must evaluate a representative sample of recipients during a survey. The sample must consist of at least:

<i>Number of recipients</i>	<i>Minimum number of recipients in sample</i>
<i>1 - 9</i>	<i>All Recipients</i>
<i>10 - 40</i>	<i>10</i>
<i>41 - 75</i>	<i>15</i>
<i>76 - 100</i>	<i>20</i>
<i>101 - 175</i>	<i>25</i>
<i>176 - 250</i>	<i>30</i>
<i>251 - 350</i>	<i>35</i>
<i>351 - 450</i>	<i>40</i>
<i>451 - more</i>	<i>50</i>

2. The sample size used in determining the scope score of a deficiency in a resurvey must not be less than 60 percent of the sample size used in the initial survey.

3. If the Division evaluates more than the minimum number of recipients, the determination of the scope score must be based on the number of recipients actually evaluated.

4. If the Division investigates a complaint relating to one recipient, the Division may include only that recipient as the sample. Any deficiency identified pursuant to this subsection must receive a scope score of one.

5. As used in this section, "recipient" means a child who:

(a) Is receiving child care services from a facility at the time the Division surveys the facility; or

(b) Received child care services at a facility within the 30 days immediately preceding the date the Division surveys the facility.

Sec. 12. *1. The scope scale prescribed in this section must be used to determine the scope score of a deficiency in or by a facility.*

2. The basis for determining the scope score of a deficiency is the actual or potential harm to children as shown by:

(a) The frequency of the deficiency;

(b) The number or percentage of recipients affected by the deficiency;

(c) The number or percentage of staff members involved in creating the deficiency; and

(d) The pattern of deficiencies or lack thereof.

3. A scope score of one must be assigned to a deficiency if there is one or an isolated number of unrelated incidents in the sample surveyed and the incident or incidents affected 20 percent or less of the recipients sampled in a facility.

4. A scope score of two must be assigned to a deficiency if:

(a) The deficiency affects more than 20 percent, but not more than 50 percent, of the recipients sampled in a facility; or

(b) The Division identifies a pattern of deficiencies at the facility, including any deficiencies involving recipients who require special care, treatment or service. The number or percentage of recipients or staff affected or involved in the deficiencies may also establish a pattern by indicating a reasonable degree of predictability of similar deficiencies.

5. A scope score of three must be assigned to a deficiency if the deficiency:

(a) Occurs in a sufficient number or percentage of recipients or staff or with sufficient regularity over time that the deficiency may be considered systemic or pervasive in or by the facility; or

(b) Affects more than 50 percent of the recipients sampled in a facility.

6. As used in this section, "recipient" means a child who:

(a) Is receiving child care services from a facility at the time the Division surveys the facility; or

(b) Received child care services at a facility within the 30 days immediately preceding the date the Division surveys the facility.

Sec. 13. 1. The severity scale prescribed in this section must be used in determining the severity score of a deficiency in or by a facility.

2. The basis for determining the severity score of a deficiency must be the actual or potential harm to children.

3. A severity score of one must be assigned to a deficiency if:

(a) The deficiency concerns a violation of only requirements promulgated primarily for administrative purposes; and

(b) No harm to a child has resulted or is likely to result from the deficiency.

4. A severity score of two must be assigned to a deficiency if the deficiency:

(a) Indirectly threatens the health, safety, rights, security, welfare or well-being of a child; and

(b) Is likely to cause harm to one or more children or a violation of one or more children's rights over time.

5. A severity score of three must be assigned to a deficiency if:

(a) The deficiency creates a condition or incident in the operation or maintenance of a facility that directly or indirectly threatens the health, safety, rights, security, welfare or well-being of one or more children; and

(b) A negative impact on the health, safety, rights, security, welfare or well-being of one or more children has occurred or can be predicted with substantial probability to occur or the well-being of a child has been or is about to be compromised and requires intervention and correction of the deficiency.

6. A facility shall be presumed to have a deficiency with a severity score of three if the facility:

(a) Violates a prohibition on accepting additional children imposed pursuant to section 19 of this regulation;

(b) Violates a limitation on the number of children to whom a facility may provide care imposed pursuant to section 17 of this regulation; or

(c) Fails to implement a directed plan of correction imposed pursuant to subsection 3 of section 16 of this regulation.

7. A severity score of four must be assigned if a deficiency has resulted in or there is a substantial probability that the deficiency will result in death or serious harm to a child. As used in this subsection, "serious harm" means serious mental harm, serious impairment of

bodily functions, serious dysfunction of any bodily organ or part, life-threatening harm or death.

Sec. 14. *If the same deficiency is found on a resurvey as was found on the initial survey, a rebuttable presumption exists that the deficiency continued during the period between the date on which the survey and resurvey were performed. The Division may impose a sanction for a deficiency found on a resurvey only if the same deficiency was found on the initial survey.*

Sec. 15. *1. After initially determining the severity score and scope score of a deficiency pursuant to sections 12 and 13 of this regulation, respectively, the Division shall consider the following secondary factors in determining the sanction to impose:*

(a) The history of previous compliance by the facility generally and specifically with reference to the deficiency at issue; and

(b) The desired corrective and long-term compliance outcomes.

2. The Division shall impose a sanction based on the nature of each deficiency and the sanction most likely to correct each deficiency. Absent evidence to the contrary, the Division shall presume that restrictions on services provided by a facility and monetary penalties are the most effective sanctions to correct deficiencies that do not cause an immediate and serious threat to children.

Sec. 16. *1. A facility shall develop a plan of correction for each deficiency and submit the plan to the Division for approval within 10 days after receiving from the Division a notice of deficiencies pursuant to subsection 2 of section 10 of this regulation.*

2. A plan of correction must:

(a) Describe the specific actions to be taken by the facility to correct the deficiency to which the plan of correction applies; and

(b) Specify the date by which the deficiency will be corrected.

3. If the plan of correction is not acceptable to the Division, the Division may:

(a) Direct the facility to revise and resubmit the plan of correction; or

(b) Develop a directed plan of correction with which the facility must comply.

4. Failure to submit the plan of correction to the Division within the 10-day period described in subsection 1 constitutes a separate deficiency subject to a monetary penalty with severity score and scope score rated at the same levels as the highest deficiency identified on the notice of deficiencies.

5. The Division may monitor a facility:

(a) To determine whether the facility carries out a plan of correction; or

(b) If the Division has reason to question the ongoing compliance of the facility with the requirements of law or regulation.

Sec. 17. 1. *The Division may limit the number of children to whom a facility may provide care to safeguard the health, safety and well-being of children currently receiving care or services from the facility and to prevent the facility from assuming responsibility for more children than the Division determines the facility is able to provide adequate care. To determine the number of children to whom a facility may provide care, the Division must determine the number of children for whom safety is reasonably assured.*

2. The Division may limit the number of children to whom a facility may provide care in addition to prohibiting the facility from accepting additional children if the Division determines that the facility is unable to provide adequate care or services.

3. *The Division may limit the number of children to whom a facility may provide care:*

(a) For a deficiency with a combined severity and scope score of less than six, only if the deficiency involves direct child care or services or the ability of occupants to exit the facility safely in the event of a fire or other emergency; or

(b) For a deficiency with a combined severity and scope score of six or more, regardless of the nature of the deficiency.

4. *Any limitation on the number of children to whom a facility may provide care imposed pursuant to this section:*

(a) Except as otherwise provided in paragraph (b), must be imposed for not less than 72 hours.

(b) Must be terminated if the facility demonstrates that substantial improvements have been made to correct the deficiencies and that the health, safety and well-being of children are adequately safeguarded.

Sec. 18. 1. *If the Division limits the number of children to whom a facility may provide care pursuant to section 17 of this regulation, the facility must post a notice of the limitation at all public entrances to the facility within 48 hours after the facility receives notice of the limitation. Each notice posted by the facility must be not less than 8.5 inches by 11 inches in size, conform to the requirements set forth by the Division in the notice provided pursuant to NAC 439.345 and include:*

(a) The words "NOTICE OF LIMITATION ON OCCUPANCY" printed in boldface type not less than 1 inch in height;

(b) A statement specifying the number of children for which the facility is authorized to provide care;

(c) A statement identifying a member of the staff of the facility who will provide additional information relating to the limitation on occupancy; and

(d) The telephone number of the Division.

2. Any person contacting the facility in writing, by telephone or using any other means of communication relating to a child seeking admission to the facility must be:

(a) Notified of the limitation on the number of children to whom the facility may provide care; and

(b) Provided with the information included in the notice described in subsection 1.

3. The failure to post notice of a limitation on the number of children to whom a facility may provide care as required by this section, or the removal of such a notice, is a deficiency with a severity score of three and a scope score of three. The failure to inform a person who contacts the facility as to the existence of a limitation on the number of children to whom a facility may provide care as required by subsection 2 is a deficiency with a severity score of two and a scope score of three.

Sec. 19. 1. *The Division may prohibit a facility from accepting additional children to safeguard the health, safety and well-being of children receiving care or services and to prevent the admission of children who cannot adequately be served by the facility. Such a prohibition applies to all admissions of children on or after the effective date of the prohibition, regardless of the source of payment.*

2. The Division may prohibit a facility from accepting additional children:

(a) For a deficiency with a severity score of two and a scope score of three, only if the deficiency involves direct child care or services or the ability of occupants to exit the facility safely in the event of a fire or other emergency; or

(b) For a deficiency with a severity score of four and a scope score of two or more or a severity score of three and a scope score of three, regardless of the nature of the deficiency.

3. Any prohibition on a facility accepting additional children imposed pursuant to this section:

(a) Except as otherwise provided in paragraph (b), must be imposed for not less than 72 hours.

(b) Must be terminated if the facility demonstrates that substantial improvements have been made to correct the deficiency or deficiencies and that the health, safety and well-being of children are adequately safeguarded.

Sec. 20. 1. *If the Division prohibits a facility from accepting additional children pursuant to section 19 of this regulation, the facility must post a notice of the prohibition at all public entrances to the facility within 48 hours after the facility receives notice of the limitation. Each notice posted by the facility must be not less than 8.5 inches by 11 inches in size, conform to the requirements set forth by the Division in the notice provided pursuant to NAC 439.345 and include:*

(a) The words "NOTICE OF BAN ON ADMISSIONS" printed in boldface type not less than 1 inch in height;

(b) A statement identifying a member of the staff of the facility who will provide additional information relating to the prohibition on accepting additional children; and

(c) The telephone number of the Division.

2. Any person contacting the facility in writing, by telephone or using any other means of communication relating to a child seeking admission to the facility must be:

(a) Notified of the prohibition on accepting additional children; and

(b) Provided with the information included in the notice described in subsection 1.

3. The failure to post notice of a prohibition on accepting additional children as required by this section, or the removal of such a notice, is a deficiency with a severity score of three and a scope score of three. The failure to inform a person who contacts the facility as to the existence of a prohibition on accepting additional children as required by subsection 2 is a deficiency with a severity score of two and a scope score of three.

Sec. 21. *1. The purpose of a monetary penalty is to protect the health, safety, rights, welfare and well-being of children and the property of children in facilities and to deter future deficiencies.*

2. Except as otherwise provided in this subsection, the Division may impose a monetary penalty, including interest thereon, on a facility for any deficiency, regardless of whether the deficiency constitutes an immediate and serious threat. A facility is not subject to a monetary penalty for a deficiency with a severity score of one or two and a scope score of one or two.

3. The initial amount of a monetary penalty must be determined in the manner prescribed in section 23 of this regulation.

4. In addition to the initial monetary penalty, the Division may impose a monetary penalty for each day that the facility is not in substantial compliance, as determined pursuant to section 5 of this regulation, from the date the lack of substantial compliance begins or is identified until the date that substantial compliance is verified by the Division.

5. Except as otherwise provided in section 25 of this regulation, the total amount of a monetary penalty bears interest at the rate of 10 percent per annum.

Sec. 22. *1. An initial monetary penalty may only be imposed pending a hearing or appeal unless the facility upon which the penalty was imposed waives the right to a hearing or*

appeal. The payment of the initial monetary penalty must not be stayed during the pendency of any administrative appeal.

2. The payment of any daily monetary penalty or interest that accrues while the facility has a hearing pending on the initial determination of the deficiency or deficiencies leading to the imposition of the penalty must be stayed pending the appeal.

Sec. 23. *1. In determining the amount of an initial monetary penalty, the Division must consider only the severity of the deficiency only if the severity score is four. In determining the amount of a monetary penalty if the severity score of a deficiency is less than four, the Division must consider both the severity score and the scope score of the deficiency. In determining whether to impose a daily monetary penalty, the Division must consider the severity score and the scope score and the factors indicated for the increase or reduction of a monetary penalty as provided in sections 24 and 25 of this regulation.*

2. For each initial deficiency with a severity score of four, the Division shall impose an initial monetary penalty of \$500.

3. For each initial deficiency with a severity score of three and a scope score of three, the Division shall impose an initial monetary penalty of \$200.

4. For each initial deficiency with a severity score of three and a scope score of two or less, the Division shall impose an initial monetary penalty of \$100.

5. For each initial deficiency with a severity score of two and a scope score of three, the Division may impose an initial monetary penalty of \$50. The Division must suspend the payment of a monetary penalty described in this subsection if the facility corrects the deficiency within the time specified in the plan of correction approved by the Division.

6. *In addition to any monetary penalty imposed pursuant to subsection 2, 3, 4 or 5 and subject to the limitation prescribed by subsection 7, the Division may impose a daily monetary penalty of not more than \$10 per child for which the facility provides care per day for each day the initial deficiency continues.*

7. *The principal amount of the total daily monetary penalty imposed on a facility must not exceed \$100 per day for an initial deficiency.*

Sec. 24. 1. *For each deficiency identified during a resurvey that is performed within 18 months after the deficiency was identified during the initial survey, the Division shall compute the monetary penalty at the rate of 1.5 times the rate that was imposed, or was authorized to be imposed, initially for a deficiency with that severity score and scope score.*

2. *The Division may double the daily monetary penalty that was imposed, or was authorized to be imposed, for a deficiency if the facility upon which the daily monetary penalty is imposed alleges compliance and the Division determines on a survey that at the time compliance was alleged the deficiency continued to exist.*

3. *There is a rebuttable presumption that a deficiency identified on a resurvey was present on each day between the date on which the initial deficiency was identified and the date on which the deficiency was identified on the resurvey.*

Sec. 25. *The Division may reduce a monetary penalty by 25 percent and must not charge interest if the facility upon which the monetary penalty is imposed:*

1. *Waives the right to a hearing;*
2. *Corrects each deficiency that was the basis for the monetary penalty; and*
3. *Pays the monetary penalty within 15 days after receipt of the notice of the penalty.*

Sec. 26. 1. *A daily monetary penalty must begin:*

(a) In the case of an immediate and serious threat, on the date on which the deficiency occurred; or

(b) In any other case, on the date on which the deficiency is identified.

2. The Division shall compute daily monetary penalties and interest after verifying substantial compliance in the manner prescribed by section 5 of this regulation or providing the facility with notice of revocation of a license or provisional license. A daily monetary penalty must end on the date on which the Division determines that the facility has achieved substantial compliance or revoked the license of the facility.

3. If a facility achieves substantial compliance, as determined pursuant to section 5 of this regulation, the Division must mail a separate written notice to the facility which includes, without limitation:

(a) The daily amount of the monetary penalty;

(b) The number of days for which the monetary penalty was imposed;

(c) The due date for payment of the daily monetary penalty; and

(d) The total amount due.

4. If the Division determines to revoke the license of a facility, the Division must include the information required by subsection 3 in the notice of revocation.

5. If the determination by the Division that a facility is not in substantial compliance is upheld on appeal or the facility waives the right to a hearing, the Division must impose the daily monetary penalty for the number of days between the date on which the monetary penalty was determined to begin and the date on which the deficiency or deficiencies were corrected or, if applicable, the date on which the license of the facility is revoked.

Sec. 27. 1. *The Division must terminate the daily accrual of a monetary penalty if the facility demonstrates to the Division that it has made substantial improvements to correct each deficiency for which the daily monetary penalty was imposed and that the health, safety and well-being of children are adequately protected and safeguarded.*

2. *The Division may impose a daily monetary penalty for not longer than 6 months, after which the Division must instead deny, suspend or revoke the license of the facility.*

Sec. 28. 1. *A facility must pay an initial monetary penalty not later than 15 days after notice of the penalty is provided by the Division even if an administrative appeal is sought.*

2. *Payment of a daily monetary penalty is due within 15 days after the Division determines that the facility is in substantial compliance pursuant to section 5 of this regulation or revocation of a license is effective and the facility is notified of the amount of the total daily monetary penalty and interest due.*

3. *If a facility appeals a decision of the Division to impose a monetary penalty, any daily monetary penalty must be paid after the final administrative decision is rendered within 15 days after the facility has been notified of the amount of the total daily monetary penalty and interest due.*

4. *Unless interest is waived pursuant to section 25 of this regulation, interest at the rate of 10 percent per annum must be assessed on the unpaid balance of a monetary penalty, beginning on the date on which payment of the monetary penalty is required.*

5. *The Division may recover from a facility any costs that the Division incurs in the collection of a monetary penalty from the facility, including, without limitation, attorney's fees, filing fees, fees for service of notices or process and all expenses of litigation recoverable as costs pursuant to chapter 18 of NRS.*

Sec. 29. 1. *If a facility fails to pay a monetary penalty, the Division may suspend the license of the facility.*

2. *The Division shall, in accordance with the requirements of NRS 432A.200 and NAC 432A.230 and 439.345, provide notice to a facility of its intention to suspend the license of the facility.*

3. *If a facility fails to pay a monetary penalty, including any additional costs described in subsection 5 of section 28 of this regulation incurred in the collection of the penalty, within 10 days after receipt of the notice provided pursuant to subsection 2, the Division must suspend the license of the facility. The suspension must not be stayed during the pendency of any administrative appeal of the suspension or the monetary penalty.*

Sec. 30. 1. *If the Division intends to appoint a temporary manager for a facility because a deficiency exists that the Division determines is an immediate and serious threat to the health and safety of children served by the facility, the Division must orally notify the facility of the appointment. The Division must also send written notice that complies with the requirements of NRS 432A.200 and NAC 439.345 to the facility by mail within 48 hours after providing the oral notice.*

2. *If the facility does not accept the temporary manager or a temporary manager is not available within 10 days after the date on which the deficiency is identified, and the immediate and serious threat is not removed, the Division must deny, suspend or revoke the license of the facility.*

3. *If a facility accepts a temporary manager appointed by the Division, the Division must notify the facility that the facility remains responsible for eliminating the immediate and serious threat, and if the threat is not removed its license will be denied, suspended or revoked.*

4. If a deficiency that is an immediate and serious threat identified by the Division is not removed on or before the 23rd day after the appointment of a temporary manager, the Division must deny, suspend or revoke the license of the facility.

5. If the Division intends to appoint a temporary manager for a facility and there is not a deficiency determined by the Division to be an immediate and serious threat to the health and safety of children served by the facility, the Division must notify the facility in accordance with the provisions of NAC 439.345.

Sec. 31. 1. *A temporary manager appointed pursuant to section 30 of this regulation must:*

(a) Be qualified to operate the facility to which he or she is appointed to manage pursuant to the provisions of chapter 432A of NRS relating to the licensing of the facility;

(b) Demonstrate prior competency as a director of the type of facility to which he or she is appointed to manage or possess other relevant experience pertinent to the deficiencies identified; and

(c) Not have had any disciplinary action taken against him or her by any licensing board or professional organization in any state.

2. A temporary manager may be an employee of the Division or a person or agency that enters into a contract with the Division.

3. A temporary manager must not be:

(a) An employee of the facility that he or she is appointed to manage or an affiliated facility; or

(b) A person or agency that has served as a consultant to the facility that he or she is appointed to manage or an affiliated facility within the 2 years immediately preceding the appointment of the temporary manager.

4. A facility shall relinquish to a temporary manager the authority to operate the facility that he or she is appointed to manage and to hire, terminate or reassign members of the staff, obligate money of the facility and alter procedures used by the facility and take any other action deemed necessary by the temporary manager to correct a deficiency at the facility. A temporary manager may take such action as he or she deems necessary to mitigate an immediate and serious threat to the health and safety of children served by the facility.

5. A facility to which a temporary manager is assigned shall, through the Division, pay for the cost and any expenses of temporary management, including, without limitation, the compensation of the temporary manager.

Sec. 32. *If a facility does not agree to the appointment of a temporary manager pursuant to section 30 of this regulation or fails to relinquish authority to the temporary manager pursuant to section 31 of this regulation, the Division must:*

1. Request the Attorney General to bring an action pursuant to NRS 439.565 to enjoin the facility from operating with continued deficiencies; and

2. Deny, suspend or revoke the license of the facility.

Sec. 33. *1. The Division shall terminate the temporary management of a facility if the Division determines that:*

(a) The facility has achieved substantial compliance, as determined pursuant to section 5 of this regulation, and has assigned management that the Division determines is capable of

ensuring continued compliance with applicable state and federal statutes, regulations, conditions and standards; or

(b) The license of the facility has been denied, revoked or suspended.

2. If temporary management will be needed for more than 24 days, the Division must request the Attorney General to bring an action pursuant to NRS 439.565 to enjoin the facility from continued deficiencies.

Sec. 34. *In an emergency, the Division may deny, suspend or revoke the license of a facility. The Division may take such action only if the Division determines that other less severe measures are inadequate to prevent or remove a serious threat to the health, safety and well-being of children to whom the facility provides care.*

Sec. 35. NAC 432A.280 is hereby amended to read as follows:

432A.280 1. Each licensee shall develop an appropriate plan to ensure that the staff of his or her facility is prepared to respond in an emergency, including, without limitation, a fire or natural disaster. The plan must, at a minimum, be reviewed on a quarterly basis during a meeting of the staff of the facility. Each licensee shall ensure that the plan is, at a minimum, evaluated annually and is changed as necessary.

2. Each plan developed pursuant to subsection 1 must include, without limitation:

- (a) The duties of the director and staff;
- (b) A procedure for removing staff and children to a shelter within a building of the facility if the staff and children are instructed to do so by emergency personnel;
- (c) A procedure for evacuating the facility;
- (d) A plan for transportation;
- (e) A list of sites that may be used for relocation;

- (f) A plan for the supervision of the children of the facility during the emergency;
- (g) The manner in which children and staff from the facility will be accounted for during the emergency; ~~and~~
- (h) The method for contacting emergency personnel, including, without limitation, the fire department, a law enforcement agency or any other appropriate authority ~~H~~;
- (i) A plan to ensure that the needs of children with disabilities and other persons with disabilities in the facility are met; and*

(j) A plan to reunify children with their families after the emergency.

3. The licensee of a facility shall hold:

- (a) A fire drill at least once every month; and
- (b) A drill for natural disasters at least once every 3 months.

4. Appropriate plans for removing the staff and children of a facility to a shelter within a building of the facility and for the evacuation of the facility in case of emergency must be conspicuously posted in a public place in the facility.

5. The director of the facility shall maintain a daily sign-in sheet that includes:

- (a) The first and last names of staff and children; and
- (b) The times of arrival and departure for staff and children.

6. To maintain his or her license, the licensee must ensure that his or her facility meets all standards for fire safety which are established by the State Fire Marshal.

7. The State Fire Marshal or a designee thereof shall, at least annually:

- (a) Enter and inspect every building or the premises of each facility; and
- (b) Observe and make recommendations regarding the drills conducted pursuant to

subsection 3.

8. Reports of the drills conducted pursuant to subsection 3 and the inspections concerning the fire safety of a facility conducted pursuant to subsection 7 must be maintained in a physical file at the facility and be available for review at the facility by a parent of a child who attends the facility or a parent who is considering enrolling his or her child at the facility for at least 2 years after the date of inspection.

Sec. 36. NAC 432A.300 is hereby amended to read as follows:

432A.300 1. Except as otherwise provided in subsection ~~3~~ 4, the licensee of a child care facility shall:

(a) Serve as the director of the facility, if the licensee has the qualifications set forth in NRS 432A.1773 ~~and~~ *and has been approved by the Division pursuant to subsection 3*; or

(b) Appoint a person who satisfies the qualifications set forth in NRS 432A.1773 *and has been approved by the Division pursuant to subsection 3* to serve as the director.

2. The licensee shall notify the Division of any appointment made pursuant to subsection 1 within 5 working days after the date of the appointment.

3. *Before serving as the director of a facility, a person must apply to the Division in the form prescribed by the Division and receive approval from the Division. A facility shall retain the notice of approval from the Division in the personnel file of the director.*

4. If a person was approved as a director of a facility before May 28, 2013, and ~~in accordance with regulations adopted by the State Board of Health,~~ *the person obtained a waiver from the Division in accordance with section 3 of Assembly Bill No. 109, chapter 194, Statutes of Nevada 2013, at page 737*, the person is not required to comply with the provisions of subsection 1 ~~and~~

~~—(a) For~~ *for* the duration of ~~{a}~~ *that* waiver . ~~{obtained from the Division in accordance with section 3 of Assembly Bill No. 109, chapter 194, Statutes of Nevada 2013, at page 737; or~~

~~—(b) If the person did not obtain such a waiver, until January 1, 2016.}~~

Sec. 37. NAC 432A.304 is hereby amended to read as follows:

432A.304 1. The director of a child care facility is responsible for screening, scheduling and supervising the staff of the facility and for the conduct of each member of the staff at the facility.

2. The director shall:

(a) Provide a program for child care for the facility which meets the requirements of this chapter.

(b) Be physically present in the facility for a sufficient amount of time to ensure compliance with the provisions of this chapter and chapter 432A of NRS.

(c) Provide space for an office, the storage of records, conferences with parents, meetings of the staff and all other needs of the program for child care.

(d) Maintain organized separate records for each employee that include, without limitation, documents related to training. Such records must include, without limitation:

(1) Documents verifying that the employee has, if applicable:

(I) Completed the training required pursuant to NRS 432A.177;

(II) Received the orientation and basic training required pursuant to NAC 432A.320;

(III) Completed the training required pursuant to NAC 432A.323; ~~{and}~~

(IV) Completed the training required pursuant to NAC 432A.326; and

(V) Registered with The Nevada Registry or its successor organization as required by NAC 432A.306, if applicable; and

(2) A copy of the documentation concerning, and the results of, the investigation of the employee's background and personal history which is conducted pursuant to NRS 432A.170, including, without limitation, a clearance letter from the Division or a current child care work card, and a release form for this information completed by the employee.

(e) Ensure that each member of the staff of the facility who is not a caregiver, but whose job duties may directly impact children cared for in the facility, has the training necessary to protect the health and safety of the children and the health and safety of the other members of the staff, including, without limitation, training concerning proper nutrition, methods of sanitation and procedures for maintaining a safe environment in the facility.

(f) Work with parents and include them, whenever possible, in the programming and functioning of activities.

(g) Cooperate with the Division and other agencies of government to improve the quality of child care and the competence of caregivers.

(h) Designate a member of the staff who is responsible for the operation of the facility when the director is not present at the facility.

3. If the facility is in operation 25 hours or less per week, the director must be present in the facility during at least half the hours of operation.

Sec. 38. NAC 432A.306 is hereby amended to read as follows:

432A.306 1. Every caregiver in a child care facility must:

(a) Be at least 16 years of age;

(b) Be able to summon help in an emergency;

(c) Be emotionally and physically qualified to carry out a program which places emphasis on the development of children; and

(d) Except as otherwise provided in subsection 5, within 90 days after the caregiver commences employment in the child care facility, apply with The Nevada Registry or its successor organization, and annually renew his or her registration before the date on which it expires.

2. Not more than 50 percent of the caregivers in a child care center, a child care institution or an early care and education program may be under 18 years of age. Any caregiver who is under 18 years of age and is employed in such a facility must:

(a) Have completed a course in the development of children which is approved by:

(1) The Nevada Registry or its successor organization, or any other agency designated by the Director of the Department to approve such courses; or

(2) If the course has not been approved by The Nevada Registry or its successor organization, and the Director of the Department has not designated another agency to approve such courses, the Division or the local licensing agency; or

(b) Be currently enrolled in such a course.

3. A child care facility may not be operated unless a person who is 18 years of age or older is on the premises of the facility.

4. A volunteer for a child care facility, regardless of his or her age, and a member of the staff of the facility who is under 18 years of age may not provide direct care to a child at the facility unless the care is provided under the supervision of an employee of the facility who is 18 years of age or older.

5. A caregiver in a child care institution is not required to initially apply with or annually renew his or her registration with The Nevada Registry or its successor organization.

6. A caregiver in a child care facility shall not consume or be under the influence of alcohol or psychoactive drugs while caring for children in the facility.

Sec. 39. NAC 432A.323 is hereby amended to read as follows:

432A.323 1. Except as otherwise provided in NAC 432A.521 and NRS 432A.177, within 120 days after commencing his or her employment or position in a child care facility, each person who is employed in a child care facility, other than a person employed in a facility that provides care for ill children, and each director of a child care facility shall complete:

(a) Any training required by the facility in which the director serves or in which the person is employed for the purposes of obtaining certification in the administration of cardiopulmonary resuscitation as required pursuant to NAC 432A.322;

(b) Three or more hours of training in child development or guidance and discipline specific to the age group served by the facility in which the director serves or in which the person is employed;

(c) Two or more hours of training in the administration of first aid;

(d) Two or more hours of training in the recognition of signs and symptoms of illness, which must include, without limitation, training in the prevention of exposure to bloodborne pathogens;

(e) Two or more hours of training in the recognition and reporting of child abuse and neglect;

(f) If the person or director works with infants under 12 months of age, at least:

(1) Two hours of training concerning Sudden Infant Death Syndrome; and

(2) One hour of training in the prevention of shaken baby syndrome and abusive head trauma;

(g) Two or more hours of training in the administration of medication, which must include, without limitation, training in the prevention of and response to food and other allergies;

(h) Two or more hours of training in building and physical premises safety, which must include, without limitation, training in the storage of biocontaminants and other hazardous materials;

(i) Two or more hours of training in emergency preparedness and response planning for emergencies resulting from a natural or man-made event;

(j) If the facility provides transportation, 1 or more hours of training in precautions to be taken when transporting children for each person who will provide such transportation; and

(k) Two or more hours of training in lifelong wellness, health and safety of children, which must include, without limitation, training relating to childhood obesity, nutrition and moderate or vigorous physical activity.

2. Except as otherwise provided in NAC 432A.521, within 12 months after commencing employment, each person described in subsection 1 shall, in addition to completing any training required pursuant to subsection 1 and completing any course in the development of children required pursuant to NAC 432A.306, complete at least the number of hours of training described in NAC 432A.326. A person may use training completed pursuant to subsection 1 to satisfy the training requirements set forth in NAC 432A.326.

3. ~~Except as otherwise provided in NAC 432A.521, within 12 months after commencing employment as a member of the staff of a facility, each member of the staff of a facility shall complete a course in the development of children required pursuant to NAC 432A.306.~~ *The Division may require a person described in subsection 1 to repeat any training required by that subsection that was completed more than 36 months before commencing employment.*

4. The training concerning the administration of first aid and the recognition of signs and symptoms of illness that is required to be completed pursuant to subsection 1 must be provided

by one of the persons, agencies or institutions listed in NAC 432A.308 as qualified to provide such training.

5. The training required pursuant to subsections 1 ~~{;}~~ *and* 2 ~~{and 3}~~ must be designed to:

- (a) Ensure the protection of the health and safety of each child enrolled in the facility; and
- (b) Promote the physical, moral and mental well-being of each child enrolled in the facility.

6. If the facility is a special needs facility, the training required pursuant to subsections 1 ~~{;}~~ *and* 2 ~~{and 3}~~ must also be designed to provide information on the characteristics of handicapping conditions and appropriate programs for children with special needs. The training must be approved by:

(a) The Nevada Registry or its successor organization, or any other agency designated by the Director of the Department to approve such training; or

(b) If the training has not been approved by The Nevada Registry or its successor organization, and the Director of the Department has not designated another agency to approve such courses, the Division or the local licensing agency.

7. Evidence that an employee has completed the training required pursuant to subsections 1 ~~{;}~~ *and* 2 ~~{and 3}~~ must be included in his or her personnel file and must be kept at the facility.

With regard to training concerning the administration of first aid and the recognition of signs and symptoms of illness, the evidence listed in NAC 432A.308 as adequate evidence of compliance is adequate evidence of compliance for the purposes of this section.

Sec. 40. NAC 432A.410 is hereby amended to read as follows:

432A.410 If any person suspects that child abuse or neglect is occurring in a facility, the person may immediately report such suspicions to the Division. Every licensee or employee of a

facility who has reason to believe child abuse or neglect is occurring in the facility, in the child's home or elsewhere shall report such beliefs to ~~the~~ :

1. *The* appropriate authority as required in NRS 432B.220 ~~H~~; *and*
2. *If the suspected child abuse or neglect is occurring in the facility, the Division.*

Sec. 41. NAC 432A.534 is hereby amended to read as follows:

432A.534 1. Limits on the number of children in a family home are set forth in the following table:

Age of Child	Group Size
Less than 1 year of age	2
1 year of age or older but less than 3 years of age	4
3 years of age or older	6

2. Except as otherwise provided in NAC 432A.546, a licensee of a family home shall:
 - (a) Have one caregiver on duty at all times;
 - (b) Not provide care for more than two children who are less than 1 year of age at any given time;
 - (c) Have a second caregiver on duty whenever four or more of the children in the facility are children with special needs; and
 - (d) Provide an alternate caregiver in case of an emergency.
3. If a licensee of a family home is:
 - (a) A natural person, the licensee shall:
 - (1) Reside in the facility; and

(2) Provide direct care to the children in the facility.

(b) Not a natural person, one of the persons listed on the license pursuant to NRS 432A.150 as a person authorized to operate the facility shall:

(1) Reside in the facility; and

(2) Provide direct care to the children in the facility.

4. A child of the person who resides in a family home pursuant to subsection 3 will be counted to determine whether a licensee is in compliance with subsection 1 only if the child is less than 3 years of age.

Sec. 42. NAC 432A.536 is hereby amended to read as follows:

432A.536 1. Except as otherwise provided in NAC 432A.546, a licensee of a group home shall abide by the following limits on ~~the number of children in the group home and~~ staffing levels:

Age of Child	Required Staff to Child Ratio	Group Size
Less than 1 year of age	1 caregiver for every 2 children	4
1 year of age or older but less than 3 years of age	1 caregiver for every 4 children	8
3 years of age or older	2 caregivers for every 6 children	12

↪ Three caregivers must be on duty whenever eight or more of the children in the facility are children with special needs.

2. If a licensee of a group home is:

(a) A natural person, the licensee shall:

- (1) Reside in the facility; and
- (2) Provide direct care to the children in the facility.

(b) Not a natural person, one of the persons listed on the license pursuant to NRS 432A.150

as a person authorized to operate the facility shall:

- (1) Reside in the facility; and
- (2) Provide direct care to the children in the facility.

3. A child of the person who resides in a facility pursuant to subsection 2 will be counted to determine whether a licensee is in compliance with subsection 1 only if the child is less than 3 years of age.

Sec. 43. Section 3 of LCB File No. 182-18, is hereby amended to read as follows:

Sec 3. 1. If the Division assigns to a facility a grade of “B,” the licensee of the facility may, not later than 30 days after receiving the placard containing the grade pursuant to section 2 of ~~[this regulation,]~~ *LCB File No. 182-18*, apply to the Division for a resurvey. *The application must be accompanied by a fee of \$100.*

2. If the Division assigns to a facility a grade of “C,” “D,” or “F,” the licensee of the facility must, not later than 30 days after receiving the placard containing the grade pursuant to section 2 of ~~[this regulation,]~~ *LCB File No. 182-18*, apply to the Division for a resurvey. *The application must be accompanied by a fee of:*

(a) For a resurvey of a facility that received a grade of “C” or “D,” \$200.

(b) For a resurvey of a facility that received a grade of “F,” \$300.

3. The Division may revoke the license of a facility that fails to comply with the requirements of subsection 2.

Sec. 44. 1. This section and sections 1 to 42, inclusive, of this regulation become effective on the date on which this regulation is filed with the Secretary of State.

2. Section 43 of this regulation becomes effective only if LCB File No. R182-18 is adopted by the Division of Public and Behavioral Health of the Department of Health and Human Services and filed with the Secretary of State. Section 43 of this regulation becomes effective on:

(a) The date on which this regulation is filed with the Secretary of State; or

(b) The date on which LCB File No. R182-18 is filed with the Secretary of State,

↳ whichever occurs later.

