

**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 will have a minimal adverse financial impact on existing business and may have a beneficial impact on existing business. It is anticipated the proposed regulations will not limit the formation of small businesses. The proposed regulations do have some direct negative financial impacts on small businesses but they also reduce the regulatory burden on industry by removing provisions of current regulations that are not necessary to effectively license and regulate these programs.

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 three main reasons these proposed regulations are being moved forward are:

- 1) To bring current regulations into conformance with SB 146 and SB 298 of the 2023 Legislative Session;
- 2) To carry out the Governor's Executive Order 2023-003 by removing provisions of regulations that are outdated or impose an unnecessary burden on business and to streamline and improve upon current regulations; and
- 3) To protect public health, safety and security.

The major topics addressed by the proposed regulations include:

- Brings current regulations into conformance with Senate Bill 146 of the 82<sup>nd</sup> Legislative Session (2023) related to authorizing a certified nurse-midwife to perform a physical examination or obtain a medical history before or after a patient is admitted to a hospital for the purpose of giving birth.
- Currently rural clinics do not have a set of state regulatory standards. The proposed regulations adopt the federal regulatory standards for rural clinics.
- Currently home health agencies have a surety bond requirement, but hospice care providers do not. This adds a requirement that hospice providers have a surety bond.
- Addresses visitation in a facility for the dependent.
- Addresses confidentiality of inspection and complaint investigations.
- Addresses use of volunteers in homes for individual for residential care.
- Authorizes certified nurse midwives to perform physical examinations in a hospital.

- Establishes educational and training requirements for mental health technicians and psychiatric technicians and exempts mental health technicians who work in State hospitals as they have established requirements in State statutes and regulations.
- Addresses the use of home health and hospice services in a residential facility for groups.
- Provides criteria for a residential facility for groups to accept or retain a resident with a peripherally inserted central catheter or a peritoneal catheter.
- Requires the use of an inter-facility infection control transfer form to be used when transferring a patient with a current infection, colonization or a history of a positive culture of a multi-drug resistant organism or other potentially transmissible infectious organism when transferring a patient from one licensed health care facility to another licensed health care facility.
- For general licensure requirements clarifies that at least one personal reference is needed, instead of providing a copy of the business license requires the business identification number be provided and removes the requirement for an applicant that is a corporation to submit a copy of its bylaws and articles of incorporation.
- Increased the time frame from 10 to 30 days from the date of the change for a facility to submit a change of administrator application and assess a late fee if it is not submitted within 30 days instead of 10 days currently in regulations.
- Refers the definition of a psychiatric residential treatment facility back to the statutory definition instead of a regulatory definition.
- Health facilities that have a change to their license must pay a fee to do so in accordance with NAC 449.0168 but if facilities are added through the statutory or regulatory process and are not included in the definition of a medical facility or facility for the dependent they fall out of this requirement. This adds in such facilities (employment agency to provide nonmedical services, outpatient facility, recovery center, psychiatric residential treatment facility) so they also have to pay the fee to modify their license.
- Instead of the Division providing a copy of standards set forth in 42 CFR Part 2, as it relates to Facilities for the Treatment of Alcohol or Other Substance Use Disorders, it notes the webpage in which a person can go and obtain a copy of the standards free of charge.
- Removes the word “ironed” as it relates to linen from several sections.
- Updates the Bureau’s name to its current name, Bureau of Health Care Quality and Compliance.
- Updates CPR requirements to include an in person hands-on practical training component in several sections.
- Makes the regulatory language clearer as to which residents are not admissible into a residential facility for groups, when waivers are required for admission and when they are not. It also allows a patient of a hospice program to be admitted into a residential facility for groups without prior approval so long as the resident is retained pursuant to subsection 5 of Section 41 of the proposed regulations.
- Brings the regulations into conformance with SB 298 of the 82<sup>nd</sup> Legislative Session (2023) as it relates to involuntary discharges from residential facilities for groups.
- Omits provisions in regulations that were determined to be an extra burden on industry without adding a benefit to public safety.
- Expands the scope of services that can be provided by personal care attendants working at a personal care agency.

- Adopts the federal visitation guidelines for skilled nursing facilities.
- Proposes changes to LCB File No. R048-22 to allow, in addition to a physician, a physician assistant or advanced practice registered nurse to serve on the Committee to provide quarterly reviews of sampled patient records receiving services from a home health agency.

**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 (DPBH) has requested input from small businesses that may be affected by the proposed regulations.

Notice was sent to all NRS and NAC Chapter 449 licensed health facilities that were licensed at the time of the notice distribution, to members of the public who have chosen to subscribe to the Division’s health facility specific ListSrvs and to representatives of the Nevada Health Care Association, Nevada Hospital Association, and Nevada Rural Hospital Partners. An email notice with a link to the small business impact questionnaire and proposed regulations was sent to those with an email address on file with DPBH, members of the public subscribed to the Division’s health facility specific ListSrvs and the three entities previously noted on February 8, 2024. The proposed regulations were also posted on DPBH’s website.

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 Responses**

<b>Summary of Comments Received</b> <b>(5 responses were received out of a minimum of 2,637 small business impact questionnaires distributed)</b>			
<b>Will a specific regulation have an adverse economic effect upon your business?</b>	<b>Will the regulation (s) have any beneficial effect upon your business?</b>	<b>Do you anticipate any indirect adverse effects upon your business?</b>	<b>Do you anticipate any indirect beneficial effects upon your business?</b>
Yes- 3 No - 1	Yes – 2 No - 2	Yes – 2 No – 2	Yes – 0 No – 3 1 left answered.
Comments: Are we allowing diabetic injection administration in group home setting? The regulation seems confusing on this regard.	Comments: No need for landline with the business name, one	Comments: Increasing acuity in the care of elderly residents,	Comments: Fewer potential clients who can afford my facility.

<p>This will definitely increase liability insurance for the business.</p> <p>Depending on how the Cultural Competency Training requirements shake out there could be a significant adverse impact.</p> <p>Sec.13. Inter-facility infection control transfer form  Facility staff will need to spend 15 minutes completing additional forms that contain information which can be very easily communicated verbally in seconds. This wasted time will decrease staff productivity and take staff time away from direct resident care. The larger negative impact will be on the elderly and disabled that we serve, as facilities will be forced to again increase their fees and price more individuals out of their facilities, limiting access to care for the elderly and disabled who need it most. The anticipated cost will range from \$10,000 to \$30,000 annually in staff time, opportunity cost, risk of injury to residents while staff is not able to be attentive to residents because they are drowning in paperwork, facility liability from increased resident risk.</p> <p>SB 298 of the 2023 legislative session, Sec 10.2. Allowing residents up to 45 days to pay their monthly fees  Residential Facilities for Groups will be significantly more negatively affected by this, as they have lower fees and fewer beds. These facilities simply cannot afford to keep their doors open if they have to go 1.5 months without revenue. Like all regulations, the macro impact will be negative for the elderly and disabled that we serve, as facilities will be forced to again increase their fees and price more individuals out of their facilities, limiting access to care for the elderly and disabled who need it most. The anticipated annual cost will be \$96,000 (the monthly operating costs over 12 months).</p>	<p>less cost for the operator.</p> <p>I understand that non-medical may be allowed to administer medications under certain scenarios, if so this would be a positive development</p>	<p>but the reimbursement remained unchanged.</p>	
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One of the responses was received via email and noted:

“Would be nice if licensed rfa is applying for new license for pca to consider rfa in lieu of high school diploma.....just saying.”

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

Division of Public and Behavioral Health  
Bureau of Health Care Quality and Compliance  
727 Fairview Drive, Suite E  
Carson City, NV 89701  
Leticia Metherell  
Phone: 775-684-1045  
Email: [lmetherell@health.nv.gov](mailto:lmetherell@health.nv.gov)

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

An analysis of industry input collected was conducted by a health program manager. The analysis involved analyzing feedback obtained from the small business impact questionnaire, review of the proposed regulations, review of statutes, and review of literature to help determine the economic impact to small business. Please see number 4 for the methods the agency considered to reduce the impact of the proposed regulations on small businesses. This information was then used to complete this small business impact statement including the conclusion on the impact of the proposed regulation on a small business found in number 8.

**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:* There may be direct beneficial effects, for example, if a facility currently has a landline telephone and a cellphone, and due to the passage of the proposed regulations decides to only keep a cellphone, it will save on the costs of a landline telephone. The overall reduction of regulatory burdens may also result in direct beneficial effects.

*Indirect Beneficial Effects:* Indirect beneficial effects (some of which may produce direct beneficial effects) include:

- Clarifying that residents with peripherally inserted central catheters or peritoneal catheters may be admitted or retained in a residential facility if certain conditions are met. This may have a positive financial impact if it avoids the discharge of a resident and maintains the associated revenue.
- The use of the inter-facility infection control transfer form may result in a positive impact on revenue. If a facility is aware that a new admission has an infectious organism it can put measures in place to help prevent the spread of such organism and save money on resources such as an increased use of personal protective equipment that may be associated with a spread of an infectious organism in a facility.

- Removing the need to include certain documents to obtain a license, results in the ability for the Division to process and approve an application in a more efficient manner, which may result in the ability for a business to open and start collecting revenue more quickly.
- Increasing the timeframe from which a licensee shall notify the Division of a change in administrator of the facility and pay any associated late fee from 10 to 30 days will provide a more realistic timeframe for facilities to provide such notification; therefore, potentially avoiding the late fee.
- Removing requirements related to ironing, posting telephone numbers in a telephone directory, providing the flexibility to use a cellphone, and reducing the burden related to written waivers that must be submitted to the Division, pursuant to NAC 449.2736, may all have a positive financial impact on a business.
- Expanding the scope of services that may be provided by a personal care agency through its attendants may result in less clients leaving personal care agencies or allow an agency to attract a greater number of clients; therefore, potentially preventing the loss of revenue or increasing revenue.
- Allowing physician assistants or advanced practice registered nurses, in addition to physicians, to be appointed to the Committee pursuant to NAC 449.793, may result in a salary cost savings. In addition, removing the requirement that a branch office of home agency be small in order to establish one Committee, instead of more than one Committee, may result in a cost saving through increased efficiencies and a saving on salaries to maintain more than one Committee.

*Direct Adverse Effects:* Direct adverse effects include the cost for facilities and programs of hospice to obtain a surety bond, and the cost for an employment agency to provide nonmedical services, an outpatient facility, a recovery center, or a psychiatric residential treatment facility to modify its license. The cost to modify the license is \$250; the estimated financial impact depends on how many times a facility modifies its license and if it never modifies its license the cost would be \$0.

*Indirect Adverse Effects:* Review of comments received from the small business impact questionnaire revealed that taking 15 minutes to complete the inter-facility infection control transfer form would result in a negative financial impact (see comments in summary of responses table). The proposed regulations clarify that the inter-facility infection control transfer form does not need to be completed on every patient, but only if the facility is aware of or suspects a patient currently has an infection, colonization or a history of a positive culture of a multidrug-resistant organism or other potentially transmissible infectious organism. According to the CDC's Health Topics – Healthcare-associated infections (HAI) webpage (<https://www.cdc.gov/policy/polaris/healthtopics/hai/index.html>): “HAIs in U.S. hospitals have direct medical costs of at least \$28.4 billion each year. They also account for an additional \$12.4 billion in costs to society from early deaths and lost productivity.”

There have been reports of patients being transferred to a receiving facility without notification or notification in a manner that brings attention to the patient's infectious disease status before the patient is integrated into the facility, indicating that the patient has an infectious disease or is colonized with an organism such as candida auris. The purpose of the form is to foster

communication during this critical transition to help ensure the receiving facility is aware of the patients infectious disease status so it can implement any necessary measures to keep its population safe. Therefore, although there may be some additional staff time involved to complete the form, it is anticipated that the potential for the prevention of the spread of an infectious disease through the use of the form may have a positive financial impact.

The impact of the cultural competency regulations is not addressed here as those are being moved forward in a separate set of regulations which has its associated small business impact statement.

There was a comment related to the negative financial impact as a result of the passage of SB 298 of the 82<sup>nd</sup> legislative session (2023). The proposed regulations bring current regulations in line with SB 298 and do not provide any additional requirements beyond what is required in the bill; therefore, any negative impact on businesses, if any, is a direct result of the passage of SB 298 and not of the proposed regulations being moved forward.

There was also concern expressed that allowing diabetic injection administration in a group home setting would increase liability insurance for business. Current regulations allow the administration of insulin so long as certain statutory and regulatory requirements are met. The proposed regulations, Section 37, modify current regulations to note, a person who has diabetes may be admitted to a residential facility or be permitted to remain as a residential facility if certain criteria are met, instead of reading a person who has diabetes must not be admitted to a residential facility or be permitted to remain as a residential facility unless certain criteria are met. The proposed regulations do not add any provisions requiring a residential facility to admit an insulin dependent diabetic resident; therefore, it is anticipated that the proposed regulations would not increase liability insurance. The proposed regulations do eliminate the requirement to submit a written waiver request pursuant to NAC 449.2736 (Section 41); therefore, removing a regulatory burden if a facility chooses to accept a resident in accordance with Section 37 (NAC 449.2726).

**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 identified and used methods to reduce the impact of the proposed regulations on small businesses including making modifications to the proposed regulations based on industry feedback, implementing SB 298 of the 82<sup>nd</sup> legislative session (2023) without adding any additional regulatory requirements beyond what is required by the bill, eliminating provisions of regulations that increase regulatory burden, and modifying current regulations to reduce the regulatory burden on licensed health care facilities. The proposed regulations were modified, based on feedback received from industry, to reflect that an individual licensed by the Board of Examiners for Long-Term Care Administrators pursuant to chapter 654 of NRS or an individual with a high school diploma or its equivalent meets the educational requirement be the administrator of a personal care agency. This does not require an individual to be licensed by the Board of Examiners for Long-Term Care Administrators, but instead provides another avenue to meet this requirement.

The proposed regulations related to surety bond amount requirements are based on the number of employees, with businesses with fewer employees having to cover a smaller amount; therefore, resulting in a lower cost for smaller businesses.

Certain sections, as noted below, were heard before the Board of Health on April 28, 2023.

Text of Repealed Sections: NAC 449.079

Section 19: NAC 449.126

Section 22: NAC 449.15357

Section 23: NAC 449.154991 (2)

Section 26: NAC 449.232 (3)

Section 43: NAC 449.39516 (2) (b)

Section 48: NAC 449.74357 (removed “ironed” from (4)

Section 49: NAC 449.74417 (2) (a)

There was no testimony in support or against the above sections heard at the Board of Health on April 28, 2023. There was testimony provided related to cultural competency proposed regulations. Cultural competency proposed regulations are being addressed in LCB File No. R004-24 which is currently moving through the regulatory process.

A public workshop will be held allowing for further input by stakeholders regarding the proposed regulations and their impact. These comments will be taken into consideration for possible further revisions to the regulations to reduce the economic impact on programs.

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

The estimated cost for the agency to enforce the proposed regulations would be \$0 to \$17,000 per year depending on the number of requests received to modify a license pursuant to NAC 449.0168 (Section 17), if any. The fee noted in number 6 would be used to pay for this cost.

#### **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.**

There currently is an existing fee pursuant to NAC 449.0168 (Section 17) that allows the Division to assess a fee of \$250 to modify the license of a medical facility, facility for the dependent, program of hospice care or a referral agency. As facility types are added, but not included in the definition of a medical facility or facility for the dependent or added to NAC 449.0168, then the Division is not authorized to collect the \$250 fee to modify a license. The proposed regulations add an employment agency to provide nonmedical services, an outpatient facility defined pursuant to NAC 449.999417, a recovery center defined pursuant to NAC 449.99702, and a psychiatric residential treatment facility as defined in NRS 449.1195, to NAC 449.0168 in order to be able to collect such a fee.

The total annual amount DPBH expects to collect is unknown because there is no way to determine if any the above-mentioned facilities will apply for a modification of its license or the number of times it may modify its license in a given year. If none of the facilities modifies its license the amount collected in a year would be \$0 and if every currently licensed facility added



to NAC 449.0168 modified its license pursuant to NAC 449.0168 the total amount collected in a year would be \$17,000.

The money would be used to cover the Division's operating costs related to the work associated with the modification of a license including applicable application processing and inspection costs.

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

Certification by the Centers for Medicare and Medicaid Services (CMS) is voluntary but state licensure is mandatory for skilled nursing facilities and rural clinics. As such, both federal and state regulations are needed, as there is a possibility that a facility chooses to be state licensed only, in which case the CMS federal regulations would not apply, but the state regulations would apply.

The proposed regulations are not more stringent than the federal regulations for skilled nursing facilities and rural clinics. To avoid duplication and any additional state licensure burden, the proposed regulation adopts the federal rural clinic standards so there is only one standard to be followed. As a state regulation this would also apply to state licensed only rural clinics.

The proposed regulations also require a skilled nursing facility to be in compliance with federal CMS visitation guidelines which eliminates any conflicts between state and federal visitation regulatory guidelines.

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

The reasons for the Division's conclusion regarding the impact of the proposed regulation on a small business is recognizing in the analysis that hospices would incur the cost to pay for a surety bond and certain facilities may be subject to the fee to modify its license. In addition, the reason for the conclusion is based on the analysis conducted on the proposed regulations to make a determination on whether the addition, omission or modification of a certain regulation would have a negative or positive financial impact.

**Certification by Person Responsible for the Agency**

I, Cody L. 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: 3/7/2024