

SMALL BUSINESS IMPACT STATEMENT 2016

PROPOSED REGULATIONS: COMMUNITY BASED LIVING ARRANGMENTS R090-16

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments should not have a negative financial impact upon a small business. The proposed regulations are not expected to negatively impact 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

The exiting law requires the State Board of Health to adopt regulations for the care and treatment of persons with mental illness under NRS 433.324.

<http://www.leg.state.nv.us/Register/2016Register/R090-16P.pdf>

The proposed regulations provide provisions for the following:

- 1) This will establish regulatory provisions of community based living arrangement services (CBLA), which are individualized services and designed to maximize a person's independence. These services are provided in a home setting, and in the natural community setting. Services are for compensation for individuals served by the Division of Public and Behavioral Health.
- 2) Requires for a person or governmental entity to hold a provisional certificate or certificate by the Division to provide CBLA services or receive payment of these services. Prescribes the process of application, acceptance, denial and training requirements. Places timeframes of how long the certifications are good for; 1 year for a provisional with no renewal, and every 2 years for certifications.
- 3) Authorizes the Division to conduct quality assurance reviews, and to take action as needed. Sets forth the standards in which a provider must comply, including maintaining certain records.
- 4) Maintains certain rights to the recipients of services and authorizes any person to file a complaint with the Division against a provider of services.
- 5) Prescribes the grounds in which the Division may revoke a provisional certificate or certificate. In addition, it authorizes the Division to terminate a provider immediately if it is determined that a person is in imminent or probable risk of harm.

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 DPBH’s contracted providers, Board of Nursing, Nevada State Housing Division and HUD.

A Small Business Impact Questionnaire was sent to SNAMHS & NNAMHS contracted residential providers, Board of Nursing, Nevada State Housing Division and Housing and Urban Development (HUD), along with a copy of the proposed regulation changes, on August 15, 2016. 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?
- 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 (7 responses were received out of 102 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?
No = 5 Yes = 2 No response/ unknown = 0	No = 7 Yes = 0 No response/ unknown = 0

The dollar amount in cost associated with the adverse effect of the section below being addressed cannot be specified. However, the severity of this impact may cause the provider to possibly go out of business due to failure of compliance as a result of a quality assurance audit.

SECTION 17.1

No comments, although additional costs could incur with updated provider requirements such as fingerprinting, medical training, updating policies and procedures, possible legal fees, etc. to ensure compliance with Nevada laws and regulations.

SECTION 17.2

The Division may conduct a quality assurance review for cause at any time

The term AT ANY TIME should be a specific time period due to the numerous sections embedded in this regulation that Providers will be constantly have to be aware of and updated at all times. Incidences can occur at a moment's notice and Providers should be given time to address the validity and the severity of any allegation against them and provide a more considerable solution that can appease both parties before resulting in a quality assurance review. This will take time away from the Provider to care for other clients to simply address an allegation that may turn out to be false. In addition, the time it takes to conclude a quality assurance review may also be costly for the Provider especially when performed "at any time" or "surprise audits"

SECTION 17.3

(a)(1) policies and procedures should provide more guidance and specify the Division's expectations of Providers in order to better develop safe and sound policies and procedures for ongoing compliance. The lack of specifics in policy and leaving it open ended may lead the Provider to become noncompliant by having inconsistent or poor policies and procedures. This in turn can impact a quality assurance audit and depending on the magnitude of certain policies not being in place can lead to a denial in certification for the Provider. Providers should be given guidance and provided with resources to use to develop sound policies and procedures.

(b) Conduct interviews with persons receiving community based living arrangement services...

Interviews with clients about their services may or may not always be completely accurate and should always be given the benefit of the doubt. Clients will always be treated with the up most care by Providers, however there are always circumstances especially with clients with mental disabilities where that quality of care may not always be wanted. During these circumstance, especially during a quality assurance audit, interviewing the client could adversely affect the Provider's reputation based on that client's answers when being interviewed. The answers could be misleading, untruthful, or maybe lead to false accusations towards the Provider. This can then lead to noncompliance alone as a result of a quality assurance audit and could subject the Provider to sanctions, have their certificate revoked, or even close their business entirely. Interviews with clients should be reconsidered or omitted as part of a quality assurance audit.

No, I cannot conclude or know the economic effects upon our small business in an adverse way. It is apparent this is the first draft of regulation. My assumption and hope is there will be more specific details as time goes on, and there is elaborated on question 4 regarding details.

No, I cannot conclude or know the economic effects upon our small business in an adverse way. It is apparent this is the first draft of regulation. My assumption and hope is there will be more specific details as time goes on, and there is elaborated on question 4 regarding details.

There is no impact towards the cost of my business. Business license, CPR/First Aid, fingerprint, TB Test, and medication training is required every year.

No I cannot conclude or know the economic effects upon our business in a beneficial way.

No I cannot conclude or know the economic effects upon our business in a beneficial way.

There is no impact towards the cost of my business. I spend the same amount of money for the business license, CPR/First Aid, fingerprint, TB Test, and medication training.

<p>If a caregiver will be a requirement for CLBA house, at 20 or 30 hr per client, not feasible; will be impossible to operate; not unless the provider is willing to be in the hole every month.</p>	
<p>Do you anticipate any indirect adverse effects upon your business?</p>	<p>Do you anticipate any indirect beneficial effects upon your business?</p>
<p>No =3 Yes = 4 No response/ unknown = 0</p>	<p>No = 2 Yes = 5 No response/ unknown = 0</p>
<p>The quality assurance audit adds on another layer for Providers to undergo. This creates more time and effort on the part of the Provider to ensure these proposed regulations are in full compliance and being followed. These audits will take time away from the provider rather than focusing more on the quality of care for clients and their well-being. Additional costs may also incur for the Provider by possibly having to hire additional staff and resources to ensure full compliance with the Division in all matters.</p> <p>Here are some regulations that might have adverse effect:</p> <ol style="list-style-type: none"> i. Section 10 (e) "provider satisfies the same or similar criteria of a person professionally qualified in the field of psychiatric mental health." This might not include our business but if it does, does it require us to hire a professional. This is not simple credential easily obtain and might be costly and/or time consuming to get on our own. ii. Section 19 (1) "obtaining services from professionally qualified persons or other specially trained persons as needed to assist in planning, carrying and reviewing the provisions of community based living arrangement services." This regulation needs to have more details because who will shoulder the cost for such services to stay in compliant with this regulation. iii. Section 20 (3) "Submit to the Division any financial report" This regulation needs to have more details in regards to what is considered financial reporting and the need to have those request be very specific for the privacy of the business but balancing financial regulation inquiry. iv. Section 14 (5) "Any period not to exceed 2 years if the division conducts a quality assurance review and determine that the provider is in compliance with the standards of the Division concerning the provision of community based living arrangement services set forth in Section 1 to Section 30, inclusive." This regulation's time period as well as the one's above feels like "over-regulation". We fear that over-regulation might push most providers and employees to focus on the technicalities of the regulations in the form of documentation/paperwork rather than the care for each client. With this said, this could result in having a negative effect on client care because of limited resources of a small business. This will result in the addition of employees to assist in all areas above. <p>In this regulation, we believe 2 years seems too short of a time considering there are already safe guards throughout this draft. These safe guards are all the complaints of any client or anyone involved with the client, existing monthly environmental review, and also informal/formal inspections of agency representatives (case managers.) Concluding, 2 years is a difficult hardship that we believe should be reconsidered.</p>	<p>The regulation provides a better and safer environment for clients, which in turn allows the business to produce better results.</p> <p>One of the benefits of having these regulations in place to prevent frivolous and fraudulent Providers trying to gain access to clients without any certification or licenses. Clients should always be given the upmost quality of care and not taking advantage of simply for the purpose of financial gain.</p> <p>Yes. The indirect beneficial effect that I can conclude is there will be more information regarding the client admission to our company especially with our limited space. Thus the information and plan of care allows the small business to understand the needs of client and to customize the service uniquely for the client. It allows us to anticipate problem areas that might occur.</p> <p>Yes. The indirect beneficial effect that I can conclude is there will be more information regarding the client admission to our company especially with our limited space. Thus the information and plan of care allows the small business to understand the needs of client and to customize the service uniquely for the client. It allows us to anticipate problem areas that might occur.</p> <p>I am more aware of the new regulations which provides a better life/service for the clients.</p>

Here are some regulations that might have adverse effect:

- i. Section 10 (e) "provider satisfies the same or similar criteria of a person professionally qualified in the field of psychiatric mental health." This might not include our business but if it does, does it require us to hire a professional. This is not simple credential easily obtain and might be costly and/or time consuming to get on our own.
- ii. Section 19 (1) "obtaining services from professionally qualified persons or other specially trained persons as needed to assist in planning, carrying and reviewing the provisions of community based living arrangement services." This regulation needs to have more details because who will shoulder the cost for such services to stay in compliant with this regulation.
- iii. Section 20 (3) "Submit to the Division any financial report" This regulation needs to have more details in regards to what is considered financial reporting and the need to have those request be very specific for the privacy of the business but balancing financial regulation inquiry.
- iv. Section 14 (5) "Any period not to exceed 2 years if the division conducts a quality assurance review and determine that the provider is in compliance with the standards of the Division concerning the provision of community based living arrangement services set forth in Section 1 to Section 30, inclusive." This regulation's time period as well as the one's above feels like "over-regulation". We fear that over-regulation might push most providers and employees to focus on the technicalities of the regulations in the form of documentation/paperwork rather than the care for each client. With this said, this could result in having a negative effect on client care because of limited resources of a small business. This will result in the addition of employees to assist in all areas above.

In this regulation, we believe 2 years seems too short of a time considering there are already safe guards throughout this draft. These safe guards are all the complaints of any client or anyone involved with the client, existing monthly environmental review, and also informal/formal inspections of agency representatives (case managers.)
Concluding, 2 years is a difficult hardship that we believe should be reconsidered.

There will be more inspections, training, and interviewing which I prefer to spend more quality time with the clients.

Sometimes, too much regulation is not good; it takes up so much of our time that we could have used instead giving care to our residents.

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

An analysis was conducted of the feedback received by the Outpatient Administrator in Southern Nevada. To help alleviate some of the concerns it was explained in a face to face meeting with the providers the intent of the regulations and certain components such as the quality assurance audits, trainings and the intent of the regulations overall. The analysis of the feedback was considered and will used when creating the specific provider trainings and provider billing forms for efficiencies and stream lining of processes. The two year certification was a concern of the providers. The two year intent is based on legislative session and the Division/Agencies' approved budget cycle since these regulations fall within the Division's oversight and the ability to potentially reimburse for services. The prescribed renewal process ensures that providers are within continued satisfactory guidelines along with up to date information of requirements. It is not intended to be punitive but rather proactive safeguards for both the provider and the State. The overall feedback matched the regulations and did not have a negative 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.

The feedback from the providers was that it would strengthen the system overall from other providers would attempt to de-fraud the system both at the Division and Medicaid level. The providers shared concerns that as business owners they may need to spend more time on interviewing and hiring, training their staff, increase their staffing levels, etc instead of spending their time on caregiving themselves. Each individual placed in a community based living arrangement will have an individual contract of services that will be reimbursed for services. If that person is on a private contract with that provider, the provider should have a contract with that person as well to ensure private reimbursement. As a business, this will guide their practice of hiring and training for sustainability as it already does presently. The strength and intent of the regulations is to protect both the State and their business practices based on the oversight for the safety and health of the individuals. There will be on-going meetings with the providers to support them through the process and address their questions and provide technical assistance as appropriate in the coming months once the regulations are adopted so that they can be successful in the transition.

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 of Public and Behavioral Health has held several opportunities for contracted providers to provide input and comments regarding the proposed CBLA regulations, including the economic impact the proposed regulations may have on their business. Some modifications to the proposed regulations have been made as a result of this input. Workshops will be held on October 31, 2016 allowing for further input by public comment or faxed/written comments regarding the proposed regulations and how they will impact their business. These comments will be taken into consideration for possible further revisions to the regulations to reduce the economic impact on community based living arrangements.

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

At this particular time it is not estimated that there will be an additional cost to the agency to enforce the proposed regulations as the agencies will realign current staffing to increase the Residential Departments for oversight. It is known that there will be an increased workload for mandatory trainings, quality assurance field oversights, certification processes, business office auditing, and potential growth of new provider applicants. This is in addition to the current workloads of the department, but the Division/Agencies are proactively working towards the future system to close the gap smoothly for both the staff and the providers systematically.

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.
No fees are proposed.

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

No federal regulations.

We are proposing new state regulations for these community based living arrangements under DPBH-SNAMHS/NNAMHS.

Group homes have their own regulatory oversight under DBPH-HCQC.

Supportive living arrangements have their own certification process and oversight under ADSD-Regional Centers.

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

Currently in mental health there are no regulations with a certification process for oversight by the DPBH for providers that provide services in homes for individuals that need support to work towards independent living. These regulations and certification process provide a systematic health and safety support for the individuals, providers and the State for oversight and quality assurance. The certification process would allow for two levels of certifications. The initial certification would be a provisional certification which is valid for 12 months. The certification is valid for 24 months and is renewable. The 24 month/2 year certification was based on the legislative cycle and the Division/Agencies would be staffing and reimbursing for services based on these cycles. In addition, it is best practice to ensure that each of the providers are up to date with their information and business requirements at least every 24 months for recertification. The Division/Agencies will provide the trainings as indicated in the regulations for the providers for the provisional certification.

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

Division of Public and Behavioral Health
Southern Nevada Adult Mental Health
6161 West Charleston Blvd.
Las Vegas, NV 89146
Anabel Ballard
Phone: 702-486-6238
Email: anabelballard@health.nv.gov

Certification by Person Responsible for the Agency

I, Cody 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  Date: 10/14/16