

**DIVISION OF PUBLIC & BEHAVIORAL HEALTH**  
**BUREAU OF BEHAVIORAL HEALTH WELLNESS AND PREVENTION**  
**SUBSTANCE ABUSE PREVENTION AND TREATMENT AGENCY**

**LCB File No. R134-16**  
**Informational Statement per NRS 233B.066**

1. *Need for the adopted regulation:*

Existing law provides that if an offender is found guilty of driving under the influence of alcohol or drugs and certain other requirements are met, the court is required to order an evaluation of the offender to determine whether the offender is an abuser of alcohol or drugs. In most circumstances, this evaluation must be conducted by an alcohol and drug abuse counselor, a clinical alcohol and drug abuse counselor or a physician at an evaluation center. After the evaluation, the counselor or physician is required to report to the court the results of the evaluation and make a recommendation concerning the length and type of treatment required for the offender. (NRS 484C.300, 484C.350) Existing regulations prohibit an evaluation center program that is provided in a county whose population is 100,000 or more from being operated by an operator who operates or has a financial interest in a treatment program in the same geographic area. (NAC 458.336) This regulation exempts from this requirement an evaluation center program that: (1) is operated by an Indian tribe; and (2) only provides services to American Indians and Alaska Natives who are enrolled members of federally recognized tribes and their descendants.

2. *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 requested input from all known certified providers of substance abuse prevention and treatment services, and the leadership and members of the Inter-Tribal Council of Nevada (ITCN).

A Small Business Impact Questionnaire was distributed to the following along with a copy of the proposed regulation changes, on March 9, 2017:

- All known certified providers of substance abuse prevention and treatment services (n=142) who were listed on the SAPTA mailing list under the LISTSERV host name, LISTSERV.STATE.NV.US.
- Chairpersons listed for the Inter-Tribal Council of Nevada (ITCN) Executive Board, as of February 15, 2017, via United States Postal Service.
- Environmental Directors listed in the Tribal Environmental Directory, as of March 2, 2017, via United States Postal Service.
- On April 4, 2017, the Small Business Impact Questionnaire and a copy of the proposed regulation changes were additionally distributed to the Executive Director, Inter-Tribal Council of Nevada (ITCN), for inclusion on the agenda for the April 13, 2017, meeting of the Tribal Health Center Directors, via telephone contact and email follow-up.
- Links to the Small Business Impact Questionnaire and the proposed regulation changes were also provided on the SAPTA program page of the website maintained by the Division of Public and Behavioral Health:

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([http://dpbh.nv.gov/Programs/ClinicalSAPTA/Home\\_-\\_SAPTA/](http://dpbh.nv.gov/Programs/ClinicalSAPTA/Home_-_SAPTA/)).

### Summary of Response

Summary of Comments Received *			
(5 questionnaire responses were received out of 293 <i>plus</i> unique small business impact questionnaires distributed**)			
Q2: Will a specific regulation have an adverse economic effect upon your business?	Q3: Will the regulation(s) have any beneficial effect upon your business?	Q4: Do you anticipate any indirect adverse effects upon your business?	Q5: Do you anticipate any indirect beneficial effects upon your business?
No = 4 Yes = 1 No Response/ Unknown = 0	No = 5 Yes = 0 No Response/ Unknown = 0	No = 5 Yes = 0 No Response/ Unknown = 0	No = 5 Yes = 0 No Response/ Unknown = 0
Comments: <u>Written response on questionnaire form:</u> "I would lose between \$500 – 1,000 if Native Americans can be evaluated and treated by the Indian Health Services in Washoe County."  <u>Verbal response (gist) during follow up telephone call to request clarification from the same small business owner (above):</u> I provide evaluation services to 5-10 Native Americans each year, typically. If a person is adjudicated for DUI in Reno, then they will use my business. If there is a change that allows both evaluation and treatment by the same provider, then I might lose that business.	Comments: None.	Comments: None.	Comments: None.

Number of Respondents out of 293 <i>plus</i> unique questionnaires distributed	Adverse economic effect?	Beneficial effect?	Indirect adverse effects?	Indirect beneficial effects?
No	4	5	5	5
Yes	1	0	0	0

\* No questionnaires were returned that indicated 150 or more employees.

\*\* A reminder prompt was emailed to the SAPTA mailing list (host name, LISTSERV.STATE.NV.US) on March 15, 2017.

3. The Public Workshop to consider the Proposed Amendments to Nevada Administrative Code (NAC) 458 was called to order by Ruth Condray at 1:05 pm, on Tuesday, May 16, 2017, at 4150 Technology Way, Room 303, Carson City, Nevada. The meeting was video conferenced to the Southern Nevada Adult Mental Health Services, West Hall Conference Room, Las Vegas, NV. Offsite attendees accessed the meeting through a conference-call number. There were no public comments. The Workshop was adjourned at 1:16 pm. The following persons attended:

**Staff Members Present:**

Ruth Condray, Ph.D., Substance Abuse Prevention and Treatment Agency, Bureau of Behavioral Health Wellness and Prevention

Sara Weaver, Administrative Assistant, Substance Abuse Prevention and Treatment Agency, Bureau of Behavioral Health Wellness and Prevention

**Others Present:**

Amanda Swenson, WestCare

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.*

See Response to Question 2 (above).

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 existing regulation prohibits an evaluation center program that is provided in a county whose population is 100,000 or more from being operated by an operator who operates or has a financial interest in a treatment program within the same geographic area. The original intent for this limitation may have been to reduce conflicts of interest that could arise due to the common ownership or combined operation of an evaluation service and a treatment program in areas with adequate resources. However, the regulation as it is written may have unintended and undesirable consequences for communities such as Indian tribes that are located simultaneously in urban counties of more than 100,000 population, and within communities that are more similar to Nevada's rural and frontier counties. The proposed amendment may provide culturally sensitive resources by exempting an evaluation center program that is operated by an Indian tribe, and that only provides services to American Indians and Alaska Natives who are enrolled members of federally recognized tribes and their descendants.

The survey of all known small business owners who provide substance use services in Nevada indicated that only one operator expected income loss associated with the proposed regulation. It was concluded that the proposed change is unlikely to produce an excessive or adverse economic impact on most small businesses that provide services for substance use disorders. It was also concluded that the amendment may actually help tribal businesses which use limited resources within a combined entity to serve a population with specific behavioral health needs. Although an Indian tribe may be located in a county of over 100,000 population, its members may still be isolated and underserved in their access to substance use

services, especially services that are culturally appropriate. Allowing Tribal operators to provide both evaluation and treatment services could enable access to more effective treatment services.

6. *The estimated economic effect of the regulation on the businesses 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 businesses which NAC 458 regulates:

A. *Adverse effects:* The Division of Public and Behavioral Health (DPBH) has determined that the proposed amendment is not expected to have a negative impact on the formation, operation or expansion of most small businesses that provide services for substance-related disorders. Only one small business owner indicated possible revenue loss due to the proposed regulation.

B. *Beneficial effects:* The proposed amendment may help Tribal businesses which use limited resources within a combined entity to serve a population with specific cultural and behavioral health needs.

C. *Immediate effects:* None.

D. *Long-term effects:* Only one small business owner indicated anticipated revenue loss due to the proposed regulation over the course of 2017–2018, and potentially in subsequent years going forward.

2. Anticipated effects on the public:

A. *Adverse effects:* None.

B. *Beneficial effects:* The proposed amendment may help Tribal businesses which use limited resources within a combined entity to serve a population with specific cultural and behavioral health needs. Although an Indian tribe may be located in a county of over 100,000 population, its members may still be isolated and underserved in their access to substance use services, especially services that are culturally appropriate. Allowing Tribal operators to provide both evaluation and treatment services could enable access to more effective treatment services.

C. *Immediate effects:* None.

D. *Long-term effects:* Enhanced access to more effective treatment services could increase over time.

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

There will be no cost to the Division of Public and Behavioral Health associated with enforcement of the proposed 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.*

The proposed regulations do not overlap or duplicate any other Nevada state or known federal 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:*

No increases in the number or level of stringency of standards, regardless of entity, are considered necessary.

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.*

There are no fees associated with the proposed regulation.

**NOTE: The Informational statement is essential. If this statement is not included with the final regulations or is incomplete or inaccurate, LCB will return the regulation to the agency. Unless a statement is supplied, the LCB will not submit the regulation to the Legislative Commission, and the regulation never becomes effective (NRS 233B.0665).**