

Steve Sisolak
Governor

Richard Whitley, MS
Director



**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
Division of Public and Behavioral Health
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam, Ph.D., M.D.
Chief Medical Officer

April 23, 2020

MEMORANDUM

To: Dr. Jon Pennell, Chairperson
State Board of Health

Dr. Jeffery Murawsky, Vice -Chair
State Board of Health

From: Lisa Sherych, Secretary
State Board of Health

Re: Consideration and adoption of proposed regulation LCB File No. R017-20,
Amendments to Nevada Administrative Codes 439A and NAC439.220.

PURPOSE OF AMENDMENTS

The proposed regulations amend and modify existing language to make regulations more clear, current and compatible with the intent and scope of the Conrad 30/J-1 Visa Waiver Program (J-1). Introduction of new language which aids the J-1 to carry out its regulatory role more effectively and repeals redundant and / or outdated regulations.

SUMMARY OF CHANGES TO THE NAC

The proposed addition/change of regulations to NAC 439A and NAC 439.220 in LCB File No. R017-20 include provisions for:

- The proposed amendment to (NAC 439A.720) Section 1 of this regulation requires that at least half of the application fee be paid by the employer and allows the employer to pay the entire fee.
- The proposed amendment to (NAC 439A.720) Section 1, (NAC 439A.725) Section 2, and (NAC 439A.730) Section 4, remove the specific address and website information from the regulations.
- The proposed amendment to (NAC 439A.728) Section 3 of this this regulation updates the fee for a letter of support to \$2,000 which is the allowable amount under NRS 439A.170.
- The proposed amendment to (NAC 439A.730) Section 4 updates language for J-1 physicians transferring to a new employer.
- The proposed amendment to (NAC 439A.735) Section 5 and (NAC 439A.740) Section 6, update language to allow the Administrator to approve additional work locations for the physicians. It also allows the practices to notify in writing of benefits.
- The proposed amendment to (NAC 439A.745) Section 7 updates language to allow the Administrator to report violations to the Board of Medical Examiners or Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health.

- The proposed amendment to (NAC 439A.750) Section 8 updates language to allow the Administrator to prohibit an employer from program participation for up to two years for program violations. The proposed update would allow the Administrator to approve a transfer of current J-1 physicians to a new employer.
- The proposed amendment to (NAC 439.220) Section 9 updates language to allow the electronic posting of public notices to the website for the Division of Public and Behavioral Health.

POSSIBLE OUTCOME IF PROPOSED AMENDMENT IS NOT APPROVED

NAC 439A regulations are for the health and safety of Nevadans. Updating, adding new and repealing regulations assures that the public and the regulated community are safe and that the program can be administered more effectively.

PUBLIC COMMENT RECEIVED

A Small Business Impact Questionnaire was sent to community stakeholders, J-1 participants, licensees and law firms (926 contacts). A Small Business Impact Summary was prepared based upon the returned questionnaires. Staff has determined that there is no impact on small businesses in the state of Nevada.

A Public Workshop was conducted on January 27, 2020. One verbal comment was received indicating that raising the fees will disincentivize primary care physicians from applying to the program and put a financial strain on primary care sites trying to recruit physicians.

STAFF RECOMMENDATION

Staff recommends that the State Board of Health adopt the proposed amended regulations to NAC 439A and 439.200 Physician Visa Waiver Program in LCB File No. R017-20 as presented.

PRESENTER

Joseph Tucker, Manager, Primary Care Office, Division of Public and Behavioral Health.

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

LCB File No. R017-20

March 6, 2020

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

AUTHORITY: §1, NRS 439.190 and 439.200; §§2, 3 and 5-7, NRS 439.200, 439A.170 and 439A.175; §4, NRS 439.150, 439.200, 439A.170 and 439A.175; §§8 and 9, NRS 439.200, 439A.170 and 439A.180.

A REGULATION relating to the State Board of Health; revising requirements concerning publication of certain notice relating to the request for a variance from certain regulations; revising the application fee for a letter of support for the Physician Visa Waiver Program; revising requirements concerning the notification of patients of a J-1 visa physician of certain information; revising provisions governing the reporting of violations concerning the Program and disciplinary action for such violations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the State Board of Health to adopt regulations for certain purposes and hold hearings. (NRS 439.190, 439.200) Existing regulations authorize a person who is unduly burdened by a regulation of the Board and thereby suffers a hardship and the abridgment of a substantial property right to request a variance. (NAC 439.200) Existing regulations require the Secretary of the Board to provide public notice of the application and the date of the public hearing on the application by publishing the notice in newspapers of general circulation within the area affected by the requested variance. (NAC 439.220) **Section 1** of this regulation removes the requirement that such notice be published in newspapers and instead requires the Secretary to publish such notice on the Internet website maintained by the Division of Public and Behavioral Health of the Department of Health and Human Services.

Existing law establishes the Physician Visa Waiver Program, whereby the Administrator of the Division oversees: (1) physicians who have graduated from a foreign medical school, hold a J-1 visa and a waiver of certain federal requirements and work at health facilities that serve patients residing in underserved areas; and (2) employers of such physicians. (NRS 439A.150, 439A.170) The Program is required to issue letters of support to the Waiver Review Division of

the United States Department of State stating that a request for a J-1 visa waiver by such a physician is in the public interest. (NRS 439A.160, 439A.170) **Section 4** of this regulation removes a requirement that an applicant for a letter of support pay a fee that is based on the practice area and practice location of the physician and instead requires the applicant to pay a fee of \$2,000. **Section 2** of this regulation revises provisions concerning payment of the application fee for a letter of support. **Sections 2, 5 and 8** of this regulation revise certain contact information for the Division.

Existing regulations require the employer of a J-1 visa physician to post a sign in the waiting room of each location where the J-1 visa physician works stating that: (1) fees based on a sliding scale are available to certain patients who demonstrate financial need; and (2) patients will be provided care and services regardless of ability to pay. (NAC 439A.735) **Section 6** of this regulation alternatively authorizes the employer to instead provide written notice of that information to patients.

Existing regulations require a J-1 visa physician to work at a location which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division. (NAC 439A.735, 439A.740) **Sections 6 and 7** of this regulation remove that requirement and instead require a J-1 visa physician to work at a location approved by the Administrator.

Existing regulations require the Administrator to report a violation of provisions of law or regulations governing the Program that affects the health and safety of a patient to the Board of Medical Examiners. (NAC 439A.745) **Section 8** of this regulation alternatively authorizes the Administrator to report such a violation to the Bureau of Health Care Quality and Compliance of the Division, which regulates medical facilities and facilities for the dependent. (Chapter 449 of NRS, chapter 449 of NAC)

If an employer violates provisions of law or regulations governing the Program, existing regulations require the Administrator to: (1) impose a fine for a first or second offense; and (2) withdraw the support of the Division for the employer's participation in the Program for a third offense. (NAC 439A.750) Existing regulations prohibit the Administrator from issuing a letter of support to an employer who was penalized for a violation of requirements concerning the Program or federal immigration law within the immediately preceding 2 years. (NAC 439A.725) **Section 9** of this regulation authorizes rather than requires the imposition of certain penalties. **Section 9** also authorizes an employer for whom support has been withdrawn to apply for reinstatement not sooner than 2 years after the withdrawal. **Section 3** of this regulation removes the prohibition on the issuance of a letter of support to an employer who has been penalized but for whom the Administrator has not withdrawn support.

If a J-1 visa physician violates provisions of law or regulations governing the Program, existing regulations authorize the Administrator to report the violation to the United States Citizenship and Immigration Services and the United States Department of State and recommend

that the J-1 visa waiver of the J-1 visa physician be revoked. (NAC 439A.750) **Section 9** removes authorization for the Administrator to report the violation to the Department of State.

Section 1. NAC 439.220 is hereby amended to read as follows:

439.220 1. The Secretary of the State Board of Health shall provide public notice of the application and the date of the public hearing by publishing the notice ~~in one or more newspapers of general circulation within the area affected by the requested variance.~~ *on the Internet website maintained by the Division of Public and Behavioral Health of the Department of Health and Human Services.*

2. The notice must be published *for* at least ~~once, not less than~~ *10 days, at least one of which must be the date* 10 days before the hearing, and must specify the time, date and place of the hearing, the nature of the application and the regulation involved.

3. The Board will hold a public hearing on the application 40 or more days after the date on which the Secretary receives the application. The hearing will be held:

- (a) At its next regularly scheduled meeting;
- (b) At its next meeting in Carson City, Las Vegas or Reno, as requested by the applicant in the application; or
- (c) As soon as the schedule of the Board permits.

Sec. 2. NAC 439A.720 is hereby amended to read as follows:

439A.720 1. An application for a letter of support must:

- (a) Be complete.
- (b) Include the materials required by subsection 1 of NRS 439A.175.
- (c) Be on the form prescribed by the Division of Public and Behavioral Health.

(d) Contain the notarized signatures of the employer and the J-1 visa physician.

(e) Except as otherwise provided in subsection 2, be accompanied by ~~an~~ *the* application fee pursuant to NAC 439A.728. ~~The~~ *At least one-half of the* fee must be paid ~~in equal amounts~~ by the employer. ~~and the J-1 visa physician.~~

2. The Administrator may waive ~~the~~ *any* portion of the application fee which must be paid by the J-1 visa physician or require the J-1 visa physician to pay that portion of the application fee pursuant to a payment plan if the J-1 visa physician is experiencing an economic hardship and the J-1 visa physician submits with the application documentation sufficient to demonstrate that the economic hardship exists.

3. The application fee will not be refunded if the Administrator does not issue a letter of support for the applicant. The Administrator may refund ~~;~~

~~(a) One half of the application fee paid by the J-1 visa physician and one half of the application fee paid by the employer if the application is withdrawn before the Administrator has made a determination whether to issue a letter of support; or~~

~~(b) All~~ *all or any portion* of the application fee paid by the J-1 visa physician and the employer if ~~;~~ *at* :

(a) The application is withdrawn before the Administrator has made a determination whether to issue a letter of support; or

(b) At the time the application is received by the Division, all the available spots for enrollment of J-1 visa physicians in the Program have been filled for that fiscal year.

4. An employer or a J-1 visa physician may obtain an application for a letter of support from the Division of Public and Behavioral Health on the Internet website maintained by the Division

~~{at <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/>~~ or by submitting a written request for an application to the *Primary Care Office of the* Division ~~{of Public and Behavioral Health, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.}~~ *at the address posted on the Internet website maintained by the Division.*

Sec. 3. NAC 439A.725 is hereby amended to read as follows:

439A.725 1. An application for a letter of support must be filed with the Administrator by personal delivery, commercial carrier or mail.

2. The Advisory Council may review an application submitted pursuant to this section for completeness and compliance with the provisions of NRS 439A.130 to 439A.185, inclusive, and NAC 439A.700 to 439A.755, inclusive.

3. Applications must be reviewed in the order in which they were received.

4. The Administrator is responsible for the review and the approval or denial of all applications. The Administrator shall provide notice of the approval or denial of an application to the applicant. If an application is incomplete, the Administrator shall provide notice to the applicant within 14 days after receipt of the application and provide a written explanation of the missing information or documentation. An application may be resubmitted with the additional required information or documentation.

5. The Administrator shall accept applications pursuant to this section until all available spots for enrollment of J-1 visa physicians in the Program have been filled. The Administrator shall post the status of the number of available spots for enrollment on the Internet website maintained by the Division of Public and Behavioral Health . ~~{at~~

~~<http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/> .}~~

6. The Administrator shall not issue a letter of support to:

(a) An employer ~~{who was penalized for a violation of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.}~~ *for which the Administrator has withdrawn the support of the Division of Public and Behavioral Health pursuant to NAC 439A.750.*

(b) A J-1 visa physician who was determined by the Administrator to have violated a provision of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

Sec. 4. NAC 439A.728 is hereby amended to read as follows:

439A.728 ~~{H.}~~ Except as otherwise provided in ~~{this section and}~~ NAC 439A.720, the application ~~{fees}~~ *fee* for a letter of support from the Division of Public and Behavioral Health ~~{are as follows:~~

—(a) For a primary care provider employed by a health facility in a designated health professional shortage area.....	500
—(b) For a primary care provider employed by a health facility in a flex slot.....	800
—(c) For a primary care provider employed by a third-party contractor in a designated health professional shortage area.....	1,100
—(d) For a primary care provider employed by a third-party contractor in a flex slot.....	1,400
—(e) For a specialist employed by a health facility in a designated health professional shortage area.....	800

~~—(f) For a specialist employed by a health facility in a flex slot.....1,100~~

~~—(g) For a specialist employed by a third-party contractor in a designated health professional shortage area.....1,100~~

~~—(h) For a specialist employed by a third-party contractor in a flex slot.....1,400~~

~~—2. If the actual cost to the Division of processing an application exceeds the amount listed in subsection 1, the Division shall impose an additional amount equal to that cost, except the total fee may not exceed \$2,000.~~

~~—3. As used in this section:~~

~~—(a) “Designated health professional shortage area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254e.~~

~~—(b) “Flex slot” means an area which is not a designated health professional shortage area or a medically underserved area but which contains health facilities that are utilized by persons who reside in neighboring areas which are designated health professional shortage areas or medically underserved areas.~~

~~—(c) “Medically underserved area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254b as containing a medically underserved population.~~

~~—(d) “Primary care provider” means a physician or osteopathic physician who practices in the area of family practice, general practice, geriatrics, internal medicine, obstetrics and gynecology, pediatrics or psychiatry.~~

~~—(e) “Specialist” means a physician or osteopathic physician who practices in any area other than an area specified for a primary care provider.~~

~~—(f) “Third party contractor” means the employer of a physician or an osteopathic physician who is not a health facility.] is \$2,000.~~

Sec. 5. NAC 439A.730 is hereby amended to read as follows:

439A.730 1. In addition to the requirements of subsection 2 of NRS 439A.175, the contract entered into by the employer and the J-1 visa physician must:

(a) Except as otherwise provided in subsection 2, require the J-1 visa physician to begin work within 90 days after receipt of the J-1 visa waiver.

(b) Except as otherwise provided in subsection 2, be for a term of at least 3 years.

(c) Provide that the J-1 visa physician will work a minimum of 40 hours each week at the location identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State.

(d) Specify the wage that the J-1 visa physician will earn. The wage must not be less than the prevailing wage determined by the Office of Foreign Labor Certification of the United States Department of Labor, which may be found on the Internet website maintained by the Foreign Labor Certification Data Center . ~~[at <http://www.fldatacenter.com>.]~~

(e) Contain the signatures of the employer and the J-1 visa physician and the date on which the contract was signed by each person.

(f) Identify the conditions for termination of the contract, which must not include a provision authorizing termination without cause.

2. If a J-1 visa physician is transferred to a different employer pursuant to NAC 439A.750, the contract entered into by the employer to which the J-1 visa physician is transferred and the J-1 visa physician must comply with paragraphs (c) to (f), inclusive, of subsection 1 and:

(a) Require the J-1 visa physician to begin work within 90 days after receiving notice that the transfer was granted; and

(b) Be for a term ~~equal to the time remaining on the previous contract.~~ *sufficient for the J-1 visa physician to complete the obligation associated with the J-1 visa waiver.*

3. A contract entered into by an employer and a J-1 visa physician may contain a clause for liquidated damages. If a contract entered into by an employer and a J-1 visa physician contains a clause for liquidated damages, the employer may not receive liquidated damages if the contract is terminated by the J-1 visa physician before the end of the contract because the employer has violated a provision of the contract, NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive.

Sec. 6. NAC 439A.735 is hereby amended to read as follows:

439A.735 An employer shall:

1. Offer fees based on a sliding scale to patients whose income is at or below 200 percent of the federally designated level signifying poverty.

2. Ensure that the J-1 visa physician works only in a location ~~which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State.~~ *approved by the Administrator.*

3. Post a sign in the waiting room of each location where the J-1 visa physician works *or provide written notice to each patient* which states that:

(a) Fees based on a sliding scale are available for certain patients who have demonstrated a financial need for assistance to pay for care and services.

(b) Patients will be provided care and services regardless of the ability of the patient to pay.

4. Provide documentation satisfactory to the Division of Public and Behavioral Health that the employer participates in Medicaid, Medicare and Nevada Check Up.

5. File the schedule of fees with the Administrator for review.

6. Submit an affidavit to the Administrator once every 6 months which attests that the J-1 visa physician ~~+~~

~~—(a) Worked~~ *worked* at least 40 hours each week at a location ~~[which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division; and~~

~~—(b) Is not employed at any location which is not identified on the petition.]~~ *approved by the Administrator.*

Sec. 7. NAC 439A.740 is hereby amended to read as follows:

439A.740 A J-1 visa physician must be in the final year of residency or a fellowship program or be requesting a transfer from the J-1 visa waiver program of another state and shall:

1. Comply with the requirements of 8 U.S.C. § 1184(k).

2. If the J-1 visa physician will prescribe or dispense controlled substances:

(a) Obtain any certificate or registration required by chapters 453 and 639 of NRS and any regulations adopted pursuant thereto; and

(b) Register with the Drug Enforcement Administration of the United States Department of Justice.

3. Accept patients who are enrolled in Medicaid, Medicare or Nevada Check Up.

4. Provide care and services based on the sliding scale of fees filed with the Administrator pursuant to subsection 5 of NAC 439A.735.

5. Only work in a location ~~{which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division of the United States Department of State.}~~ *approved by the Administrator.*

6. Submit an affidavit to the Administrator once every 6 months which attests that the J-1 visa physician ~~is~~

~~—(a) Worked}~~ *worked* at least 40 hours each week at a location ~~{which is identified on the petition submitted by the J-1 visa physician to the Waiver Review Division; and~~

~~—(b) Is not employed at any other location which is not identified on the petition.}~~ *approved by the Administrator.*

Sec. 8. NAC 439A.745 is hereby amended to read as follows:

439A.745 1. A complaint about an employer or a J-1 visa physician may be submitted to the Program on the Internet website maintained by the Division of Public and Behavioral Health ~~{at <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/> or by submitting a written complaint to the *Primary Care Office of the* Division {of Public and Behavioral Health, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.}~~ *at the address posted on the Internet website maintained by the Division.*

2. The Administrator shall ~~{investigate or require the Advisory Council to}~~ investigate each complaint submitted pursuant to this section. The investigation must commence within 45 days after receipt of the complaint, except that if the complaint alleges that the safety of a patient was threatened, the investigation must commence as soon as practicable. ~~{The Administrator is responsible for the investigation of complaints submitted pursuant to this section.}~~

3. If the Administrator determines that a violation of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, has occurred, the Administrator:

(a) Shall, if the violation affected the health and safety of a patient, submit a report to the Board of Medical Examiners ~~{}~~ *or the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health;* or

(b) May, if the violation did not affect the health or safety of a patient, submit a report to the Board of Medical Examiners or to the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health.

Sec. 9. NAC 439A.750 is hereby amended to read as follows:

439A.750 1. If an employer violates the provisions of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, the Administrator ~~{shall:}~~ *may:*

- (a) For a first offense, impose an administrative fine of \$1,000.
- (b) For a second *or subsequent* offense, impose an administrative fine of \$10,000.
- (c) ~~{For a third offense, withdraw}~~ *Withdraw* the support of the Division of Public and Behavioral Health for the employer and assist in the transfer of the J-1 visa physician to a different employer pursuant to subsection 2.

2. If an employer is penalized ~~{for a third offense}~~ pursuant to paragraph (c) of subsection 1 ~~{, the}~~ :

(a) *The* Administrator shall ~~{, in cooperation with a different employer, the J-1 visa physician and the Waiver Review Division of the United States Department of State,}~~ assist in the transfer of the J-1 visa physician to a different employer, including, without limitation, submitting a letter to the J-1 visa physician which documents the reasons for the transfer and providing

documentation for designating a new location in which the J-1 visa physician may work. *The Administrator may notify the United States Citizenship and Immigration Services of the withdrawal of support and recommend to the United States Citizenship and Immigration Services that the J-1 visa physician be transferred to a different employer in this State.*

(b) The employer may apply to the Administrator to request reinstatement of support not sooner than 2 years after the date on which support is withdrawn. The application must include, without limitation:

(1) A detailed description of changes concerning management or policy which the employer has made to protect the interests of any J-1 visa physicians to be employed by the employer; and

(2) An attestation that each person who has responsibility for any part of the operation or management of the employer has reviewed and agreed to comply with all federal and state requirements relating to the Program.

3. If a J-1 visa physician does not comply with the provisions of NRS 439A.130 to 439A.185, inclusive, and NAC 439A.700 to 439A.755, inclusive, the Administrator may report the failure to comply to the United States Citizenship and Immigration Services ~~and the United States Department of State~~ and recommend that the J-1 visa waiver of the J-1 visa physician be revoked.

Errata – LCB File No. R017-20.

Blue italic = Proposed language found in LCB File No. R017-20

Green italics = New proposed language added to LCB File No. R017-20 Errata.

~~*Red italic bold bracketed strikethrough*~~ = Proposed omission in Errata to current LCB File No. R017-20 draft.

Sec. 4. NAC 439A.728 is hereby amended to read as follows:

439A.728 **[1.]** Except as otherwise provided in **[this section and]** NAC 439A.720, the application **[fees] fee** for a letter of support from the Division of Public and Behavioral Health **[are as follows:**

- (a) For a primary care provider employed by a health facility in a designated health professional shortage area.\$500**
- (b) For a primary care provider employed by a health facility in a flex slot800**
- (c) For a primary care provider employed by a third-party contractor in a designated health professional shortage area.1,100**
- (d) For a primary care provider employed by a third-party contractor in a flex slot.1,400**
- (e) For a specialist employed by a health facility in a designated health professional shortage area.800**
- (f) For a specialist employed by a health facility in a flex slot.1,100**
- (g) For a specialist employed by a third-party contractor in a designated health professional shortage area.1,100**
- (h) For a specialist employed by a third-party contractor in a flex slot.1,400**

2. If the actual cost to the Division of processing an application exceeds the amount listed in subsection 1, the Division shall impose an additional amount equal to that cost, except the total fee may not exceed \$2,000.

3. As used in this section:

- (a) “Designated health professional shortage area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254e.**
- (b) “Flex slot” means an area which is not a designated health professional shortage area or a medically underserved area but which contains health facilities that are utilized by persons who reside in neighboring areas which are designated health professional shortage areas or medically underserved areas.**
- (c) “Medically underserved area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254b as containing a medically underserved population.**
- (d) “Primary care provider” means a physician or osteopathic physician who practices in the area of family practice, general practice, geriatrics, internal medicine, obstetrics and gynecology, pediatrics or psychiatry.**
- (e) “Specialist” means a physician or osteopathic physician who practices in any area other than an area specified for a primary care provider. Physician who is not a health facility.] *is \$2,000 except for all nonprofit organizations which is \$1000.***

Rationale for Errata

The Primary Care Advisory Council (PCAC) was created under NAC 439A.710 to make recommendations to the Administrator of the Division of Public and Behavioral Health related to the J-1 Physician Visa Waiver program, regarding program policies and procedures. A public meeting was held on March 04, 2020 in which the PCAC reviewed the proposed regulation

changes and recommended that nonprofits be charged a lower application fee due the financial constraints of nonprofit entities and their utilization of the program.

NOTICE OF PUBLIC HEARING

Intent to Adopt Regulations
(LCB File No. R017-20)

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 439A and 439.220 of Nevada Administrative Code (NAC), Physician Visa Waiver Program. This public hearing is to be held in conjunction with the State Board of Health meeting on June 5, 2020. The NAC 439A and 439.220 regulation changes will be heard in the order placed on the State Board of Health agenda.

The State Board of Health will be conducted via videoconference beginning at 9:00 a.m. on Friday, June 05, 2020 at the following locations:

Division of Public and Behavioral Health 4150 Technology Way Room 303 Carson City, NV 89076	Grant Sawyer Building 555 E. Washington Ave. Room 1400 Las Vegas, NV 89101
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This meeting may be conducted without physical locations and the notices in the libraries are not currently available in accordance with Governor Sisolak’s Declaration of Emergency Directive 006 which can be found at the end of this notice.

The proposed addition/change of regulations to NAC 439A and 439.220 in LCB File No. R017- 20 include provisions for:

- The proposed amendment to (NAC 439A.720) Section 1 of this regulation requires that at least half of the application fee be paid by the employer and allows the employer to pay the entire fee.
- The proposed amendment to (NAC 439A.720) Section 1, (NAC 439A.725) Section 2, and (NAC 439A.730) Section 4, remove the specific address and website information from the regulations.
- The proposed amendment to (NAC 439A.728) Section 3 of this this regulation updates the fee for a letter of support to \$2,000 which is the allowable amount under NRS 439A.170.
- The proposed amendment to (NAC 439A.730) Section 4 updates language for J-1 physicians transferring to a new employer.
- The proposed amendment to (NAC 439A.735) Section 5 and (NAC 439A.740) Section 6, update language to allow the Administrator to approve additional work locations for the physicians. It also allows the practices to notify in writing of benefits.
- The proposed amendment to (NAC 439A.745) Section 7 updates language to allow the Administrator to report violations to the Board of Medical Examiners or Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health.
- The proposed amendment to (NAC 439A.750) Section 8 updates language to allow the Administrator to prohibit an employer from program participation for up to two years for program violations. The proposed update would allow the Administrator to approve a transfer of current J-1 physicians to a new employer.

- The proposed amendment to (NAC 439.220) Section 9 updates language to allow the electronic posting of public notices to the website for the Division of Public and Behavioral Health.
1. Anticipated effects on the business which NAC 439A and 439.220 regulates:
 - A. *Adverse effects*: The agency concludes the proposed regulations will produce a negligible impact on small businesses.
 - B. *Beneficial*: Clearly defines what is expected of the regulated community. Protects the physicians in the event of a program violation, allows the program to be administered more efficiently.
 - C. *Immediate*: The stated adverse and beneficial effects would be immediate impacts as soon as the proposed regulations become effective.
 - D. *Long-term*: The long-term impacts would be the same as the immediate impacts as it is not be expected that the impacts would go away.
 2. Anticipated effects on the public:
 - A. *Adverse*: None anticipated.
 - B. *Beneficial*: Increased public health and safety.
 - C. *Immediate*: Increased public health and safety.
 - D. *Long-term*: Increased public health and safety.
 3. There is no estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulations. Enforcement of the proposed regulations will be incorporated into current administrative, registration, licensing and inspection processes.
 4. The amendment to NAC 439A.720 Section 1 of this regulation increases the fee for a letter of support from a progressive schedule of \$500-\$1,400, to a flat fee of \$2,000 - the maximum allowable under NRS 439A.170.
 5. The proposed regulations do not overlap or duplicate any other Nevada state regulations.
 6. Per NRS 233B.0608(3), The Division of Public and Behavioral Health prepared and distributed a Small Business Impact Questionnaire (SBIQ) to all community stakeholders, J-1 participants, and licensed facilities in the State. The responses received were analyzed and used to generate the Small Business Impact Statement (SBIS) which was approved by the Administrator on December 26, 2019.
 7. Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence in excess of two typed, 8-1/2" x 11" pages must submit the material to the Board's Secretary, Lisa Sherych, to be received no later than Friday, May 06, 2020 at the following address:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300

Carson City, NV 89706

Written comments, testimony, or documentary evidence in excess of two typed pages will not be accepted at the time of the hearing. The purpose of this requirement is to allow Board members adequate time to review the documents.

A copy of the notice and proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours:

Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Division of Public and Behavioral Health
4220 S. Maryland Parkway, Bldg. D,
Suite 810
Las Vegas, NV 89119

Nevada State Library and Archives
100 N. Stewart Street
Carson City, NV 89701

Copies may be obtained in person, by mail, or by calling the Primary Care Office at (775) 684-2232 in Carson City.

A copy of the regulations and this notice can also be found on-line by going to:

<http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/>

<https://www.leg.state.nv.us/Register/2020Register/R017-20I.pdf> (Regulations Only)

<https://www.leg.state.nv.us/App/Notice/A/>

In accordance with Nevada Governor Sisolak's Declaration of Emergency Directive 006 the meeting may be done without physical locations and notices in the libraries and other locations are not currently available.

- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 3: The requirements contained in NRS 241.020 (4) (a) that public notice agendas be posted at physical locations within the State of Nevada are suspended.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 4: Public bodies must still comply with requirements in NRS 241.020 (4)(b) and NRS 241.020 (4)(c) that public notice agendas be posted to Nevada's notice website and the public body's website, if it maintains one along with providing a copy to any person who has requested one via U.S. mail or electronic mail.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 5: The requirement contained in NRS 241.020 (3)(c) that physical locations be available for the public to receive supporting material for public meetings is suspended.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 6: If a public body holds a meeting and does not provide a physical location where supporting material is available to the public, the public body must provide on its public notice agenda the name and

contact information for the person designated by the public body from whom a member of the public may request supporting material electronically and must post supporting material to the public body's website, if it maintains one.

Per NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

Steve Sisolak
Governor
Richard Whitley, MS
Director



**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
Division of Public and Behavioral Health
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator
Ihsan Azzam, Ph.D., M.D.
Chief Medical Officer

NOTICE OF PUBLIC WORKSHOP
Intent to Adopt Regulations

NOTICE IS HEREBY GIVEN that the Division of Public and Behavioral Health will hold a public workshop to consider amendments to Nevada Administrative Code (NAC) 439A. The workshop is scheduled for **January 27, 2020, at 10:30 am**, at the following locations:

Nevada State Health Division 4150 Technology Way, Room 303 Carson City, Nevada 89706	Bureau of Health Care Quality and Compliance 4220 South Maryland Parkway, Suite 810, Building D Las Vegas, Nevada 89119
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This workshop will be conducted in accordance with NRS 241.020, Nevada's Open Meeting Law.

Agenda

1. Introduction of workshop process
2. Review Small Business Impact Statement
3. Public comment on proposed amendments of NAC 439A regarding the J-1 Physician Visa Waiver program.

Summary of amendments

- Provisions for the administration of the Physician Visa Waiver Program, including the following:
 - Increase to a \$2,000 fee for letters of support, at least half of which must be paid by the employer and employee;
 - Removal of website and address specific information
- Contract requirements entered by J-1 visa physician transferring to a new employer:
 - Remove Foreign Labor Certificate Data Center website address;
 - Require physicians to agree to begin work within 90 days of notice of transfer;
 - Require contract be for a term long enough for J-1 physician to complete the J-1 visa waiver obligation;
- Locations of employment:
 - Allow physicians to work in locations approved by the Administrator;
 - Require practices to inform patients either by posted sign, or in writing that, fees based on sliding fee scale are available for certain patients demonstrating need;
 - Submit Affidavit every 6 months demonstrating physician only working in locations approved by the Administrator;
- Administrator (Health Division) is required to do the following:
 - Remove requirement to have Primary Care Advisory Council investigate complaints;
 - Shall, report to Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health if a violation affected the health and safety of a patient;
- Employer violations to the provisions of J-1 Visa Waiver Program:
 - Allow Administrator to prohibit future participation in the program by employers with program violations for a period of two years;

- Require employers prohibited from using the program to demonstrate changes made and ability to remain in compliance with the J-1 Visa Waiver program;
- Allow Administrator to assist J-1 physician with a transfer to a new employer in the event of a program violation by the employer;
- Remove the requirement that the Administrator report noncompliance to the United States Department of State;

Additional Information

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence in excess of two typed pages must submit the material to Joseph Tucker, Manager, Primary Care Office, **no later than January 03, 2020** at the following address:
 Primary Care Office, 4150 Technology Way, Suite 300, Carson City, NV 89706.

Members of the public who require special accommodations or assistance at the workshop are required to notify Joseph Tucker, Manager at the above address or by telephone at (775) 684-2232, **no later than January 03, 2020**.

Written comments, testimony, or documentary evidence in excess of two typed pages will not be accepted at the time of the hearing. The purpose of this requirement is to allow for adequate time to review the documents.

A copy of the notice and the proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours: Primary Care Office, Nevada Division of Public and Behavioral Health, 4150 Technology Way, Suite 300, Carson City, NV; and Nevada State Library and Archives, 100 Stewart Street, Carson City, NV.

A copy of this notice has been posted at the workshop locations as well as the Nevada Conrad30/J-1 Physician Visa Waiver website: <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/>. Copies may be obtained in person, by mail, or by calling (775) 684-2232.

AGENDA POSTING LOCATIONS

Division of Public and Behavioral Health – 4150 Technology Way, First Floor Lobby, Carson City, 89706; NEVADA STATE LIBRARY AND ARCHIVES – 100 North Stewart Street, **Carson City, 89701**; ELKO MEDICAID DISTRICT OFFICE – 1010 Ruby Vista Drive, Suite 103, Elko, NV 89801; MEDICAID DISTRICT OFFICE, 1210 South Valley View, Suite 104, Las Vegas, NV 89102; **MEDICAID DISTRICT OFFICE, 1030 Bible Way, Reno, NV 89502**; DIVISION OF HEALTH CARE FINANCING AND POLICY, 1100 East William Street, Suite 101, Carson City, NV 89701

On the Internet at the Division of Public and Behavioral Health website:

<http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/>.

We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements are necessary, please notify Joseph Tucker, in writing at the Nevada Primary Care Office, 4150 Technology Way, Suite 300, Carson City, NV 89706 or by calling (775) 684-2232 no later than January 03, 2020.

Copies may also be obtained from any of the public libraries listed below:

Carson City Library
900 North Roop Street
Carson City, Nevada 89701-3101

Churchill County Library
553 South Main Street
Fallon, Nevada 89406-3306

Las Vegas-Clark County Library District
Headquarters
833 Las Vegas Boulevard North
89415 Las Vegas, Nevada 89101-2062

Douglas County Public Library
1625 Library Lane
Minden, Nevada 89423-0337

Elko County Library
720 Court Street
Elko, Nevada 89801-3397

Esmeralda County Library
Corner of Crook & 4th Street
P.O. Box 430
Goldfield, Nevada 89013-0430

Eureka County Library
10190 Monroe Street
Eureka, Nevada 89316

Humboldt County Library
85 East 5th Street
Winnemucca, Nevada 89445-3095

Battle Mountain Branch Library (Lander County)
625 South Broad Street
Battle Mountain, Nevada 89820

Lincoln County Library
63 Main Street
Pioche, Nevada 89043

Lyon County Library System
20 Nevin Way
Yerington, Nevada 89447-2399

Mineral County Public Library
P.O. Box 1390
Hawthorne, Nevada

Pershing County Library
1125 Central Avenue
Lovelock, Nevada 89419

Storey County Public Library (CLOSED,
instead, send to the Storey County Clerk's
Office, see below)

Storey County Treasurer and Clerk's Office
Drawer D
Virginia City, Nevada 89440

Tonopah Public Library (Nye County)
P.O. Box 449
Tonopah, Nevada 89049

Washoe County Library System
301 South Center Street
Reno, Nevada 89501-2102

White Pine County Library
950 Campton Street
Ely, Nevada 89301

Per NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

Steve Sisolak
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Lisa Sherych
Administrator
Ihsan Azzam, Ph.D., M.D.
Chief Medical Officer

SMALL BUSINESS IMPACT STATEMENT 2019

PROPOSED AMENDMENTS TO NAC 439A

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments should not impose an economic burden upon a small business or have a negative impact on the formation, operation or expansion of a small business in Nevada.

A small business is defined in Nevada Revised Statutes (NRS) 233B as a "business conducted for profit which employs fewer than 150 full-time or part-time employees."

This small business impact statement is made pursuant to NRS 233B.0608 (3) and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business in sections 1, 2, 3, and 4 below and provides the reasons for the conclusions of the agency in section 8 below followed by the certification by the person responsible for the agency.

Background

Proposed amendments to Nevada Administrative Code (NAC) 439A update the following areas:

- Update the application fee requirement to allow the J-1 physician or employer to pay fee.
- Increase application fees to \$2,000 dollars consistent with NRS 439A.170 as amended by Assembly Bill No. 39, chapter 94, Statutes of Nevada 2015; and
- Allow physicians to agree to begin work in 90 days
- Ensure that physicians work only in locations approved by the Administrator
- Allow employers options to provide patients with written information about discounts based on a sliding fee scale.
- Remove the requirement that the Primary Care Advisory Council investigate complaints.
- Update requirement to report program violations affecting patient health and safety to the Board of Medical Examiners or to the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health.
- Update the violations of the provisions of NRS 439A.130 to 439A.185 to allow Administrator the option to prohibit employers from participation in the program and transfer J-1 visa physician when violations occur.
- Remove references to obsolete website and address.

1) A description of the way comment was solicited from affected small business, a summary of their response and an explanation of the way other interested persons may obtain a copy of the summary.

Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health has requested input from all known stakeholders.

A Small Business Impact Questionnaire was distributed to Nevada Hospital Association, Nevada Rural Hospital Partners, medical facilities licensed throughout the state, the State Office of Rural Health, National Health Service Corps sites, 3RNet Referral List, J-1 Law Firms and J-1 Participants, along with a copy of the proposed regulation changes, on October 30, 2019.

The questions on the questionnaire were:

- 1) How many employees are currently employed by your business?
- 2) Will a specific regulation have an adverse economic effect upon your business?
- 3) Will the regulation(s) have any beneficial effect upon your business?
- 4) Do you anticipate any indirect adverse effects upon your business?
- 5) Do you anticipate any indirect beneficial effects upon your business?

Summary of Response

Summary of Comments Received

(11 responses were received out of 926 contacts invited to complete the small business impact questionnaire)

Will a specific regulation have an adverse economic effect upon your business?	Will the regulation (s) have any beneficial effect upon your business?	Do you anticipate any indirect adverse effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?
Yes – 1 response No – 9 responses No Answer – 1 response 1 respondent noted \$50k – one fulltime salary of one office nurse	Yes – 1 response No – 10 responses 1 respondent noted \$15,000	Yes -1 responses No - 10 responses 1 respondent noted <i>It will be difficult to Recruit if the fees are Increased.</i>	Yes – 1 response No – 10 responses

Additional responses were collected from two participants who completed the survey but indicated that their business does not meet the small business definition defined above.

One participant answered yes to question 2 and question 5 but provided no further information. The second participant answered no to questions 2-5 and did not provide any additional comments.

2) Describe the way the analysis was conducted.

The Small Business Impact Questionnaire was embedded in an online survey with a link to the proposed amendments to regulation and distributed electronically to the stakeholders identified above. Responses were reviewed individually and collectively to determine potential impacts of the proposed amendments. Staff have reviewed the regulations to ensure there is not a negative impact on small business.

3) The estimated economic effect of the proposed regulation on the small business which it is to

regulate including, without limitation both adverse and beneficial effects and both direct and indirect effects.

The proposed changes include modest application fee increases for a J-1 visa waiver application to cover increased costs for program administration and monitoring. The cap was increased from \$500 to \$2,000 under NRS 439A.170. The fee schedule in the proposed regulation charges a flat fee of \$2,000 per application, except for all nonprofits which will be \$1,000, to better reflect actual costs, and to help sustain the program.

- 4) Provide a description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency used any of those methods.**

The regulation will retain an exemption to the fee requirement for a demonstrated hardship.

- 5) The estimated cost to the agency for enforcement of the proposed regulation.**

No new costs are anticipated for enforcement of the proposed regulation.

- 6) If the proposed regulation provides a new fee or increases an existing fee, the total annual amount DPBH expects to collect and the way the money will be used.**

The average number of applications received, per year, over the last five years is 11. The average cost per application since the last fee update in 2016, is \$907. If all 11 applications per year were subject to an increase of \$1,100, this would total \$12,100 per year. These funds would be used to administer and monitor the program, including technical assistance, application review, public hearing, data collection, site visits, monitoring, and marketing.

- 7) An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.**

The proposed regulation does not include more stringent provisions than the Nevada Revised Statutes.

- 8) Provide a summary of the reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.**

The response rate to the small business impact questionnaire was relatively low which may be a reflection that stakeholders do not anticipate significant impact from the proposed regulation. Most respondents indicated no impact, with one respondent noting positive impact of the regulation, in general. One respondent did indicate that raising the fees would make it harder to recruit providers. One respondent stated they expect an economic adverse effect and an indirect beneficial effect on their business but left no clarifying comments. The Primary Care Advisory Council recommended charging a reduced application fee to nonprofit organizations based on the organization's financial constraints and utilization of the program.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Joseph Tucker at the Division of Public and Behavioral Health at:

Division of Public and Behavioral Health 4150
Technology Way, 3rd Floor
Carson City, NV 89701
Joseph Tucker Phone: (775) 684- 2232
Email: jtucker@health.nv.gov

Certification by Person Responsible for the Agency

I, Lisa Sherych, Administrator of the Division of Public and Behavioral Health certify to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business and the information contained in this statement was prepared properly and is accurate.



Signature:

Date: 4/27/2020
