

## 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/](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**

<b>Summary of Comments Received *</b>			
(5 questionnaire responses were received out of 293 <i>plus</i> unique small business impact questionnaires distributed**)			
<b>Q2: Will a specific regulation have an adverse economic effect upon your business?</b>	<b>Q3: Will the regulation(s) have any beneficial effect upon your business?</b>	<b>Q4: Do you anticipate any indirect adverse effects upon your business?</b>	<b>Q5: Do you anticipate any indirect beneficial effects upon your business?</b>
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
Comments: <u>Written response on questionnaire form:</u> "I would lose between \$500 – 1,000 if Native Americans can be evaluated and treated by the Indian Health Services in Washoe County."  <u>Verbal response (gist) during follow up telephone call to request clarification from the same small business owner (above):</u> 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.	Comments: None.	Comments: None.	Comments: None.

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

\* 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](mailto: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*