











Existing law requires the administrator or other person in charge of a designated facility to develop and annually update a written plan for the control of infectious diseases at the facility. (Section 1 of Assembly Bill No. 217, chapter 89, Statutes of Nevada 2021, at page 363 (NRS 449.0925))

- **Section 5** of this regulation prescribes the required contents of such a written plan.

#### POSSIBLE OUTCOME IF PROPOSED AMENDMENT IS NOT APPROVED

If the proposed amendments are not approved by the Board of Health, the Board will not be in compliance with Assembly Bill 217 of the 81<sup>st</sup> (2021) legislative session.

#### APPLICABILITY OF PROPOSED AMENDMENT

The proposed regulations will apply statewide.

#### PUBLIC COMMENT RECEIVED

A public workshop was held on December 6, 2022, and small business impact questionnaires were sent to licensed medical and non-medical providers. The testimony, written comments and responses to the small business impact questionnaires are included in the Informational Statement in the attached supporting materials.

#### STAFF RECOMMENDATION

Staff recommends the State Board of Health adopt the proposed regulation amendments to Nevada Administrative Code (NAC) 449, “Medical Facilities and Other Related Entities”, LCB File No. R063-21.

#### PRESENTER

Tina Leopard, Health Facilities Inspection Manager

Enclosures

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

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Chief Medical Officer

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**SMALL BUSINESS IMPACT STATEMENT**

**PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE (NAC 449) LCB File R063-21**

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments should have a minimal financial impact upon a small business and 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.0382 as a "business conducted for profit which employs fewer than 150 full-time or part-time employees."

This small business impact statement is made pursuant to NRS 233B.0608(3) and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business in sections 1, 2, 3, and 4 below and provides the reasons for the conclusions of the agency in section 8 below followed by the certification by the person responsible for the agency.

**Background**

The 2021 Legislative Session passed Assembly Bill 217, which amended NRS Chapter 449 and directs the State Board of Health to adopt regulations designating the types of facilities to which certain requirements to provide training to unlicensed caregivers apply; prescribing requirements relating to such training; prescribing the required content for the written plan for the control of infectious diseases developed by a designated facility; and providing other matters properly relating thereto. The proposed regulations LCB file R063-21 are designed with the intent to ensure free infection control training posted on the Division's website is accessible to all unlicensed caregivers. This training would meet the unlicensed caregiver infection control requirements and would not be a financial burden on licensed providers as the training will be free.

**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 licensed medical and non-medical facilities.

A Small Business Impact Questionnaire was sent to licensed medical and non-medical providers along with a copy of the proposed regulation changes, on 12/8/21. 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> (55 responses were received out of 2611 small business impact questionnaires distributed)			
<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 - 24 No - 15	Yes- 14 No - 23	Yes – 21 No - 15	Yes – 10 No - 26
11 comments indicated the required training would have an adverse economic effect on their business.	8 comments indicated the regulations will have beneficial effect on their business.	12 comments made on indirect adverse effects on their business.	9 comments on indirect beneficial effects on their business

## **Comments on Adverse economic effect**

- To be trained by nationally recognized organization for both unlicensed caregivers and representative of the company will have significant impact. From just googling, programs cost a minimum of \$100 to hundreds of dollars. These actual programs seem like college seminars Currently, to just become caregiver it will cost one at least around \$250.
- The cost of implementing this and maintaining it is estimated to cost this 15-bed facility a minimum of \$3,000 annually.
- The regulation will just make it harder to expand businesses because there not many caregivers that are interested plus after taking certificated classes from SNAMHS and HCQC. SNAMHS requires caregiver to do 16 hours of training every year already not including medication management and CPR.
- The proposed regulation change mandating unlicensed caregivers' complete infection control training by a nationally recognized organization puts an undue financial strain on the assisted living/memory care communities of Nevada.
- There should be more specific regulations around unlicensed caregivers
- AB 217, we spend a lot of time training on stuff that does not add value and do not train on things that add value.
- We pay a license fee of \$850 per year when we only have 20 people. This will also add to the cost of business.
- We're already doing the annual Medication training/renewal, Elder Abuse/Adult Protective Services training annually, CPR every 2 years, Safe injection Practices training annually plus the other Continuing Education for caregiving.



- This required training will raise the cost to hire and retain employees. In a field with high turnaround this will cost thousands of dollars a year.
- The cost will be significant to hire someone to train staff. We are already required to do the Cultural Competency training those costs \$100 per employee annually.
- LCB File No. R063-21 will cost us to provide an outside company to provide this training and negatively impact our business.
- Most small businesses are still trying to recover from Covid-19 There were many, many, extra expenses. We cannot find Caregivers now because they make more staying home on unemployment. The challenge continues, if more restrictions are put on our industry, we as small business owners are doomed to fail. The extra time to train, the paper, the ink, paying overtime for training. It already costs roughly \$500 to get all that is needed just to hire a Caregiver, CPR etc.

**Comments on beneficial effects on businesses:**

- It will help to improved training requirements and hold the personnel to a higher more standardized systems across agencies.
- Might be if we can use it to help train other Personal Care Workers from other agencies.
- It could stand to bring consistency to infection control policies and training.
- Infection control is an important topic in senior care, however mandating that the training needs to be completed by a nationally recognized organization is over the top and not realistic in today's staffing shortages. Instead put together a list of topics that must be covered in infection control training and that can be completed at the facility level.
- There is always room for more improvement. This changes in the regulation are allowing us to see our own selves that sooner or later we will be in this population of Geriatrics
- If it streamlines the process instead of adding a bunch of stuff that doesn't help caregivers, clients, and agencies it will help.
- Providing better quality caregivers, that understand their actions will be accountable for all communities. This helps all communities set a standard of care and accountability for all communities to provide to our residents.
- It will help weed out unethical as well as untrained staffing from my competitors.

**Comments on Indirect Adverse Effects upon Businesses:**

- This requirement would push a lot of new hires to be apprehensive by number of requirements and cost of becoming an employee.
- As it is, the state does not compensate well to the changes in costs to operate, they pay flat rate, this for sure will discourage current and new small business/providers to open new facilities much like the NAC 477 that was added couple of years back. This will also impact the communities being served by providers.
- Some lag in implementation and identification of 'approved' providers.
- Administrative time consumption.
- The proposed regulation change mandating unlicensed caregivers' complete infection control training by a nationally recognized organization puts an undue financial strain on the assisted living/memory care communities of Nevada.
- Being saddled with non-productive training.
- I think we are already having that with the mandate of the vaccine, this is just another standard of care that should be implemented.
- Training will take longer for new employees and result in more time away from work for yearly training.

-The concern is potential: If facilities paid independently from CMS are mandated to CDC COVID Vaccination, it will become near impossible to employ enough care givers to continue to serve the small percentage of need covered. The proposed changes do not immediately cause hardship as written but should mandates foreseen be covered by these changes then it will shut many small homes care agencies down.

-Yes, the indirect adverse effects right now are the Omicron and the reaction of the workers. Who can promise that their families and themselves are safe?

-More financial problems: the economy is inflated, food costs elevated, supply costs elevated, cannot find decent workers, gasoline to/from work has nearly doubled.

-It is harder to higher individual for minimum wage and now add on my classes. They will go clean rooms at a casino and make more with no training.

### **Comments on indirect Beneficial effects on business:**

-Provide additional staff to assist with patient needs.

-NONE

-Decrease in potential illness reports and/or decrease cleanliness concerns.

-Only if the changes will work for the benefits of both parties.

-Potentially, a source for training that's low cost and effective

-Business will close if pay hike is not controlled

-Each licensed Facilities will comply to follow and provide the training to all caregivers/staff/employees.

-No employees who don't stay past probationary period will lose money out of their checks and won't be reimbursed for training.

-More time spent hiring and training than taking care of the residents.

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

A small business impact questionnaire was sent out to all licensed providers, that may have unlicensed caregivers providing care, on 12/8/21. Of 2,611 providers that were sent the email questionnaire, 55 responded by the deadline of 12/23/21. An analysis of the input collected was conducted by a Health Facilities Inspection Manager. The analysis involved analyzing feedback obtained from the small business impact questionnaire, review of current statutes and review of the requirements of LCB File R063-21 to determine how the Division could reduce the impact on small businesses through the proposed regulations.

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.

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

## **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.**

There is very minimal economic effect on small businesses as the training is free on the Division's website for licensed providers.

*Direct Beneficial Effects:* It will help training requirements be more consistent for unlicensed caregivers for infection control. Fourteen respondents agreed there will be a direct benefit while 23 indicated there would not be.

*Indirect Beneficial Effects:* Ten respondents indicated there will be a direct beneficial benefit to the regulations while 26 replied there are no direct beneficial effects. Responders thought it will benefit the industry if caregivers have better knowledge of infection control for non-medical facilities.

*Direct Adverse Effects:* Twenty-four respondents indicated there will be a direct adverse effect on their business. Comments reflected added costs of training to caregivers in an environment where staff shortages are prominent in non-medical as well as medical healthcare facilities. The added training would be a financial burden to facilities that have already seen staff shortages for caregivers. Comments referenced above.

*Indirect Adverse Effects:* Twenty-one respondents indicated there would be an indirect adverse effect from the proposed regulation. Comments included elevated costs of doing business in the current economic environment and this would also add to the burden of costs imposed on providers.

**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 provided opportunities for licensed providers to give input and comments regarding the proposed LCB File R063-21 regulations, including the economic impact the proposed regulations may have on licensed medical and non-medical providers that employ unlicensed caregivers. Modifications to the proposed regulations have been made as a result of this input.

The Division will hold a public workshop to obtain further feedback on the proposed regulations. The Division will take the feedback into consideration when determining if further modifications to the proposed regulations are needed to mitigate the impact to small businesses.

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

There should be no additional costs to the agency to enforce the proposed regulations. Providing free infection control training may in fact reduce the costs of conducting infection control inspections due to providers being more knowledgeable thus reducing complaints regarding infection control.

**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 will not provide for a new fee or increase in existing fees.

**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 duplicate or more stringent provisions regulating infection control training for unlicensed caregivers.

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

Although comments from the small business impact questionnaire raise concern over cost of training unlicensed caregivers, the training will be free on the Division’s website. This will eliminate licensed providers from having to pay for their unlicensed caregiver’s infection control training. The proposed regulations could have a beneficial impact on limiting spread of infections in facilities through training of unlicensed caregivers related to infection control.

**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: Tina Leopard  
4220 S. Maryland Parkway Building A, Suite 100  
Las Vegas, NV 89119  
Phone: 702-486-6515  
Email: [tleopard@health.nv.gov](mailto:tleopard@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: 09/08/2022

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

**LCB File No. R063-21**

November 18, 2021

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

AUTHORITY: §§ 1-5, NRS 439.200 and 449.0302, as amended by section 5 of Assembly Bill No. 217, chapter 89, Statutes of Nevada 2021, at page 365, and section 1 of Assembly Bill No. 217, chapter 89, Statutes of Nevada 2021, at page 363 (NRS 449.0925).

A REGULATION relating to health care; designating the types of facilities to which certain requirements to provide training to unlicensed caregivers apply; prescribing requirements relating to such training; prescribing the required content for the written plan for the control of infectious diseases developed by a designated facility; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law requires the State Board of Health to adopt regulations prescribing mandatory training for unlicensed caregivers who provide care at designated medical facilities, facilities for the dependent and other licensed facilities. (Section 1 of Assembly Bill No. 217, chapter 89, Statutes of Nevada 2021, at page 363 (NRS 449.0925)) **Section 2** of this regulation interprets the term “unlicensed caregiver” for that purpose. **Section 3** of this regulation designates the types of facilities to which the requirements for training unlicensed caregivers apply. **Section 4** of this regulation: (1) requires the training on the control of infectious diseases to be provided by a nationally recognized organization that follows evidence-based standards; and (2) establishes the required topics for the training. **Section 4** further requires each unlicensed caregiver who completes the training to provide proof of completion of the training to the administrator of the facility.

Existing law requires the administrator or other person in charge of a designated facility to develop and annually update a written plan for the control of infectious diseases at the facility. (Section 1 of Assembly Bill No. 217, chapter 89, Statutes of Nevada 2021, at page 363 (NRS 449.0925)) **Section 5** of this regulation prescribes the required contents of such a written plan.

**Section 1.** Chapter 449 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

**Sec. 2.** *As used in section 1 of Assembly Bill No. 217, chapter 89, Statutes of Nevada 2021, at page 364 (NRS 449.0925), and sections 2 to 5, inclusive, of this regulation, the Division shall interpret “unlicensed caregiver” to mean any person that provides care to residents, patients or clients at a facility described in section 3 of this regulation and who:*

*1. Is not required to hold licensure or certification pursuant to title 54 of NRS to provide such care; and*

*2. Does not hold such licensure or certification.*

**Sec. 3.** *Each medical facility, facility for the dependent or facility licensed pursuant to NRS 449.0303 that uses unlicensed caregivers to provide care to residents, patients or clients shall ensure that each such unlicensed caregiver complies with the requirements of section 4 of this regulation.*

**Sec. 4.** *1. An unlicensed caregiver who provides care to residents, patients or clients at a facility described in section 3 of this regulation shall annually complete evidence-based training provided by a nationally recognized organization concerning the control of infectious diseases. The training must include, without limitation, instruction concerning:*

*(a) Hand hygiene;*

*(b) The use of personal protective equipment, including, without limitation, masks, respirators, eye protection, gowns and gloves;*

*(c) Environmental cleaning and disinfection;*

*(d) The goals of infection control;*

*(e) A review of how pathogens, including, without limitation, viruses, spread; and*

*(f) The use of source control to prevent pathogens from spreading.*

*2. Each unlicensed caregiver who completes the training required by subsection 1 must provide proof of completion of that training to the administrator or other person in charge of the facility in which the unlicensed caregiver provides care.*

**Sec. 5. 1.** *Except as otherwise provided in subsection 2, the written plan for the control of infectious diseases developed pursuant to paragraph (c) of subsection 3 of section 1 of Assembly Bill No. 217, chapter 89, Statutes of Nevada 2021, at page 363 (NRS 449.0925), must:*

*(a) Designate a person to be responsible for coordinating the program for infection control for the facility.*

*(b) Include policies and procedures for the control of infectious diseases that:*

*(1) Are based on current nationally recognized, evidence-based guidelines for the prevention and control of infectious diseases. Acceptable guidelines include, without limitation, the guidelines prescribed by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.*

*(2) Reflect the scope and complexity of the services the facility provides.*

*(c) Include procedures that identify, record and correct failures to adhere to the policies and procedures described in paragraph (b) or otherwise properly prevent or control infectious diseases.*

*(d) Include a process for reviewing activities for the prevention and control of infectious diseases performed at the facility.*

*(e) Include procedures for investigating communicable diseases and reporting those diseases in accordance with chapter 441A of NRS and chapter 441A of NAC.*

*(f) Include a strategy for addressing an outbreak of an infectious disease and the effects of such an outbreak at the facility, including, without limitation, staffing shortages, new admissions and readmissions, visitation and protecting residents, patients or clients from the spread of the infectious disease.*

*2. Where a specific provision of this chapter requires a facility described in section 3 of this regulation to adopt or maintain written protocols, policies or procedures, a written plan or a similar written document concerning the control of infectious or communicable diseases, such a written document satisfies the requirements of paragraph (c) of subsection 3 of section 1 of Assembly Bill No. 217, chapter 89, Statutes of Nevada 2021, at page 363 (NRS 449.0925), regardless of whether that document meets the requirements of this section.*



Steve Sisolak  
Governor



Richard Whitley, MS  
Director

**DEPARTMENT OF  
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Lisa Sherych  
Administrator

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

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## **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 449 (LCB File R063-21).

The workshop will be conducted via videoconference beginning at 2 p.m. on Dec. 6, 2022. at the following locations:

- [Click here to join the meeting](#)
  - Meeting ID: 268 620 681 36
  - Passcode: MvkgDo
- Call in: 775-321-6111 (Phone Conference ID: 201 772 370#)

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 NAC Chapter 449
3. Public Comment

The proposed changes contained in LCB file R063-21 will revise NAC Chapter 449; are being proposed in accordance with NRS 449.0302; and bring state regulations in compliance with [Assembly Bill 217 \(AB 217\)](#) of the 2021 Legislative Session. AB 217 amended NRS Chapter 449 and directs the State Board of Health to adopt regulations designating the types of facilities to which certain requirements to provide training to unlicensed caregivers apply; prescribing requirements relating to such training; prescribing the required content for the written plan for the control of infectious diseases developed by a designated facility; and providing other matters properly relating thereto. Under AB 217, the Division of Public and Behavioral Health must ensure free or minimal cost infection control training that meets the training requirements of the proposed regulations is listed on the Division's website.

The proposed regulations provide provisions for the following:

- Section 2 interprets the term "unlicensed caregiver."
- Section 3 designates the types of facilities to which the requirements for training unlicensed caregivers apply.
- Section 4:
  - requires the training on the control of infectious diseases to be provided by a nationally recognized organization that follows evidence-based standards;
  - establishes the required topics for the training; and
  - requires each unlicensed caregiver who completes the training to provide proof of completion

of the training to the administrator of the facility.

- Section 5 prescribes the required contents for the written plan for the control of infectious diseases developed by a designated facility and designation of a person to be responsible for coordinating the program for infection control for the facility.

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 Tina Leopard, Health Facilities Inspection Manager, at the following address:

Division of Public and Behavioral Health  
4220 S. Maryland Parkway, Building A, Suite 100  
Las Vegas, NV 89119  
702-486-6520 (FAX)

Members of the public who require special accommodations or assistance at the workshops are required to notify Tina Leopard, Health Facilities Inspection Manager, in writing to the Division of Public and Behavioral Health, 4220 S. Maryland Parkway, Building A, Suite 100, Las Vegas, NV 89119, or by calling 702-486-6515 at least five (5) working days prior to the date of the public workshop.

You may contact Tina Leopard, Health Facilities Inspection Manager, by calling 702-486-6515 for further information on the proposed regulations or how to obtain copies of the supporting documents.

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:

Nevada Division of Public and Behavioral Health  
4220 S. Maryland Parkway, Suite 100, Building A  
Las Vegas, NV 89119

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

Southern Nevada Health District (SNHD)  
280 S. Decatur Boulevard  
Las Vegas, Nevada 89107

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

Washoe County Administration Complex  
1001 E 9th St.  
Reno, NV 89512

Nevada State Library and Archives  
100 Stewart Street  
Carson City, NV 89701

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

[https://dpbh.nv.gov/Reg/HealthFacilities/State\\_of\\_Nevada\\_Health\\_Facility\\_Regulation\\_Public\\_Workshops/](https://dpbh.nv.gov/Reg/HealthFacilities/State_of_Nevada_Health_Facility_Regulation_Public_Workshops/)

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.

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.