

**ADOPTED REGULATION OF
THE STATE BOARD OF HEALTH**

LCB File No. R151-15

Effective June 28, 2016

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

AUTHORITY: §1, NRS 439.200; §§2-6, NRS 439A.170, as amended by section 1 of Assembly Bill No. 39, chapter 94, Statutes of Nevada 2015, at page 360.

A REGULATION relating to the State Board of Health; revising provisions relating to taking action on certain petitions filed with the Board; revising application fees for the Physician Visa Waiver Program; revising provisions relating to the refund of those application fees in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations provide that any interested person who desires the adoption, filing, amendment or repeal of any regulation of the State Board of Health may petition the Board, and the Secretary of the Board must either deny the petition or initiate procedures to carry out the request of the petition within 45 days after receipt of the petition. (NAC 439.010, 439.030) **Section 1** of this regulation changes that requirement to 30 days.

Existing law requires the State Board of Health to adopt regulations providing for the administration of the Physician Visa Waiver Program, which is established in the Division of Public and Behavioral Health of the Department of Health and Human Services. The Board is also required to establish an application fee for a physician or an employer seeking a letter of support from the Program. (NRS 439A.170, as amended by section 1 of Assembly Bill No. 39, chapter 94, Statutes of Nevada 2015, at page 360) The maximum amount of the application fee was increased from \$500 to \$2,000 by section 1 of Assembly Bill No. 39, chapter 94, Statutes of Nevada 2015, at page 360. **Section 2** of this regulation provides a schedule of application fees based on whether the: (1) physician is a primary care provider or a specialist; (2) employer of the physician is a health facility or a third-party contractor; and (3) area in which the physician will work is a designated health professional shortage area.

Section 3 of this regulation provides that a member of the Primary Care Advisory Council, which is authorized to review applications submitted for the Physician Visa Waiver Program, may designate a person to attend a meeting of the Council in place of the member. (NAC 439A.710, 439A.725) **Section 3** also requires the Council to meet annually and to select a Chair from among its members biennially.

Section 4 of this regulation authorizes the Administrator of the Division of Public and Behavioral Health to refund one-half of the application fee submitted to the Physician Visa Waiver Program if the application is withdrawn before the Administrator has made a determination about issuing a letter of support and to refund all of the application fee if all the available spots for enrollment in the Program have been filled for that fiscal year. (NAC 439A.720)

Sections 4-6 of this regulation revise the citation to the Internet website where a person may obtain an application for a letter of support for the Physician Visa Waiver Program. (NAC 439A.720, 439A.725, 439A.745)

Section 1. NAC 439.030 is hereby amended to read as follows:

439.030 1. The Secretary of the State Board of Health shall, within ~~145~~ 30 days after receipt of the letter submitted pursuant to NAC 439.010, either deny the petition in writing, stating the reasons, or initiate the procedure for the adoption, amendment or repeal of regulations.

2. If the petition is denied, a copy of the letter of denial must be sent to each member of the Board.

Sec. 2. Chapter 439A of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section and NAC 439A.720, the application fees for a letter of support from the Division of Public and Behavioral Health are as follows:

(a) For a primary care provider employed by a health facility in a designated health professional shortage area.....\$500

(b) For a primary care provider employed by a health facility in a flex slot.....800

(c) For a primary care provider employed by a third-party contractor in a designated health professional shortage area.....1,100

(d) For a primary care provider employed by a third-party contractor in a flex slot.....1,400

<i>(e) For a specialist employed by a health facility in a designated health professional shortage area.....</i>	<i>800</i>
<i>(f) For a specialist employed by a health facility in a flex slot.....</i>	<i>1,100</i>
<i>(g) For a specialist employed by a third-party contractor in a designated health professional shortage area.....</i>	<i>1,100</i>
<i>(h) For a specialist employed by a third-party contractor in a flex slot.....</i>	<i>1,400</i>

2. If the actual cost to the Division of processing an application exceeds the amount listed in subsection 1, the Division shall impose an additional amount equal to that cost, except the total fee may not exceed \$2,000.

3. As used in this section:

(a) “Designated health professional shortage area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254e.

(b) “Flex slot” means an area which is not a designated health professional shortage area or a medically underserved area but which contains health facilities that are utilized by persons who reside in neighboring areas which are designated health professional shortage areas or medically underserved areas.

(c) “Medically underserved area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254b as containing a medically underserved population.

(d) “Primary care provider” means a physician or osteopathic physician who practices in the area of family practice, general practice, geriatrics, internal medicine, obstetrics and gynecology, pediatrics or psychiatry.

(e) “Specialist” means a physician or osteopathic physician who practices in any area other than an area specified for a primary care provider.

(f) “Third-party contractor” means the employer of a physician or an osteopathic physician who is not a health facility.

Sec. 3. NAC 439A.710 is hereby amended to read as follows:

439A.710 1. The Primary Care Advisory Council is hereby created within the Division of Public and Behavioral Health. The Advisory Council consists of members appointed by the Administrator as follows:

- (a) One member who represents the ~~{Great Basin}~~ Nevada Primary Care Association, or a successor organization;
- (b) One member who represents a federally qualified health center in this State;
- (c) One member who represents the Nevada Office of Rural Health within the University of Nevada School of Medicine;
- (d) One member who is a physician licensed in good standing pursuant to chapter 630 of NRS and who has successfully completed an employment contract under the Program;
- (e) One member who represents the Nevada State Medical Association, or its successor organization;
- (f) Members who are health care professionals; and
- (g) Representatives from the communities being served by the Program.

2. In addition to the members appointed pursuant to subsection 1, the Administrator may appoint nonvoting members from the Division of Public and Behavioral Health or other governmental agencies who have knowledge of and experience in health care and the Program.

3. Each member of the Advisory Council serves for a term of 2 years. A member may be reappointed.

4. *Each member of the Advisory Council may designate a person to attend a meeting in place of the member. Such a designation must be made in accordance with NRS 241.025, as amended by section 5 of Senate Bill No. 70, chapter 226, Statutes of Nevada 2015, at page 1059.*

5. If a vacancy occurs during the term of a member, the Administrator shall appoint a person similarly qualified to replace that member for the remainder of the unexpired term.

~~15.1~~ 6. The Advisory Council shall meet at least ~~once each calendar quarter~~ *annually* and at such other times as specified by a call of the Chair.

~~16.1~~ 7. At the first meeting, and ~~annually~~ *biennially* thereafter, the Advisory Council shall select a Chair from among its members.

~~17.1~~ 8. The Chair of the Advisory Council may appoint a subcommittee to review applications, complaints and policies and procedures of the Program and make recommendations to the Advisory Council.

~~18.1~~ 9. As used in this section, “federally qualified health center” has the meaning ascribed to it in 42 U.S.C. § 1396d(1)(2)(B).

Sec. 4. NAC 439A.720 is hereby amended to read as follows:

439A.720 1. An application for a letter of support must:

- (a) Be complete.
- (b) Include the materials required by subsection 1 of NRS 439A.175.
- (c) Be on the form prescribed by the Division of Public and Behavioral Health.
- (d) Contain the notarized signatures of the employer and the J-1 visa physician.

(e) Except as otherwise provided in subsection 2, be accompanied by an application fee ~~of \$500 which~~ *pursuant to section 2 of this regulation. The fee* must be paid in equal amounts by the employer and the J-1 visa physician.

2. The Administrator may waive the portion of the application fee which must be paid by the J-1 visa physician or require the J-1 visa physician to pay that portion of the application fee pursuant to a payment plan if the J-1 visa physician is experiencing an economic hardship and the J-1 visa physician submits with the application documentation sufficient to demonstrate that the economic hardship exists.

3. *The application fee will not be refunded if the Administrator does not issue a letter of support for the applicant. The Administrator may refund:*

(a) One-half of the application fee paid by the J-1 visa physician and one-half of the application fee paid by the employer if the application is withdrawn before the Administrator has made a determination whether to issue a letter of support; or

(b) All of the application fee paid by the J-1 visa physician and the employer if, at the time the application is received by the Division, all the available spots for enrollment of J-1 visa physicians in the Program have been filled for that fiscal year.

4. An employer or a J-1 visa physician may obtain an application for a letter of support from the Division of Public and Behavioral Health on the Internet website maintained by the Division ~~[of Public and Behavioral Health] at <http://health.nv.gov/PrimaryCare.htm>~~ <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/> or by submitting a written request for an application to the Division of Public and Behavioral Health, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.

Sec. 5. NAC 439A.725 is hereby amended to read as follows:

439A.725 1. An application for a letter of support must be filed with the Administrator by personal delivery, commercial carrier or mail.

2. The Advisory Council may review an application submitted pursuant to this section for completeness and compliance with the provisions of NRS 439A.130 to 439A.185, inclusive, and NAC 439A.700 to 439A.755, inclusive ~~†~~, *and section 2 of this regulation.*

3. Applications must be reviewed in the order in which they were received.

4. The Administrator is responsible for the review and the approval or denial of all applications. The Administrator shall provide notice of the approval or denial of an application to the applicant. If an application is incomplete, the Administrator shall provide notice to the applicant within 14 days after receipt of the application and provide a written explanation of the missing information or documentation. An application may be resubmitted with the additional required information or documentation.

5. The Administrator shall accept applications pursuant to this section until all available spots for enrollment of J-1 visa physicians in the Program have been filled. The Administrator shall post the status of the number of available spots for enrollment on the Internet website maintained by the Division of Public and Behavioral Health at

~~<http://health.nv.gov/PrimaryCare.htm>.~~ <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/>.

6. The Administrator shall not issue a letter of support to:

(a) An employer who was penalized for a violation of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, *and section 2 of this regulation* or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

(b) A J-1 visa physician who was determined by the Administrator to have violated a provision of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, *and section 2 of this regulation* or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

Sec. 6. NAC 439A.745 is hereby amended to read as follows:

439A.745 1. A complaint about an employer or a J-1 visa physician may be submitted to the Program on the Internet website maintained by the Division of Public and Behavioral Health at ~~http://health.nv.gov/PrimaryCare_J-1.htm~~ <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/> or by submitting a written complaint to the Division of Public and Behavioral Health, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.

2. The Administrator shall investigate or require the Advisory Council to investigate each complaint submitted pursuant to this section. The investigation must commence within 45 days after receipt of the complaint, except that if the complaint alleges that the safety of a patient was threatened, the investigation must commence as soon as practicable. The Administrator is responsible for the investigation of complaints submitted pursuant to this section.

3. If the Administrator determines that a violation of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, *and section 2 of this regulation* has occurred, the Administrator:

(a) Shall, if the violation affected the health and safety of a patient, submit a report to the Board of Medical Examiners; or

(b) May, if the violation did not affect the health or safety of a patient, submit a report to the Board of Medical Examiners or to the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health.

DIVISION OF PUBLIC & BEHAVIORAL HEALTH

Primary Care Office
LCB File No. R151-15

Informational Statement per NRS 233B.066

1. A clear and concise explanation of the need for the adopted regulation;
 - *A discrepancy was identified between statutes and regulation regarding the required response time for the State Board of Health to address petitions under NRS 233B.100 Nevada Administrative Procedure Act.*
 - *The adopted regulation changes the response time under NAC 439.030 from 45 days to 30 days.*
 - *Statutory changes were made to the Nevada Conrad 30/J-1 Physician Visa Waiver program in the 2015 Legislative Session. Subsequently, proposed changes were drafted to update the corresponding regulations, and additional changes were proposed to update terminology and to streamline processes. The adopted changes include the following:*
 - *Update NAC 439A.720 to increase application fees consistent with NRS 439A.170 as amended by Assembly Bill No. 39, chapter 94, Statutes of Nevada 2015.*
 - *Update NAC 439A.710 to:*
 - *the new name of the Nevada Primary Care Association, formerly Great Basin Primary Care Association;*
 - *allow members to designate representatives to serve as their proxy for the purpose of obtaining a quorum and voting on action items;*
 - *change meeting requirements for the Advisory Council from at least once each calendar quarter to at least annually; and*
 - *change selection of Advisory Council chairperson from annually to biennially.*
 - *Update NAC 439A.720-745 to remove references to obsolete website.*
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;

In order to receive public comment, a small business impact questionnaire was distributed online with notice to all known stakeholders (see responses under item #3); two workshops were held on December 15, 2015 and January 28, 2016; and a public hearing was held under the Nevada State Board of Health (BOH) on June 10, 2016. Notices for the workshops and the public hearing, with intent to act upon a regulation, were posted at public libraries and on the website for the Division of Public and Behavioral Health (DPBH), at least fifteen and thirty days in advance, respectively, as required by regulation.

The proposed regulation was presented by staff from the Primary Care Office (PCO) at both of the workshops and at the public hearing. At the December 15th workshop, discussion was limited to questions about the application process, rather than the regulatory changes. At the January 28th workshop, concerns were expressed regarding licensure requirements for H1-B Visa holders (This is an issue for the Board of Medical Examiners); and pre-existing

regulatory language regarding penalties for violations, related to “inadvertent violations related to federal forms.” Neither of these comments is specific to the proposed amendments.

At the public hearing, a public comment was made in support of the change to NAC 439.030 to bring it into compliance with NRS 233B.100, requiring the Board of Health to respond to petitions within 30 days, rather than 45 days. No other comments were made at the public hearing.

Interested parties can receive documentation of public comments through the Primary Care Office, Division of Public and Behavioral Health.

3. A statement indicating the number of persons who attended each meeting or workshop, 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 at each hearing and/or submitted written statements regarding the proposed regulation, the following information, if provided to the agency conducting the hearing or workshop:
 - (a) Name (b) Telephone Number (c) Business Address (d) Business telephone number
 - (e) Electronic mail address; and (f) Name of entity or organization represented.

December 15, 2015 Workshop

	Name	Organization	Phone#	Email Address	Support
1	Nary Sam	Advanced Laparoscopic and General Surgery of Nevada	702-791-7855	narysam@embarqmail.com	Neutral
2	Carolyn Weaver	IPC Healthcare: IPC of Nevada, Inc.	702-813-7372	cweaver@ipcm.com	Neutral
3	Judy Guzman	Children’s Specialty Center of Nevada	702-862-1123	jguzman@cure4thekids.org	Neutral
4	Gerald Ackerman	NV Office of Rural Health	775-738-3828x22	gackerman@medicine.nevada.edu	Yes
5	Nancy Hook	Nevada Primary Care Association	775-887-0417x112	nhook@nvpc.org	Yes

January 28, 2016 Workshop

1	Jan Pederson	Maggio-Kattar PC	202-483-0053	jan@maggio-kattar.com	Neutral
2	Denise Thomasen	Maggio-Kattar PC	2020-483-0053	Not provided	Neutral

June 10, 2016 Public Hearing

1	Barry Lovgren	Private Citizen	775-265-2659	barrylovgren@yahoo.com	Yes
2	Carolyn Weaver	IPC	702-813-7372	cweaver@ipcm.com	Neutral
3	Brian Saeman	Chairperson, State Board of Health (SBOH)	NA	NA	Yes

4	Dipti Shah, MD	SBOH	NA	NA	Yes
5	Monica Ponce	SBOH	NA	NA	Yes
6	Jon Pennell, DVM	SBOH	NA	NA	Yes
7	Judith Bittner	SBOH	NA	NA	Yes
8	Mason Gorda	SBOH	NA	NA	Yes
9	Jeffrey Murawsky, MD	SBOH	NA	NA	Yes

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.

The Small Business Impact Questionnaire was distributed through an online survey with notification to multiple contact lists, including: J-1 Physician Employers, J-1 Physician Attorneys, J-1 Physicians, 3RNet Referral List, National Health Service Corps sites, Nevada Board of Medical Examiners, Nevada Office of Rural Health, Nevada Hospital Association, and Nevada Rural Hospital Association.

Respondents to the questionnaire included the following statements:

- *Improves physician recruitment efforts and care delivery and reduces recruitment costs for each candidate;*
- *No adverse or beneficial impact from the proposed regulations.*

One respondent sent a separate e-mail asking for clarification on the following items:

1. *Do specialists include hospitalists and intensivists or are they considered primary care providers?*
 - a. *Staff responded that hospitalists and intensivists are considered specialists.*
2. *Are flex slots determined by practice site or the origin of the patient?*
 - a. *Staff responded that a flex slot can be any location outside of a designated Health Professional Shortage Area, which can demonstrate service to an underserved population.*
3. *How does private practice fit in to this regulation?*
 - a. *Staff responded that eligibility is not limited by practice type, so private practices are welcome.*

Another respondent sent a separate e-mail noting that psychiatry had been excluded from our definition of primary care in the first draft of the regulation; it was subsequently included in the final draft.

A summary of the responses may be obtained from the PCO, DPBH.

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.

One change was made to include psychiatry in the definition of primary care, after receiving public comment that it had been left out. The regulation was adopted without any other 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.

The proposed amendments will increase application costs to certain applicants. Specifically, the proposed fee increases will impact applications from specialists and/or those employers located in "flex-slots" that are not designated shortage areas, but serve underserved populations. The cost of administering the program for specialists and/or flex slots is higher because additional data and review are required, and they typically involve multiple practice sites which require additional site visits.

The proposed increase in application fees will help to sustain the program, which has never had a fee increase, although oversight requirements have increased over the last decade.

The public benefits from the proposed increase in application fees because the program is more sustainable, without state general funds, and benefits communities by increasing access to care while stimulating the local economy.

The immediate effect is the increased fees for certain applicants. The long-term effect is the sustainability of the program.

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

No additional costs are anticipated for enforcement of the proposed amendments to regulation.

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 state or federal laws or regulations that overlap with the proposed regulation.

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

The proposed amendments do not include any provisions which are more stringent than federal regulation which regulates the same activity.

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 average number of applications received, per year, over the last five years is three. If all three applications per year were subject to an increase of \$900, this would total \$2,700 per year. These funds would be used to administer and monitor the program, including technical assistance, application review, public hearing, data collection, site visits and monitoring.