REVISED SMALL BUSINESS IMPACT STATEMENT, 2020
PROPOSED AMENDMENTS TO NAC 449

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments to the Nevada Administrative Code (NAC) maybe have a financial impact upon a small business or 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

1) **The proposed regulations bring the Board of Health into compliance with NRS 449.0302, and NRS 449.101 to NRS 449.104. The proposed regulations address cultural competency training and the prohibition of discrimination in health care facilities licensed by DPBH. If adopted, it is anticipated that health care workers in DPBH-licensed health care facilities will be able to more effectively treat/care for patients/residents by taking required cultural competency training, so they may better understand patients or residents who have different cultural backgrounds. In addition, the proposed regulations outline the specific types of prohibited discrimination, as required by subsection 1 (e) of NRS 449.0302, helping health care facilities to better understand the different types of prohibited discrimination.**

Pursuant to NRS 233B.0608 (2)(a), DPBH has requested input from all licensed health facilities in Nevada with 150 or fewer employees, and from subscribers to two opt-in email lists of persons who are interested in information relative to the aforementioned health facilities.

A web-based Small Business Impact Questionnaire and a copy of proposed regulations were sent on Nov. 13, 2019, to:

- Email addresses associated with all currently licensed Nevada health facilities (1,903 addresses)
- Medical facilities listserv (approx. 510 email addresses)
- Nonmedical facilities listserv (approx. 414 email addresses)

The questions 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 Responses

Out of approximately 2,827 small-business impact questionnaires distributed, 58 responses were recorded as received. (Responses to all questions are not mandatory, so the overall number recorded responses do not necessarily correlate to the number of responses to any given question.)

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 – 18 No – 14	Yes – 7 No – 23	Yes – 18 No – 11	Yes – 7 No – 20
Comments* – The bullets below summarize major points from respondent comments. -Length of training (more than 1 hour is extreme strain) -Changes to computer system -Proposed regs state "almost nothing" about curriculum. -Need free, online training -Changes to computer tracking -Possible daily fines for noncompliance -Requirement for experienced, qualified instructor	Comments* - Some beneficial effects included: - "Home health staff and field staff will be considerate to all different cultures we take care at home." - "We have an extremely diverse workforce in our city. It is important for team building and better caregiving to teach this information to the employees."	Comments* – The bullets below summarize major points from respondent comments*. -Increased reporting -Cost passed to residents. -Overhead costs -Time spent on processes vs. resident care -Adding significant costs for training -Penalties (for noncompliance) -Increase in cost for onboarding of new employees	Comments* – Some indirect beneficial effects included: - "Better trained team members with awareness of a variety of areas is always helpful. It comes down to time involvement and content/follow up required- and how that is balanced with other regulations and priorities." - "Helps my field staff how to handle different culture of patients." - "I think as humans within this world, it is important to offer education on how to live and enjoy peoples differences and various cultures and religions."

*To review all comments submitted please reference Attachment: Cultural Competency Proposed Regulations Small Business Impact Questionnaire Responses.

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

An online survey was disseminated via email on Nov. 13, 2019, and on Nov. 30, 2019, the survey was closed, and responses analyzed by staff of the Bureau of Health Care Quality and Compliance (HCQC), the agency in charge of health facility licensing under Nevada Revised Statutes Chapter 449. An HCQC inspector and the HCQC education and information officer met to discuss the responses, and then a meeting was held with these HCQC staff members plus an HCQC health facilities manager and with subject matter experts. The language of NRS 449.0302, NRS 449.101 to NRS 449.104 and regulations also were consulted in making modifications to the proposed regulations as indicated later in this document. Additional outreach to explain the implications of the bills and subsequent regulations was done at several Advisory Council meetings conducted through HCQC. Those meetings included:

1. The Adult Day Care Advisory Council Meeting held on 11/21/19;
2. The Assisted Living Advisory Council Meeting held on 1/16/20; and
3. The Palliative Care and Quality of Life Advisory Council held on 1/23/20.

On January 29th, 2020, a Public Workshop was conducted to hear from representatives of licensed health care facilities, facility organizations and any members of the public that were interested in participating in the workshop. The Las Vegas location was attended by 23 people, the Carson City location consisted of 15 people, and no one attended the location provided in Elko. The feedback from these meetings was analyzed and the proposed regulations were further modified to reduce the impact on small businesses. For details on the modifications made to reduce the impact on small business please refer to number 4.

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.

Direct beneficial effects: Although some respondents included beneficial effects on their business as noted in the table on page 2, it was not clear that these would result in direct economic beneficial effects.

Indirect beneficial effects: The proposed regulations may result in indirect beneficial effects. Responses to the small business impact questionnaire included that teaching the information in the regulations is important for team building and better caregiving and that better trained team members with awareness of a variety of areas is always helpful.

According to the Georgetown University, McCourt School of Public Policy, Health Policy Institute:

"A culturally competent health care system can help improve health outcomes and quality of care, and can contribute to the elimination of racial and ethnic health disparities. Examples of strategies to move the health care system towards these goals include providing relevant training on cultural competence and cross-cultural issues to health professionals and creating policies that reduce administrative and linguistic barriers to patient care."

"People with chronic conditions require more health services, therefore increasing their interaction with the health care system. If the providers, organizations, and systems are not working together to provide culturally competent care, patients are at higher risk of having negative health consequences, receiving poor quality care, or being dissatisfied with their care."

According to internal analysis, improved patient satisfaction through better interactions with staff may lead to improved public relations and a larger customer base. Cultural competency training, stricter anti-discrimination requirements, and adapting health records to meet the medical needs of patients may mitigate risk from poor patient care (including possible abuse or neglect) that may reduce potential for lawsuits and associated financial loss.

Direct adverse effects: NRS 449.104 requires the Board of Health to adopt regulations requiring facilities noted in the bill to adapt electronic records to reflect the gender identities or expressions of patients or residents with diverse gender identities or expressions, and if the facility is a medical facility, adapting health records to meet the medical needs of patients or residents. In addition, NRS 449.103, requires facilities noted in the bill to conduct cultural competency training. Although the Division does recognize that there may be a direct adverse financial effect to certain facilities, the proposed regulations carry out the provisions of NRS 449.0302, and NRS 449.101 to NRS 449.104 while taking measures to reduce the financial impact of the

proposed regulations on small businesses. Please refer to question number 4 for a description of the measures taken to reduce the financial impact on small business.

Indirect adverse effects: Possible monetary sanctions for noncompliance with training and posting requirements. In most instances, facilities will be required to submit and implement a plan of correction to come into compliance without the imposition of monetary penalties; therefore, the overall impact on small business is expected to be minimal.

Time taken to participate in training that takes away from patient care: HCQC staff estimate training staff for each individual employee to be no more than 3 hours per year.

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 Division implemented several methods to reduce the impact of the proposed regulations and still be able to carry out the provisions of NRS 449.0302, and NRS 449.101 to NRS 449.104 including:

- Allowing health facilities to use training that is already developed to meet training requirements: Based on concerns about cost to produce a training, language below was added to the proposed regulations giving DPBH the ability to review and approve trainings created by certain outside entities to be used by Nevada health facilities to comply with the new law and clarified that the trainings could be provided online, through a facility's training system, or in person.
    - *The Department Director or designee may approve a cultural competency course or program provided by a nationally recognized organization, as determined by the Department Director or designee, a governmental agency, or a university or college accredited in the District of Columbia, state or territory of the United States, without submitting the information pursuant to subsection 2, as long as the course or program provides proof of completion.*
    - *All cultural competency courses or programs approved pursuant to this section may be completed online, through a facility's training system, or in person.*

In addition, the proposed regulations allow the Director of the Department or designee to approve cultural competency training applications from persons that are not health care facilities and allows cultural competency courses or programs submitted by a facility to include courses or programs that are already approved by the Director of the Department or designee.

The flexibility allowed in the above regulations allow facilities options to help reduce the financial burden by not requiring each facility to have to develop its own cultural competency training but instead may utilize other trainings that have already been approved.

- Length of training: DPBH/DHHS recognizes that health facility staff must be paid for the time spent in training, however to achieve the intent of the new laws DPBH/DHHS also recognizes that training could take a relatively significant amount of time (possibly several hours). To balance the needs of the content with the facility's ability to save staff costs, a duration for the training was not mandated in the proposed regulations to allow facilities to balance these factors. Regarding costs borne by

businesses associated with these regulations, DPBH/DHHS recognizes that facilities will incur certain labor costs in order to fulfill training requirements, however the ability to provide more equitable health care delivery is expected to create better health outcomes and a decrease in ancillary expenses.

- Sanctions: The proposed regulations do not specifically address sanctions for noncompliance, and HCQC will treat noncompliance similarly to other training requirements with a low likelihood of monetary penalties. No monetary penalties are imposed on small businesses that have a severity level 1 (administrative-type violations) or severity level 2 violations (indirectly threaten the health, safety, rights, security, welfare or well-being of a recipient; potential for harm, as yet unrealized, exists) and that do not affect more than half (50%) of the facility's population. Monetary penalties are either not imposed or rarely imposed for severity level 2 violations that affect more than 50% of a facility's population because the payment of this monetary penalty must be suspended if the facility has corrected the deficiencies within the time specified in the approved plan of correction. This leaves a very small percentage of all health facilities (2% to 4%) receiving a monetary penalty for more severe violations at a severity level 3 or 4. Severity level 3 violations directly or indirectly threaten the health, safety, rights, security, welfare or well-being of one or more recipients. The severity level 4 violation creates a condition or incident that has resulted in or can be predicted with substantial probability to result in death or serious harm to a recipient.
    - In addition, facilities are authorized to request to use all or a portion of an initial monetary penalty to correct the deficiency for which the penalty was imposed, in lieu of paying the penalty. HCQC is authorized to approve such a request if the deficiency results from the facility's first violation of a provision of law or regulation, which would be the case here initially because the laws/regulations are brand new. Although it is recognized that this still may present a burden for some facilities who did not budget for the items to be corrected or for this previously non-existent training, it still reduces the burden by not having to pay both the fine and use monies to correct a deficiency if needed, and the monies would stay with the facility to correct violations, therefore helping a facility come back into compliance.
- For facilities for the dependent or other residential facilities, many of which are small businesses, the proposed regulations only require the minimum requirement of NRS 449.104, relating to the adoption of electronic records and any paper records to include the preferred name and pronoun and gender identity or expression of a resident, and does not request any other information although allowed by the bill, which limits the impact only to what is required by the bill.

On January 29th, 2020, a Public Workshop was conducted. Below is a summary of the feedback provided during the public workshop and additional measures the Division took to reduce the impact on small businesses.

- GENERAL COMMENTS
    - Can existing regulations be fixed instead of rewriting them?
    - Deadlines specified in the regulations are too tight – they should be extended so facilities can meet the standards.
    - Annual review needs a longer time period to respond…not enough time to be thorough.
    - Changing "maternal" to "pregnant may be appropriate but is beyond the scope of the bills".
    - Reference to Indirect Discrimination is not in the bills, is vague, and not understood, so should be omitted. LTC (long term care) provider is not responsible.
    - "Agent" should be clarified. It doesn't include most physicians.

- TRAINING
    - The draft regulation doesn't distinguish between courses from the training division, a private group, or in house to the facility.
    - The state needs to offer a standard program and allow the facility to modify.
    - The State needs to create an online program offered at no cost to the facility (multiple comments).
    - Section 5 – course content – inclusion of 'self-reflection' is unusual. Long term care provider is not responsible. Providing the document should be sufficient and should not be required.
    - Training pulls the caregiver away from provider care – regulations should be minimal to meet statutory requirement but nothing more.
    - The curriculum advisory group (CCAG) doesn't include a member from a facility.
    - CCAG is not authorized by the bills, though may need to be considered/no statutory requirement/no health care facility involvement.
- MEDICAL RECORDS
    - Altering historical medical records is dangerous, and the H&P (History and Physical) process during intake should cover necessary issues.

To help reduce the impact to small businesses the following modifications to the regulations were made:

1) Modified the language to clearly show that a facility does not have to develop its own cultural competency training. The language provides a facility the option of developing their own training or utilizing a training approved by the Department Director or designee.

2) Clarified that (3) of paragraph (b) of section 16 relating to the health records of a medical facility only applies to medical facilities. In addition, the scope of the data collection was reduced by requiring an organ inventory only if the gender assigned at birth is different than the declared gender identity.

3) Removed the requirement that a facility attest that it has reviewed their cultural competency course or program annually with each licensure renewal.

4) Modified section 15 to give a facility flexibility in developing its own process and timing for handling prohibited discrimination complaints or grievances filed with the facility.

5) The proposed regulations were modified to allow more time for facilities to submit the approved cultural competency course or program that the facility conducts from adoption of the proposed regulations or upon licensure from 60 business days to 90 days, which extends the time by approximately 6 days. In addition, the proposed regulations were modified to allow a facility 6 months from such time that the facility is notified that the facility's current course or program no longer meets revised standard of the Division to find a course or program that does meet the revised standards.

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

These proposed regulations will not add any costs to the current regulatory enforcement activities conducted by HCQC. The facilities impacted by the new laws are already licensed and inspected by HCQC and these new training and posting/patient notification requirements can be incorporated into HCQC's current workload.

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.**

These proposed regulations do not provide for a new fee or increase to any existing fee associated with health facility licensing.

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

Regulations are in compliance with NRS 449.0302, and NRS 449.101 to NRS 449.104, which fill gaps in the federal standards.

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

- Cultural competency training curriculum requirements will be widely disseminated to health facility licensees (web and email) to help businesses reduce time spent searching for training requirements should they decide to create their training internally.
- Sanctions – The impact to small businesses from monetary sanctions imposed for noncompliance with the new regulations should be minimal because:
    - Training noncompliance is generally a lower severity.
    - Posting of complaint information is expected to require minimal time and resources by facilities.
- The proposed regulations provide for flexibility in the methods that can be used to deliver required cultural competency training and allows facilities to utilize trainings that have been approved by other persons; therefore, meeting the requirements of the bill while providing options to help facilities tailor trainings to the needs of their individual facilities to help reduce costs.
- Subsection 1 of NRS 449.104 requires the Board of Health to adopt regulations that requires impacted facilities to develop policies to ensure that a patient or resident is addressed by his or her preferred name and pronoun and in accordance with his or her gender identity or expression. Subsection 2 of NRS 449.104 also requires the facility to adapt electronic records to reflect the gender identities or expressions of gender diverse patients or residents, so regulations must conform.
    - Many electronic health record (EHR) systems already have incorporated the ability to input this information into the software. It is expected that medical facilities that upgraded their electronic health records in 2016 or later to receive participation payments from a Centers for Medicare and Medicaid Services incentive program already have the sexual orientation/gender identity information in their EHR system.
    - For facilities for the dependent or other residential facilities, NRS 449.104 requires adapting electronic and paper records to include the preferred name and pronoun and gender identity or expression of a resident. Regulations do not expand upon the bill requirements.

In conclusion, it is recognized that the proposed regulations, in carrying out the provisions of NRS 449.0302 and NRS 449.101 to NRS 449.104, may or may not cause an adverse financial impact on facilities and that the impact may vary depending on the individual facility; therefore, the Division moved forward the proposed regulations in a manner that brings the regulations into compliance with the bills while providing flexibility and options to facilities to help reduce the financial impact.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to:

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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 businesses and the information contained in this statement was prepared properly and is accurate.

Signature:  Date: 2/12/2020