

**FGI DIVISION OF PUBLIC & BEHAVIORAL HEALTH
BUREAU OF HEALTH CARE QUALITY AND COMPLIANCE
LCB File No. R122-16**

Informational Statement per NRS 233B.066

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

The main purpose of the amendment is to update the Nevada Administrative Code (NAC) in the section that adopts construction standards by reference for certain medical facilities. NAC 449.0105(1)(c) requires compliance with an outdated reference regarding the design and construction of hospitals and health care facilities, the American Institute of Architects (AIA). The American Institute of Architects (AIA) no longer publishes the guidelines referred to in the NAC; rather these guidelines are now published by the Facility Guidelines Institute (FGI). The FGI took over the publication for and since the 2010 edition of the design and construction standards. The AIA Guidelines were last published in 2006, and are the currently in effect until the regulations are changed to update to the FGI.

There are five medical facility types that currently impacted with this regulation change and they include: hospitals, skilled nursing facilities, intermediate care facilities, mobile units, and surgical centers for ambulatory patients.

These proposed regulations would allow for the current, adopted edition of the design and construction codes, which is the 2014 FGI edition. The regulations provides current code pricing and current code access informational changes. The regulations also allow for a longer review period for suitability within the state, from six months to twelve months. This last change allows time for physically obtaining and reviewing the code, time for any necessary public workshops and time for preparing any recommendations before the board of health when deemed necessary.

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 Nevada Revised Statutes (NRS) 233B.0608 (2) (a) (Proposed permanent or temporary regulation: Determination of impact on small businesses; consultation with owners and officers of small businesses; analysis of likely impact on small business; consideration of methods to reduce impact on small businesses; preparation of small business impact statement; requirement to include impact statement in submission to Legislative Counsel Bureau.) and NRS 233B.061 (Proposed permanent or temporary regulation: Public comment; workshop; public hearing; applicability of Open Meeting Law.), the Division of Public and Behavioral Health had requested input from the five licensed facility types that would be impacted with the proposed change through (a) small business impact questionnaire and (b) the public workshops.

(a) A Small Business Impact Questionnaire was sent to the five licensed facility types along with a copy of the proposed regulation change on January 4, 2017. This information was also posted on the Division's website and sent out through the Division's computerized licensing system (Aithent) via facilities' registered e-mails. Those five licensed facility types and number of facilities contacted include:

- 1) Hospitals (54);
- 2) Skilled nursing facilities (57);
- 3) Intermediate care facilities (4);
- 4) Surgical center for ambulatory patients (89); and
- 5) Mobile units (Note: There are currently no mobile unit providers).

The small business impact questionnaire had only 1 of the 204 facilities that responded to the small impact statement. The lone respondent indicated that their facility had less than 150 employees, and the respondent indicated no impact on their business.

(b) Two public workshops were held on May 23, 2017, and July 06, 2017. The public comments were in general support of the regulations, the main concern was when they would go into effect so that they can better plan for upcoming projects.

The May 23, 2017 workshop was held 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

The July 06, 2017, a public workshop was held 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.

The comments from the workshops were included 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 LCB number R122-16.

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

Or, a summary of the 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.

None of the attendees testified or provided a written statement at the hearing concerning these regulations.

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 had requested input from the five existing licensed facility types that are required by regulation to utilize the existing adopted construction standards.

A Small Business Impact Questionnaire was sent to the five licensed facility types along with a copy of the proposed regulation change on January 4, 2017. This information was also posted on the Division's website and sent out through the Division's computerized licensing system (Aithent) via facilities' registered e-mails. Those five licensed facility types and number of facilities contacted include:

- 1) Hospitals (54);
- 2) Skilled nursing facilities (57);
- 3) Intermediate care facilities (4);
- 4) Surgical center for ambulatory patients (89); and
- 5) Mobile units (Note: There are currently no mobile unit providers).

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."

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?

Only 1 of the 204 facilities responded to the small impact statement. The lone respondent indicated that their facility had less than 150 employees, and answered no to questions 2 through 5. The respondent indicated no impact on their business.

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.

There were no changes necessary for these regulations. The five licensed provider groups have been working with similar construction regulations for years or even decades. These licensees have been required to design plans, submit plans and construct and/or remodel their facilities to be in compliance to past codes and are accustomed to their presence and use. These licensees recognize that this is part of doing business with local authorities having jurisdiction and with the state of Nevada. The facilities' corporate offices also recognize the ever evolving code changes and would prefer that the states be more similar across jurisdictional lines here and elsewhere in the United States.

These licensee also recognize that the codes change over time. The code changes can occur with advances in technology, systems becoming antiquated, and operational changes. The licensees evolve with these changes and do not want to be limited with codes that no longer make sense, thus their ready acceptance.

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.

Anticipated effects on the business:

- A. *Adverse effects*: No adverse effects are anticipated.
- B. *Beneficial*: The updating of the construction standards adopted references would allow providers and their architects to use more current regulations for the design and construction of the health care facilities or remodeling projects. These changes would account for the recent changes in technology, removal of antiquated systems, and more modern operational changes.
- C. *Immediate*: Once the regulations are approved, facilities would be able to use the more current construction standards that would match more modern design and operational consideration.
- D. *Long-term*: Besides being more consistent with the design and construction of medical facilities with other states across the nation, the facilities can take advantage of advances in technology and operational efficiencies that comes with modern design and construction.

Anticipated effects on the public:

- A. *Adverse*: No adverse effects are anticipated.
- B. *Beneficial*: The public would receive care that is more modern with the newer codes. The existing medical facilities with remodeling would also have standardization construction on par with the newer medical facilities.
- C. *Immediate*: Would allow architects to readily access and utilize the newer standards in their designs of the medical facilities.
- D. *Long-term*: Harmonization of the construction standards concerning medical facilities in Nevada and other states. By utilizing the current codes, the facilities would capitalize on the technology advances, removal of outmoded systems, and enhanced operations.

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

At this time, it is estimated that there would be no additional cost to the agency to enforce the proposed regulations. It is anticipated that any increased workload would be off-set with the existing fees. There is a nominal fee for the purchasing of the newer codes.

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 and governmental agencies' regulations that overlap or duplicate the proposed regulations. The Facilities Guidelines Institute (FGI) (formerly published by the AIA Guidelines) focuses on physical plant requirements, such as, space designation to support health care facilities operations and space allocation to ensure sufficient number and size of spaces are available for the medical services provided.

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 FGI (former the AIA Guidelines) requirements are not more stringent than federal regulations, because the federal physical plant requirements do not address space designation to support health care facilities operations and space allocation to ensure sufficient number and size of spaces are available for the medical services provided.

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 only fee change is related to the cost for the adopted regulations are indicated as follows and paid directly to those entities that publish the respective standards:

- *National Fire Protection Association 101, Life Safety Code*
From \$55.80 to \$98.00 + \$9.95 handling
- *National Fire Protection Association 99, Health Care Facility Code*
From \$45.25 to \$72.50 + \$9.95 handling
- Facility Guidelines Institute, "*Guidelines for the Design and Construction of Hospitals and Outpatient Facilities*"
From \$75.00 + 9.00 handling to \$200.00
- Facility Guidelines Institute, *Guidelines for the Design and Construction of Residential Health, Care, and Support Facilities*
From \$75.00 + 9.00 handling to \$200.00