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## NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of Regulations of the  
Department of Health and Human Services

### AGENDA

**Date: July 23, 2020 2:30 pm.**

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.

#### Location of Hearing:

Virtual meeting via videoconference

Call-in Line: 1 669 900 6833

Meeting ID: 375 926 3152

Join Zoom Meeting: <https://zoom.us/j/3759263152>

#### 1. Open Hearing with presentation:

The proposed addition/change of regulations to NAC 439A in LCB File No. R022- 20 include provisions for:

- The proposed amendment to (NAC 439A.365) Section 2 of this regulation removes the requirement to deliver a receipt at the time of delivery of an application.
- The proposed amendment to (NAC 439A.455) Section 3, (NAC 439A.515) section 4, (NAC439A.545) Section 5, and (NAC 439A.555) Section 6, remove the requirement to publish notices in a newspaper of general circulation and allow for electronic public posting on the website for the Division of Public and Behavioral Health.
- The proposed amendment to (NAC 439A.545) Section 5, allows electronic notices to be provided to health care facilities located in the service area that provide similar institutional services.
- 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.

#### 2. Public Comment on LCB File No. R022-20

#### 3. Adoption of regulations contained in LCB File No. R022-20 (for possible action)

#### 4. Close Hearing

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify Joseph Tucker, in writing, no later than five (5) working days before the hearing: 4150 Technology Way, Suite 300, Carson City, Nevada 89706, or [jtucker@health.nv.gov](mailto:jtucker@health.nv.gov)  
Supporting public material for this hearing may be requested from Joseph Tucker, Nevada Department of Health and Human Services, 4150 Technology Way, Suite 300, Carson City, Nevada 89706, (775) 684-2232, or [jtucker@health.nv.gov](mailto:jtucker@health.nv.gov).

The following information is provided pursuant to the requirements of NRS 233B.0603:

**1. The need for and the purpose of the proposed regulation or amendment.**

LCB File No. R022-20: The proposed regulations amend and modify existing language to make regulations more clear, current and compatible with the intent and scope of the Certificate of Need (CON). Introduction of new language which allows the program to post notices electronically to carry out its regulatory role more effectively and repeals redundant and/or outdated regulations.

**2. If the proposed regulation is a temporary regulation, either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved. If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised test of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.**

A copy of the proposed regulation can be obtained at the Certificate of Need website by going to [http://dphh.nv.gov/Programs/Certificate\\_of\\_Need/Certificate\\_of\\_Need\\_-\\_Home/](http://dphh.nv.gov/Programs/Certificate_of_Need/Certificate_of_Need_-_Home/) or by contacting Joseph Tucker at 775-684-2232, [jtucker@health.nv.gov](mailto:jtucker@health.nv.gov) or 4150 Technology Way, Suite 300, Carson City, NV 89706. A reasonable fee for copying may be charged.

**3. A statement identifying the methods used by the agency in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608.**

The request for input regarding impact was sent to the following websites and listservs:

- Nevada Department of Health and Human Services Certificate of Need webpage

A workshop to hear input was held February 11, 2020. Comments and recommendations were considered by the Department and incorporated into draft regulations submitted to the Nevada Legislative Counsel Bureau on February 12, 2020.

**4. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and in each case must include:**

**(a) Both adverse and beneficial effects; and**

The regulation does not economically affect business owners.

**(b) Both immediate and long-term effects.**

Benefits stated above appear to be immediate and long term.

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

The Nevada Department of Health and Human Services believes there will be no cost of enforcement of the proposed regulations.

**6. A description of the citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.**

The Department is not aware of any overlapping or duplicating of federal or state regulations.

**7. If the regulation is required pursuant to federal law, a citation and description of the federal law.**

The Department is not aware of any requirement to federal law.

**8. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

No duplication of a federal regulation.

**9. Whether the proposed regulation establishes a new fee or increases an existing fee.**

The regulation does not establish any new fees.

Persons wishing to comment upon the proposed action by the Nevada Department of Health and Human Services may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to Primary Care Office, 4150 Technology Way, Suite 300, Carson City, NV 89706 or by e-mail to [jtucker@health.nv.gov](mailto:jtucker@health.nv.gov). Written submissions must be received by the Nevada Department of Health and Human Services on or before date: **July 10, 2020**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Department of Health and Human Services may proceed immediately to act upon any written submissions.

Additional copies of the notice and the regulation to be adopted will be available at Department of Health and Human Services for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person either before adoption or within 30 days thereafter, will 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.

**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.



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## SMALL BUSINESS IMPACT STATEMENT 2020

### 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 receipt requirement.
- Remove the requirement to post public notices in a newspaper and allow for electronic posting.
- Allow health care facilities and/or interested parties to be notified electronically.
- Update the public posting requirement to allow Division to post on their website and in public facilities.

#### **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, 2,116 medical facilities licensed throughout the state, the State Office of Rural Health, and 768 Radiation Producing Machine (RPM) facilities, along with a copy of the proposed regulation changes, on December 31, 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**

(09 responses were received out of 2,887 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 – 4 responses No – 5 responses	Yes – 2 response No – 7 responses  1 respondent noted <i>\$65,000</i>	Yes -2 responses No - 7 responses  2 respondents noted <i>That the fees required could be an impediment.</i>	Yes – 2 response No – 7 responses

One participant noted that the fees created an indirect adverse effect that could reduce the ability for a small business to hire staff or cause them to reduce staff benefits. The same participant also noted that the changes would bring indirect beneficial effects to their business but did not elaborate how.

**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 amendments do not include any proposed changes to the application fee and are not expected to have any economic effect – adverse or beneficial – on small businesses.

**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 agency is not seeking to make any changes to the application fee and doesn't expect for the proposed changes to impact small businesses.

**S) 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.**

There will be no change in the fee schedule.

**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. Two respondents did indicate that the application fees could potentially impact small businesses. The agency determined that since the fees are not changing, the proposed changes would not have a negative impact on small businesses.

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, 3<sup>rd</sup> Floor  
Carson City, NV 89701  
Joseph Tucker Phone: (775) 684- 2232  
Email: [jtucker@health.nv.gov](mailto: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: 1/21/2020

**PROPOSED REGULATION OF THE DIVISION  
OF PUBLIC AND BEHAVIORAL HEALTH OF THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**LCB File No. R022-20**

April 24, 2020

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

AUTHORITY: §§1 and 3-5, NRS 439A.081; §2, NRS 439A.081 and 439A.100.

A REGULATION relating to health facilities; revising the manner in which the Department of Health and Human Services will acknowledge receipt of an application for approval of certain new construction on behalf of a health facility; revising requirements concerning notice relating to such an application; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires a person to apply for and obtain the approval of the Director of the Department of Health and Human Services before undertaking new construction that exceeds a prescribed cost by or on behalf of a health facility in certain sparsely populated areas. (NRS 439A.100) **Section 1** of this regulation revises the manner in which the Department will acknowledge the receipt of an application for such approval.

Existing regulations require any notice relating to an application for the approval of the Director to be provided: (1) by mail to certain persons; and (2) to the general public by publication in a newspaper of general circulation. (NAC 439A.545) **Section 4** of this regulation additionally authorizes notice to be provided electronically to persons to whom notice is currently required to be provided by mail. **Section 4** also requires notice to be provided to certain health care facilities located in the service area of the proposed project in addition to the persons to whom notice is currently required to be provided. **Sections 2-5** of this regulation remove the requirement that notice be published in a newspaper of general circulation and instead require notice: (1) be published on the Internet website maintained by the Division of Public and Behavioral Health of the Department; and (2) be posted in a public facility in the area in which the project is located or will be located.



**Section 1.** NAC 439A.365 is hereby amended to read as follows:

439A.365 1. The original and three copies of an application for a letter of approval must be submitted by mail or delivered by hand to the Department.

2. Each application submitted to the Department must be accompanied by a nonrefundable fee of \$9,500. The fee must be paid by check made payable to the order of the Department of Health and Human Services.

3. The Department will acknowledge receipt of an application and accompanying fee ~~[-~~  
~~—(a) For applications delivered by hand, by a receipt issued to the deliverer at the time of delivery; or~~  
~~—(b) For applications received through the mail, by mail]~~ within 5 working days after the date of receipt ~~[-~~  
~~→ Receipt will be acknowledged]~~ on a form ~~[of receipt]~~ prescribed by the Department.

**Sec. 2.** NAC 439A.455 is hereby amended to read as follows:

439A.455 1. In connection with an application made pursuant to NRS 439A.100, the Director will issue to each applicant a letter of approval or disapproval, together with a copy of the written findings of fact issued pursuant to NAC 439A.445. This letter is the official document permitting or denying the applicant's project.

2. A letter of disapproval will contain the reasons for denial.

3. A letter of approval will contain:

(a) A timetable for the project, including a specific date by which the proposed facility must be made available for receiving patients or providing services;

(b) The maximum capital expenditure for the project;

- (c) The specific location of the project;
- (d) The specific health services and the number of beds identified in the application;
- (e) Notice of the requirement that, within 30 days after the date of publication of the decision, the applicant must file with the Department its written acceptance of the decision; and
- (f) Each condition placed on the approval which is directly related to the proposed project and the criteria for review.

4. The applicant's failure to accept the letter of approval within 30 days after the date of publication of the decision cancels the letter of approval, and the project may be reinstated only by a new application and review.

5. Public notice of the decision of the Director will be given within 15 days after the date of the decision.

6. The period during which a reconsideration of the decision of the Director must be requested begins on the date on which the notice of the decision ~~first appears in a newspaper of general circulation.~~ *is posted in the manner required pursuant to NAC 439A.545.*

**Sec. 3.** NAC 439A.515 is hereby amended to read as follows:

439A.515 1. Any person:

- (a) Who is the subject of a letter of disapproval;
- (b) Whose project has been determined to be subject to review pursuant to NAC 439A.315;

or

- (c) Whose letter of approval has been withdrawn pursuant to NAC 439A.505,

↪ may request reconsideration of the decision.

- 2. A request for reconsideration will be considered by the Director only if:

(a) It is submitted in writing within 30 days after the ~~first~~ date ~~of publication in a newspaper of general circulation~~ *on which* the notice of the decision for which the reconsideration is being requested ~~is~~ *is posted in the manner required pursuant to NAC 439A.545;* and

(b) It contains sufficient and adequate documentation of good cause for a reconsideration, which is limited to:

(1) The presentation of significant information relevant to a material issue which was not previously considered by the Director and which, with reasonable diligence, could not have been presented to the Director before the conclusion of the public hearing;

(2) A significant change in a factor or circumstance relied upon by the Director in reaching the decision; or

(3) A showing that the Department has materially failed to follow its procedures in reaching the decision.

3. The Director will, within 15 days after receipt of a request for reconsideration, determine whether good cause is shown as required under subsection 2.

4. If the request for reconsideration is denied, the Director will issue a letter to the person requesting the reconsideration stating the reasons for denial.

5. If the request for reconsideration is granted, the affected decision is set aside and the Director will issue a letter to the person requesting the reconsideration and the applicant or holder of the letter of approval stating the reasons for granting the request.

6. If the Director requests additional information in the letter issued pursuant to subsection 5, the person receiving the request has 15 days from the date of receipt to submit the information requested.

7. The Department will, within 15 days after the date on which reconsideration is granted, schedule and give public notice of a public hearing.

8. The public hearing may be waived upon a written request by the applicant or holder of the letter of approval if:

(a) The applicant or holder of the letter of approval is the only person requesting reconsideration; and

(b) The sole ground for the reconsideration is that the Department failed to follow the adopted procedures.

↪ If the public hearing is waived pursuant to this subsection, public notice of the reconsideration will be given.

9. The person requesting reconsideration shall appear at the public hearing personally or by a representative. If that person fails to appear, the hearing will not be held and the decision for which reconsideration was requested will be reinstated.

10. The decision of the Director will be issued to the applicant or holder of a letter of approval in a letter signed by the Director stating the reasons for the decision, together with written findings of fact, within 30 days after:

(a) The close of the public hearing; or

(b) The date of the granting of the request for reconsideration if the public hearing is waived pursuant to subsection 8.

11. The Director will give public notice of the decision upon reconsideration.
12. The decision of the Director upon reconsideration supersedes the original decision.

**Sec. 4.** NAC 439A.545 is hereby amended to read as follows:

439A.545 1. Unless otherwise required in NAC 439A.295 to 439A.675, inclusive, notice given pursuant to NAC 439A.295 to 439A.675, inclusive, will be made in accordance with this section.

2. Notice will be provided by mail *or electronically* to:

- (a) The applicant or the holder of a letter of approval;
- (b) The person requesting the proceeding for which the notice of the proceeding or the resulting decision is being given; ~~and~~
- (c) All persons who have requested in writing *or electronically* that they be placed on a

~~mailing~~ list for ~~this~~ *the* purpose ~~of~~ *receiving such notice; and*

*(d) Any health facility that:*

*(1) Holds a license, certificate or permit issued pursuant to chapter 449 of NRS;*

*(2) Is located in the service area of the proposed project; and*

*(3) Offers health services similar to those offered by the proposed project.*

3. The notice will be provided to the public and all other interested persons by publication *on the Internet website maintained by the Division of Public and Behavioral Health of the Department and by posting the notice* in a ~~newspaper of general circulation~~ *public facility that is located* in the area in which the project is located or will be located.

4. For decisions relating to a letter of intent or a letter of determination, the Department will provide the notice required by this section not later than 21 days after such a decision is made.

**Sec. 5.** NAC 439A.555 is hereby amended to read as follows:

439A.555 ~~[(1)]~~ When a notice of a public hearing is made pursuant to NAC 439A.295 to 439A.675, inclusive, the notice will include:

~~[(a)]~~ 1. The date of the public hearing;

~~[(b)]~~ 2. The time and place of the hearing;

~~[(c)]~~ 3. The nature of the hearing;

~~[(d)]~~ 4. A statement of the legal authority and jurisdiction under which the hearing is to be held;

~~[(e)]~~ 5. A reference to the particular sections of state statutes and regulations involved; and

~~[(f)]~~ 6. A short and plain statement of the matters to be asserted.

~~[(2.—In the case of a hearing for reconsideration of a decision, the notice will be published in two successive issues of a newspaper of general circulation.)]~~