

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of
the Department of Health and Human Services
(LCB File No. R043-20)

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing at 9:00 a.m. on December 10, 2020, via videoconference. The purpose of the hearing is to receive comments from all interested persons regarding amendments to Chapter 457 of Nevada Administrative Code (NAC) Cancer, Chapter 459 of Nevada Administrative Code, Hazardous Materials and Chapter 653 of Nevada Administrative Code, Radiation Therapy and Radiologic Imaging. The NAC 457, NAC 459 and NAC 653 regulation changes will be heard in the order placed on the State Board of Health agenda.

The State Board of Health will be conducted via videoconference beginning at 9:00 a.m. on Thursday, December 10, 2020 at the following locations:

Meeting link:

<https://nvhealth.webex.com/nvhealth/j.php?MTID=m1a5a5859bc3635a276dd8cbb8001ec7a>

Meeting number:

146 522 3046

Password:

HDpsRrJp824

Join by phone:

+1-415-655-0001 US Toll

Access code: 146 522 3046

This meeting will be conducted without a physical location and the physical posting of notices, in accordance with Governor Sisolak's Declaration of Emergency Directive 006, as provided at the end of this notice.

The following information is provided pursuant to the requirements of NRS 233B.0603:

The proposed addition/change of regulations to NAC 457, NAC 459 and NAC 653 in LCB File No. R043- 20 include provisions for:

- Existing regulations require the Division to charge and collect a fee of \$551 for the issuance or renewal of a certificate for a mammography machine. (NAC 457.295) **Section 1** of this regulation requires a person who fails to pay the renewal fee in a timely manner to: (1) pay the renewal fee and an additional late fee of \$56 within 5 days after the date on which the certificate expired; and (2) stop operating the machine until the fee is paid.
- Existing law and regulations provide for: (1) the licensure of radioactive materials; and (2) the registration of radiation machines and persons who install or service radiation machines. (NRS 459.201; NAC 459.150-459.313) Existing regulations prohibit a licensee or certain affiliated persons from engaging in deliberate misconduct or knowingly submitting incomplete or

inaccurate information to the Division. (NAC 459.135) **Section 2** of this regulation additionally prohibits a registrant or certain persons affiliated with a registrant from engaging in similar conduct.

- Existing regulations require an applicant for the issuance or renewal of registration of a radiation machine to pay a fee for each X-ray tube, electron source or source of ionizing radiation installed in each radiation machine. If the renewal fee is not submitted in a timely manner, the applicant is required to stop operating the machine or pay the required fee and an additional late fee of \$56 within 5 days after the date on which the registration expired. (NAC 459.161) **Section 3** of this regulation instead: (1) requires the registrant to pay the renewal fee and late fee; and (2) prohibits the registrant from operating the machine until the fees are paid. **Section 3** also revises the manner in which the Division will determine the date on which the renewal fee is paid. (See Errata)
- **Sections 5 and 6** of this regulation remove requirements concerning gonadal shielding for a patient undergoing certain medical and dental radiographic procedures and **sections 4, 7 and 19** of this regulation make conforming changes.
- Existing law authorizes a person who does not hold a license or limited license to take X-ray photographs if the person: (1) registers with the Division; (2) completes certain training and continuing education; and (3) such X-ray photographs are taken as part of his or her employment as an independent contractor in a rural health clinic or federally-qualified health center that is located in a county whose population is less than 55,000 and has established a quality assurance program for X-ray photographs. (NRS 653.620) Existing regulations refer to such registration as a “rural authorization” and establish the requirements for the issuance and renewal of a rural authorization. (Section 27 of LCB File No. R074-19) Section 9 of this regulation defines the term “rural authorization” for chapter 653 of the Nevada Administrative Code, and sections 14, 15 and 17 of this regulation make conforming changes. Sections 10 and 12 of this regulation prescribe the requirements that a quality assurance program for X-ray photographs adopted by a rural health clinic or federally-qualified health center must meet for the rural health clinic or federally-qualified health center to be eligible to employ the holder of a rural authorization or allow the holder of a rural authorization to serve as an independent contractor. **Section 18** of this regulation requires an applicant for the issuance or renewal of a rural authorization to submit to the Division proof that the person will be employed or serve as an independent contractor in a rural health clinic or federally-qualified health center that has established a quality assurance program that meets such requirements.
- Existing law generally prohibits a person from performing computed tomography or fluoroscopy unless he or she: (1) is licensed to engage in radiation therapy or radiologic imaging; and (2) holds a certification from certain national accrediting organizations that is specific to the performance of computed tomography or fluoroscopy, as applicable. (NRS 653.630, 653.640) Existing law authorizes a person who performs computed tomography or fluoroscopy as part of his or her employment on January 1, 2020, to continue to perform any such activity on and after that date without obtaining such licensure and certification if he or she: (1) registers with the Division; (2) provides any information requested by the Division; and (3) does not expand the scope of his or her duties relating to computed tomography or fluoroscopy. (NRS 653.620) **Section 11** of this regulation prescribes the information that a person must provide to the Division in order to apply for the issuance or renewal of registration to perform computed tomography or fluoroscopy. **Section 11** also prescribes the expiration date of such a registration.
- Existing law authorizes a holder of a license or limited license to engage in radiation therapy

or radiologic imaging outside the scope of practice authorized for his or her license or limited license if: (1) necessary to qualify for certification by a national accrediting organization in that area; and (2) the licensee registers with the Division before engaging in such activity. (NRS 653.610) Existing law also authorizes the holder of a license who does not hold the required certification to perform computed tomography in order to obtain that certification if he or she registers with the Division before performing computed tomography. (NRS 653.630) Section 13 of this regulation provides that such a registration expires on the same date as the underlying license or limited license, as applicable.

- Existing regulations prescribe the fees for the issuance and renewal of: (1) a license to engage in radiation therapy or radiologic imaging; (2) a rural authorization; and (3) a registration to perform computed tomography or fluoroscopy. (Section 20 of LCB File No. R074-19) Existing law exempts the holder of a license or limited license from the requirement to pay a fee for the issuance or renewal of a certificate to operate a radiation machine for mammography. (NRS 457.183) **Section 15** of this regulation exempts the holder of a certificate to operate a radiation machine for mammography from the requirement to pay a fee for the issuance or renewal of a license to engage in radiation therapy or radiologic imaging.
- Existing law: (1) requires the Board to adopt regulations defining the scope of practice for radiologist assistants and persons who hold licenses or limited licenses; and (2) authorizes the Board to adopt any other regulations necessary or convenient to carry out provisions of law governing radiation therapy and radiologic imaging. (NRS 653.460) **Sections 10 and 16** of this regulation require a radiologist assistant and the holder of a license, limited license, rural authorization or any registration issued pursuant to chapter 653 of NRS or NAC to comply with the *Standards of Ethics* prescribed by the American Registry of Radiologic Technologists.
- Existing regulations require a holder of a license, limited license or rural authorization to: (1) complete certain continuing education; and (2) submit certain documentation of that continuing education to the Division. (Section 22 of LCB File No. R074-19) Section 17 of this regulation authorizes a holder of a license or limited license to submit, as evidence that he or she has completed the required continuing education, a copy of a valid certification issued by a national professional organization that indicates, as a requirement to maintain the certification, that the holder has completed continuing education that meets or exceeds the applicable requirements.
- Please refer to the Errata Sheet for LCB File No. R043-20 for additional information.

1. Anticipated effects on the business which NAC 457, NAC 459 and NAC 653 regulates:

- A. *Adverse effects*: The agency concludes the proposed regulations will produce a negligible impact on small businesses.
- B. *Beneficial*: Clearly defines what is expected of the regulated community. Protects the public from unnecessary exposure to harmful ionizing radiation. Amends and modifies existing language to make regulations more clear, current and compatible with the intent and scope of the Radiation Control Program.
- C. *Immediate*: The stated adverse and beneficial effects would be immediate impacts as soon as the proposed regulations become effective.

D. *Long-term*: The long-term impacts would be the same as the immediate impacts as it is not be expected that the impacts would go away.

2. Anticipated effects on the public:

A. *Adverse*: None anticipated.

B. *Beneficial*: Increased public health and safety.

C. *Immediate*: Increased public health and safety.

D. *Long-term*: Increased public health and safety.

3. There is no estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulations. Enforcement of the proposed regulations will be incorporated into current administrative, registration, licensing and inspection processes.

4. The amendment to NAC 457.295 of this regulation establishes a late fee for the renewal of a mammographer's certificate of \$56.

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

6. Per NRS 233B.0608(3), The Division of Public and Behavioral Health prepared and distributed a Small Business Impact Questionnaire (SBIQ) to all licensee's and registrants of the Radiation Control Program. The responses received were analyzed and used to generate the Small Business Impact Statement (SBIS) which was approved by the Administrator on August 3, 2020.

Persons wishing to comment upon the proposed action of the Board of Health may appear via teleconference at the scheduled public health or may address their comments, data, views or arguments in written form, to:

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

Written submissions must be received by the Division of Public and Behavioral Health on or before November 20, 2020. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board of Health may proceed immediately to act upon any written submissions.

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

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

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

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

Copies may be obtained in person, by mail, or by calling the Primary Care Office at (775) 684-2232 in Carson City.

A copy of the regulations and this notice can also be found on-line by going to:

http://dpbh.nv.gov/Reg/RPM/Radiation_Producing_Machines_-_Home/

<https://www.leg.state.nv.us/Register/2020Register/R043-20P.pdf> (Regulations Only)

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

In accordance with Nevada Governor Sisolak's Declaration of Emergency Directive 006 the meeting may be done without physical locations and notices in the libraries and other locations are not currently available.

- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 3: The requirements contained in NRS 241.020 (4) (a) that public notice agendas be posted at physical locations within the State of Nevada are suspended.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 4: Public bodies must still comply with requirements in NRS 241.020 (4)(b) and NRS 241.020 (4)(c) that public notice agendas be posted to Nevada's notice website and the public body's website, if it maintains one along with providing a copy to any person who has requested one via U.S. mail or electronic mail.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 5: The requirement contained in NRS 241.020 (3)(c) that physical locations be available for the public to receive supporting material for public meetings is suspended.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 6: If a public body holds a meeting and does not provide a physical location where supporting material is available to the public, the public body must provide on its public notice agenda the name and contact information for the person designated by the public body from whom a member of the public may request supporting material electronically and must post supporting material to the public body's website, if it maintains one.

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.