

SMALL BUSINESS IMPACT STATEMENT
PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE (NAC 449)

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments to the Nevada Administrative Code (NAC) Chapter 449 will have a financial impact on a small business opening a brand-new freestanding birthing center associated with the cost for building space, staffing costs, equipment and supplies, and other costs related to opening a new freestanding birthing center. The costs may vary depending on multiple factors, including but not limited to, location, size of the center, the number of staff employed, the staff mix, and other factors; therefore, the cost cannot be determined. Industry had noted that the obstetric center regulations resulted in a barrier to opening a new business. The Division currently has only one licensed obstetric center which has been deemed to be a freestanding birthing center pursuant to AB 287 of the 2021 Legislative Session. The small business impact questionnaire submitted by the licensed freestanding birthing center noted: *"We are a current licensed birth center all of these new regulations will be a huge cost savings."* Although there will be costs associated with opening this type of business, it is anticipated these proposed regulations will stimulate the formation, operation or expansion of small businesses in Nevada because it removes certain barriers present in the obstetric center regulations that made it more difficult to open a freestanding birthing center. The proposed regulations remove certain barriers while at the same time maintaining client safety.

A small business is defined in Nevada Revised Statutes (NRS) 233B.0382 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 proposed regulations bring the Board into compliance with AB 287 of the 2021 Legislative Session which requires the board to adopt separate regulations governing the licensing and operation of freestanding birthing centers. Such regulations must:

- (a) Align with the standards established by the American Association of Birth Centers, or its successor organization, the accrediting body of the Commission for the Accreditation of Birth Centers, or its successor organization, or another nationally recognized organization for accrediting freestanding birthing centers; and
- (b) Allow the provision of supervised training to providers of health care, as appropriate, at a freestanding birthing center.

In addition, the bill makes void the obstetric center regulations previously adopted by the State Board of Health. The term obstetric center is being replaced by freestanding birthing center.

The major provisions of the proposed regulations include:

- 1) Adopting by reference and requiring freestanding birthing centers to be in compliance with the most current version of the Commission for the Accreditation of Birth Centers Indicators of Compliance with Standards for Birth Centers.
- 2) Allowing birth assistants to be a member of the clinical staff that can perform tasks that are within the education, training and competency of the birth assistant.
- 3) Requiring that a freestanding birthing center be accredited by the accrediting body of the Commission for the Accreditation of Birth Centers.
- 4) Prohibits surgeries from being performed at a freestanding birthing center but does not consider an episiotomy or repairs of laceration sustained during delivery of the newborn as surgery.
- 5) Establishes the requirements for supervised training to providers of health care.
- 6) Establishes the criteria in which a pregnant person may give birth in a freestanding birthing center so that birthing services provided in a freestanding birthing center are limited to low-risk pregnancies.
- 7) Establishes the criteria for a denial of an application, renewal, revocation or suspension of a license.

- 8) Establishes design and construction standards that must be met as well as outlining the regulations, laws and codes that the freestanding birthing center must be in compliance with.
- 9) Outlines the services that must be provided by a freestanding birthing center and requires the center to be located within 30 miles of a hospital that offers obstetric, neonatal and emergency services related to pregnancy.
- 10) Requires the freestanding birthing center to have a director in accordance with AB 287 of the 2021 Legislative Session.
- 11) Requires the freestanding birthing center to have policies and procedures for infection prevention and control that are in accordance with nationally recognized infection prevention and control guidelines.
- 12) Addresses drugs and agents that may be possessed, distributed and administered in a freestanding birthing center.
- 13) Requires the freestanding birthing center to notify the Division of any deaths that occur in the center and if the center loses its accreditation.
- 14) Establishes licensing fees.

Pursuant to NRS 233B.0608(2)(a), DPBH has requested input from the one licensed freestanding birthing center in Nevada with 150 or fewer employees and to 5 individuals that have expressed interest in freestanding birthing centers.

A Small Business Impact Questionnaire and a copy of the proposed regulations were emailed to the one licensed freestanding birthing center and the 5 other individuals who have expressed interest in freestanding birthing centers on August 18, 2021.

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 the small-business impact questionnaires sent to the one freestanding birthing center licensed at the time the questionnaire was distributed, one response from the licensed freestanding birthing center was recorded as received.

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 – 1 No – 0	Yes – 1 No – 0	Yes – 1 No – 0	Yes – 1 No – 0
Comments – With the proposed changes to birth attendants, our birth center can save an average of \$5,200/month and \$63,000/year on salaries. This is calculated at 30 births/month at \$350 per birth for a total of \$10,500. Estimating a conservative coverage for	Comments – Current plumbing being grandfathered in for already established birth centers could save the cost of adding sink, shower, etc. Being a teaching/training	Comments – Each renewal year of malpractice puts a potential indirect adverse effect on the business due to national premium increases. The continued rising prices	Comments – Our center is currently in the insurance credentialing phase and because of that, we will be able to service more clients.

<p>birth attendant at 50% coverage by student midwife/midwife in training.</p>	<p>facility gives us the opportunity to house more students which in return gives us cost savings on salaries and a more well-trained staff pool. We are a current licensed birth center all of these new regulations will be a huge cost savings.</p>	<p>of medical supplies can be costly.</p>	
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1) Describe the manner in which the analysis was conducted.

A small business impact questionnaire was disseminated via email on August 18, 2021 and a virtual TEAMS meeting was conducted on September 7, 2021 with the only licensed (small business) freestanding birthing center. The feedback provided by the only small business freestanding birthing center was reviewed and taken into consideration. In addition, the following feedback was provided in an email correspondence, dated 9/10/21, from a representative of the only licensed freestanding birthing center: *“I believe the more we align with these indicators, the more options we will have for birth centers in Nevada.”* The most current version of the Commission for the Accreditation of Birth Centers Indicators of Compliance with Standards for Birth Centers was also reviewed to see how the proposed regulations could be best aligned with these indicators. In addition, the Minnesota statutes and Illinois codes governing birth centers were reviewed. Both states accept the accrediting body of the Commission for the Accreditation of Birth Centers. Based on the review it was determined the associated standards used by the accrediting bodies was the main mechanism to ensure safety in birth centers in these two states. AB 287 of the 2021 Legislative Session was also reviewed and Section 16.5 notes:

The Board shall adopt separate regulations governing the licensing and operation of freestanding birthing centers. Such regulations must:

- (a) Align with the standards established by the American Association of Birth Centers, or its successor organization, the accrediting body of the Commission for the Accreditation of Birth Centers, or its successor organization, or another nationally recognized organization for accrediting freestanding birthing centers; and*
- (b) Allow the provision of supervised training to providers of health care, as appropriate, at a freestanding birthing center.*

The proposed freestanding birthing center regulations, as well as the obstetric center regulations, were reviewed. This information was then analyzed by a Health Program Manager III to determine the impact of the proposed freestanding birthing center regulations on small business.

A public workshop will be scheduled at a future date to continue to obtain feedback on the proposed regulations during the regulatory development process.

2) 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: The small business questionnaire revealed the following direct beneficial effect:

With the proposed changes to birth attendants, our birth center can save an average of \$5,200/month and \$63,000/year on salaries. This is calculated at 30 births/month at \$350 per birth for a total of \$10,500. Estimating a conservative coverage for birth attendant at 50% coverage by student midwife/midwife in training.

Indirect beneficial effects: An increase in freestanding birthing center applications for licensure is anticipated if the proposed regulations become effective.

Direct adverse effects: The proposed regulations were modified based on the feedback that not allowing birth assistants to provide services in a freestanding birthing center creates an adverse financial effect; therefore, removing this direct adverse effect as noted in the first question listed in the summary of responses.

In addition, direct adverse financial impact on a small business opening a brand-new freestanding birthing center includes costs for building space, staffing costs, equipment and supplies, and other costs related to opening a new freestanding birthing center. The costs may vary depending on multiple factors, including but not limited to, location, size of the center, the number of staff employed, the staff mix, and other factors; therefore, the cost cannot be determined.

Indirect adverse effects: The small business questionnaire revealed the following indirect adverse effect:

Each renewal year of malpractice puts a potential indirect adverse effect on the business due to national premium increases. The continued rising prices of medical supplies can be costly.

3) 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 method the Division used to reduce the impact of the proposed regulations was to analyze which provisions would have an impact or not then determine if a reduction in impact could be made. After analysis, the following changes were made to reduce the financial impact on new and existing businesses:

- 1) By adopting by reference and requiring compliance with the most current version of the Commission for the Accreditation of Birth Centers Indicators of Compliance with Standards for Birth Centers, many of the provisions in the regulations were eliminated as they are addressed in the above-mentioned Indicators of Compliance. This also helps to align the proposed regulations with one of the standards required by AB 287 of the 2021 Legislative Session and may help reduce any additional burdens these sections may have created.
- 2) Birth assistants were also added as a clinical staff member who may be used to provide services within the scope of a birth assistant.

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

The estimated cost to enforce the proposed regulations is equal to the initial licensing fee of \$1,564 with an annual renewal fee of \$782.

5) 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.

The proposed regulations do not provide a new fee or increase an existing fee. The fee to license obstetric centers is already established in regulations and will be the same fee used to license freestanding birthing centers. The licensing fee will be used to license and regulate freestanding birthing centers. The annual amount collected will be \$782 until such time that additional freestanding birthing centers become licensed, which is unknown at this time.

In addition, if a freestanding birthing center chooses to modify their license pursuant to NAC 449.0168, a \$250 fee will be assessed. As it is unknown whether a freestanding birthing center would submit a request to modify its license or how often a modification may be requested, the annual amount cannot be determined.

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

The proposed regulations are not duplicative or more stringent than any federal, state or local standards.

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

The conclusion is that opening a new business, including a freestanding birthing center, will result in significant costs, although the costs would be dependent on the size and complexity of the freestanding birthing center; therefore, the financial impact is unknown. Based on the feedback provided, the proposed regulations will have a positive financial impact on the existing licensed small business as the small business noted in the small business impact questionnaire: *“We are a current licensed birth center all of these new regulations will be a huge cost savings.”*

The proposed regulations have taken into consideration the feedback from industry to reduce the financial impact but at the same time ensure client safety.

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

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

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: September 23, 2021