STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

LEGISLATIVE COMMISSION (775) 684-6800
NICOLE J. CANNIZZARO, *Senator, Chair*
Brenda J. Erdoes, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
MAGGIE CARLTON, *Assemblywoman, Chair*
Cindy Jones, *Fiscal Analyst*
Mark Krmpotic, *Fiscal Analyst*

August 26, 2020

Mr. Joseph Filippi
Executive Assistant
Nevada Department of Health and Human Services
4150 Technology Way
Carson City, Nevada 89706

Re: LCB File No. R022-20

Dear Mr. Filippi,

A regulation adopted by the Division of Public and Behavioral Health of the Department of Health and Human Services has been filed today with the Secretary of State pursuant to NRS 233B.067 or 233B.0675 as appropriate. As provided in NRS 233B.070, this regulation becomes effective upon filing, unless otherwise indicated.

Enclosed are two copies of the regulation bearing the stamp of the Secretary of State which indicates that it has been filed. One copy is for your records and the other is for delivery to the State Library and Archives Administrator pursuant to subsection 6 of NRS 233B.070.

Sincerely,

Bryan J. Fernley
Legislative Counsel

Eric W. Robbins
Principal Deputy Legislative Counsel

BJF/slj
Enclosure

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

| SECRETARY OF STATE<br>FILING DATA | For Filing Administrative Regulations | FOR EMERGENCY REGULATIONS ONLY |
|---|---|---|
| FILED,NV,SOS 2020 AUG 25 AM10:49 | | Effective date..... |
| FILED,NV,SOS 2020 AUG 25 AM10:49 | LCB File No. *R022-20* | Expiration date..... |
| | Agency...**State Board of Health.** | .....<br>Governor's Signature |

## Classification:

☐ PROPOSED ☒ ADOPTED BY AGENCY ☐ EMERGENCY Brief description of action.....

The Director of Health and Human Services adopted the proposed regulation amendment(s) to NAC 439A at a public hearing held on July 23, 2020.

Authority citation other than 233B *NRS 439A.100*

Notice date *06/23/20* Date of Adoption by Agency *07/23/20*

Hearing date *07/23/20*

# APPROVED REGULATION OF THE DIVISION

# OF PUBLIC AND BEHAVIORAL HEALTH OF THE

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## LCB File No. R022-20

Filed August 26, 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 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.]~~

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

**DIVISION OF PUBLIC & BEHAVIORAL HEALTH**

**Primary Care Office**

**LCB File No. R022-20**

## Informational Statement per NRS 233B.066

1. The proposed regulations amend and modify the existing language to make regulations more clear, current, and compatible with the intent and scope of the Certificate of Need program (CON). The introduction of new language which aids the Department of Health and Human Services (DHHS) to carry out its regulatory role more effectively and repeals redundant or outdated regulations.

2. A **public workshop** was conducted to solicit feedback from stakeholders in the community on February 11, 2020 at 4150 Technology Way, Carson City, NV 89706 with videoconference to 4220 S. Maryland Parkway in Las Vegas. No one signed-in to the workshop.

**Public Hearing**

A public hearing was held on July 23, 2020. No public comments were received.

How other interested persons may obtain a copy of the summary:

Any other persons interested in obtaining a copy of the summary may e-mail jtucker@health.nv.gov, call 775-684-2232, or mail in a request to Joseph Tucker at the Division of Public and Behavioral Health at:

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

3. A statement indicating the number of persons who attended each hearing, testified at each hearing, and submitted written statements regarding the proposed regulation. This statement should include for each person identified pursuant to this section that testified and/or provided written statements at each hearing regarding the proposed regulation, the following information, if provided to the agency conducting the hearing:
   (a) Name
   (b) Telephone Number
   (c) Business Address
   (d) Business telephone number
   (e) Electronic mail address; and
   (f) Name of entity or organization represented

**Public Workshop**
A public workshop was held on February 11, 2020. No one attended the workshop to make public comments.

**Public Hearing**
A public hearing was held on July 23, 2020. A total of seven individuals attended the teleconference meeting. Due to Section 37 of the Governor's Directive 21, the hearing was conducted by phone conference without a physical location for attendees. The public participated in the hearing and no public comments were made.

4. Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health (DPBH) has requested input from Nevada Rural Hospital Partners, Nevada Hospital Association, medical facilities licensed throughout the state, the State Office of Rural Health, radiation producing machine facilities and has made a concerted effort to determine whether the proposed regulations are likely to impose an economic burden upon a small business.

Notice was sent to all entities by the Division on December 31, 2019, requesting that all interested individuals complete the small business impact questionnaire. An email notice with a link to the small business impact questionnaire and proposed regulations was provided to those with an email address. The proposed regulations were posted on DPBH's website. The questions listed 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**<br><br>**(There were { 09 } responses received out of { 2,887 } small business impact questionnaires distributed)** | | | |
|---|---|---|---|
| **(Q#1) Will a specific regulation have an adverse economic effect upon your business?** | **(Q#2) Will the regulation(s) have any beneficial effect upon your business?** | **(Q#3) Do you anticipate any indirect adverse effects upon your business?** | **(Q#4) Do you anticipate any indirect beneficial effects upon your business?** |
| { 4 } "Yes" Responses | { 2 } "Yes" Responses | { 2 } "Yes" Responses | { 2 } "Yes" Responses |
| { 5 } "No" Responses | { 7 } "No" Responses | { 7 } "No" Responses | { 7 } "No" Responses |

Comments (Q#1):

Comments (Q#2):

1 respondent noted $65,000

Comments (Q#3):

2 respondents noted that the fees required could be an impediment

Comments (Q#4):

Additional responses were collected from one respondent who stated that the fees create 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 respondent noted that the changes would bring indirect beneficial effects to their business but did not elaborate how.

How other interested persons may obtain a copy of the summary

Any other persons interested in obtaining a copy of the summary may e-mail jtucker@health.nv.gov, call 775-684-2232,, or mail in a request to Joseph Tucker at the Division of Public and Behavioral Health at:

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

5. No further changes to the regulations were proposed after considering the public comment. The proposed changes do not affect the current application fee structure and the changes are not expected to have a negative impact on health care facilities or the public.

6. Anticipated effects on the businesses which NAC 439A regulates:

*Adverse effects*:

A. *Adverse*: There are no adverse anticipated effects on businesses.
B. *Beneficial:* There are no beneficial anticipated effects on businesses.
C. *Immediate:* The application processing time will be reduced and more efficient allowing health care facilities to receive their letter of determination more quickly.
D. *Long-term:* The same as the immediate effect.

Anticipated effects on the public:

E. *Adverse*: There are no adverse anticipated effects on the public.

F. *Beneficial:* There are no beneficial anticipated effects on the public.
G. *Immediate*: There are no immediate anticipated effects on the public.
H. *Long-term:* There are no long-term anticipated effects on the public.

7. No new cost is anticipated to the agency for enforcement of the proposed regulation.

8. There are no known regulations of other state or government agencies which overlap or duplicate the proposed regulation changes.

9. The proposed regulations do not include more stringent provisions than the Nevada Revised Statutes or federal regulations.

10. The regulation does not increase the existing fee.

NOTE: **The Informational statement is essential. If this statement is not included with the final regulations or is incomplete or inaccurate, LCB will return the regulation to the agency. Unless a statement is supplied, the LCB will not submit the regulation to the Legislative Commission, and the regulation never becomes effective (NRS 233B.0665).**