

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

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulation of the Board of Health,
LCB File No. R093-22 relating to Peer Recovery Support Services

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 433 of Nevada Administrative Code (NAC) (LCB File No. R093-22). This public hearing is to be held in conjunction with the State Board of Health meeting on December 2, 2022, at 9:00 AM at the following virtual and physical locations.

Virtual Meeting Locations:

- [Click here to join the meeting](#); or
- Call in (audio only): 775-321-6111 (Phone Conference ID: 153 453 179#)

Physical Meeting Locations:

- Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard
Las Vegas, Nevada 89107
- Nevada Division of Public and Behavioral Health (DPBH)
Hearing Room No. 303, 3rd Floor
4150 Technology Way
Carson City, Nevada 89706

1. The need for and the purpose of the proposed regulation or amendment.

The proposed changes will revise Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) and are being proposed in accordance with the following authority: §§ 1-5, NRS 433.324, 433.631 and 433.639. The proposed regulations are needed in order to come into compliance and/or align regulations with NRS 433.631 and NRS 433.639. NRS 433.631 allows the Division to impose upon an adult who violates applicable sections of NRS 433.631, a civil penalty in an amount prescribed by regulation of the Board.

NRS 433.639 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 applicable sections of NRS 433.639 and allows the Division, in consultation with each agency which provides child welfare services, to establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor described in the statutes who has, within the immediately preceding 5 years, had a substantiated report

of child abuse or neglect or a violation of NRS 201.540, 201.560, 392.4633 or 394.366 made against him or her to continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report.

The proposed changes to Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) include the following:

Existing law prohibits a person from providing or supervising the provision of peer recovery support services for compensation as a regular part of his or her job duties or holding himself or herself out as authorized to provide or supervise the provision of such peer recovery support services unless he or she holds an appropriate certificate issued by the Nevada Certification Board or its successor organization. (NRS 433.631) Unless specifically authorized by the Division of Public and Behavioral Health of the Department of Health and Human Services, existing law also prohibits a person who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or certain related violations from serving as an employee or independent contractor who provides or supervises the provision of peer recovery support services in a position where the person has regular and substantial contact with minors. (NRS 433.639) Section 2 prescribes a process for the investigation of a complaint alleging a violation of those requirements. It also authorizes the Division to disclose any information collected as part of such an investigation to the Nevada Certification Board or its successor organization.

Section 3 prescribes the civil penalties that the Division may impose for such a violation. It also authorizes a person aggrieved by the imposition of such a civil penalty to file an appeal with the Division.

Section 4 provides that: (1) a complaint and any documents and information considered by the Division when determining whether to impose a civil penalty are public records; and (2) all other documents and information relating to an investigation conducted pursuant to section 2 are confidential.

Existing law authorizes the Division to establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or certain related violations made against him or her may continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report. (NRS 433.639) Section 5 of this regulation establishes such a process.

2. A statement explaining how to obtain the approved or revised text of the proposed regulation.

Any persons interested in obtaining a copy of the approved or revised text of the proposed regulations 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

3. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

Anticipated effects of Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) on the businesses which it regulates:

A. *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 statutes which allows for the imposition of a civil penalty. It will not have an adverse effect on small businesses and/or individuals that remain in compliance with NRS 433.631 and NRS 433.639. 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 NRS 433.639, 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 NRS 433.631 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 statutory violations; therefore, resulting in increased staff time and potential costs to address the complaint.

B. *Beneficial:*

There is no direct financial beneficial effect 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 5 of the proposed regulations to continue to provide these services is granted. This may reduce costs related to staff turnover.

C. *Immediate:*

There are no immediate beneficial or adverse effects expected for individuals and small businesses that remain in compliance with the applicable statutory requirements. For those found to be in non-compliance with the applicable statutory requirements, there may be a negative financial impact if civil penalties for non-compliance are imposed in accordance with the proposed regulations. Penalties imposed pursuant to the proposed regulations must not exceed \$10,000 in the aggregate. The exact amount of the financial impact is unknown because it is unknown the number of individuals that will be found to be in non-compliance; therefore, subject to a monetary penalty.

D. Long-term:

The long-term negative financial effects would be dependent on whether individuals and small business remain in compliance with the applicable statutory requirements. As this is unknown, the amount of the negative financial impact cannot be determined. There may be a positive financial impact for individuals and small businesses in which the owner or employees are found to have a substantiated report of child abuse or neglect or found to be in violations of certain statutes pursuant to Section 5, who work with minors, and are able to continue to work after a successful petition to the Division allowing the individual to provide peer recovery support services to minors.

Anticipated effects on the public:

A. Adverse:

There are no anticipated negative financial impacts expected on members of the public not engaged in providing or supervising the provision of peer recovery support services. The anticipated impacts for members of the public providing or supervising the provision of peer recovery support services would be the same as the adverse effects indicated in “1. Anticipated effects on the business which NAC 433 regulates”. There are also no anticipated adverse financial effects for members of the public who utilize peer recovery support services.

B. Beneficial:

The anticipated beneficial effects for members of the public providing or supervising the provision of peer recovery support services would be the same as the beneficial effects indicated in “1. Anticipated effects on the business which NAC 433 regulates”.

C. Immediate:

The anticipated immediate effects for members of the public providing or supervising the provision of peer recovery support services would be the same as the immediate effects indicated in “1. Anticipated effects on the business which NAC 433 regulates”.

D. Long-term: The anticipated long-term effects for members of the public providing or supervising the provision of peer recovery support services would be the same as the long-term effects indicated in “1. Anticipated effects on the business which NAC 433 regulates”.

4. The methods used by the agency in determining the impact on a small business.

The methods used by the agency in determining the impact of the proposed changes to Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) on a small business are as follows:

A Small Business Impact Questionnaire was sent to Peer Recovery Support Specialists certified by the Nevada Certification Board and others on their Listserv. 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?

This data was then collected and analyzed to help determine the impact on a small business.

A public workshop was also held on June 8, 2022, to gain further information on the proposed regulations on business, including small businesses. No public comment was received in support or against the proposed regulations.

A health program manager reviewed the requirements of NRS 433.631 and NRS 433.639, the proposed regulations, the small business impact questionnaire responses, and the lack of opposition during the public workshop 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 NRS 433.639 and allows the Division to impose upon an adult who violates NRS 433.631 a civil penalty. The proposed regulations and the provisions of NRS 433.631 and NRS 433.639 were then analyzed along with the feedback received from industry to complete the small business impact statement.

5. The estimated cost for the Division of Public and Behavioral Health for enforcement of proposed changes to Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) are as follows:

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 NRS 433.631 and NRS 433.639 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, 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. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

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

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

There are no known federal regulations that regulate the same activity.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulations establish a civil monetary penalty in accordance with NRS 433.631 and NRS 433.639. The proposed regulations allow the imposition of a civil monetary penalty to any person or entity, for each violation of applicable sections of NRS 433.631 and NRS 433.639, of \$100 for each such violation. In addition, a monetary penalty for each day of noncompliance from the date the noncompliance is identified until compliance is verified, may be imposed. 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 applicable statutes 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 for the Division's operating costs to carry out the provisions of the statutes and proposed regulations.

Persons wishing to comment upon the proposed action of Board of Health may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Board's Secretary, Lisa Sherych, to be received no later than November 17, 2022, 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.

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify Leticia Metherell, in writing, no later than five (5) working days before the hearing via email at: lmetherell@health.nv.gov or by mailing a request to:

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

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 100, Building A
Las Vegas, NV 89119

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

Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard
Las Vegas, Nevada 89107

A copy of the regulations, public hearing notice, and small business impact statement can be found on-line by going to:

http://dpbh.nv.gov/Reg/HealthFacilities/State_of_Nevada_Health_Facility_Regulation_Public_Workshops/

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.

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.

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Lisa Sherych
Administrator

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

September 6, 2022

MEMORANDUM

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) 433, "Administration of Mental Health and Intellectual and Developmental Disability Programs", LCB File No. R093-22.

GENERAL PROVISIONS

PURPOSE OF AMENDMENT

The proposed changes will revise Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) and are being proposed in accordance with the following authority: §§ 1-5, NRS 433.324, 433.631 and 433.639. The proposed regulations are needed in order to come into compliance and/or align regulations with NRS 433.631 and NRS 433.639. NRS 433.631 allows the Division to impose upon an adult who violates applicable sections of NRS 433.631, a civil penalty in an amount prescribed by regulation of the Board.

NRS 433.639 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 applicable sections of NRS 433.639 and allows the Division, in consultation with each agency which provides child welfare services, to establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor described in the statutes who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or a violation of NRS 201.540, 201.560, 392.4633 or 394.366 made against him or her to continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report.

SUMMARY OF CHANGES TO NEVADA ADMINISTRATIVE CODE (NAC) 433

The proposed changes to Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) include the following:

Existing law prohibits a person from providing or supervising the provision of peer recovery support services for compensation as a regular part of his or her job duties or holding himself or herself out as authorized to provide or supervise the provision of such peer recovery support services unless he or she holds an appropriate certificate issued by the Nevada Certification Board or its successor organization. (NRS 433.631) Unless specifically authorized by the Division of Public and Behavioral Health of the Department of Health and Human Services, existing law also prohibits a person who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or certain related violations from serving as an employee or independent contractor who provides or supervises the provision of peer recovery support services in a position where the person has regular and substantial contact with minors. (NRS 433.639) Section 2 prescribes a process for the investigation of a complaint alleging a violation of those requirements. It also authorizes the Division to disclose any information collected as part of such an investigation to the Nevada Certification Board or its successor organization.

Section 3 prescribes the civil penalties that the Division may impose for such a violation. It also authorizes a person aggrieved by the imposition of such a civil penalty to file an appeal with the Division.

Section 4 provides that: (1) a complaint and any documents and information considered by the Division when determining whether to impose a civil penalty are public records; and (2) all other documents and information relating to an investigation conducted pursuant to section 2 are confidential.

Existing law authorizes the Division to establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or certain related violations made against him or her may continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report. (NRS 433.639) Section 5 of this regulation establishes such a process.

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 NRS 433.639 which 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 applicable sections of NRS 433.639 and would not allow the Division, in consultation with each agency which provides child welfare services, to establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor described in the statutes who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or a violation of NRS 201.540, 201.560, 392.4633 or 394.366 made against him or her to continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report.

APPLICABILITY OF PROPOSED AMENDMENT

The proposed regulations will apply statewide.

PUBLIC COMMENT RECEIVED

A public workshop was also held on June 8, 2022, to gain further information on the proposed regulations on business, including small businesses. No public comment was received in support or against the proposed regulations.

STAFF RECOMMENDATION

Staff recommends the State Board of Health adopt the proposed regulation amendments to Nevada Administrative Code (NAC) 433, “Administration of Mental Health and Intellectual and Developmental Disability Programs”, LCB File No. R093-22.

PRESENTER

Leticia Metherell, RN, Health Program Manager III

Enclosures

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

LCB File No. R093-22

July 15, 2022

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

AUTHORITY: §§ 1-5, NRS 433.324, 433.631 and 433.639.

A REGULATION relating to peer recovery support services; establishing the procedure for the investigation of a complaint alleging certain violations; authorizing the imposition of certain civil penalties for such violations; authorizing an appeal of such a civil penalty; providing for the confidentiality of certain records; establishing the procedure to petition for authorization to serve in certain positions despite a substantiated report of child abuse or neglect or certain related violations; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law prohibits a person from providing or supervising the provision of peer recovery support services for compensation as a regular part of his or her job duties or holding himself or herself out as authorized to provide or supervise the provision of such peer recovery support services unless he or she holds an appropriate certificate issued by the Nevada Certification Board or its successor organization. (NRS 433.631) Unless specifically authorized by the Division of Public and Behavioral Health of the Department of Health and Human Services, existing law also prohibits a person who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or certain related violations from serving as an employee or independent contractor who provides or supervises the provision of peer recovery support services in a position where the person has regular and substantial contact with minors. (NRS 433.639) **Section 2** of this regulation prescribes a process for the investigation of a complaint alleging a violation of those requirements. **Section 2** also authorizes the Division to disclose any information collected as part of such an investigation to the Nevada Certification Board or its successor organization. **Section 3** of this regulation prescribes the civil penalties that the Division may impose for such a violation. **Section 3** also authorizes a person aggrieved by the imposition of such a civil penalty to file an appeal with the Division. **Section 4** of this regulation provides that: (1) a complaint and any documents and information considered by the Division when determining whether to impose a civil penalty are public records; and (2) all other documents and information relating to an investigation conducted pursuant to **section 2** are confidential.

Existing law authorizes the Division to establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor who

has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or certain related violations made against him or her may continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report. (NRS 433.639) **Section 5** of this regulation establishes such a process.

Section 1. Chapter 433 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this regulation.

Sec. 2. 1. *Upon receiving a complaint alleging a violation of NRS 433.631 or 433.639, the Division shall investigate the complaint. The investigation may include, without limitation:*

(a) An investigation of any person providing or supervising the provision of peer recovery support services, the employer of such a person or any other person or entity against whom allegations are made in the complaint;

(b) An interview of any person whom the Division determines to be relevant to the investigation;

(c) An observation on the site of any premises, as the Division determines is relevant to the investigation; and

(d) A request for any documents or information that the Division determines to be relevant to the investigation, including, without limitation:

(1) The name, residential address, business address, electronic mail address or telephone number of any person or entity;

(2) The results of or other documents relating to any investigation conducted by:

(I) The Nevada Certification Board or its successor organization;

(II) The employer of any person providing or supervising the provision of peer recovery support services; or

(III) Any other person or entity who has conducted an investigation relevant to the allegations contained in the complaint; or

(3) Any relevant documents maintained by the Nevada Certification Board or its successor organization.

2. The Division may provide any information collected as part of an investigation conducted pursuant to subsection 1 to the Nevada Certification Board or its successor organization.

Sec. 3. 1. *If the Division determines after an investigation conducted pursuant to section 2 of this regulation and providing notice pursuant to NAC 439.345 that any person or entity has violated the provisions of NRS 433.631 or 433.639, the Division may impose a civil penalty not to exceed \$100 for each violation.*

2. In addition to a civil penalty imposed pursuant to subsection 1, the Division may impose a civil penalty in an amount to be determined by the Division for each day a violation continues after the Division has notified the relevant person or entity of the violation.

Penalties imposed pursuant to this subsection must not exceed \$10,000 in the aggregate.

3. Any person aggrieved by the imposition of a civil penalty pursuant to this section may file an appeal with the Division in accordance with the procedures set forth in NAC 439.300 to 439.395, inclusive.

Sec. 4. 1. *Except as otherwise provided in subsection 2 and NRS 239.0115, any documents and information obtained during an investigation conducted pursuant to section 2 of this regulation and any record of such an investigation are confidential.*

2. The complaint filed with the Division pursuant to section 2 of this regulation and all documents and information considered by the Division when determining whether to impose a civil penalty pursuant to section 3 of this regulation are public records.

Sec. 5. 1. An employee or independent contractor who provides or supervises the provision of peer recovery support services in a position where he or she has regular and substantial contact with minors and has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or a violation of NRS 201.540, 201.560, 392.4633 or 394.366 made against him or her may petition the Division for authorization to provide or supervise the provision of peer recovery support services in a position where he or she has regular and substantial contact with minors despite the report.

2. A petition submitted pursuant to subsection 1 must be:

(a) In the form prescribed by the Division and include:

(1) The name of the petitioner;

(2) The social security number of the petitioner or, if the petitioner has not been assigned a social security number, the taxpayer identification number of the petitioner;

(3) The consent of the petitioner for the Division to:

(I) Interview the petitioner or any other person or entity whom the Division determines may have information relevant to the petition, including, without limitation, current and prior employers and family members of the petitioner; and

(II) Obtain any information that the Division determines necessary to evaluate the petition; and

(b) Accompanied by a copy of the substantiated report of child abuse or neglect or the violation of NRS 201.540, 201.560, 392.4633 or 394.366, as applicable.

3. *A petitioner pursuant to this section shall provide to the Division any documentation requested by the Division for the purpose of evaluating the petition.*

4. *When evaluating a petition submitted pursuant to this section, the Division shall consider:*

(a) The amount of time that has passed since the most recent substantiated report of child abuse or neglect or the violation of NRS 201.540, 201.560, 392.4633 or 394.366 by the petitioner;

(b) The number of substantiated reports of child abuse or neglect or violations of NRS 201.540, 201.560, 392.4633 or 394.366 by the petitioner;

(c) Demonstration of rehabilitation of the petitioner;

(d) Relevance of the reported child abuse or neglect or the violation of NRS 201.540, 201.560, 392.4633 or 394.366 to the employment or contracted position of the petitioner;

(e) Whether the employer of the petitioner or the person with whom the petitioner has entered into a contract for the provision or supervision of the provision of peer recovery support services is aware of the reported child abuse or neglect or the violation of NRS 201.540, 201.560, 392.4633 or 394.366;

(f) Whether the person is required by federal or state law to register as a sex offender; and

(g) Any relevant extenuating circumstances.

5. *Not later than 90 days after the date on which the Division receives a petition submitted pursuant to this section, the Division shall issue and provide to the petitioner a written decision concerning whether the petitioner may provide or supervise the provision of peer recovery support services in a position where the person has regular and substantial contact with minors.*

6. The Division may rescind a written decision issued pursuant to subsection 5 at any time.

7. Not sooner than 2 years after the date on which the Division issues a written decision pursuant to subsection 5 prohibiting a person from providing or supervising the provision of peer recovery support services in a position where the person has regular and substantial contact with minors, the petitioner may submit a new petition pursuant to this section.

8. A petition submitted pursuant to this section and all information included in or accompanying such a petition is confidential. A final written decision issued pursuant to subsection 5 is a public record.

Steve Sisolak
Governor

Richard Whitley, MS
Director



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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. The information contained in this statement was prepared properly and is accurate.

Signature



Date: 04/28/2022

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

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) Chapters 433, 640D and 640E.

The workshop will be conducted via videoconference and will have a call-in option available beginning at 2 PM on Wednesday, June 8, 2022, by using the information provided below to join on your computer or by calling in via telephone. If you have difficulties joining in by computer, you can call in utilizing the number below.

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

+1 775-321-6111 (Phone Conference ID: 104 244 541#)

[Find a local number](#) | [Reset PIN](#)

[Learn More](#) | [Meeting options](#)

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 433, Administration of Mental Health and Intellectual and Developmental Disability Programs.
3. Public comment on proposed amendments to Nevada Administrative Code, Chapter 640D, Music Therapists.
4. Public comment on proposed amendments to Nevada Administrative Code, Chapter 640E, Dietetics.
5. Public Comment

Nevada Administrative Code, Chapter 433 - 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.

Nevada Administrative Code, Chapter 640D, Music Therapists - Background

The proposed regulations are being moved forward as a result of Assembly Bill 330 of the 81st (2021) legislative session which requires each regulatory body, in this case the Board of Health, to adopt regulations to effectuate the purposes of the following bill requirements:

- 1. A person who, in secondary or postsecondary education, completes a training program for occupational, vocational, career, trade or technical education approved by the State Board of Education and receives a certificate for the completion of that program is eligible to receive equivalent credit towards the satisfaction of requirements for the issuance of any professional and occupational licenses and certifications relating to the training received.*
- 2. For a person to be eligible to receive equivalent credit pursuant to subsection 1, the secondary or postsecondary education received by the person pursuant to title 34 of NRS must be consistent with the requirements for the issuance of professional or occupational licenses and certifications established pursuant to the provisions of title 54 of NRS and the regulations adopted pursuant thereto.*
- 3. Any person aggrieved by a decision of a regulatory body concerning eligibility for equivalent credit pursuant to this section may appeal to the regulatory body for a determination whether the training satisfies the*

requirements for professional or occupational licensure or certification, as applicable. An appeal made pursuant to this subsection must be conducted as provided for the appeal of the denial of a professional or occupational license or certificate by that regulatory body.

In addition, the proposed regulations amend NAC 640D.200 relating to unlicensed music therapy complaints by requiring the Executive Officer to investigate such complaints, not allowing unlicensed individuals to engage in music therapy services until the individual becomes licensed, and other related provisions.

The proposed regulations also amend NAC 640D.210, as it relates to a complaint against a licensee or an applicant for a license to practice music therapy, to allow the Executive Officer to conduct an investigation, and if substantiated, to forward the complaint, information collected as part of the investigation, and the investigative results to the Certification Board for Music Therapists.

Nevada Administrative Code, Chapter 640E, Dietetics - Background

The proposed regulations are being moved forward as a result of Assembly Bill 73 and Assembly Bill 330 of the 81st (2021) legislative session.

Assembly Bill 330 requires each regulatory body, in this case the Board of Health, to adopt regulations to effectuate the purposes of the following bill requirements:

- 1. A person who, in secondary or postsecondary education, completes a training program for occupational, vocational, career, trade or technical education approved by the State Board of Education and receives a certificate for the completion of that program is eligible to receive equivalent credit towards the satisfaction of requirements for the issuance of any professional and occupational licenses and certifications relating to the training received.*
- 2. For a person to be eligible to receive equivalent credit pursuant to subsection 1, the secondary or postsecondary education received by the person pursuant to title 34 of NRS must be consistent with the requirements for the issuance of professional or occupational licenses and certifications established pursuant to the provisions of title 54 of NRS and the regulations adopted pursuant thereto.*
- 3. Any person aggrieved by a decision of a regulatory body concerning eligibility for equivalent credit pursuant to this section may appeal to the regulatory body for a determination whether the training satisfies the requirements for professional or occupational licensure or certification, as applicable. An appeal made pursuant to this subsection must be conducted as provided for the appeal of the denial of a professional or occupational license or certificate by that regulatory body.*

Assembly Bill 73 removes the requirement that the Board of Health establish a fee for the late renewal of a license and the issuance of a duplicate license. The proposed regulations follow suit by removing these fees. Assembly Bill 73 amends the requirements for a provisional license; therefore, the amendment to NAC 640E.100 (1) in section 4 of the proposed regulations, as it relates to the issuance of a provisional license, refers back to NRS 640E.180.

In addition, the proposed regulations amend NAC 640E.200 relating to unlicensed dietitian complaints by requiring the Executive Officer to investigate such complaints, not allowing unlicensed individuals to engage in the practice of dietetics until the individual becomes licensed, and other related provisions.

The proposed regulations also amend NAC 640E.210, as it relates to a complaint against a licensee or an applicant for a license to practice dietetics, to allow the Executive Officer to conduct an investigation, and if

substantiated, to forward the complaint, information collected as part of the investigation, and the investigative results to the Commission on Dietetic Registration.

The proposed regulations also omit NAC 640E.120 and NAC 640E.130 which are no longer relevant with the passage of Assembly Bill 73.

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 at the following address:

Leticia Metherell
Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, NV 89701
Phone: 775-684-1030
Fax: 775-684-1073
Email: lmetherell@health.nv.gov

Members of the public who require special accommodations or assistance at the workshops are required to notify Leticia Metherell, Health Program Manager, in writing to the Division of Public and Behavioral Health, 727 Fairview Drive, Suite E, Carson City, NV 89701, by calling 775-684-1045 or via email at: lmetherell@health.nv.gov at least five (5) working days prior to the date of the public workshop.

You may contact Leticia Metherell by calling 775-684-1045 or via email at lmetherell@health.nv.gov 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:

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 100, Bldg A
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:

https://dph.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/>

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

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.