

SMALL BUSINESS IMPACT STATEMENT
PROPOSED AMENDMENTS TO NEVADA ADMINISTRATIVE CODE (NAC) 449

The Nevada Health Authority (NVHA), Division of Purchasing and Compliance, has determined the proposed amendments may have a minimal adverse financial impact on existing business and may have a beneficial impact on existing business. It is anticipated the proposed regulations will not limit the formation of small businesses. The proposed regulations may have some direct negative financial impact on small businesses, but they also reduce the regulatory burden on the industry by removing provisions of current regulations that are not necessary to effectively license and regulate these programs.

A small business is defined in Nevada Revised Statutes (NRS) 233B as a "business conducted for profit which employs fewer than 150 full-time or part-time employees."

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

Background

- A. The three main reasons these proposed regulations are being moved forward are:
- 1) To bring current regulations into conformance with SB 146, SB 298 and AB 403 of the 2023 Legislative Session.
 - 2) To carry out the Governor's Executive Order 2023-003 by removing provisions of regulations that are outdated or impose an unnecessary burden on business and streamline and improve upon current regulations.
 - 3) To protect public safety.
- B. The major topics addressed by the proposed regulations include:
- Authorizes a certified nurse midwife to perform a physical exam or obtain a medical history before or after a patient is admitted to a hospital for the purpose of giving birth (SB 146).
 - Addresses visitation in a facility for the dependent.
 - Removes halfway houses for persons recovering from alcohol or other substance use regulations from NAC chapter 449 in conformance with AB 403.
 - Addresses confidentiality of inspection and complaint investigations.
 - Addresses use of volunteers in homes for individuals for residential care.
 - Establishes educational and training requirements for mental health technicians and psychiatric technicians and exempt mental health technicians

who work in state hospitals as they have established requirements in state statutes/regulations.

- Addresses the use of home health and hospice services in a residential facility for groups.
- Provides criteria for residential facilities for groups to accept or retain a resident with a peripherally inserted central catheter or a peritoneal catheter.
- Requires the use of an inter-facility infection control transfer form when transferring a patient from one licensed health care facility to another with a current infection, colonization or history of a positive culture of a multi-drug-resistant organism or other potentially transmissible infectious organism.
- For general licensure requirements, it clarifies at least one personal reference is needed; instead of providing a copy of the business license requires the business identification number to be provided; and removes the requirement for an applicant, that is a corporation to submit a copy of its bylaws and articles of incorporation.
- Increases the timeframe to submit a change of administrator from 10 to 30 days from the date of the change and assess a late fee if it is not submitted within 30 days instead of 10 days currently in regulations.
- Refers the definition of a psychiatric residential treatment facility back to the statutory definition instead of a regulatory definition.
- Adds employment agency to provide nonmedical services, outpatient facility, recovery center, psychiatric residential treatment facility to NAC 449.0168 (Fees for modification of certain licenses).
- Removes the word “ironed” as it relates to linen from several sections.
- Updates cardiopulmonary resuscitation (CPR) training requirements to include an in-person instruction, combination of in-person and virtual instruction, or virtual instruction only if an interactive, hands-on skills training component is provided in several sections.
- Clarifies regulatory language as to which residents are not admissible into a residential facility for groups and clarifies when waivers are required for admission and when they are not. The proposed regulations also allow a patient of a hospice program to be admitted into a residential facility for groups without prior approval so long as the resident is retained pursuant to subsection 6 of section 44 of the proposed regulations.
- Conforms with Senate Bill 298 of the 2023 Nevada Legislative session as it relates to involuntary discharges.
- Omits provisions in current regulations that were determined to be an extra burden on industry without adding benefit to public safety.
- Expands the scope of services that can be provided by attendants working at an agency providing personal care services in the home.
- Requires skilled nursing facilities to comply with the provisions of 42 CFR 483.10(f) (4) relating to the visitation of patients.

- Propose changes to NAC 449.793 to allow, in addition to physicians, a physician assistant or advanced practice registered nurse to serve on the Committee to provide quarterly reviews of sampled patient records receiving services from an agency to provide nursing in the home.

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 Purchasing and Compliance (formerly Division of Public and Behavioral Health (DPBH)) requested input from small businesses that may be affected by the proposed regulations.

Notice was sent to all NRS and NAC Chapter 449 licensed health facilities that were licensed at the time of the notice distribution, to members of the public who have chosen to subscribe to the Division's health facility specific ListSrvs and to representatives of the Nevada Health Care Association, Nevada Hospital Association, and Nevada Rural Hospital Partners. An email notice with a link to the small business impact questionnaire and proposed regulations was sent to those with an email address on file with DPBH/NVHA, members of the public subscribed to the Division's health facility specific ListSrvs and the three entities previously noted on February 8, 2024. The proposed regulations were also posted on DPBH's website.

The questions on the questionnaire were:

- 1) How many employees are currently employed by your business?
- 2) Will a specific regulation have an adverse economic effect upon your business?
- 3) Will the regulation(s) have any beneficial effect upon your business?
- 4) Do you anticipate any indirect adverse effects upon your business?
- 5) Do you anticipate any indirect beneficial effects upon your business?

Summary of Responses

Summary of Comments Received (5 responses were received out of a minimum of 2,637 small business impact questionnaires distributed)			
Will a specific regulation have an adverse economic effect upon your business?	Will the regulation (s) have any beneficial effect upon your business?	Do you anticipate any indirect adverse effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?

Yes- 3 No - 1	Yes – 2 No - 2	Yes – 2 No – 2	Yes – 0 No – 3 1 left answered.
Comments: Are we allowing diabetic injection administration in group home setting? The regulation seems confusing on this regard. This will definitely increase liability insurance for the business. Depending on how the Cultural Competency Training requirements shake out there could be a significant adverse impact. Sec.13. Inter-facility infection control transfer form Facility staff will need to spend 15 minutes completing additional forms that contain information which can be very easily communicated verbally in seconds. This wasted time will decrease staff productivity and take staff time away from direct resident care. The larger negative impact will be on the elderly and disabled that we serve, as facilities will be forced to again increase their fees and price more individuals out of their facilities, limiting access to care for the elderly and disabled who need it most. The anticipated cost will range from \$10,000 to \$30,000 annually in staff time, opportunity cost, risk of injury to residents while staff is not able to be attentive to residents because they are drowning in paperwork, facility liability from increased resident risk. SB 298 of the 2023 legislative session, Sec 10.2. Allowing residents up to 45 days to pay their monthly fees	Comments: No need for landline with the business name, one less cost for the operator. I understand that non-medical may be allowed to administer medications under certain scenarios, if so this would be a positive development	Comments: Increasing acuity in the care of elderly residents, but the reimbursement remained unchanged.	Comments: Fewer potential clients who can afford my facility.

Residential Facilities for Groups will be significantly more negatively affected by this, as they have lower fees and fewer beds. These facilities simply cannot afford to keep their doors open if they have to go 1.5 months without revenue. Like all regulations, the macro impact will be negative for the elderly and disabled that we serve, as facilities will be forced to again increase their fees and price more individuals out of their facilities, limiting access to care for the elderly and disabled who need it most. The anticipated annual cost will be \$96,000 (the monthly operating costs over 12 months).			
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One of the responses was received via email and noted:

“Would be nice if licensed rfa is applying for new license for pca to consider rfa in lieu of high school diploma.... just saying.”

Any other person interested in obtaining a copy of the summary may e-mail, call, or mail a request to Leticia Metherell, RN, CPM, HPM III at the Division of Purchasing and Compliance at:

Division of Purchasing and Compliance
Bureau of Health Care Quality and Compliance
727 Fairview Drive, Suite E
Carson City, NV 89701
Leticia Metherell
Phone: 775-684-1045
Email: lmetherell@nvha.nv.gov

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

An analysis of industry input collected was conducted by a health program manager. The analysis involved analyzing feedback obtained from the small business impact questionnaire, review of the proposed regulations, review of statutes, and review of literature to help determine the economic impact to small business. Please see number 4 for the methods the agency considered to reduce the impact of the proposed regulations on small businesses. This information was then used to complete this small business impact

statement including the conclusion on the impact of the proposed regulation on a small business found in number 8.

3) The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation both adverse and beneficial effects and both direct and indirect effects.

Direct Beneficial Effects: There may be direct beneficial effects, for example, if a facility currently has a landline telephone and a cellphone, and due to the passage of the proposed regulations decides to only keep a cellphone, it will save on the costs of a landline telephone.

Indirect Beneficial Effects: Indirect beneficial effects (some of which may produce direct beneficial effects) include:

- Clarifying that residents with peripherally inserted central catheters or peritoneal catheters may be admitted or retained in a residential facility if certain conditions are met. This may have a positive financial impact if it avoids the discharge of a resident and maintains the associated revenue.
- The use of the inter-facility infection control transfer form may result in a positive impact on revenue. If a facility is aware that a new admission has an infectious organism, it can put measures in place to help prevent the spread of such organism and save money on resources such as an increased use of personal protective equipment that may be associated with the spread of an infectious organism in a facility.
- Removing the need to include certain documents to obtain a license results in the ability for the Division to process and approve an application in a more efficient manner, which may result in the ability for a business to open and start collecting revenue more quickly.
- Increasing the timeframe from which a licensee shall notify the Division of a change in administrator of the facility and pay any associated late fee from 10 to 30 days will provide a more realistic timeframe for facilities to provide such notification; therefore, potentially avoiding the late fee.
- Removing requirements related to ironing, posting telephone numbers in a telephone directory, providing flexibility to use a cellphone, and reducing the burden related to written waivers that must be submitted to the Division, pursuant to NAC 449.2736, may all have a positive financial impact on a business.
- Expanding the scope of services that may be provided by a personal care agency through its attendants may result in less clients leaving personal care agencies or allow an agency to attract a greater number of clients; therefore, potentially preventing the loss of revenue or increasing revenue.
- Allowing physician assistants or advanced practice registered nurses, in addition to physicians, to be appointed to the Committee pursuant to NAC 449.793, may result in salary savings. In addition, removing the requirement that a branch office of home agency be small to establish one Committee, instead of more than one

Committee, may result in cost saving through increased efficiencies and a saving on salaries to maintain more than one Committee.

Direct Adverse Effects: Direct adverse effects include the cost for an employment agency to provide nonmedical services, an outpatient facility, a recovery center, or a psychiatric residential treatment facility to modify its license. The cost to modify the license is \$250; the estimated financial impact depends on how many times a facility modifies its license and if it never modifies its license the cost would be \$0.

Indirect Adverse Effects: Review of comments received from the small business impact questionnaire revealed that taking 15 minutes to complete the inter-facility infection control transfer form would result in a negative financial impact (see comments in summary of responses table). The proposed regulations clarify that the inter-facility infection control transfer form does not need to be completed on every patient, but only if the facility is aware of or suspects a patient currently has an infection, colonization or a history of a positive culture of a multidrug-resistant organism or other potentially transmissible infectious organism. According to the CDC's Health Topics – Healthcare-associated infections (HAI) webpage

(<https://www.cdc.gov/policy/polaris/healthtopics/hai/index.html>):

“HAIs in U.S. hospitals have direct medical costs of at least \$28.4 billion each year. They also account for an additional \$12.4 billion in costs to society from early deaths and lost productivity.”

There have been reports of patients being transferred to a receiving facility without notification or notification in a manner that brings attention to the patient's infectious disease status before the patient is integrated into the facility, indicating that the patient has an infectious disease or is colonized with an organism such as candida auris. The purpose of the form is to foster communication during this critical transition to help ensure the receiving facility is aware of the patient's infectious disease status so it can implement any necessary measures to keep its population safe. Therefore, although there may be some additional staff time involved to complete the form, it is anticipated that the potential for the prevention of the spread of an infectious disease using the form may have a positive financial impact.

The impact of the cultural competency regulations is not addressed here as those were addressed as part of the LCB File No. R004-24 regulatory process.

There was a comment related to the negative financial impact because of the passage of SB 298 of the 82nd legislative session (2023). The proposed regulations bring current regulations in line with SB 298 and do not provide any additional requirements beyond what is required in the bill; therefore, any negative impact on business, if any, is a direct result of the passage of SB 298 and not of the proposed regulations being moved forward.

There was also concern expressed that allowing diabetic injection administration in a group home setting would increase liability insurance for business. The section that amended NAC 449.2276 related to the care of people who have diabetes was removed from the proposed regulations; therefore, there is no new financial impact to the LCB Draft of Revised Proposed Regulation R089-24 related to this issue.

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 Purchasing and Compliance has identified and used methods to reduce the impact of the proposed regulations on small businesses including making modifications to the proposed regulations based on industry feedback, implementing SB 298 of the 82nd legislative session (2023) without adding any additional regulatory requirements beyond what is required by the bill, eliminating provisions of regulations that increase regulatory burden, and modifying current regulations to reduce the regulatory burden on licensed health care facilities. The proposed regulations were modified, based on feedback received from industry, to reflect that an individual licensed by the Board of Examiners for Long-Term Care Administrators pursuant to chapter 654 of NRS or an individual with a high school diploma or its equivalent meets the educational requirement to be the administrator of a personal care agency. This does not require an individual to be licensed by the Board of Examiners for Long-Term Care Administrators to become an administrator of a personal care agency but instead provides another avenue to meet this requirement.

Certain sections, as noted below, were heard before the Board of Health on April 28, 2023.
Text of Repealed Sections: NAC 449.079

Section 23: NAC 449.126

Section 27: NAC 449.15357

Section 28: NAC 449.154991 (2)

Section 34: NAC 449.232 (3)

Section 50: NAC 449.39516 (2) (b)

Section 73: NAC 449.74357 (removed “ironed” from (4)

Section 74: NAC 449.74417 (2) (a)

There was no testimony in support or against the above sections heard at the Board of Health on April 28, 2023. There was testimony provided related to cultural competency proposed regulations. Cultural competency proposed regulations are addressed in LCB File No. R004-24.

A public workshop was held on April 24, 2024.

Twenty-eight (28) individuals, including State staff, participated in the public workshop virtually. One State staff member participated in person and, for a total of twenty-nine (29) participants. Five (5) individuals provided testimony during the public workshop.

Below is a summary of the testimony provided by the five (5) individuals during the public workshop.

Testimony #1

The person providing the testimony noted he appreciates the work on the proposed regulations, but expressed concern related to requiring in-person CPR training instead of allowing a 100% virtual option. The person providing testimony recommended the Division allow a virtual training option that fits the same requirements that can be met in person.

In addition, although the person providing testimony supported the change that would allow personal care attendants to administer medications, he had a concern related to the 16 hours of training being added. The concern noted that the hours for training are not reimbursed by the Division. He felt that paying for the training would create a huge challenge and burden to personal care agencies. He noted that when you consider all the required training, it results in a huge cost to providers without being reimbursed by the state for this training. He noted all the training courses required are unfunded or unreimbursed; therefore, he would love to see the Division find a way to help reimburse these training courses, especially around medication administration, as he believes it is of great added value to the state. Examples of the added value to the state include clients being able to remain in the least restrictive environment and reducing costs to the overall health care system.

Testimony #2

The person providing testimony noted she was in opposition to Senate Bill 298 as it relates to involuntary discharges from residential facilities for groups. She explained they were a small nonprofit who specializes in caring for people with complex medical needs and brain injuries who need maximum assistance and that their mission is to provide housing for the disabled population in need. She noted that since the inception of Senate Bill 298, they have gone completely unfunded with four clients. She noted the services they provide are so extensive it costs an average of \$400.00 per day per client to provide the services. She provided several examples of clients that were unfunded. She noted there was no avenue to discharge the clients leaving them with the responsibility of bearing the costs.

She also gave an example of a client who was provided with notice because he was violent, and his behaviors were out of control for their setting. She noted no other setting would

accept him; therefore, their staff had to care for him, even though their staff were at risk due to his violence.

She noted there are two parts to this bill that were concerning. One is rent and that covers the residence, but the other, more concerning part, is the services that are provided. She testified the services that are provided are quite extensive and very, very expensive because there are no discharge (DC) plans for many of the clients. She noted they are not required per Senate Bill 298 to continue the plan of care indefinitely at a significant cost to them with no updates to the plan as needed since the state is the entity responsible for initially writing this plan. Now, not only do they need to provide these expensive and extensive services, but they must hire additional clinical personnel to update the plan accordingly. She questioned whether that was even permissible since Senate Bill 298 states specifically, they will continue the same services. She noted this could be detrimental to their clients as their needs do change over time.

She asked the following questions:

Where are these safe discharge sites at the Community level?

And since the state is mandating that services need to be continued, should the burden not be placed on the state if there is no other safe discharge for clients who have lost their Medicaid yet still require the services? Or is this burden going to continue to be placed on these providers, which I believe will place us all at great risk.

Testimony #3

The person providing testimony noted they have three hospitals in the State of Nevada, and she wanted to voice her support for the increased time frame from 10 to 30 days related to the change of administrator application.

Testimony #4

The person had questions related to current regulations and did not have questions specific to the proposed regulations.

Testimony #5

The person testified she had safety concerns related to the proposed regulations including concerns with the trimming of fingernails and toenails. She noted it was recommended that people with diabetes have their toenails cut by a podiatrist and that they don't do it themselves. She noted the regulations could result in untrained people cutting people's toenails. She felt that there was a danger with no training including a diabetic losing a foot.

The other concern was related to the range of motion exercises. She noted these are provided by a medical professional, such as a physical therapist.

She noted there is no kind of training mentioned for range of motion exercises or trimming nails, and she felt this would be putting clients in danger and she is opposed to those.

She made a comment related to the medication training requirements, and noted she believed we were talking about the Med tech training.

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

The estimated cost for the agency to enforce the proposed regulations would be \$0 to \$17,000 per year depending on the number of requests received to modify a license pursuant to NAC 449.0168, if any. The fee noted in number 6 would be used to pay for this cost.

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.

There currently is an existing fee pursuant to NAC 449.0168 (Section 21) that allows the Division to assess a fee of \$250 to modify the license of a medical facility, facility for the dependent, program of hospice care or a referral agency. As new facility types are added by new statutes or in accordance with statutory authority, they may not be included in the definition of a medical facility or facility for the dependent or added to NAC 449.0168, then the Division is not authorized to collect the \$250 fee to modify a license. The proposed regulations add an employment agency to provide nonmedical services as defined in NAC 449.0033, an outpatient facility defined pursuant to NAC 449.999417, a recovery center defined pursuant to NAC 449.99702, and a psychiatric residential treatment facility as defined in NRS 449.1195, to NAC 449.0168 to be able to collect such a fee.

The total annual amount DPBH expects to collect is unknown because there is no way to determine if any of the above-mentioned facilities will apply for a modification of its license or the number of times it may modify its license in a given year. If none of the facilities modifies its license the amount collected in a year would be \$0 and if every currently licensed facility added to NAC 449.0168 modified its license pursuant to NAC 449.0168 the total amount collected in a year would be approximately \$17,000.

The money would be used to cover the Division's operating costs related to the work associated with the modification of a license including applicable application processing and inspection costs.

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

Certification by the Centers for Medicare and Medicaid Services (CMS) is voluntary but state licensure is mandatory for skilled nursing facilities. As such, both federal and state regulations are needed, as there is a possibility that a facility chooses to be state licensed only, in which case the CMS federal regulations would not apply, but the state regulations would apply.

The proposed regulations are not more stringent than the federal regulations for skilled nursing facilities. The proposed regulations require a skilled nursing facility to follow federal CMS visitation guidelines which eliminate any conflicts between state and federal visitation regulatory guidelines.

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

The reason for this conclusion is based on the analysis conducted pursuant to number two of this document. After review of statutes, the proposed regulations, feedback from industry, modifications made to the proposed regulations, a conclusion could be drawn regarding the impact of the regulations on small businesses.

Certification by Person Responsible for the Agency

I, Todd Rich, Administrator of the Division of Purchasing and Compliance 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: 10/02/25_____