

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.
Chief Medical Officer

January 13, 2020

To: Jon Pennell, DVM, Chair
State Board of Health
From: Lisa Sherych, Secretary
State Board of Health

Re: Consideration and adoption of proposed regulation amendment(s) to Nevada Administrative Code (NAC) 652, "Medical Laboratories", LCB File No. R090-18.

PURPOSE OF AMENDMENT

The legislature has declared that the proper operation of medical laboratories within the State is a matter of vital concern affecting the public health, safety and welfare. As part of the operation of medical laboratories the Division is responsible for certifying or licensing medical laboratory personnel including office laboratory assistants, technicians, technologists, laboratory directors and others. As of December 16, 2019, the Division has 15,262 licensed or certified laboratory personnel on a provisional or fully licensed/certified level.

The main purpose of the amendment is to bring the regulations into compliance with NRS 622.530 which were adopted as a result of the 2017 legislative session by establishing criteria required for medical laboratory personnel to obtain a license or certificate, as applicable, by endorsement in accordance with NRS 622.530.

SUMMARY OF CHANGES TO NEVADA ADMINISTRATIVE CODE (NAC)

The Board of Health last revised regulations to NAC Chapter 652, "Medical Laboratories" in 2017.

The proposed regulations bring the medical laboratory regulations into partial compliance with NRS 622.530 as it relates to issuing medical laboratory personnel a license or certificate by endorsement. NRS 622.530 requires the regulatory body, in this case the Board of Health, to adopt regulations for the issuance of a license or certificate by endorsement to any natural person who hold a corresponding valid and unrestricted license in any state or territory of the United States, possess qualifications that are substantially similar to the qualifications required for issuance of a license to engage in that occupation in Nevada and satisfies other requirements outlined in the bill.

The Nevada Department of Public Safety (DPS) notified the Division, through the attached correspondence, that the Criminal Justice Information Law Unit (CJILU) determined that the background check language in NRS 622.530, Subsection (1)(h), would not qualify for access to FBI criminal history record information under the criteria set forth under Pub. L. 92-544; therefore, the endorsement process for medical laboratory personnel is only available to those who received a background check when the individual was licensed as a medical laboratory personnel in the District of Columbia or any state or territory of the United States.

In addition, medical laboratory personnel licensed or certified, as applicable, are not required to be background checked for medical laboratory licensing or certification purposes; therefore, there is no other known statutory

authority that would authorize a fingerprint-based background check for the purposes of licensing or certifying laboratory personnel.

An errata is being moved forward that brings the proposed regulations in line with the background check process currently available to those applying for a laboratory personnel license or certificate by endorsement, as noted previously. In addition, the errata clarifies that the proof of a passing score on a nationally recognized examination for certification as laboratory personnel must be specific to the personnel type for which the applicant is applying.

POSSIBLE OUTCOME IF PROPOSED AMENDMENT IS NOT APPROVED

If the proposed amendments are not approved, the Board of Health would not be in compliance with NRS 622.530, to the extent possible, as noted previously, as it relates to issuing a license or certificate by endorsement to laboratory personnel.

APPLICABILITY OF PROPOSED AMENDMENT

These regulations will apply statewide to all individuals that apply for a laboratory personnel license or certificate by endorsement.

PUBLIC COMMENT RECEIVED

An outline of opportunities for public comment follows:

Pursuant to NRS 233B.0608 (2) (a), the Division of Public and Behavioral Health requested input from both medical laboratories and laboratory personnel licensed or certified in Nevada. A Small Business Impact Questionnaire was sent to licensed or certified laboratory personnel and laboratories along with information on how to obtain a copy of the proposed regulations on or prior to November 8, 2017. These were also posted on the Division’s website.

Below is a summary of the responses to the questionnaire.

<p align="center">Summary of Comments Received (7 responses were received out of 15,599 small business impact questionnaires distributed)</p>			
<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- 0 No - 4 N/A - 1</p>	<p>Yes - 1 No- 3 N/A - 1</p>	<p>Yes - 0 No - 4 N/A - 1</p>	<p>Yes - 1 No - 3 N/A - 1</p>
<p>Comments: The proposed regulation states that it applies to “initial applicant” for lab personnel certification of lab director licensure. All of our Lab personnel are residents of Nevada and are already licensed in Nevada.</p>	<p>Comments: The proposed regulation states that it applies to “initial applicant” for lab personnel certification of lab director licensure. All of our Lab personnel are residents of Nevada and are already licensed in Nevada. Would eliminate the cost of certification for already credential applicants.</p>	<p>Comments: The proposed regulation states that it applies to “initial applicant” for lab personnel certification of lab director licensure. All of our Lab personnel are residents of Nevada and are already licensed in Nevada.</p>	<p>Comments: The proposed regulation states that it applies to “initial applicant” for lab personnel certification of lab director licensure. All of our Lab personnel are residents of Nevada and are already licensed in Nevada.</p>

One individual did not submit a small business impact questionnaire but provided the following feedback: Who will endorse? The current system under the jurisdiction of the Dept. of Health works well. It would be tough to circumvent by other private entity. The current system protects well the participants as well as the job of the Nevada lab personnel. Just imagine if there will be an influx of lab staffs coming to our state and take our jobs by reason of endorsements.

October 30, 2018 – Public Workshop

A public workshop was held on October 30, 2018 at 727 Fairview Drive, Carson City with videoconference to 4220 South Maryland Parkway in Las Vegas, with a teleconference option available as well.

Two individuals signed the public workshop sign in sheet for R090-18 in Carson City.

One individual signed in support of the proposed regulations and one individual did not note their position on the proposed regulations.

There were several individuals participating on the teleconference line at approximately 13 participants (included participants attending for another set of regulations being heard at the same time).

Although there were 5 participants that signed the R090-18 Las Vegas public workshop sign in sheet, it is believed the 5 participants were there to hear another set of regulations being heard at the same time.

No one testified against the proposed regulations in Carson City, Las Vegas or over the phone.

The public workshop notice was posted on the LCB website and distributed to medical laboratories and laboratory personnel on or prior to October 10, 2018.

The public hearing notice was posted to the LCB website and distributed to medical laboratories and laboratory personnel by January 9, 2020 and was sent to the Medical Laboratory Advisory Committee members on January 13, 2020.

STAFF RECOMMENDATION

Staff recommends the State Board of Health adopt the proposed regulation amendments to NAC 652, “Medical Laboratories”, LCB File No. R090-18.

PRESENTER

Leticia Metherell, Health Program Manager III

Enclosures

**PROPOSED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R090-18

October 11, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-5, NRS 622.530 and 652.125.

A REGULATION relating to medical laboratories; prescribing requirements for applying for a license as a laboratory director or certificate as laboratory personnel by endorsement; prescribing actions by an applicant if a criminal background check cannot be completed for certain reasons; prescribing procedures to correct or supplement information acquired through a criminal background check; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain regulatory bodies to adopt regulations providing for the issuance of a license by endorsement to engage in an occupation or profession in this State to a natural person who: (1) holds a corresponding valid and unrestricted license to engage in that occupation or profession in the District of Columbia or any state or territory of the United States; (2) possesses qualifications that are substantially similar to the qualifications required for issuance of a license to engage in that occupation or profession in this State; and (3) satisfies certain other requirements, including submitting to a background investigation by the Central Repository for Nevada Records of Criminal History or providing proof that he or she has passed a comparable background check. (NRS 622.530) **Sections 2 and 4** of this regulation prescribe the information that an applicant for a license as a laboratory director or certificate as laboratory personnel, respectively, by endorsement is required to submit to the Division of Public and Behavioral Health of the Department of Health and Human Services. **Sections 2 and 4** also prescribe conditions under which an applicant who holds a valid, unrestricted license or certificate in the District of Columbia or any state or territory of the United States to practice as a laboratory director or laboratory personnel, respectively, will be deemed to have provided proof that he or she has previously passed a comparable background check for the purposes of obtaining a license or certificate by endorsement in this State.

(c) Payment of the fee prescribed for initial licensure of a director who is not licensed by endorsement prescribed by paragraph (d) of subsection 1 of NAC 652.488.

(d) A complete set of his or her fingerprints and written permission authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or proof that the applicant has previously passed a comparable criminal background check. A valid, unrestricted license as a director in the District of Columbia or any state or territory of the United States shall be deemed to be proof that the applicant has previously passed a comparable background check if the applicant was required to pass such a background check, including, without limitation, the submission of fingerprints to the Federal Bureau of Investigation, as a condition for obtaining that license.

(e) The statement required by NRS 425.520.

(f) The name of the regulatory authority that issued the valid and unrestricted license which the applicant holds and the number of that license.

2. If the Central Repository for Nevada Records of Criminal History determines that a background investigation of an applicant for an initial license as a director by endorsement cannot be completed because pertinent information is missing, the Division shall send a notice to the applicant which specifies the missing information and provides that, to obtain the license, the applicant must:

(a) Submit the missing information to the Central Repository for Nevada Records of Criminal History within 30 days after receipt of the notice; or

(b) Require the holder to work under the direct supervision of a person who holds a valid license issued by the Division.

Sec. 4. 1. To apply for an initial certificate as laboratory personnel by endorsement, an applicant who holds a valid, unrestricted certificate as laboratory personnel in the District of Columbia or any state or territory of the United States must submit to the Division an application on a form prescribed by the Division. The application must be accompanied by:

(a) Proof that the applicant has achieved a passing score on a nationally recognized examination for certification as laboratory personnel.

(b) An attestation, under penalty of perjury, that he or she meets the requirements prescribed in paragraphs (a) to (e), inclusive, of subsection 2 of NRS 622.530.

(c) Payment of the applicable fee prescribed for initial certification of personnel who are not certified by endorsement prescribed by paragraph (g) of subsection 1 of NAC 652.488.

(d) A complete set of his or her fingerprints and written permission authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or proof that the applicant has previously passed a comparable criminal background check. A valid, unrestricted certificate as laboratory personnel in the District of Columbia or any state or territory of the United States shall be deemed to be proof that the applicant has previously passed a comparable background check if the applicant was required to pass such a background check, including, without limitation, submission of fingerprints to the Federal Bureau of Investigation, as a condition for obtaining that certificate.

(e) The statement required by NRS 425.520.

Sec. 5. 1. *If the holder of a certificate as laboratory personnel issued by endorsement believes that the information provided to the Division by the Central Repository for Nevada Records of Criminal History pursuant to paragraph (g) of subsection 2 of NRS 622.530 is incorrect, the holder must inform the Division not later than 10 days after the holder receives the information. If the Division is so informed, the Division shall give the holder at least 30 days to correct the information.*

2. *During the period in which the holder of a certificate issued by endorsement seeks to correct information pursuant to subsection 1, the Division may, as it determines is in the best interest of the State:*

(a) Suspend the certificate; or

(b) Require the holder to work under the direct supervision of a person who holds a valid certificate issued by the Division.

Errata – LCB File No. R090-18.

Blue italics = Proposed language found in LCB File No. R090-18

Green italics = New proposed language added to LCB File No. R090-18 Errata.

~~*Red italic bold bracketed strikethrough*~~ = Proposed omission in Errata to current LCB File No. R090-18 draft.

Sec. 2. 1. To apply for an initial license as a director by endorsement, an applicant who holds a valid, unrestricted license as a director in the District of Columbia or any state or territory of the United States must submit to the Division an application on a form prescribed by the Division. The application must be accompanied by:

(a) Proof that the applicant has achieved a passing score on a nationally recognized examination for licensure as a director.

(b) An attestation, under penalty of perjury, that he or she meets the requirements prescribed in paragraphs (a) to (e), inclusive, of subsection 2 of NRS 622.530.

(c) Payment of the fee prescribed for initial licensure of a director who is not licensed by endorsement prescribed by paragraph (d) of subsection 1 of NAC 652.488.

~~*(d) [A complete set of his or her fingerprints and written permission authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or proof that the applicant has previously passed a comparable criminal background check.] Proof of a [A] valid, unrestricted license as a director in the District of Columbia or any state or territory of the United States which shall be deemed to be proof that the applicant has previously passed a comparable background check if the applicant was required to pass such a background check, including, without limitation, the submission of fingerprints to the Federal Bureau of Investigation, as a condition for obtaining that license.*~~

(e) The statement required by NRS 425.520.

(f) The name of the regulatory authority that issued the valid and unrestricted license which the applicant holds and the number of that license.

~~{2. If the Central Repository for Nevada Records of Criminal History determines that a background investigation of an applicant for an initial license as a director by endorsement cannot be completed because pertinent information is missing, the Division shall send a notice to the applicant which specifies the missing information and provides that, to obtain the license, the applicant must:~~

- ~~(a) Submit the missing information to the Central Repository for Nevada Records of Criminal History within 30 days after receipt of the notice; or~~
- ~~(b) Submit satisfactory evidence to the Division that the missing information cannot be obtained.}~~

~~{3. If a background investigation cannot be completed because the applicant has been arrested or issued a citation, or has been the subject of a warrant for alleged criminal conduct, and there has been no disposition of the matter, the applicant must notify the Division immediately upon:~~

- ~~(a) The scheduling of any judicial proceeding concerning the matter; and~~
- ~~(b) The disposition of the matter and forward to the Central Repository for Nevada Records of Criminal History evidence of the disposition of the matter as soon as it is available.}~~

4. The Division may request such additional documentation from an applicant as it deems necessary to ensure the provisions of this section and NRS 622.530 are met.

~~{5. As used in this section, "disposition" has the meaning ascribed to it in NRS 179A.050.}~~

~~{Sec. 3. 1. If the holder of a license as a director issued by endorsement believes that the information provided to the Division by the Central Repository for Nevada Records of Criminal History pursuant to paragraph (g) of subsection 2 of NRS 622.530 is incorrect, the holder must inform the Division not later than 10 days after the holder receives the information. If the Division is so informed, the Division shall give the holder at least 30 days to correct the information.}~~

~~{2. During the period in which the holder of a license as a director issued by endorsement seeks to correct information pursuant to subsection 1, the Division may, as it determines is in the best interest of the State:~~

- ~~(a) Suspend the license; or~~
- ~~(b) Require the holder to work under the direct supervision of a person who holds a valid license issued by the Division.}~~

Sec. 4. 1. To apply for an initial certificate as laboratory personnel by endorsement, an applicant who holds a valid, unrestricted certificate as laboratory personnel in the District of Columbia or any state or territory of the United States must submit to the Division an application on a form prescribed by the Division. The application must be accompanied by:

- (a) Proof that the applicant has achieved a passing score on a nationally recognized examination for certification as laboratory personnel for the personnel type for which they are applying.**
- (b) An attestation, under penalty of perjury, that he or she meets the requirements prescribed in paragraphs (a) to (e), inclusive, of subsection 2 of NRS 622.530.**

(c) Payment of the applicable fee prescribed for initial certification of personnel who are not certified by endorsement prescribed by paragraph (g) of subsection 1 of NAC 652.488.

~~(d) [A complete set of his or her fingerprints and written permission authorizing the Division to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report or proof that the applicant has previously passed a comparable criminal background check.] Proof of a [A] valid, unrestricted certificate as laboratory personnel in the District of Columbia or any state or territory of the United States which shall be deemed to be proof that the applicant has previously passed a comparable background check if the applicant was required to pass such a background check, including, without limitation, submission of fingerprints to the Federal Bureau of Investigation, as a condition for obtaining that certificate.~~

(e) The statement required by NRS 425.520.

(f) The name of the regulatory authority that issued the valid and unrestricted certificate which the applicant holds and the number of that certificate.

~~2. If the Central Repository for Nevada Records of Criminal History determines that a background investigation of an applicant for an initial certificate as laboratory personnel by endorsement cannot be completed because pertinent information is missing, the Division shall send a notice to the applicant which specifies the missing information and provides that, to obtain the certificate, the applicant must:~~

~~(a) Submit the missing information to the Central Repository for Nevada Records of Criminal History within 30 days after receipt of the notice; or~~

~~(b) Submit satisfactory evidence to the Division that the missing information cannot be obtained.~~

~~3. If a background investigation cannot be completed because the applicant has been arrested or issued a citation, or has been the subject of a warrant for alleged criminal conduct, and there has been no disposition of the matter, the applicant must notify the Division immediately upon:~~

~~(a) The scheduling of any judicial proceeding concerning the matter; and~~

~~(b) The disposition of the matter and forward to the Central Repository for Nevada Records of Criminal History evidence of the disposition of the matter as soon as it is available.~~

4. The Division may request such additional documentation from an applicant as it deems necessary to ensure the provisions of this section and NRS 622.530 are met.

~~5. As used in this section, "disposition" has the meaning ascribed to it in NRS 179A.050.~~

~~*[Sec. 5.1. If the holder of a certificate as laboratory personnel issued by endorsement believes that the information provided to the Division by the Central Repository for Nevada Records of Criminal History pursuant to paragraph (g) of subsection 2 of NRS 622.530 is incorrect, the holder must inform the Division not later than 10 days after the holder receives the information. If the Division is so informed, the Division shall give the holder at least 30 days to correct the information. -*~~

~~*2. During the period in which the holder of a certificate issued by endorsement seeks to correct information pursuant to subsection 1, the Division may, as it determines is in the best interest of the State:*~~

~~*(a) Suspend the certificate; or*~~

~~*(b) Require the holder to work under the direct supervision of a person who holds a valid certificate issued by the Division.]*~~

Rationale for Errata

NRS 622.530 (2) (h) requires an applicant to submit to the regulatory body a complete set of his or her fingerprints and written permission authorizing the regulatory body to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation (FBI), but the FBI did not authorize the use of these statutes; therefore, the endorsement process is only available to those who received a background check when the individual was licensed in the District of Columbia or any state or territory of the United States.

In addition, medical laboratory personnel licensed or certified, as applicable, are not required to be background checked for licensing/certification purposes; therefore, there is no other known statutory authority that would authorize a fingerprint-based background check for the purposes of licensing or certifying laboratory personnel.

Please reference the attached letter from the Nevada Department of Public Safety informing the Division of Public and Behavioral Health that the Criminal Justice Information Law Unit (CJILU) determined the criminal history language in Senate Bill 69 of the 2017 legislative session which has been codified as NRS 622.530 (2) (h) would not qualify for access to FBI criminal history record information (CHRI) under the criteria set forth under Pub. L. 92-544.

Steve Sisolak
Governor



**Nevada Department of
Public Safety**
DEDICATION PRIDE SERVICE

George Togliatti
Director

Sheri Brueggemann
Deputy Director

Mindy McKay
Division Administrator

**Records, Communications and
Compliance Division**

333 West Nye Lane, Suite 100
Carson City, Nevada 89706
Telephone (775) 684-6262 – Fax (775) 687-3289

November 19, 2019

Nevada Department of Health and Human Services
Attn: Leticia Metherell Manager III
727 Fairview Drive Suite E
Carson City, NV 89701

Dear Ms. Metherell,

This letter is to inform your agency of the Federal Bureau of Investigations (FBI) decision in regards to their review of Senate Bill (SB) 69 which amends Nevada Revised Statutes (NRS), Chapter 622, to determine if it would meet the requirements of Public Law (Pub. L.) 92-544 for access to FBI criminal history record information (CHRI).

The Criminal Justice Information Law Unit (CJILU) reviewed the draft SB 69, which would authorize the Governor, by executive order, to direct regulatory bodies to adopt regulations to facilitate the issuing of licenses by endorsement. Section 3 states that a Nevada regulatory body shall adopt regulations, providing for the issuance of a license by endorsement to engage in an occupation or profession in the state of Nevada and may adopt regulations to require an applicant for the issuance of a license by endorsement to submit to a fingerprint-based state and national criminal history record check. The CJILU determined that the language would not qualify for access to FBI CHRI under the criteria set forth under Pub. L. 92-544.

Specifically, for a state to conduct FBI fingerprint-based background checks under Pub. L. 92-544, the statute must outline the specific categories to be background. The category contained in draft SB 69, "licensure by endorsement," is overly broad and does not specify what individual licenses will be required to have FBI background checks. Also, a statute must designate a governmental agency responsible for the FBI background checks. The generic term of "regulatory body" is not specific enough to meet the requirements of Pub. L. 92-544. Lastly, for FBI fingerprint-based background checks to be authorized under Pub. L. 92-544, all of the criteria must be set out in statute. Executive orders, rules and regulations adopted by a regulatory body within the state of Nevada would not meet this requirement unless the rules or regulations are voted on by the full legislature.

Steve Sisolak
Governor



Nevada Department of
Public Safety
DEDICATION PRIDE SERVICE

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333 West Nye Lane, Suite 100
Carson City, Nevada 89706

Telephone (775) 684-6262 – Fax (775) 687-3289

As a matter of information, the FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544. The criteria are as follows:

- a. The statute must exist as a result of a legislative enactment;
- b. It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
- c. It must, expressly (“submit to the FBI”) or by implication (“submit for a national check”), authorize the use of FBI records for the screening of applicants;
- d. It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth;
- e. It must not be against public policy; and
- f. It may not authorize receipt of the CHRI by a private entity.

Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and thereafter forwarded to the FBI for a “national” criminal history check.

Please note, that the CJILU is also available to review draft versions prior to adoption to verify compliance under PL. 92-544.

If you have any questions or concerns, please contact your agency’s Civil Applicant auditor, Georgina Velazquez at (775) 684-6245 or gvelazquez@dps.state.nv.us.

Sincerely,

A handwritten signature in blue ink that reads "Mindy McKay".

Mindy McKay,
Division Administrator and CSO
Nevada Department of Public Safety
Records, Communications and Compliance Division

CC: file

CC: Brenda Erdoes

NOTICE OF PUBLIC WORKSHOP

NOTICE IS HEREBY GIVEN that the Division of Public and Behavioral Health will hold a public workshop to consider amendments to Nevada Administrative Code (NAC) Chapter 652, LCB File No. R090-18.

The workshop will be conducted via videoconference and teleconference beginning at 2:00 PM on Tuesday, October 30, 2018 at the following locations:

Division of Public and Behavioral Health Bureau of Health Care Quality and Compliance 727 Fairview Drive, Suite E Carson City, NV 89701	Division of Public and Behavioral Health Bureau of Health Care Quality and Compliance 4220 South Maryland Parkway, Suite 810, Building D Las Vegas, NV 89119
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TELECONFERENCE NUMBER: 1-877-336-1829

ACCESS CODE: 4481651

These workshops will be conducted in accordance with NRS 241.020, Nevada's Open Meeting Law.

AGENDA

1. Introduction of workshop process
2. Public comment on proposed amendments to Nevada Administrative Code Chapter 652, LCB File No. R090-18.
3. Public Comment

The proposed changes will revise Chapter 652 of the Nevada Administrative Code, LCB File No. R090-18, and are being proposed in accordance with NRS 652.125 and Senate Bill 69 of the 2017 legislative session.

The proposed regulations provide provisions for the following:

- 1) Establishes the criteria required for laboratory personnel to obtain a license by endorsement in accordance with Senate Bill 69 of the 2017 legislative session.
- 2) Outlines background check procedures to obtain a laboratory personnel license or certificate by endorsement.

Note: The section related to licensing or certification of laboratory personnel who are active members, or the spouse of an active member of the United States Armed Forces, or a veteran or surviving spouse of a veteran, via reciprocity of licensure or certification, in the original draft of the proposed regulations has been removed, as it was noted regulations were not required to carry out the provisions of NRS 622.510.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence may submit the material to Leticia Metherell, Health Program Manager III at the following address:

Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, NV 89701
775-684-1073 (FAX)
lmetherell@health.nv.gov (E-mail)

Members of the public who require special accommodations or assistance at the workshops are required to notify Leticia Metherell, Health Program Manager III, in writing to the Division of Public and Behavioral Health, 727 Fairview Drive, Suite E, Carson City, Nevada, 89701, or by calling (775) 684-1030 at least five (5) working days prior to the date of the public workshop.

You may contact Leticia Metherell, Health Program Manager III, as noted above, for further information on the proposed regulations.

A copy of the notice and the proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours:

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

Division of Public and Behavioral Health
4220 S. Maryland Parkway, Suite 810, Bldg D
Las Vegas, NV

Nevada State Library and Archives
100 Stewart Street
Carson City, NV

A copy of the regulations and small business impact statement can be found on the Division of Public and Behavioral Health's web page:

http://dpbh.nv.gov/Reg/MedicalLabs/Notice_of_Public_Workshops_and_Proposed_Regulations/

A copy of the public workshop notice can also be found at Nevada Legislature's web page:

<https://www.leg.state.nv.us/App/Notice/A/>

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 684-1030 in Carson City or (702) 486-6515 in Las Vegas.

A copy of this notice has been posted at the following locations:

1. Division of Public and Behavioral Health, 4150 Technology Way, First Floor Lobby, Carson City
2. Nevada State Library and Archives, 100 Stewart Street, Carson City
3. Legislative Building, 401 S. Carson Street, Carson City
4. Grant Sawyer Building, 555 E. Washington Avenue, Las Vegas
5. Washoe County District Health Department, 9TH and Wells, Reno

Copies may also be obtained from any of the public libraries listed below:

Carson City Library
900 North Roon Street
Carson City, NV 89702

Churchill County Library
553 South Main Street
Fallon, NV 89406

Clark County District Library
833 Las Vegas Boulevard North
Las Vegas, NV 89101

Douglas County Library
1625 Library Lane
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County Library
Corner of Crook and 4th Street
Goldfield, NV 89013-0484

Eureka Branch Library
210 South Monroe Street
Eureka, NV 89316-0283

Henderson District Public Library
280 South Water Street
Henderson, NV 89105

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445-3095

Lander County Library
625 South Broad Street
Battle Mountain, NV 89820-0141

Lincoln County Library
93 Maine Street
Pioche, NV 89043-0330

Lyon County Library
20rNevin Way
Yerington, NV 89447-2399

Mineral County Library
110 1st Street
Hawthorne, NV 89415-1390

Pahrump Library District
701 East Street
Pahrump, NV 89041-0578

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419-0781

Storey County Library
95 South R Street
Virginia City, NV 89440-0014

Tonopah Public Library
167 Central Street
Tonopah, NV 89049-0449

Washoe County Library
301 South Center Street
Reno, NV 89505-2151

White Pine County Library
950 Campton Street
Ely, NV 89301-1965

Per NRS 233B.064(2), upon adoption of any regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

NOTICE OF PUBLIC HEARING

Intent to Adopt Regulations
(LCB File No. R090-18)

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Nevada Administrative Code (NAC) Chapter 652, LCB File No. R090-18 with associated errata, relating to medical laboratory personnel certification or licensure, as applicable, by endorsement. This public hearing is to be held in conjunction with the State Board of Health meeting on March 6, 2020.

The State Board of Health will be conducted via videoconference beginning at 9:00 a.m. on March 6, 2020 at the following locations:

Division of Public and Behavioral Health 4150 Technology Way Room #303 Carson City, NV 89706	Grant Sawyer Building 555 E Washington Ave Suite 1400 Las Vegas, NV 89101
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The proposed changes to NAC 652 (LCB File No. R090-18) with associated errata establishes the criteria required for medical laboratory personnel to obtain a license or certificate, as applicable, by endorsement in accordance with Nevada Revised Statutes (NRS) 622.530 and NRS 652.125.

1. Anticipated effects on the businesses which NAC 652 regulates:
 - A. *Beneficial*: No direct economic beneficial effects are anticipated as the certification/licensing costs are the same for a regular (non-endorsement) license as for a license for endorsement but if a background check is required, there may be additional background check processing fees for an applicant for a certificate/license by endorsement.
 - B. *Adverse*: For applicants who chose to obtain certification/licensure through endorsement, there may be additional background check processing fees.
 - C. *Immediate*: If an applicant for licensure/certification by endorsement is required to obtain a background check in accordance with NRS Chapter 622 and the proposed regulations, the immediate adverse financial effect would be the cost to obtain the background check. Although the requirement for the background check may cause a delay in issuing a certificate/license in certain cases, there may be other instances in which applying by endorsement may result in a quicker turn-around time, which

would be a benefit.

D. *Long-term*: As there is no statutory requirement for ongoing background checks, no long-term adverse effects are anticipated. No long-term beneficial effects are anticipated.

2. Anticipated effects on the public:

A. *Adverse*: No adverse effects on the public are anticipated.

B. *Beneficial*: Although the requirement for the background check may cause a delay in issuing a certificate/license in certain cases there may be other instances in which applying by endorsement may result in a quicker turn-around time, which would be a benefit.

C. *Immediate*: No immediate adverse or beneficial effects on the public are anticipated.

D. *Long-term*: No long-term adverse or beneficial effects on the public are anticipated.

3. The estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulations.

NRS 622.530 (2) (g) requires applicants for a license by endorsement to pay applicable fees for the issuance of a license that are otherwise required for a person to obtain a license; therefore, the Division would collect fees based on existing fees outlined in current regulations to pay for the enforcement of the proposed regulations. There may be an additional cost to the agency due to the increased workload to process background checks for medical laboratory personnel by endorsement, as this would be a new workload for the Division. It is too soon to determine if this workload will require additional staff or if the Division will be able to fully integrate it into the workload of its current staff; therefore, additional costs have not been added at this point, but this may be re-evaluated at a future date.

The proposed regulations do not overlap or duplicate any other Nevada state regulations.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence in excess of two typed, 8-1/2" x 11" pages must submit the material to the Board's Secretary, Lisa Sherych, to be received no later than February 14, 2020 at the following address:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Written comments, testimony, or documentary evidence in excess of two typed pages will not be accepted at the time of the hearing. The purpose of this requirement is to allow Board members adequate time to review the documents.

A copy of the notice and proposed regulations are on file for inspection and/or may be copied at

the following locations during normal business hours:

Nevada Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, NV 89701

Nevada State Library
100 Stewart Street
Carson City, NV 89701

Nevada Division of Public and Behavioral Health
4220 S. Maryland Parkway, Suite 810, Building D
Las Vegas, NV 89119

A copy of the regulations and small business impact statement can be found on-line by going to:
http://dpbh.nv.gov/Reg/MedicalLabs/Notice_of_Public_Workshops_and_Proposed_Regulations/

A copy of the public hearing notice can also be found at Nevada Legislature's web page:
<https://www.leg.state.nv.us/App/Notice/A/>

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 684-1030 in Carson City or (702) 486-6515 in Las Vegas.

Copies may also be obtained from any of the public libraries listed below:

Carson City Library
900 North Roop Street
Carson City, NV 89702

Churchill County Library
553 South Main Street
Fallon, NV 89406

Clark County District Library
1401 East Flamingo Road
Las Vegas, NV 89119

Douglas County Library
1625 Library Lane
Minden, NV 89423

Elko County Library
720 Court Street
Elko, NV 89801

Esmeralda County Library
Corner of Crook and 4th Street
Goldfield, NV 89013-0484

Eureka Branch Library
80 South Monroe Street
Eureka, NV 89316-0283

Henderson District Public Library
280 South Green Valley Parkway
Henderson, NV 89012

Humboldt County Library
85 East 5th Street
Winnemucca, NV 89445-3095

Lander County Library
625 South Broad Street
Battle Mountain, NV 89820-0141

Lincoln County Library

Lyon County Library

93 Maine Street
Pioche, NV 89043-0330

Mineral County Library
110 1st Street
Hawthorne, NV 89415-1390

Pershing County Library
1125 Central Avenue
Lovelock, NV 89419-0781

Tonopah Public Library
167 Central Street
Tonopah, NV 89049-0449

White Pine County Library
950 Campton Street
Ely, NV 89301-1965

20th Nevin Way
Yerington, NV 89447-2399

Pahrump Library District
701 East Street
Pahrump, NV 89041-0578

Storey County Library
95 South R Street
Virginia City, NV 89440-0014

Washoe County Library
301 South Center Street
Reno, NV 89505-2151

Per NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption.

SMALL BUSINESS IMPACT STATEMENT 2018
PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE (NAC) 652

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendment, as a result of Senate Bill 69 of the 2017 legislative session, may have a minor financial impact upon small businesses but should not prevent 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

Senate Bill 69 of the 2017 legislative session requires a regulatory body to adopt regulations providing for the issuance of a license by endorsement to engage in an occupation or profession in Nevada. Medical laboratory personnel do not require a background check process to obtain a regular (non-endorsement) occupational certificate/license as many work in a laboratory setting and not directly with a vulnerable population. Those who work at certain health facilities which serve a vulnerable population would be background checked for employment purposes as part of the health facility background check laws and regulations. Senate Bill 69 imposes background check requirements for all medical laboratory personnel applicants applying for certification/licensure through the endorsement process. The proposed regulations are being moved forward as required by Senate Bill 69.

The proposed regulations provide provisions for the following:

- Establishes the criteria required for medical laboratory personnel to obtain a license by endorsement in accordance with Senate Bill 69 of the 2017 legislative session.

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 Nevada's licensed/certified laboratory personnel and laboratories licensed by the Division and has made a concerted effort to determine whether the proposed regulations are likely to impose an economic burden upon a small business.

Notice was sent to all licensed/certified laboratory personnel and laboratories licensed by the Division by November 8, 2017, requesting that all interested individuals complete the small business impact questionnaire. An email notice with a link to the small business impact questionnaire and proposed regulations was provided to those with an email address. In addition,

a phone number was provided which an individual could call to obtain a copy of both documents. Those without an email address were mailed the small impact questionnaire and proposed regulations. 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 Response

Summary of Comments Received (7 responses were received out of 15,599 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?	Do you anticipate any indirect adverse effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?
Yes- 0 No - 4 N/A - 1	Yes - 1 No- 3 N/A - 1	Yes - 0 No - 4 N/A - 1	Yes - 1 Non- 3 N/A - 1
Comments: The proposed regulation states that is applies to "initial applicant" for lab personnel certification of lab director licensure. All of our Lab personnel are residents of Nevada and are already licensed in Nevada.	Comments: The proposed regulation states that is applies to "initial applicant" for lab personnel certification of lab director licensure. All of our Lab personnel are residents of Nevada and are already licensed in Nevada. Would eliminate the cost of certification for already credential applicants.	Comments: The proposed regulation states that is applies to "initial applicant" for lab personnel certification of lab director licensure. All of our Lab personnel are residents of Nevada and are already licensed in Nevada.	Comments: The proposed regulation states that is applies to "initial applicant" for lab personnel certification of lab director licensure. All of our Lab personnel are residents of Nevada and are already licensed in Nevada.

One individual did not submit a small business impact questionnaire but provided the following feedback: Who will endorse? The current system that under the jurisdiction of the Dept. of Health works well. It would be tough to circumvent by other private entity. The current system protects well the participants as well as the job of the Nevada lab personnel. Just imagine if there will be an influx of lab staffs coming to our state and take our jobs by reason of endorsements.

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

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

An analysis of the input collected was conducted by a Health Program Manager III. The analysis involved analyzing feedback obtained from the small business impact questionnaire, review of current statutes and review of the requirements of Senate Bill 69 to determine how the Division could reduce the impact on small businesses through the proposed regulations. Current statutes do not require medical laboratory personnel applying for a regular (non-endorsement) certificate/license to obtain a background check. Review of Senate Bill 69 imposes background check requirements for those who obtain certification/licensure through endorsement. Background check fees would result in an additional financial cost to applicants who apply for a certificate/license by endorsement instead of a regular (non-endorsement) certificate/license. The proposed regulations attempt to reduce this extra financial cost to both individuals and small businesses by allowing the Division to accept proof, as allowed by Senate Bill 69, that an applicant who has previously passed a comparable criminal background check would be accepted instead of having the applicant be background checked again.

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: No direct economic beneficial effects are anticipated as the certification/licensing costs are the same for a regular (non-endorsement) license as for a license for endorsement and there may be additional background check processing fees for an applicant for a certificate/license by endorsement.

Indirect Beneficial Effects: No indirect economic beneficial effects are anticipated.

Direct Adverse Effects: For applicants who chose to obtain certification/licensure through endorsement, there may be additional background check processing fees.

Indirect Adverse Effects: There may be delays in certification/licensure awaiting the results of background checks, including time to challenge results if an applicant feels the accuracy of the information provided because of the background check is not correct.

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 distribution of the small business impact questionnaire to all licensed/certified laboratory personnel and laboratories licensed by the Division so they could provide input on how the proposed regulations may impact their business, review of current statutes and review of Senate Bill 69 to determine how to reduce the burden on small business by moving forward proposed regulations. The Division did implement the measure it identified to reduce the burden on small businesses by allowing the Division to accept a background check conducted for certification/licensure purposes from another state, the District of Columbia, or United States territory, if the applicant holds an active certificate/license in that state, District of Columbia, or territory instead of requiring a new one, thus saving on background check costs.

A public workshop will also be held allowing for further input by stakeholders regarding the proposed regulations and how they will impact all licensed/certified laboratory personnel and laboratories licensed by the Division. 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.

Senate Bill 69 requires applicants for license by endorsement to pay applicable fees for the issuance of a license that are otherwise required for a person to obtain a license; therefore, the Division would collect fees based on existing fees outlined in current regulations to pay for the enforcement of the proposed regulations. There may be an additional cost to the agency due to the increased workload to process background checks for medical laboratory personnel by endorsement, as this would be a new workload for the Division. It is too soon to determine if this workload will require additional staff or if the Division will be able to fully integrate it into the workload of its current staff; therefore, additional costs have not been added at this point, but this may be re-evaluated at a future date.

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 do not provide for a new fee or increase an existing fee that would be collected by the Division. Any background check processing fees would be collected by a fingerprint agency and/or the Department of Public Safety, as applicable.

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 state or federal regulations addressing 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.

The reasons for the Division's conclusion on the impact of the proposed regulations on small businesses is based on feedback received from the industry and its analysis as outlined in number two. The conclusion is the proposed regulations may have a minor financial impact on applicants or small businesses that pay for an applicant's background check processing fees, if applicable.

Certification by Person Responsible for the Agency

I, Julie Kotchevar, 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 Julie Kotchevar Date: 7-18-18