

**DIVISION OF PUBLIC & BEHAVIORAL HEALTH
BUREAU OF HEALTH CARE QUALITY AND COMPLIANCE
LCB File No. R133-15**

Informational Statement per NRS 233B.066

1. A clear and concise explanation of the need for the adopted regulation;

The Community Health Worker Pool regulations were developed to be in compliance with the 2015 Legislature (SB 498) and Nevada Revised Statutes (NRS), Chapter 449.0302, to provide regulatory oversight for this new facility type to ensure public health protection of recipients of peer support recovery services.

- The legislature required sufficient oversight to ensure these vulnerable sub-populations serve by the community health workers had regulatory protections and means to address possible grievances.
- The community health worker services (promoting health through education, outreach, coordination of health care and stimulating health care access for various targeted populations for disease prevention) are not medical therapies, rather services to enable the individual to function more independently and get connected with a variety of health care resources.
- The proposed regulations are minimal in their scope and are limited to:
 - The required statutory requirements: The Nevada Revised Statutes requirements range from staff training in cardiopulmonary resuscitation (CPR) and first aid training; to staff's health screening for tuberculosis; personnel background checks for the protection of the clients; and inclusion of patients' rights.
 - Ensuring that community health worker pools maintain evidence of routine, independent business practices. Like any business, the business must identify the entities that they interact with and the activities that occur with those interactions. As part of the typical business transactions, the facility would document services rendered and to whom they were rendered. The documentation assist the inspection agency to readily evaluate the validity of any complaint against the facility and its staff.
 - That staff meet minimal educational requirements to ensure that the community health worker pool employees have a level of knowledge about their job as community health workers, and continue to obtain additional knowledge through annual continuing education.
 - The inspection and licensing agency is a fee based agency. In order to provide the regulatory oversight of the community health worker pools, the inspection and licensing agency must charge a fee to cover the expense of that public health service, both initial licensing and annual renewal fees.
- The community health worker pools must obtain a license if they are offering for compensation community health worker services. The exception would be for existing licensed medical facilities (as defined at NRS 449.0151) and licensed facilities for the dependent (as defined at NRS 449.0045), because these facilities do NOT have to be

dually licensed with both their current license and another community health worker license.

2. A description of how public comment was solicited, a summary of public response, and an explanation how 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 Division of Health Care Financing and Policy (Nevada Medicaid) for possible future licensees. These identified entities were solicited with the proposed regulations, (A) small business impact questionnaire and (B) the public workshops comments. Since we do not currently have any community health worker pools in Nevada, we solicited information from the identified entities that may eventually have a desire to become licensed facilities providing community health worker services in the future. As such and in the absence of actual community health worker pools, we decided to reach out to these facilities to obtain comments and best fulfill our responsibilities in accordance with NRS 233B.

(A) A Small Business Impact Questionnaire was sent to 43 possible of Nevada entities that would possibly become a community health worker pool licensee, along with a copy of the proposed regulation, on 10/20/15. 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?

None of the 43 business entities responded to the small impact questionnaire. The result of the small business impact questionnaire revealed no data for analysis.

(B) Two public workshops were conducted.

The first public workshop was held on May 23, 2017, at the following locations:

- Division of Public and Behavioral Health, 4150 Technology Way, Conference room #303, Carson City Nevada 89706;
- Aging and Disabilities Services Division, 1820 East Sahara Avenue, Suite 201, Las Vegas Nevada; and
- Division of Aging and Disability Services, Early Intervention Services, Suite 102 Elko, Nevada

Many of the issues raised at the 05/23/17 workshop, originated from a Nevada Community Health Worker Association (NvCHWA) 04/24/17 letter sent to the Secretary of the Board of Health (at that time Ms. Cody Phinney). The letter was favorable to the regulations, however the association had some concerns, as described below. Some of the concerns may be misperception

as related to the regulations. Many of these concerns/misconceptions are mitigated by statutes/regulations.

A copy of the NvCHWA letter and those concerns can be found in Attachment #3 of the Memorandum to the Board of Health. See access information at the end of Question #2 below.

Comments given below will be identified as originating from either the NvCHWA 04/24/17 letter, the workshop, or from both.

a) A comment from both the letter and the workshop was the concern that an individual had to be on the license, and consequently, if that individual transitioned, the CHWP would have go through the initial process and fees again. Nevada Revised Statutes (NRS) 449.085 requires the Administrator to be listed on the license. The administrator on the license can be listed as a corporation. If there are personnel changes within the corporation, those changes do not need to be changed on the license.

b) A comment from both the letter and the workshop related to Section 9.2(h) that the CHWP “has sufficient resources and capability to satisfy the request of each client.” The expectation is that the CHWP do not over extend themselves fiscally or overstate their abilities to service their clients. The reasonable person rule is used when evaluating various situations that present, especially with complaints, by the regulating authority. The code was written broadly to account for various contingencies that may present.

c) A comment from both the letter and the workshop was the requirement for a specific location and the remote, work stations (Section 8) when services are offered throughout the community. Like other licensed facility types, such as home health agencies and personal care agencies, the facility has a central licensed location and staff go out into the community to provide their respective services. Similarly a home health agency, when there are clusters of work area activities that are either a significant distance away from the central office or across town requiring significant driving time, a branch office is created. For Community Health Worker Pool (CHWP), instead of a branch office, these locations are identified as work stations, and would operate in a similar manner.

d) A comment from both the letter and the workshop was with regard to the amount of training hours necessary to work as Community Health Worker (CHW), which was originally 72 hours. The state agency review agrees with the concern and is reducing the hours to 30 as recommended. An errata was created and Legislative Counsel Bureau (LCB) drafted new regulations with this change at R133-15RP1.

e) A comment from both the letter and the workshop was with regard to the approval of the training hours being solely conducted by the Division of Public and Behavioral Health (DPBH) for both initial and continuing education courses. An errata included adding a designee, however, the original intent of designee was for the division to have more discretion in allowing a wider variety of training topics. After speaking with LCB, the term designee suggested reassigning the authority to another entity, which was not the intention, thus removed.

f) A comment from both the letter and the workshop was with regard to Section 13.1(c)(5). This section requires the CHWP to train their staff in “techniques for communicating through alternative modes with persons with communication or sensory impairments.” If the CHW is knowledgeable in both English and Spanish and their client speaks Farsi, the CHWP must have methods to communicate with this person. Similarly if the client is aphasic. The CHWP must train staff on available methods and on the methods themselves, such as message boards, translator services, etc., as necessary to accommodate the client’s needs.

g) A comment at the workshop perceived that the educational delivery method was restricted by the regulations, which is not the situation. Online or classroom class methods are acceptable if the information is appropriate.

h) A comment from the workshop wanted to have a stratified fee structure; one fee amount for nonprofit CHWP and another fee amount for-profit CHWP. The workload for the regulatory agency is the same, whether the licensee is for profit or is not for profit, the fee established represent this cost.

i) A comment from both the letter and the workshop was related to client rights at Section 14.4. The group was supportive of client rights issues, however perceived that technology was precluded from being utilized in disseminating the information. If the technology allows for the signing of a copy of the CHWP’s written description of their rights and can provide signed and dated receipt of same, the technology would not be excluded. If the technology cannot support the requirement, then different technology or hard copy would have to be utilized.

j) A comment from both the letter and the workshop was the request to license only an organization and not a person. The definition of a CHWP in NRS 449.0028 states, “Community health worker pool” means a person or agency which provides, for compensation and through its employees or by contract with community health workers, the services of community health workers...” These statutes were put in place by the legislature. The Nevada Board of Health cannot rewrite the statutes.

k) One workshop commenter was concerned with the use of and vagueness of “responsible and mature” as a qualification for an administrator in Section 9.1(c). The looseness of the language is to allow for all possible contingencies for recognized bad behavior or judgement (examples: doing drugs or drinking on the job, being under the influence while driving with a client in the vehicle, etc.). This allows the state agency to bring this behavior forward to the administrator or owner for remediation.

l) One workshop commenter had concerns with maintaining workplace records. Records regarding personnel, accounting, etc. are necessary for typical business activities and necessary for review by management, various auditors and regulators.

The second public workshop was held on July 06, 2017, at the following locations:
- Division of Public and Behavioral Health, 4150 Technology Way, Conference room #303, Carson City Nevada 89706; and
- Aging and Disabilities Services Division, Desert Regional Center, 1391 South Jones Blvd., Las Vegas Nevada.

m) Three of the commenters were in general support of the regulations.

n) One commenter was concern about why cardiopulmonary resuscitation (CPR) and first aid were requirements and if they were necessary. NRS 449.194 requires the CHWP staff to have these trainings.

o) Different commenters from those present at the 05/23/17 workshop, had similar questions as the first workshop participants, which included (see above responses):

c) Single locations and work station locations.

d) The proposed 72 training hours before offering CHW services. See errata for revision.

e) Allowing other entities courses for approval. See errata for revision.

p) One commenter was suggesting on-the-job training or a trainee working with experience staff member together as an alternative to the 72 hours pre-work training requirement. While we have agreed to lessen the total number of hours in the errata; the training should remain from an approved curriculum.

The comments from the workshops are included below and are within the Memorandum to the Board of Health and can be reviewed with the below link under the 09/08/17 Board of Health meeting, Regulations LSC number R133-15 and R133-15RP1.

http://dpbh.nv.gov/Boards/BOH/Meetings/2017/2017_Board_of_Health_meetings/

Or, a summary of the Hearing for Amendment of Nevada Administrative Code, Chapter 449 can be obtained by contacting the Bureau of Health Care Quality and Compliance, 4220 South Maryland Parkway, Building D, Suite 810, Las Vegas, Nevada 89119. Phone: 702-486-6515.

3. A statement indicating the number of persons who attended each hearing, testified at each hearing, and submitted written statements regarding the proposed regulation. This statement should include for each person identified pursuant to this section that testified and/or provided written statements at each hearing regarding the proposed regulation, the following information, if provided to the agency conducting the hearing:

(a) Name

(b) Telephone Number

(c) Business Address

- (d) Business telephone number
- (e) Electronic mail address; and
- (f) Name of entity or organization represented

Twenty-eight people were noted on the sign-in sheets as having attended the September 08, 2017 Board of Health. Note: Some of those individuals were at the hearing for other items being heard at the same hearing.

A single attendee testified or provided a written statement at the hearing concerning these regulations.

Only the state agency (DPBH) spoke in support of the proposed regulations:

One person testified in opposition:

Quinn Cartwright Nevada Community Health Worker Association 775-538-2855

4. A description of how comment was solicited (i.e., notices) from affected businesses, a summary of their response, and an explanation how 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 Division of Health Care Financing and Policy (Nevada Medicaid) for possible future licensees. These identified entities were solicited with the proposed regulations, small business impact questionnaire and the public workshops comments. Since we do not currently have any community health worker pools in Nevada, we solicited information from the identified entities that may eventually have a desire to become licensed facilities providing community health worker services in the future. As such and in the absence of actual community health worker pools, we decided to reach out to these facilities to obtain comments and best fulfill our responsibilities in accordance with NRS 233B.

A Small Business Impact Questionnaire was sent to 43 possible of Nevada entities that would possibly become a community health worker pool licensee, along with a copy of the proposed regulation, on 10/20/15. The questions on the questionnaire were:

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None of the 43 business entities responded to the small business impact questionnaire. The result of the small business impact questionnaire revealed no data for analysis.

The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendments should not impose an economic burden upon a small business or prevent the formation, operation or expansion of a small businesses in Nevada.

Other interested persons may obtain a copy of the small business impact statement/summary by following the below website link, which includes a copy of the regulations and small business impact statement.

<http://dpbh.nv.gov/Boards/BOH/Regulations/Regulations/>

Or, a copy of the summary can be obtained by contacting the Bureau of Health Care Quality and Compliance, 4220 South Maryland Parkway, Building D, Suite 810, Las Vegas, Nevada 89119. Phone: 702-486-6515.

5. If, after consideration of public comment, the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change. The statement should also explain the reasons for making any changes to the regulation as proposed.

The content of the regulations were minimal and matched similar requirements in other regulations for licensed facility types that function in a similar manner as community health worker pools. The regulations were reviewed for legislative intent and legality by the Legislative Counsel Bureau (LCB).

The public comments put forth constructive improvements. An errata was developed and was sent to the Legislative Counsel Bureau (LCB), and the LCB's Revised version of the regulations contained the errata in its substantive form at:

- Sections 11.5(a) training hours reduced from 72 to 30 hours;
- Section 11.5(a) and (b) the removal of the term designee. The original intent of designee was for the division to have more discretion in allowing a wider variety of training topics. After speaking with LCB, the term designee suggested reassigning the authority to another entity, which was not the intention, thus removed.

As part of their Revised regulation review, LCB also updated Sections 9.4(b) abuse, neglect, exploitation, isolation or abandonment and Section 12.1(d) criminal background checks due to recent 2017 legislative changes. LCB and the state agency agreed that the phrasing at 12.1(c) for tuberculosis testing of staff need to be more succinct. None of the updates were substantive changes.

6. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long term effects.

1. Anticipated effects on the business:

- A. *Adverse effects*: No adverse effects are anticipated.
- B. *Beneficial*: The regulations provides structure and standardization for community health worker pools. By being license, it offers a level of confidence to the public that there is some oversight to providers of community health worker services.
- C. *Immediate*: The regulations would guide proposed community health worker pools of features necessary for successful business operations.
- D. *Long-term*: There would be consistent community health worker pools services within the state.

2. Anticipated effects on the public:

- A. *Adverse*: No adverse effects are anticipated.
- B. *Beneficial*: Recipients of community health worker pool services would find structured administration of care, protections in place for that care, and remedies if the care is not provided in the interest of the clients.
- C. *Immediate*: Persons that propose to offer community health worker pool services would become licensed.
- D. *Long-term*: There would be an increase of licensed community health worker pools in Nevada.

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

The estimated cost to the Division of Public and Behavioral Health for enforcement of the proposed regulations is estimated to be an initial fee of \$1000.00 and an annual renewal fee of \$500.00. These fees are currently set in regulations and would be used to cover the costs to enforce the proposed regulations.

8. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, name the regulating federal agency.

There are no other state or government agency regulations that overlap or duplicate the proposed regulations.

- 9.** If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions; and

There are no federal regulations for community health worker pools, thus no conflict exist.

- 10.** If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

The new fees have been proposed as follows:

Initial licensure	\$1,000
Renewal	\$500

It is difficult to anticipate the number of new licensees. Many of those that may provide community health worker services may already work for an existing medical facility or a facility for the dependent, which would then be exempt from being dually licensed. Those entities that are not affiliated with a medical facility or a facility for the dependent that provide community health worker services would have to be licensed as a community health worker pool. The latter entity numbers would be small initially, and estimate at 3-7 providers. Using the highest number the initial licensing fees would amount to \$7,000.00.

Initial fees are used to offset the cost of initial licensing, training of staff, initial inspection(s), and complaint investigations throughout the first year of licensure. Renewal fees are used to offset the cost of renewal license application processing, periodic inspection(s) and complaint investigations in the year of renewal.