

NOTICE OF PUBLIC HEARING

Intent to Adopt Regulations

(LCB File No. R134-16)

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 458 of Nevada Administrative Code (NAC), Abuse of Alcohol and Drugs. This public hearing is to be held in conjunction with the State Board of Health meeting on June 9, 2017.

The State Board of Health will be conducted via videoconference beginning at 9:00 a.m. on Friday, June 9, 2017 at the following locations:

Division of Public and Behavioral Health 4150 Technology Way Room #303 Carson City, NV 89706	Southern Nevada Health District 280 S. Decatur Blvd Las Vegas, NV 89107	Division of Aging and Disability Services Early Intervention Services 1020 Ruby Vista Drive, Suite 102 Elko, NV
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The proposed changes to NAC 458 include the following:

Tribal entities may operate evaluation center programs and treatment for substance-related disorders in the same geographic area regardless of population.

1. Anticipated effects on the businesses which NAC 458 regulates:
 - A. *Adverse effects:* The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendment is not expected to have a negative impact on the formation, operation or expansion of most small businesses that provide services for substance-related disorders. Only one small business owner indicated possible revenue loss due to the proposed regulation.
 - B. *Beneficial:* The proposed amendment may help Tribal businesses which use limited resources within a combined entity to serve a population with specific cultural and behavioral health needs.
 - C. *Immediate:* None.
 - D. *Long-term:* Only one small business owner indicated anticipated revenue loss due to the proposed regulation over the course of 2017 – 2018, and potentially in subsequent years going forward.

2. Anticipated effects on the public:
 - A. *Adverse:* None.
 - B. *Beneficial:* As noted previously, the proposed amendment may help Tribal businesses which use limited resources within a combined entity to serve a population

with specific cultural and behavioral health needs. Although an Indian tribe may be located in a county of over 100,000 population, its members may still be isolated and underserved in their access to substance use services, especially services that are culturally appropriate. Allowing Tribal operators to provide both evaluation and treatment services could enable access to more effective treatment services.

C. *Immediate*: None.

D. *Long-term*: Enhanced access to more effective treatment services could increase over time.

3. There will be no cost to the Division of Public and Behavioral Health associated with enforcement of the proposed regulation.

The proposed regulations do not overlap or duplicate any other Nevada state or known federal regulations.

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, Cody Phinney, to be received no later than May 30, 2017, at the following address:

Secretary, Cody Phinney
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
4126 Technology Way, Suite 200
Carson City, NV

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

A copy of the regulations and small business impact statement can be found on-line by going to:
<http://dpbh.nv.gov/Programs/ClinicalSAPTA/Home> - SAPTA/

A copy of the public hearing notice can also be found at Nevada Legislature's web page:
<https://www.leg.state.nv.us/App/Notice/A/>

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 684-4190 in Carson City.

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

Carson City Library
900 North Roop Street
Carson City, NV 89702

Churchill County Library
553 South Main Street
Fallon, NV 89406

Clark County District Library
1401 East Flamingo Road
Las Vegas, NV 89119

Douglas County Library
1625 Library Lane
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County Library
Corner of Crook and 4th Streets
Goldfield, NV 89013-0484

Eureka Branch Library
80 South Monroe Street
Eureka, NV 89316-0283

Henderson District Public Library
280 South Green Valley Parkway
Henderson, NV 89012

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

Lander County Library
625 South Broad Street
Battle Mountain, NV 89820-0141

Lincoln County Library
93 Maine Street
Pioche, NV 89043-0330

Lyon County Library
20 Nevin Way
Yerington, NV 89447-2399

Mineral County Library
110 1st Street
Hawthorne, NV 89415-1390

Pahrump Library District
701 East Street
Pahrump, NV 89041-0578

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419-0781

Storey County Library
95 South R Street
Virginia City, NV 89440-0014

Tonopah Public Library
167 Central Street
Tonopah, NV 89049-0449

Washoe County Library
301 South Center Street
Reno, NV 89505-2151

White Pine County Library
950 Campton Street
Ely, NV 89301-1965

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.

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

LCB File No. R134-16

July 25, 2016

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

AUTHORITY: §1, NRS 458.025 and 484C.310.

A REGULATION relating to abuse of alcohol and drugs; revising a limitation on the common ownership or operation of an evaluation center program and a treatment program in certain counties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if an offender is found guilty of driving under the influence of alcohol or drugs and certain other requirements are met, the court is required to order an evaluation of the offender to determine whether the offender is an abuser of alcohol or drugs. In most circumstances, this evaluation must be conducted by an alcohol and drug abuse counselor, a clinical alcohol and drug abuse counselor or a physician at an evaluation center. After the evaluation, the counselor or physician is required to report to the court the results of the evaluation and make a recommendation concerning the length and type of treatment required for the offender. (NRS 484C.300, 484C.350) Existing regulations prohibit an evaluation center program that is provided in a county whose population is 100,000 or more from being operated by an operator who operates or has a financial interest in a treatment program in the same geographic area. (NAC 458.336) This regulation exempts from this requirement an evaluation center program that: (1) is operated by an Indian tribe; and (2) only provides services to American Indians and Alaska Natives who are enrolled members of federally recognized tribes and their descendants.

Section 1. NAC 458.336 is hereby amended to read as follows:

458.336 ~~{An}~~

1. Except as otherwise provided in subsection 2, an evaluation center program must not be operated by an operator who operates or has a financial interest in a treatment program or any other organization which provides treatment for substance-related disorders in the same

geographic area at which the evaluation center program will be provided if the evaluation center program is provided in a county whose population is 100,000 or more.

2. The provisions of subsection 1 do not apply to an evaluation center program that is operated by an Indian tribe and provides services only to American Indians and Alaska Natives who are enrolled members of federally recognized tribes and their descendants.

SMALL BUSINESS IMPACT STATEMENT 2017

PROPOSED AMENDMENTS TO NAC 458

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendment is not expected to have a negative impact on the formation, operation or expansion of most small businesses that provide services for substance-related disorders. However, the amendment may have a negative impact upon some existing small businesses 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

Existing law provides that if an offender is found guilty of driving under the influence of alcohol or drugs and certain other requirements are met, the court is required to order an evaluation of the offender to determine whether the offender is an abuser of alcohol or drugs. In most circumstances, this evaluation must be conducted by an alcohol and drug abuse counselor, a clinical alcohol and drug abuse counselor or a physician at an evaluation center. After the evaluation, the counselor or physician is required to report to the court the results of the evaluation and make a recommendation concerning the length and type of treatment required for the offender. (NRS 484C.300, 484C.350) Existing regulations prohibit an evaluation center program that is provided in a county whose population is 100,000 or more from being operated by an operator who operates or has a financial interest in a treatment program in the same geographic area. (NAC 458.336) This regulation exempts from this requirement an evaluation center program that: (1) is operated by an Indian tribe; and (2) only provides services to American Indians and Alaska Natives who are enrolled members of federally recognized tribes and their descendants.

1) A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which 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 certified providers of substance abuse prevention and treatment services, and the leadership and members of the Inter-Tribal Council of Nevada (ITCN).

A Small Business Impact Questionnaire was distributed to the following along with a copy of the proposed regulation changes, on March 9, 2017:

- All known certified providers of substance abuse prevention and treatment services (n=142) who were listed on the SAPTA mailing list under the LISTSERV host name, LISTSERV.STATE.NV.US.
- Chairpersons listed for the Inter-Tribal Council of Nevada (ITCN) Executive Board, as of February 15, 2017, via United States Postal Service.
- Environmental Directors listed in the Tribal Environmental Directory, as of March 2, 2017, via United States Postal Service.

The Small Business Impact Questionnaire was additionally distributed to the following along with a copy of the proposed regulation changes, on April 4, 2017:

- Daryl Crawford, Executive Director, Inter-Tribal Council of Nevada (ITCN), for inclusion on the agenda for the April 13, 2017, meeting of the Tribal Health Center Directors, via telephone contact and email follow-up.

Links to those documents were also provided on the SAPTA program page of the website maintained by the Division of Public and Behavioral Health (<http://dpbh.nv.gov/Programs/ClinicalSAPTA/Home - SAPTA/>).

The questions on the Small Business Impact 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 *			
(5 questionnaire responses were received out of 293 <i>plus</i> unique small business impact questionnaires distributed**)			
Q2: Will a specific regulation have an adverse economic effect upon your business?	Q3: Will the regulation(s) have any beneficial effect upon your business?	Q4: Do you anticipate any indirect adverse effects upon your business?	Q5: Do you anticipate any indirect beneficial effects upon your business?
No = 4 Yes = 1 No Response/ Unknown = 0	No = 5 Yes = 0 No Response/ Unknown = 0	No = 5 Yes = 0 No Response/ Unknown = 0	No = 5 Yes = 0 No Response/ Unknown = 0
<p>Comments: <i>Written response on questionnaire form:</i> "I would lose between \$500 – 1,000 if Native Americans can be evaluated and treated by the Indian Health Services in Washoe County."</p> <p><i>Verbal response (gist) during follow up telephone call to request clarification from the same small business owner (above):</i> I provide evaluation services to 5-10 Native Americans each year, typically. If a person is adjudicated for DUI in Reno, then they will use my business. If there is a change that allows both evaluation and treatment by the same provider, then I might lose that business.</p>	Comments: None.	Comments: None.	Comments: None.

Number of Respondents out of 293 <i>plus</i> unique questionnaires distributed	Adverse economic effect?	Beneficial effect?	Indirect adverse effects?	Indirect beneficial effects?
No	4	5	5	5
Yes	1	0	0	0

* No questionnaires were returned that indicated 150 or more employees.

** A reminder prompt was emailed to the SAPTA mailing list (host name, LISTSERV.STATE.NV.US) on March 15, 2017.

2) Describe the manner in which the analysis was conducted.

The Division of Public and Behavioral Health has supplied a wide range of opportunities to all known providers of substance abuse prevention and treatment services in Nevada to submit input and comments regarding the proposed amendment to NAC 458, including any economic impact this amendment may produce for small businesses. A Public Workshop will be held in May 2017 for the purpose of soliciting further input from this statewide community regarding the proposed regulation change and how it may impact their operations and incomes. All comments will be considered carefully for possible further revision to the regulation to reduce adverse economic impact on small businesses.

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.

As reflected in the table above, Summary of Comments Received, most small business owners did not anticipate any adverse or beneficial economic effects associated with the proposed regulation, and did not expect any direct or indirect effects. Only one small business operator indicated possible revenue loss due to the proposed regulation.

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 actually used any of those methods.

The survey of all known small business owners who provide substance use services in Nevada indicated that only one operator expected income loss associated with the proposed regulation. The impact of the proposed regulation was also analyzed with respect to the Indian tribe operators who would be exempted from the existing limitation on common ownership or operation of evaluation programs and treatment programs in a county whose population is 100,000 or more. The possibility was considered that the proposed amendment may actually help tribal businesses which use limited resources within a combined entity to serve a population with specific cultural and behavioral health needs.

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

There will be no cost to the agency associated with 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 manner in which the money will be used.

There are no fees associated with the proposed regulation.

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

No increases in the number or the level of stringency of standards, regardless of entity, are considered necessary.

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

The existing regulation prohibits an evaluation center program that is provided in a county whose population is 100,000 or more from being operated by an operator who operates or has a financial interest in a treatment program within the same geographic area. The original intent for this limitation may have been to reduce conflicts of interest that could arise due to the common ownership or combined operation of an evaluation service and a treatment program in areas with adequate resources. However, the regulation as it is written may have unintended and undesirable consequences for communities such as Indian tribes that are located simultaneously in urban counties of more than 100,000 population, and within communities that are more similar to Nevada's rural and frontier counties. The proposed amendment may provide culturally sensitive resources by exempting an evaluation center program that is operated by an Indian tribe, and that only provides services to American Indians and Alaska Natives who are enrolled members of federally recognized tribes and their descendants.

The existing regulation and the proposed amendment were reviewed, and feedback from stakeholders was evaluated. It was concluded that the proposed change is unlikely to produce an excessive or adverse economic impact on most small businesses that provide services for substance use disorders. It was also concluded that the amendment may actually help tribal businesses which use limited resources within a combined entity to serve a population with specific behavioral health needs. Although an Indian tribe may be located in a county of over 100,000 population, its members may still be isolated and underserved in their access to substance use services, especially services that are culturally appropriate. Allowing Tribal operators to provide both evaluation and treatment services could enable access to more effective treatment services.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Ruth Condray, Ph.D., at:

Division of Public and Behavioral Health
Behavioral Health Wellness and Prevention
4126 Technology Way, Suite 200
Carson City, NV 89706
Ruth Condray, Ph.D.
Phone: 775-684-4229
Email: rcondray@health.nv.gov

Certification by Person Responsible for the Agency

I, Cody L. Phinney, 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 businesses and the information contained in this statement was prepared properly and is accurate.

Signature

Cody L. Phinney

Date:

4/14/17

STATE OF NEVADA

BRIAN SANDOVAL
Governor

RICHARD WHITLEY, MS
Director, DHHS



CODY L. PHINNEY, MPH
Administrator, DPBH

JOHN DIMURO, D.O., MBA
Chief Medical Officer

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Behavioral Health Wellness and Prevention
4126 Technology Way, Suite 200
Carson City, Nevada 89706
Telephone: (775) 684-4190 · Fax: (775) 684-4185

NOTICE OF PUBLIC WORKSHOP

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) Chapter 458.

DATE: May 16, 2017

TIME: 1:00 p.m.

CALL-IN NUMBER: 888-363-4735, Access Code 3818294

LOCATIONS

Carson City	Las Vegas
4150 Technology Way Room 303	6161 W. Charleston Blvd. West Hall Conference Room

These workshops will be conducted in accordance with NRS 241.020, Nevada's Open Meeting Law.

AGENDA

1. Introduction of workshop process and explanatory statement of the proposed amendments to Nevada Administrative Code (NAC) Chapter 458.336.
2. Public comment on proposed amendments to NAC 458.336.
 - LCB File No. R134-16 is being proposed in accordance with NRS 449.0302. A copy of the proposed amendments can be found at:
<http://www.leg.state.nv.us/Register/2016Register/R134-16P.pdf>
3. General public comment.
4. Adjournment.

The proposed amendments to NAC 458.336 provide provisions for:

- Tribal entities to operate evaluation center programs and treatment for substance-related disorders in the same geographic area regardless of population.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence may submit the material to the following address:

Division of Public and Behavioral Health
Substance Abuse Prevention and Treatment Agency
Attention: Ruth Condray
4126 Technology Way, Suite 200
Carson City, NV 89706
FAX: 775-684-4185

Members of the public who require special accommodations or assistance at the workshop are required to notify Sara Weaver, Administrative Assistant IV, in writing to the Division of Public and Behavioral Health, 4126 Technology Way, Suite 200, Carson City, Nevada, 89706, at least five (5) working days prior to the date of the public workshop.

You may contact Kyle Devine, Bureau Chief, by calling 775-684-4077 for further information on the proposed amendments to NAC 458.336.

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:

Division of Public and Behavioral Health
4126 Technology Way, Suite 200
Carson City, NV

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

A copy of the regulations and small business impact statement can be found online at:

http://dpbh.nv.gov/Programs/ClinicalSAPTA/Home_-_SAPTA/

A copy of this notice has been posted at the following locations:

Substance Abuse Prevention & Treatment Agency	4126 Technology Way, 2nd Floor, Carson City
Department of Health and Human Services	4126 Technology Way, 1st Floor, Carson City
Northern Nevada Adult Mental Health Services	480 Galletti Way, Sparks
Southern Nevada Adult Mental Health Services	6161 W. Charleston Blvd, Las Vegas
Sierra Regional Center	605 South 21 st St., Sparks
Desert Regional Center	1391 S. Jones Blvd., Las Vegas
Truckee Meadows Community College Redfield Campus	18600 Wedge Parkway, Reno
College of Southern Nevada Cheyenne Campus	3200 E. Cheyenne Ave., Las Vegas
Elko County Library	720 Court St., Elko
DPBH Website	http://dpbh.nv.gov/Programs/ClinicalSAPTA/Home_-_SAPTA/
Nevada Public Notices	http://nv.gov

A copy of the public workshop notice can also be found at Nevada Legislature's web page: <https://www.leg.state.nv.us/App/Notice/A/>

Copies may be obtained in person, by mail, or by calling (775) 684-4190. Per NRS 233B.064(2), upon adoption of any regulations, 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.