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**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
Division of Public and Behavioral Health
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**SMALL BUSINESS IMPACT STATEMENT
PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE (NAC 228)**

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments to the Nevada Administrative Code (NAC) will not have a financial impact on a small business or the formation, operation or expansion of a small business in Nevada, if the program for the treatment of domestic violence is based on evidence-based practices. Programs that are not based on evidence-based practice would need to update their program to meet this requirement or action may be taken on their certificate, for failure to meet regulatory requirements. The actions taken may result in a negative financial impact to a business and may result in closure if action is taken against the program's certificate.

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 current regulations into compliance with NRS 439.258, which was passed during the 2019 Legislative Session and requires the Division to adopt regulations which requires a program for the treatment of domestic violence to include a module specific to victim safety and to be based on evidence-based practices and be based on the assessment of a program participant by a supervisor or provider of treatment.

Current regulations do not outline the application and renewal process to become a supervisor or provider of treatment; therefore, the application process is not transparent in regulations and has resulted in inefficiencies. The proposed regulations outline the application process to become an approved provider or supervisor of treatment. The proposed regulations do not change any of the qualifications to become an approved provider or supervisor of treatment such as any educational or licensure requirements currently in regulations.

To help increase efficiencies but at the same time ensure compliance with continuing education requirements, the proposed regulations authorize the Division to audit a supervisor of treatment or provider of treatment to verify compliance with the requirements for continuing education. To help ensure compliance with the continuing education requirements, the proposed regulations outline ramifications for lack of compliance, such as:

- Revoking the approval to work of a supervisor of treatment or provider of treatment who is found to not be in compliance with the continuing education requirements; and
- Requiring a supervisor of treatment or provider of treatment to reapply for an approval to work in that position if their approval as a supervisor of treatment or provider of treatment has been revoked by the Division due to his or her noncompliance with the requirements for continuing education.

The proposed regulations remove the 70-mile limitation and instead authorizes any offender to attend counseling sessions or other meetings electronically if: (1) the program has implemented a mechanism to ensure that the person attending electronically is actually the offender; and (2) the provider of treatment verifies the identity of the offender at each meeting by utilizing the mechanism.

There are several reasons for bringing this change forward:

- 1) It has been noted that one of the contributing factors to the lack of effectiveness of programs for the treatment of domestic violence is due to individuals that do not complete the program. It stands to reason that if a program is not completed in full, the effectiveness of the program would be negatively impacted. It has been noted that telehealth results in higher retention rates.
- 2) A mileage limitation on the ability to be able to provide counseling sessions via electronic means, such as the current 70-mile limitation, continues to result in individuals having difficulty attending program for the treatment of domestic violence sessions. This may contribute to low participation rates and contribute to higher drop out rates.
- 3) Although not directly related to domestic violence treatment programs, an article in the American Psychological Association noted that research to date shows that telepsychology or teletherapy is effective; therefore, it stands to reason that virtual, interactive domestic violence counseling sessions, if effective in person, would be effective virtually. At least one Nevada provider of treatment expressed there were several advantages to having virtual, interactive counseling sessions, including having better control over disruptive participants.
- 4) Difficulty exists in finding qualified supervisor and providers of treatment in rural areas. Opening the virtual, interactive counseling sessions would allow participants in rural areas to attend Nevada certified domestic violence treatment programs that are based out of Clark or Washoe County where many programs are based. This would allow for greater choice in selecting a program and perhaps finding one that better suits the individual.

As expressed in an article published by the, American Psychological Association, (July 1, 2020)(available at: <https://www.apa.org/monitor/2020/07/cover-telepsychology>):

And research to date shows mental health care delivered remotely—also known as telepsychology or teletherapy—is effective. Psychologists—along with psychiatrists, social workers and others—have built a substantial literature base on telehealth interventions that work for a variety of problems and populations.

“What we’ve seen is that telehealth is essentially just as effective as face-to-face psychotherapy—and retention rates are higher,” says David Mohr, PhD, director of the Center for Behavioral Intervention Technologies at Northwestern University’s Feinberg School of Medicine, who has spent his career studying telepsychology and digital mental health.

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 health facilities.

A web-based Small Business Impact Questionnaire and a copy of proposed regulations were sent on December 4, 2020, to email addresses associated with Nevada’s certified domestic violence treatment programs.

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 all 31 domestic violence treatment programs certified at the time the questionnaire was distributed, 2 responses were recorded as received.

<p>Will a specific regulation have an adverse economic effect upon your business?</p>	<p>Will the regulation(s) have any beneficial effect upon your business?</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>Yes – 2 No – 0</p>	<p>Yes – 1 No – 1</p>	<p>Yes – 2 No – 0</p>	<p>Yes – 0 No – 2</p>
<p>Comments – (NAC 228.100) Section 5 of this regulation removes the 70-mile limitation and instead authorizes any offender to attend counseling sessions or other meetings electronically if: (1) the program has implemented a mechanism to ensure that the person attending electronically is actually the offender; and (2) the provider of treatment verifies the identity of the offender at each meeting by utilizing the mechanism. The intent of the initial legislation was to ensure perpetrators of DV would receive quality "in person" counseling to help the individual from becoming a repeat offender. This rule was put in place to ensure clients were in a controlled environment to promote the best learning atmosphere. While alternatives are needed to accommodate individuals through the pandemic, the continued use of online counseling will eventually negate all in person counseling. We will not be able to bare the cost of conducting programming with one or two facilitators, an admin worker and the cost of keeping a facility open to accommodate one or two clients that choose to meet in person. Agencies like mine have developed our current facilities to meet the requirement of completing in-person counseling as outlined in current guidance. Multiple year leases were signed to allow for the square footage that was needed to accommodate these programs. The removal of the 70-mile stipulation will leave agencies like mine paying the premium for square footage that will be no longer be needed with multiple years left on an existing lease. The cost of procuring computers and services to accommodate this type of counseling is another additional cost that will require consistent maintenance and monthly meeting fees. The increase in internet bandwidth will also be an additional cost to seamlessly stream classes.</p>	<p>Comments – Altering this regulation will eliminate "in person" counseling and force all agencies to procure hardware, software and bandwidth to meet the need of our online clientele. Yes, they will continue to allow for greater service and access to rural clients, disabled clients and clients without means for transportation. It could potentially lower other costs over time, but not immediately.</p>	<p>Comments – I foresee an influx of individuals (facilitators) who obtain training and have a computer to certify and offer programming. No longer can they be required to provide a physical address to accommodate programming. These agencies/individuals may not even be local counseling professionals. Yes, one indirect impact is increased difficulty in managing and measuring success of programs. More specifically it has the potential to invite unqualified providers without the best interest of our communities to participate and diminish the overall positive impacts of treatment making our community as a whole less desirable for business.</p>	<p>Comments - We do not anticipate any.</p>

Additionally, agencies who will be forced to only provide online counseling will have to require their participants to have all the needed hardware, software and adequate internet or cellular coverage to attend these weekly meetings. This will leave little or no access to individuals who do not have the required resources and will narrow or eliminate their ability to comply with the court order. It is my belief that proceeding down this path, will be the implosion of this current requirement. It will be a disservice to the courts and the victims of domestic violence. It will transpose the quality counseling that these individuals are currently receiving and turn it into a checkbox to fulfill a requisite. The unintended consequences will be dire and will alter the beneficial end of this law to just another punitive requirement.

Section 5 of the proposed changes has the potential to have an adverse economic effect if not implemented thoughtfully. Specifically, the part of the section that waives the 70-mile radius for allowing online treatment. In the DUI space we face a similar issue with low quality out of state programs offering cheap alternatives that are not in the best interest of the community or the clients taking classes. We believe it is important to have guidelines helping to ensure these programs remain community based and can provide services to indigent clients and those needing live options. None of this will work if oversight and accountability are not part of the regulation change. We are not opposed to the changes in principle but are opposed to the changes without these additional safeguards in place to protect the integrity of treatment for domestic violence offenders. In addition, we also see this as having adverse effect on the court systems in regards to oversight and reporting. We are open to providing additional details and feedback for how these concerns can be addressed.

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

An online small business impact questionnaire was disseminated via email on December 4, 2020 and responses were received and reviewed. In addition, industry provided feedback through other means besides the small business impact questionnaire, including, via emailing feedback directly to a health program manager or conversation through electronic means, which was also reviewed. The proposed regulations, as well as existing regulations, were reviewed. This information was then analyzed by a Health Program Manager III to determine if the proposed regulation had an impact on small business or if it was existing regulations having an impact and was used to develop this small business impact statement.

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: No direct beneficial financial effects are anticipated.

Indirect beneficial effects: There are several indirect beneficial anticipated financial effects including:

- Increased participation by offenders; therefore, greater potential that payment for services will be received.
- Increased accessibility to certified programs by offenders that live in rural areas, offenders with disabilities and those without a means for transportation. This would also result in increased accessibility to programs located in less densely populated areas; therefore, potentially increasing business.
- Increased transparency in supervisor and provider of treatment application process with the goal of reducing the time and effort in submitting current applications; therefore, saving time (staff costs) that could be directed to conduct other work.
- Potential for improved outcomes as programs will be required to be evidence-based; therefore, a potential for reducing costs associated with repeated offenses.

Direct adverse effects: No significant direct adverse economic effects are anticipated. The following addresses the concerns noted in the comments section of the summary of responses:

- Currently there is no prohibition for an out-of-state program to offer its services online so long as it meets the requirements set forth in NAC 228.104, certification of program located in another state; renewal. As the proposed regulations do not make any changes to NAC 228.104, the proposed regulations would not make it easier for out of state applicants to provide services in Nevada just because instate providers can provide the services electronically.
- The proposed regulations only allows a program to offer counseling sessions by electronic means if it has a mechanism in place to ensure the offender attending the session is the offender that is supposed to be attending the session; therefore, a program that does not implement such a means does not have to offer electronic sessions and can continue to provide only in person counseling sessions. This removes any requirement that would force a program to purchase computer hardware and associated items needed to provide sessions electronically.
- The proposed regulations outline the application process for a provider or supervisor of treatment to obtain approval to become a provider or supervisor of treatment but does not reduce the qualification criteria, such as any educational or professional licensing requirements needed; therefore, it does not make it any easier for someone to become a provider or supervisor of treatment in terms of who would be qualified to provide these services.
- Although the proposed regulations outline the application process to become a provider or supervisor of treatment this is not enough to open a certified program for the treatment of domestic violence. An applicant would still have to apply and meet all the requirements to become a certified program for the treatment of domestic violence. In addition, NAC 228.100, continues to require that an applicant provide the address of the program. Although it is true that there would not be a prohibition for a program to offer all of their sessions electronically, the program would still have to meet all of the regulatory requirements to become a program

and provide an address which the Division could go onsite to perform a complaint investigation, as an example, if needed. In addition, as a program address, this address would be made available to the public through our online licensing system's public facing facility locator feature.

- Please refer to indirect adverse effects if a program is not evidence-based.

In conclusion, based on the feedback received from the small business impact questionnaire and analysis of the proposed regulations and their impact, it was concluded there would be no significant adverse economic effect on existing businesses if they are an evidence-based program. In addition, there may be a small impact on programs that currently do not have a module specific to victim safety, to incorporate such a module into their existing program but since it is a statutory requirement for the regulations to require a module specific to victim safety, this requirement could not be removed from the proposed regulations and still be in compliance with NRS 439.258.

Indirect adverse effects: Programs that are not based on evidence-based practice would need to update their program to meet this requirement or action may be taken on their certificate, for failure to meet regulatory requirements. The actions taken may result in a negative financial impact to a business and may result in closure if action to revoke a certificate is taken against the program's certificate. As it is a statutory requirement for the regulations to require a program be evidence-based, this requirement could not be removed from the proposed regulations and still be in compliance with NRS 439.258.

In addition to the comments received through the small business impact questionnaire providing feedback on the proposed regulations, feedback was received regarding current regulations that are not currently being amended by the proposed regulations. These included the following:

- 1) Allowing for a self-study course. NRS 200.485 requires weekly counseling sessions. A self-study course would not meet the weekly counseling session requirement pursuant to NRS 200.485.
- 2) Require Tests/Prevent Cheating/Require Visual Presentations – These items all have a greater association with an educational model rather than a counseling session model. In accordance with NRS 439.258, which was passed during the 2019 legislative session, the Division must adopt regulations which requires a program to be based on the assessment of a program participant by a supervisor or provider of treatment; therefore, visual presentations may not be applicable to all offenders, for example, visually impaired individuals and written tests may also present a problem, for example, to illiterate individuals; therefore, until further study is conducted these changes will not be incorporated at this time. In addition, requiring these items would reduce the ability for the offender's treatment program to be tailored based on the assessment of the offender by the provider or supervisor of treatment.

Several providers indicated that reducing the requirement from two providers of treatment to one provider of treatment per counseling session would reduce costs and that two providers were not necessary. The providers were asked to provide evidence-based supporting documentation for their positions but were not able to. One supervisor did provide an opinion from a psychiatrist that noted one counselor was better, but it appeared to be in the context of individual therapy versus a group therapy session. One article, published by the Journal of Family Violence (2016), titled, *Elements Needed for Quality Batterer Interventions Programs (BIP); Perspectives of Professionals Who Deal with Intimate Partner Violence*, noted:

Co-Facilitation Participants expressed the belief that BIPs should be co-facilitated, or rather led by two individuals as opposed to one, I think two is better because you can see different things. You are actually literally seeing a different perspective. You can debrief, so you are not just getting your own perspective. Having two people co-leading groups, it was believed, allowed facilitators to better manage the group and attend to clients. It also allowed those running the groups to gain greater insights into their clients: You need two facilitators; you need someone watching the group. You can't always do that if you are

focused, but if you have two people, one can watch and observe what is going on and that is oftentimes when you get the real kind of confession of what it is because you've caught them reacting.

Although these were participant perspectives and we had Nevada program providers argue that two providers of treatment were not necessary, in a conversation with one Nevada program provider, she indicated that two providers should be continued, even during online counseling sessions, for similar reasons presented in the article.

Although it is recognized that reducing the current regulatory requirement from 2 providers to 1 provider would reduce the fiscal burden on these businesses, it is not clear if changing the regulations at this time would have a negative impact on the quality of the group counseling sessions; therefore, no further changes to the number of required providers to the existing regulations will be made at this time. This may be revisited at a future time when more information becomes available on this topic. Again, the proposed regulations do not make any changes to the required number of providers; therefore, no fiscal impact is being realized regarding the number of required providers as a result of what is being moved forward in the proposed regulations.

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 proposals would have an impact or not then determine if a reduction in impact could be made. After analysis, it was determined that no further changes could be made to reduce the impact of the proposed regulations on small business. The two items, the requirement to add a module specific to victim safety and for a program to be based on evidence-based practices, that may result in a negative fiscal impact are required by NRS 439.258. Both items were incorporated into the proposed regulations in a minimal manner to ensure compliance with NRS 439.258 and without creating an additional financial burden beyond what is required in the statutes; therefore, no further modifications to the regulations were made.

4) 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 the Bureau of Health Care Quality and Compliance (HCQC).

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 for a new fee or increase any existing fee to certify programs for the treatment of domestic violence.

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.

In summary, the proposed regulations, in carrying out the provisions of NRS 439.258, may or may not cause an adverse financial impact on programs and the impact may vary depending on the individual program; therefore, the Division moved forward the proposed regulations in a manner that brings the regulations into compliance with statutes without creating an additional burden beyond the statutory requirements. The proposed changes not required pursuant to NRS 439.258 were determined to not have a fiscal impact because:

- 1) The out of state programs requirements have not changed; therefore, it is not anticipated that the proposed regulations would not result in a greater influx of out of state programs.
- 2) The qualifications for providers and supervisors of treatment have not changed; therefore, the proposed regulations do not make it easier for some to qualify as a provider or supervisor of treatment.
- 3) Programs are not required to provide counseling sessions via electronic means; therefore, the costs to obtain the needed equipment to conduct electronic counseling sessions would be up to the individual program. A program could choose not to obtain the equipment and provide only in person counseling sessions.

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: 02/01/2021