

Steve Sisolak
Governor

Richard Whitley, MS
Director



**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical Officer

**SMALL BUSINESS IMPACT STATEMENT 2022
PROPOSED AMENDMENTS TO NAC CHAPTER 433**

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments should not have a negative economic impact upon small businesses nor restrict the formation, operation or expansion of a small business in Nevada.

A small business is defined in Nevada Revised Statutes (NRS) Chapter 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 proposed regulations are being moved forward as required by Senate Bill (SB) 69 of the 81st (2021) Session.

Section 8 of the bill, in general, requires an adult to be certified by the Nevada Certification Board, or its successor organization, as a peer recovery support specialist or peer recovery support specialist supervisor before providing or supervising the provision of, as applicable, peer recovery support services for compensation as a regular part of his or her job duties; provides for the imposition of a civil penalty against an adult who violates that requirement; and authorizes an adult who is not certified to provide peer recovery support services to adults for compensation as an intern under certain circumstances.

Section 15 of the bill authorizes the Division to bring an action to enjoin any adult from providing or supervising the provision of peer recovery support services in violation of section 8.

Section 15.6 of the bill requires an employer, a person or an entity who employs a person for the purpose of providing or supervising the provision of peer recovery support services in a position where the person has regular and substantial contact with minors or retains an independent contractor to provide those services in such a position to undergo a screening to determine whether the person has, within the immediately preceding 5 years, been the subject of a substantiated report of the abuse or neglect of a child; or a violation

of provisions prohibiting certain sexual conduct regarding minors, corporal punishment in public schools or the use of aversive interventions against pupils with disabilities in private schools.

In general section 15.6 prohibits the employment of a person or retention of a person as an independent contractor for the purpose of providing peer recovery support services in a position where the person has regular and substantial contact with minors if the person has been found to have engaged in such conduct within the immediately preceding 5 years; and requires the termination of an employee or independent contractor who provides peer recovery support services in a position where the person has regular and substantial contact with minors and has been found to have engaged in such conduct within that period. It also authorizes an employee or independent contractor who believes that the information provided through a screening is incorrect to attempt to correct the information.

Section 15.6, subsection 7 of Senate Bill 69, requires the Division to adopt regulations to establish civil penalties to be imposed against any person or entity that fails to comply with the requirements of Section 15.6. In addition, it authorizes the Division to adopt regulations establishing a process to determine whether an employee or independent contractor who has been found to have engaged in such conduct within the immediately preceding 5 years may continue to provide peer recovery support services and have regular and substantial contact with minors.

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 peer recovery support specialists. Section 36 of Senate Bill 69 eliminated the licensure and regulation of peer support recovery organizations by repealing the applicable sections of NRS 449; therefore, the Division did not have any licensed peer support recovery organizations to conduct a small business impact study. To obtain feedback from the peer recovery support specialist industry the Nevada Certification Board, which certifies Peer Recovery Support Specialists, sent out an email to certified peer recovery support specialists, and others on their listserv, such as those behind on their applications or renewals, with information on how the industry could provide their feedback on the proposed regulations, including a link to the Division's webpage, with links to the proposed regulations and small business impact questionnaire.

In addition, the above information was sent to the Division's licensed health care facilities through its medical and nonmedical Listservs.

The Division also consulted with the Division of Child and Family Services, the Clark County Department of Family Services, and the Washoe County, Human Services Agency, in accordance with Section 15.6 of Senate Bill 69.

A Small Business Impact Questionnaire was sent to Peer Recovery Support Specialists certified by the Nevada Certification Board and others as noted above. On 3/25/2022, the Nevada Certification Board, notified the

Division that the Certification Board’s listserv was at 308 subscribers and that 105 people had opened the above-mentioned email. 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 (Three responses were received out of 308 small business impact questionnaires distributed)			
Will a specific regulation have an adverse economic effect upon your business? Yes = 2 No = 1	Will the regulation (s) have any beneficial effect upon your business? Yes = 1 No = 2	Do you anticipate any indirect adverse effects upon your business? Yes = 1 No = 2	Do you anticipate any indirect beneficial effects upon your business? Yes = 1 No = 2
Comments Any charge to these facilities will increase the hardship on any other business they have expenses accounts with. Potentially up to \$10,000, if found non-compliant until remedied. This would be up to 8% of our annual budget as we are a very small operation with 2 FT and 2 PT employees and area non-profit.	Comments It will help our clients with substance abuse to live better lives making our job easier. I do not see any cost savings to us from this.	Yes, cost will increase This could have an adverse effect if someone complained about our support services. However, I do not anticipate that anyone would register a valid complaint.	It might be beneficial as it codifies our responsibilities and rights if a complaint is made against our Peer Support Specialists.

Other interested persons may obtain a copy of the summary by calling, writing or emailing:

Nevada Division of Public and Behavioral Health
Bureau of Health Care Quality and Compliance
Attention: Leticia Metherell
727 Fairview Drive, Suite E
Carson City, NV 89701
Phone: 775-684-1030
Email: lmetherell@health.nv.gov

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

A health program manager reviewed the requirements of Senate Bill 69 of the 81st (2021) legislative session, the proposed regulations, and the small business impact questionnaire responses to determine the impact on small businesses. The proposed regulations carry out the requirement that the Division adopt regulations to establish civil penalties to be imposed against any person or entity that fails to comply with the requirements of Section 15.6 and allows the Division to impose upon an adult who violates Section 8 a civil penalty. The proposed regulations and the provisions of Section 8 and Section 15.6 were then analyzed along with the feedback received from industry to complete the small business impact statement.

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.

Adverse effects - The overall adverse financial effects are anticipated to be none to minimal for most small businesses, with the potential for an adverse financial impact on small businesses that are found not to be in compliance with the sections of Senate Bill 69 which allows for the imposition of a civil penalty, as noted in number 2. It will not have an adverse effect on small businesses that remain in compliance with sections of Senate Bill 69 in which a violation may result in a civil monetary penalty.

For example, a person or entity, after employing a person to provide or supervise the provision of peer recovery support services in a position where the person has regular and substantial contact with minors or retaining a person as an independent contractor to provide or supervise the provision of peer recovery support services in such a position, does not complete a child abuse and neglect screening or terminate the employment or contract of the employee or independent contractor, in accordance with Section 15.6 of Senate Bill 69, may be subject to the civil penalties established in the proposed regulations.

In addition, it may also have an adverse financial impact on adults who violate section 8 for providing peer recovery support services for compensation as a regular part of their job duties or holds themselves authorized to provide such services without holding a valid certificate as a peer support specialist issued by the Nevada Certification Board, or supervise the provision of such services, without holding a valid certificate as a peer recovery support specialist supervisor issued by the Nevada Certification Board.

Indirect adverse effects - The proposed regulations may result in an individual filing a complaint with the Division related to violations of Senate Bill 69; therefore, resulting in increased staff time and potential costs to address the complaint and providing any information required pursuant to the proposed regulations to the Division.

Beneficial effects – There is no direct financial benefit anticipated for small businesses.

Indirect beneficial effects – May allow individuals that would normally be disqualified from providing or supervising the provision of peer recovery support services and have regular and substantial contact with minors despite, the report, to continue to work and provide these services, if the petition submitted pursuant to section 3 of the proposed regulations to continue to provide these services is granted. This may reduce costs related to staff turnover.

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 worked with the Nevada Certification Board to send through their Listserv information on how to provide feedback on the proposed regulations. Please refer to response number one above for details on how this was carried out. The agency reviewed the statutory penalties allowed for another occupational profession, dietitians, which notes:

NRS 640E.370 Penalties.

- 1. A person who violates any provision of this chapter or any regulation adopted pursuant thereto is guilty of a misdemeanor.*
- 2. In addition to any criminal penalty that may be imposed pursuant to subsection 1, the Board may, after notice and hearing, impose a civil penalty of not more than \$100 for each such violation. For the purposes of this subsection, each day on which a violation occurs constitutes a separate offense, except that the aggregate civil penalty that may be imposed against a person pursuant to this subsection may not exceed \$10,000.*

The Division considered and implemented the method to reduce the impact on small businesses by not requiring an upfront daily monetary civil penalty and instead provided the Division discretion when applying daily monetary penalties, for example, if an individual that was fined for non-compliance did not address and correct the deficient practices and continued to be non-compliant. In addition, the Division put a cap on the amount of civil penalty that may be imposed against an entity or person.

A public workshop will be scheduled to allow for further input on the proposed regulations. The comments from the public workshop will be taken into consideration for possible further revisions to the proposed regulations to reduce the economic impact on facilities.

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

There is no significant cost anticipated for the enforcement of the proposed regulations by the Division. No additional positions were requested as a result of the passage of Senate Bill 69 to carry out the provisions of the proposed regulations as it is anticipated this workload can be incorporated into the Division's current regulatory

and enforcement workload. There may be costs associated with conducting a complaint investigation, including but not limited to, potential travel costs and paper, but the amount to be used is unknown; therefore, an estimated cost could not be determined. If no complaints are received the costs would be zero, if complaints were submitted, it would be based on the number of complaints received, if travel were required, and other related items, which is unknown.

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.

The proposed regulations establish a civil monetary penalty in accordance with Senate Bill 69. The proposed regulations allow the Division to impose a civil monetary penalty to any person or entity, for each violation of Section 8 or Section 15.6 of Senate Bill 69, of \$100 for each such violation. In addition, the Division may impose a monetary penalty for each day of noncompliance from the date the noncompliance is identified until compliance is verified. The aggregate civil penalty that may be imposed against a person or entity may not exceed \$10,000.

The total annual amount DPBH expects to collect, if any, is unknown as it is dependent on whether the criteria to impose a civil monetary penalty are met. If there are no violations of the provisions of Senate Bill 69 then DPBH would collect nothing, if there are alleged violations, then it would be dependent on the number of violations that are substantiated and whether daily monetary penalties are imposed or not.

The money would be used to carry out the provisions of SB 69 and the proposed regulations.

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

There are no other known duplicate or more stringent provisions regulating to the same activity.

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

Based on a review of the provisions of SB 69, a review of the proposed regulations, and input from industry, it was determined that the proposed regulations would have no negative economic impact on small businesses that are and remain in compliance with SB 69 and may have a negative economic impact on small businesses that are not in compliance with SB 69. The full impact, including the severity of the economic impact on a small business, cannot be determined because it is unknown how many complaints the Division would receive related to violations of the applicable provisions of SB 69, if any, how many would be substantiated, and if the violation results in a single monetary penalty to daily penalties.


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

Division of Public and Behavioral Health
727 Fairview Drive, Suite E

Carson City, NV 89705
Leticia Metherell
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: 04/28/2022