

HEALTH DIVISION
Bureau of Health Care Quality and Compliance
LCB File # R060-10RP2

Information Statement per NRS 233B.066

1. 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.

Public comment was solicited through public posting of the agenda notice at three sites in Carson City, two sites in Las Vegas, and one site in Reno. In addition, the notice was sent through the Health Division's listserv, posted on the Health Division's website, distributed through the listserv of the Bureau of Health Care Quality and Compliance, and mailed to individuals who have asked to have notices mailed to them pursuant to the State's Open Meeting Law.

2. The number of persons who:
 - (a) Attended the hearing;
 - (b) Testified at each hearing; and
 - (c) Submitted to the agency written statements.

- (a) *18 individuals identified themselves as participating in the hearing.*
 - (b) *2 individuals testified; and*
 - (c) *0 individuals submitted written statements.*

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Because these are amended regulations, no new business impact statements were solicited. Please review Item 3 of the attachment for the Information Statement for the initial regulations set.

4. If 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.

Changes were made to R060-10,RP2 to remove the proposed fees for personal care agencies and homes for individual residential care. In relation to personal care agencies, concern has been expressed that the rate of increase is too high and may be detrimental to the industry. The Bureau Chief has formed a working group to address this issue and to identify a method of inspecting them that reduces the time it takes to inspect these facilities. In regard to homes for individual residential care, the proposed fees included the costs of performing unlicensed facility inspections. As a result, this industry's fees subsidized many unlicensed providers at the expense of licensed operators. Since the agency has been successful in moving forward a measure during the 2011 Legislative Session, Assembly Bill 50, that seeks

the authority to charge unlicensed facilities for the cost of conducting the investigation of the facility, the agency will reassess the fees that should be assessed to homes for individual residential care.

5. 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.

Because these are amended regulations, no new business impact statements were solicited. Please review Item 5 of the attachment for the Information Statement for the initial regulations set.

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

Because these are amended regulations, please review Item 6 of the attachment for the Information Statement for the initial regulations set.

7. 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.

The agency is not aware of any other regulations that overlap or duplicate these provisions.

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

These regulations are not more stringent than any federal regulations.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

Because these are amended regulations, please review Item 9 of the attachment for the Information Statement for the initial regulations set.

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formulation, operation or expansion of a small business. What methods did the agency use in determining the impact of the regulation on a small business?

Because these are amended regulations, preview Item 10 of the attachment for the Information Statement for the initial regulations set.

ATTACHMENT

HEALTH DIVISION
Bureau of Healthcare Quality and Compliance
August 18, 2010
LCB File # R060-10
Information Statement per NRS 233B.066

1. 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.

Public comment was solicited by the Notice of Public Hearing posted at Health Division locations, State Library and Archives, county libraries and mailed notification of the Notice of Public Hearing to affected stakeholders. The following is a summary of the testimony provided during the State Board of Health Public Hearing on August 13, 2010:

Although there was support expressed for the Bureau of Health Care Quality and Compliance (HCQC) and the need for its services, the majority of those that testified, testified in opposition to the fee increases. The common reasons noted were:

1. It would put smaller businesses out of business and thus reduce services to the community, especially seniors.
2. It would have a significant impact on those that provide services to low income seniors and individuals.
3. It would cause a significant hardship on smaller businesses.
4. Costs would be passed down to consumers, thus affecting those on fixed incomes.
5. Fees should be increased in incremental levels and not all at once, causing in some cases, increases of 400%.
6. Only substantiated complaints should be billed to a provider and that a method should be looked at to diminish unsubstantiated complaint investigations through a better screening process of complaints HCQC receives.
7. The Bureau should increase efficiency and enact a policy to conduct less frequent surveys on facilities that have good records/no deficiencies on a previous survey.
8. Ambulatory surgical centers also have to pay a significant fee to accrediting organizations as well as their licensing fees.
9. Larger businesses are also affected as their reimbursements for services are reduced or by taking care of individuals that do not have insurance.

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, 1550 College Parkway, Suite 158, Carson City, NV 89706

2. The number of persons who:

- (a) Attended the hearing;
- (b) Testified at each hearing; and
- (c) Submitted to the agency written statements.

One hundred forty individuals were present at the hearing. Paul Shubert, Health Facilities Surveyor IV of HCQC, and Phil Weyrick, ASO IV, for the Health Division presented the proposal to amend Nevada Administrative Code, Chapter 449. 19 individuals provided testimony. A summary of the testimony can be found in number one above.

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comment was solicited from the regulated community in that over 1,074 licensed facilities were sent a notice of the regulation changes and the small business impact questionnaire prior to February 24, 2010. Notice of proposed changes were sent to all Bureau offices, main county libraries and facilities on the Health Division listing for posting of proposed regulations. All the above were notified by direct mailing of scheduled workshops. Notice of the workshop was published the week of February 22, 2010 in the Reno Gazette-Journal and the Las Vegas Review-Journal, and posted on the main web page of the Health Division, www.health.nv.gov, and on the HCQC website, www.health.nv.gov/hcqc.htm. Additionally, all interested persons who contacted HCQC offices were provided with copies of the proposed regulations.

Summary of Response

Ten (10) telephone calls were received relating to proposed changes to NAC 449. Over 1,074 small business impact questionnaires were distributed. Only twenty-two (22) of the 1,074 questionnaires (2%) were returned. Eighteen of the 22 respondents (82%) stated the proposed regulations will have an adverse economic effect on their business. Eighteen of the 22 respondents (82%) stated the proposed regulations will not have a beneficial effect on their business. Sixteen of the 22 respondents (73%) stated the proposed regulations will have an indirect adverse effect on their business. Twenty-one of the 22 respondents (95%) indicated there will be no indirect beneficial effect on their business.

The majority of the comments were negative towards the proposed regulations. One of the few positive comments was that the survey process helps maintain high industry standards. A summary of the Hearing for Amendment of Nevada Administrative Code, Chapter 439 can be obtained by contacting the Bureau of Health Care Quality and Compliance, 1550 College Parkway, Suite 158, Carson City, NV 89706

4. If 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.

Changes were made to the regulations based on comments received during the public workshops. Language was crafted to allow for the collection of fees for the workload associated with substantiated complaints and the renewal fees for facilities were adjusted by removing this workload from the calculations. During the public hearing (Board of Health meeting), there was a request to retain the low income bed fees, to ensure this part of the residential care industry was not overly impacted by the changing fees. The Board adopted language that modified and retained the low income bed fees.

5. 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 majority of the feedback from the questionnaires indicates that the revised fees will have an adverse economic affect. A beneficial economic benefit is that the residents and patients of licensed facilities will have reduced medical costs due to safer facilities and medical procedures resulting from HCQC surveys and investigations. The immediate effect would be increased fees. The increased fees will allow for greater frequency of facility surveys, with facilities being surveyed on an annual to every 18 months survey cycle, depending on the facility type. This should result in safer facilities.

6. The estimated cost to the agency for enforcement of the proposed regulation.
Estimated cost to the agency for enforcement of the proposed regulations is minimal.
7. 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 regulatory federal agency.

The proposed regulations do not pertain to duplicate of federal, state or local standards regulating the same activity.

8. The regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

Not applicable as there are no known federal regulations that require the same activity.

9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

These regulations changed many fees associated with the licensure and regulation of facilities regulated by the Bureau of Health Care Quality and Compliance (BHCQC). The total amount the agency expects to collect is \$4,840,101 for SFY 2011. This money will be used in all aspects of the operation of the BHCQC to fulfill our mission in promoting quality healthcare through regulation, enforcement and education within the healthcare facility industry. The BHCQC licenses approximately 30 different types of dependent care and medical facilities. The BHCQC conducts inspections and investigations and administers sanctions in all of the facility types regulated by the BHCQC.

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formulation, operation or expansion of a small business. What methods did the agency use in determining the impact of the regulation on a small business?

As part of the development of these revisions to the fees for facilities regulated by the Bureau of Health Care Quality and Compliance (BHCQC), a small business impact questionnaire was provided to each licensee in order to solicit information about how the proposed changes would affect small businesses. The results of the small business impact questionnaires were then summarized into a small business impact statement. The BHCQC held public workshops and recorded comments regarding the impact of the fee revisions in the minutes. The BHCQC received e-mailed comments and phone contacts concerning the impact of the fee revisions. The BHCQC set up a telephone conference and sent notice via a list-serve to interested parties so that additional comments could be heard by the agency concerning the impact of the fee revisions.

**DISCUSSION POINTS CONCERNING LCB FILE NO. R060-10RP2
PREPARED BY THE STATE HEALTH DIVISION
JANUARY 7, 2011**

The regulations, LCB File No. R060-10RP2, amend LCB File No. R060-10 by adding a new section that will allow the Health Division to collect the newly revised fees in Calendar Year 2011. In addition, they do not move forward the proposed fees that were initially identified for personal care agencies and homes for individual residential care. The agency is committed to reworking these fees based on concerns identified by legislators.

The following points provide additional background concerning the proposed fee regulations.

- On the heels of the Hepatitis C crisis, the 2009 Legislature approved a budget for the Health Facilities section of the Health Division that required the Division to inspect all facilities every 18 months. This budget provided for 11 new positions.
- In addition, a bill was passed (AB 123) that required annual inspections of ambulatory surgery centers and of physician offices where anesthesia is administered. The provisions governing annual inspections of ambulatory surgery centers became effective on January 1, 2010. The provisions for physician offices became effective October 1, 2010. This measure added 4 additional staff to meet the new workload.
- Prior to that time, facilities were on a schedule established by the Centers for Medicare and Medicaid Services wherein ambulatory surgery centers, hospitals, dialysis centers, and other medical facilities were expected to be inspected every 6 years or longer.
- Because the majority of hospitals in the state had a certain status gained through their accreditation with a national accrediting body, they were only inspected by the Health Division when there was a high-level complaint. In 2008, complaints in hospitals were only done for violations of the Emergency Medical Treatment and Labor Act, commonly known as EMTALA. Many other complaints in other licensed facilities, unless they were sufficiently high level, were not investigated at all.
- Since 2008 and with the directive outlined in the budget (see attached excerpt from the 2009 Appropriations Report), the Health Division's Bureau of Health Care Quality and Compliance has hired new staff and begun inspecting facilities, including hospitals, that had not been inspected. Some of these facilities had not been inspected for 12 years.
- As a result of the budget directive, regulations were developed to revise the fees charged to all licensed facilities. The fees needed revision because they were insufficient to support the budget of the agency due to the new workforce. In addition, fees hadn't been revised since 2003 and no longer reflected the workload attributed to facilities.
- When the fees were established in 2003, rural hospitals and personal care agencies had their fees revised at the State Board of Health hearing. This change had the effect of requiring the state's hospitals to substantially subsidize fees for other facility types, including rural hospitals and personal care agencies.

- As the fee regulations are proposed now, the fees are based on the actual workload attributed to a specific facility type excluding the cost of substantiated complaint investigations. In the past, fees were based on the total workload, including complaint investigations. Under this scenario, a facility that didn't have any complaints paid the same fee as a facility that might have undergone hundreds of hours of complaint investigation time.
- On December 16, 2010, the Legislative Commission moved forward regulations proposed by the Health Division to recover the costs for substantiated complaint investigations and to increase the amount charged to group homes for grading resurveys. Unsubstantiated complaint investigations will continue to be absorbed in the overall fee for the specific industry.
- With the amended regulations, as with the initial proposed fee regulations, the fees are based on the standard survey workload for a facility type as well as for the time and effort spent investigating unsubstantiated complaints. As noted in the previous point, the cost for substantiated complaint investigations will be charged directly to the respective facility that had the complaint thereby ensuring that only the facilities with the substantiated complaints pay for the work done in the facility, not all facilities.
- In informal discussions preceding the Board hearing, the Executive Director of Nevada Rural Hospital Partners indicated she understood that her industry had been subsidized in the past, and she stated that the rural hospitals are prepared to accept their new fees. No rural hospitals opposed the fees during the Board hearing.
- The methodology was discussed with facility industry representatives multiple times as noted below:
 - Public Workshop on March 12, 2010: Proposed fee revisions were initially presented to the public.
 - Provider Meeting on May 27, 2010: Staff of HCQC met with key representatives of the group home industry to go over the proposed regulations.
 - Telephone Conference on March 11, 2010: Noticed through the listserv of HCQC, multiple facility providers participated to review revisions to the proposed fee revisions.
 - Public Hearing on August 13, 2010: Held at regular meeting of State Board of Health. Regulations unanimously adopted by the members of the Board.
- Currently, because the fees have not been approved, the Division is maintaining 13 vacancies. If these fee regulations are not approved, the Division and the Department will be laying off an additional 11 health facilities inspectors and not filling vacant positions. As a result, the budgeted periodicity schedule for inspections of all facilities every 18 months will not be met. Further, new complaints will not be investigated, and there will be an insufficient workforce to license new facilities that submit applications.

Other Considerations

- The Health Division receives money from the Centers for Medicare and Medicaid Services to perform yearly inspections of nursing homes, one-third of all certified home health agencies, and a sample of ambulatory surgery centers, hospitals, and other medical facilities. In the formulas used to develop the fees for each industry type, this money is backed out from the licensure fee of these respective facilities. However, acceptance of this funding requires a 15 percent match that is attributed across these facility types and included in their fees.
- Some facility types realized lower fees based on their workload.

Excerpt from 2009 Legislative Appropriations Report

Pharmaceutical company rebates are also expected to increase somewhat in the 2009-11 biennium, owing to the division's improved processes for requesting rebates from companies. Therefore, the Legislature authorized approximately \$500,000 per fiscal year in rebate revenue. This revenue also supports ADAP medication costs. In contrast, during FY 2007-08, the division received approximately \$110,000 in pharmaceutical company rebates.

HEALTH FACILITIES HOSPITAL LICENSING

The primary function of the Health Facilities budget is to license and regulate health facilities in accordance with NRS and NAC regulations, and to certify that health facilities that participate in Medicare/Medicaid reimbursement programs comply with the federal agreements with the Centers for Medicare and Medicaid Services. The program also has the responsibility to inspect, monitor and evaluate the care and treatment received by individuals residing in medical and group care facilities. The program also conducts complaint investigations regarding medical facilities and coordinates with other oversight bodies, such as the Board of Medical Examiners and the Board of Pharmacy.

The 2009 Legislature approved the addition of 11 new Health Facility Surveyor positions in order to bring the time between inspections of currently regulated facilities to 18 months, except where more frequent inspections are already mandated. This enhancement was funded entirely with fee revenues, at a cost of approximately \$734,000 in FY 2009-10 and \$911,000 in FY 2010-11. Previously, many types of facilities went several years between inspections, due to the prioritization of the workload. Eighteen-month periodicity for inspections will allow the staff of the Bureau of Health Care Quality and Compliance to develop relationships with licensed facilities that can facilitate training opportunities and the ability to catch problems in the early stages, before complaints might be generated.

The 2009 Legislature also added a new facility to the list of facilities to be inspected. A.B. 123 mandates that doctors' offices where procedures requiring anesthesia are performed must receive a permit from and be inspected by the Health Division annually. Assembly Bill 123 also makes permitting and yearly inspections a requirement for Ambulatory Surgery Centers. Depending on how many doctors' offices will require permitting and inspection, approximately three additional Health Facility Surveyors may be hired to address the new workload. All new staff necessary to address the requirements of A.B. 123 will be funded with reserved fees until the new staff can be supported with fee income from the regulated facilities.

The Legislature also approved one new Biostatistician position, funded by fees, to identify trends in the inspection data that will assist in policy development and decision-making for the Bureau of Health Care Quality and Compliance. The Legislature disapproved the Governor's recommendation to add one new Management Analyst position to this budget, since the new Biostatistician, in coordination with bureau and division management, would be expected to develop program guidance and policy for Health Facility Surveyors.