

SMALL BUSINESS IMPACT STATEMENT 2013

PROPOSED AMENDMENTS TO NAC 449 "Medical and Other Related Facilities"

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 complies with the requirements of NRS 233B.0609.

- 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.**

Background

The proposed changes will amend Chapter 449 of the Nevada Administrative Code. The statutory authority to move these proposed regulations forward is Nevada Revised Statutes (NRS) 449.0302. Following is a summary of the proposed changes in LCB File No. R111-12 and the associated errata:

- Providing a process for the Central Repository for Nevada Records of Criminal History to obtain necessary information to complete a background investigation of an applicant for a license to operate certain agencies, facilities or homes, a licensed operator of such agencies, facilities or homes or an employee or independent contractor of such agencies, facilities or homes.
- Restricting the manner in which an employee or independent contractor of such an agency, facility or home may work pending completion of an investigation or pending correction of information received from an investigation while at the same time allowing industry flexibility in how this provision is carried out. It also provides for disciplinary action for failing to provide necessary information to complete a background investigation.
- The proposed regulations add intermediary service organizations and facility types required by Senate Bill 502 of the 2013 Legislative Session to conduct criminal history record investigations of their employees, independent contractors or employees of a temporary employment service. It also adds a definition of direct supervision for the purposes of carrying out the provisions of the proposed regulations.

Pursuant to NRS 233B.0608 (2) (a), the Division of Public and Behavioral Health (DPBH) has requested input from all licensed DPBH facilities and Nevada certified intermediary service organizations to which the provisions of the proposed regulations may apply in accordance with

Chapter 449. In addition, input was requested of the home for individual residential care facilities, skilled nursing facilities and residential facility for groups advisory groups. Their input resulted in the proposed errata being moved forward with the proposed regulations. A Small Business Impact Questionnaire was sent to all licensed Division of Public and Behavioral Health facilities to which the provisions of the proposed regulations may apply in accordance with Chapter 449. It was also sent to all Nevada certified intermediary service organizations along with a public workshop notice outlining how a hard or electronic copy of the regulations could be obtained by the end of June 28, 2013. 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? If so, please indicate the estimated dollar amount(s) you believe the adopted regulations will cost you over one calendar year with a brief explanation as to how the dollar amount was calculated.
- 3) Will the regulation(s) have any beneficial effect upon your business? If so, please include any cost savings you believe the adopted regulations will save you over one calendar year with an estimated dollar amount if applicable.
- 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 (6 responses were received out of 973 small business impact questionnaires distributed)			
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?
No – 6 Yes - 0	No – 6 Yes - 0	No – 6 Yes - 0	No – 6 Yes - 0

Number of Respondents out 973	Adverse economic effect?	Beneficial effect?	Indirect adverse effects?	Indirect beneficial effects?
6	0	0	0	0

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Leticia Metherell at the Division of Public and Behavioral Health at:

Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, NV 89701
Leticia Metherell, Health Facilities Inspection Manager
Phone: 775-684-1045
Email: lmetherell@health.nv.gov

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

As noted previously, the Division of Public and Behavioral Health (DPBH) requested input from all licensed DPBH facilities and Nevada certified intermediary service organizations as well as receiving input from industry advisory groups. A Small Business Impact Questionnaire was sent to all licensed DPBH facilities to which the provisions of the proposed regulations may apply. This information was analyzed by a health facilities inspection manager who is knowledgeable in the area of health facility background check requirements. All of the information was then looked at as a whole to determine the impact to businesses. Based on the input from industry changes were made to the proposed regulations providing industry with increased flexibility related to the manner in which an employee or independent contractor may work pending completion of an investigation. This would minimize any adverse effects on facilities.

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.

a) *Adverse effects:* There were concerns expressed by industry related to suspending employees or having them work under direct supervision as the only options available to them. This concern was addressed in the proposed regulations by adding language which would allow a facility to conduct an investigation into the circumstances of the criminal history record to determine and implement measures the facility identifies in order to ensure the safety of patients. This would minimize any adverse effects on facilities. Based on the Small Business Impact Questionnaire sent to industry impacted by the

proposed regulations it was revealed that they did not anticipate an adverse economic effect upon their business.

- b) *Beneficial effects:* This will result in increased public safety by ensuring that individuals with undetermined background investigations obtain a final determination as to whether they are eligible or not eligible to work in a facility.
- c) *Direct effects:* Increased public safety by ensuring individuals receive a final determination as to whether they are eligible or not eligible to work in a facility.
- d) *Indirect effects:* Individuals that have been convicted of crimes that would disqualify them from working at certain facilities which care for a vulnerable population would be identified and either prevented from working or terminated from employment as applicable.

4) A description of the methods that DPBH considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used those methods.

The Division of Public and Behavioral Health provided opportunities for those impacted by the proposed regulations to provide input and comments regarding LCB File No. R111-12, including the economic impact the proposed regulations may have on industry. Modifications to the proposed regulations have been made as a result of this input. Workshops were held on July 17, 2013 allowing for further input by industry and the public regarding the proposed regulations. No testimony in support or against the proposed regulations was provided at the time of the public workshop.

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

The estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulations is \$0.

6) Total amount DPBH expects to collect from any fees and the manner in which the money will be used

There are no fees that will be collected as a result of these proposed regulations.

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

There are no duplicative or more stringent provisions.

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

A) Feedback from the advisory groups revealed that the proposed regulations would not have a negative impact on their business except for one industry group which expressed concern related to the manner in which an employee or independent contractor may work pending

completion of an investigation. Modifications to the proposed regulations were made to reduce and/or eliminate this concern.

B) Only 6 of 973 small business impact questionnaires were returned to DPBH. The six received revealed that the proposed regulations would not have an adverse economic effect upon his or her business.

C) No one testified in support or opposition to the proposed regulations during the public workshop.

D) As DPBH currently enforces Nevada Revised Statutes (NRS) Chapter 449 background investigation laws there will be no additional cost to DPBH to enforce the provisions of these proposed regulations.

Based on the reasons noted above DPBH made its conclusion regarding the impact of the regulations on small business.

I, Richard Whitley, Administrator of the Division of Public and Behavioral Health certify to the best of my knowledge or belief, the information contained in this statement was prepared properly and accurately

Signature Richard Whitley

Date: December 2, 2013