REVISED PROPOSED REGULATION OF THE DIRECTOR OF

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

LCB File No. R150-15

February 9, 2016

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

AUTHORITY: §§1-9, NRS 439A.081.

A REGULATION relating to health facilities; defining the term "letter of approval" for the purposes of those health facility construction projects requiring approval from the Director of the Department of Health and Human Services; interpreting provisions defining a health facility for such projects; revising provisions requiring the provision to the Department of a quarterly progress report on certain health facility construction projects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires that, in a county whose population is less than 100,000, no person may undertake certain proposed expenditures for new construction by or on behalf of a health facility in excess of $2,000,000 or such an amount as the Department of Health and Human Services may specify by regulation without first applying for and obtaining the written approval of the Director of the Department. In Senate Bill No. 247, the Nevada Legislature expanded this requirement to apply also in an incorporated city or unincorporated town whose population is less than 25,000 if that city or town is located in a county whose population is 100,000 or more. (NRS 439A.100, as amended by section 2 of Senate Bill No. 247, chapter 422, Statutes of Nevada 2015, at page 2436) Existing regulations provide certain requirements for submitting an application for such a letter of approval. (NAC 439A.365) **Section 2** of this regulation provides a definition for the term "letter of approval," including an acknowledgment that such a letter is commonly known as a "certificate of need." **Section 5** of this regulation removes the requirement that the check for the fee required with the application for a letter of approval be a cashier's check.

Existing law defines "health facility" for the purposes of the requirement for written approval of the Director for certain proposed expenditures, and exempts from that definition "the office of a practitioner used solely to provide routine services for health to the practitioner's patients." (NRS 439A.015) **Section 3** of this regulation provides that the Director will interpret

the term "routine services for health" to mean "those services that can be rendered to a patient in a practitioner's office provided that the rendering of such services does not require the construction of a new facility or expansion, renovation or redesign of the existing office at a cost that exceeds, including the cost of equipment acquired for the new facility, expansion, renovation or redesign, $2,000,000." **Section 8** of this regulation makes a conforming change regarding that interpretation in a section that puts the burden of proof on the applicant for demonstrating the relevant criteria for a letter of approval. (NAC 439A.595)

Existing regulations provide requirements for submitting to the Department, prior to applying for a letter of approval, a letter of intent to determine if a letter of approval is required for a certain project. (NAC 439A.305) Existing regulations also require the holder of a letter of approval from the Director to provide the Department with quarterly progress reports on the project that is the subject of the letter of approval. (NAC 439A.465) Finally, existing regulations provide that a letter of approval is subject to withdrawal if the approved timetable of the project is not met by the holder, unless an extension is granted by the Department upon request of the holder. (NAC 439A.475) **Section 6** of this regulation removes the requirement that the provision of information to the Department in a quarterly progress report not be construed or interpreted as a request for an extension or a letter of intent, and **section 7** of this regulation requires that a request for an extension be submitted to the Department in a quarterly progress report.

Section 1. Chapter 439A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. ***"Letter of approval" means a document, commonly known as a certificate of need, which is issued by the Director pursuant to NAC 439A.455 and which indicates the approval of a proposed project for which approval is required pursuant to NRS 439A.100, as amended by section 2 of Senate Bill No. 247, chapter 422, Statutes of Nevada 2015, at page 2436.***

Sec. 3. ***As used in NRS 439A.015, the Director will interpret the term "routine services for health" to mean those services that can be rendered to a patient in a practitioner's office provided that the rendering of such services does not require the:***

1. ***Construction of a new facility; or***

2. Expansion, renovation or redesign of the existing office,

➥ ***at a cost that exceeds, including the cost of equipment acquired for the new facility, expansion, renovation or redesign, $2,000,000.***

Sec. 4. NAC 439A.010 is hereby amended to read as follows:

439A.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 439A.070 to 439A.240, inclusive, ***and section 2 of this regulation*** have the meanings ascribed to them in those sections.

Sec. 5. 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 ~~[cashier's]~~ 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. 6. NAC 439A.465 is hereby amended to read as follows:

439A.465 1. The holder of a letter of approval shall provide the Department with quarterly progress reports, beginning with the first calendar quarter following the issuance of the letter of

approval and due no later than 30 days after the end of the quarter. Each progress report must include all of the following:

(a) The date of commencement of the project;

(b) The extent of progress made in complying with the approved timetable, including:

(1) All deadlines which have passed; and

(2) Whether the required activity met the deadline;

(c) Any financial arrangements which differ from those originally approved, including a detailed description of, and the reason for, each difference;

(d) The actual cost to date for the project;

(e) A revised estimate of the total project cost, including a detailed description and explanation of the differences, if any, between the revised cost and that originally approved;

(f) All the steps taken to ensure compliance with each applicable condition;

(g) The material changes in the project, including a detailed description and explanation of each change; and

(h) The projected date of completion of the project.

2. The Department may, from time to time, request in writing such additional information as is necessary to determine whether the holder of a letter of approval is complying with the letter of approval.

3. The holder of a letter of approval will have 20 working days from his or her receipt of a request for information from the Department to submit the required information in writing. Failure to respond within this period may constitute grounds for the Department to initiate withdrawal proceedings pursuant to NAC 439A.505.

4. The holder of a letter of approval must provide access to the project site and all project records to the Department's staff for examination and inspection in order to verify compliance with the letter of approval and any information submitted by the holder of the letter of approval.

~~[5. The provision of information through progress reports required by the Department will not be construed or interpreted as an application for extension pursuant to NAC 439A.475 or the notification required pursuant to NAC 439A.305.]~~

Sec. 7. NAC 439A.475 is hereby amended to read as follows:

439A.475 1. A letter of approval is subject to withdrawal pursuant to NAC 439A.505 if the approved timetable is not met by the holder of the letter of approval, unless an extension is granted by the Department pursuant to this section.

2. An extension will be granted only if the applicant manifests an intention to complete the project and demonstrates that good and sufficient reasons exist for its failure to meet the timetable. Good and sufficient reasons include delays caused by:

(a) Litigation;

(b) The actions of a regulatory agency other than the Department; or

(c) An event determined by the Department to be beyond the control of the holder of the letter of approval.

3. Except as otherwise provided in subsection 4, a request for an extension must be submitted to the Department ***as part of the quarterly progress report required by NAC 439A.465*** at least 90 days before the required date of completion of the project. The request must contain information setting forth the reasons for noncompliance with the timetable and the extent of the progress toward completion of the project.

4. A request for an extension of a letter of approval which is submitted less than 90 days before the required date of completion of the project will not be accepted unless the applicant can demonstrate to the satisfaction of the Department that unforeseen occurrences prevented a timely submission.

5. Within 20 working days after receipt of the request, the Director will determine whether or not to grant an extension.

6. If the decision is to grant an extension, the Director will issue a letter of extension to the holder of the letter of approval, which will contain:

(a) The reasons for granting the extension; and

(b) A revised timetable for the project, including a revised date of completion for the project.

7. If an extension is not granted, proceedings to withdraw the letter of approval may be initiated pursuant to NAC 439A.505.

Sec. 8. NAC 439A.595 is hereby amended to read as follows:

439A.595 1. The applicant for a letter of approval has the burden of proof to satisfy all applicable criteria for review contained in NAC 439A.605 to 439A.637, inclusive.

2. A finding that the applicant has failed to meet its burden of proof regarding an applicable criterion will be made if:

(a) The applicant fails to provide sufficient, relevant, demonstrative evidence for a favorable determination; or

(b) The evidence on the record opposing the application outweighs the evidence in support of the application regarding the criterion.

3. The criteria for review are applicable to a proposed project if the project includes the construction , ***expansion, renovation, redesign*** or establishment of a facility to provide health services ~~[, except for a facility which will be used solely for the offices of practitioners of health care.]~~ ***at a cost that is proposed to exceed, including the cost of equipment acquired for the new facility, expansion, renovation or redesign, $2,000,000.***

4. If an application is denied on the basis of these criteria, the written findings of fact must clearly state the reason for that denial.

Sec. 9. NAC 439A.338 is hereby repealed.

TEXT OF REPEALED SECTION

439A.338 Capital expenditures for which approval not required; determination of cost of new construction subject to letter of approval. (NRS 439A.081, 439A.100)

1. The provisions of subsection 1 of NRS 439A.100 are applicable only to a project which is not dependent on or related to a larger single project.

2. The cost for construction in which no new square footage is added is not subject to a letter of approval. The cost of construction related to the existing space must be deducted from

the total capital expenditure to determine the cost of the new construction subject to a letter of approval.

3. The cost of construction attributed to space for a medical office building or an office for a health practitioner to be used solely to provide routine health services as defined in NRS 439A.017 must be deducted from the total capital expenditures to determine the cost of new construction subject to a letter of approval.