

SMALL BUSINESS IMPACT STATEMENT 2016

PROPOSED AMENDMENTS TO NAC 439A

The Department of Health and Human Services (DHHS) has determined that the proposed amendments should not impose an economic burden upon a small business or have a negative impact on the formation, operation or expansion of a small business in Nevada.

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."

This small business impact statement is made pursuant to NRS 233B.0608 (3) and complies with the requirements of NRS 233B.0609. As required by NRS 233B.0608(3), this statement identifies the methods used by the agency in determining the impact of the proposed regulation on a small business in sections 1, 2, 3, and 4 below and provides the reasons for the conclusions of the agency in section 8 below followed by the certification by the person responsible for the agency.

Background

Senate Bill 247 was approved in 2015 updating NRS 439A.100 for medical facility construction projects. Rural communities in urban counties are now included as part of the eligibility for a Certificate of Need, and public health criteria are elaborated for the Director of Health and Human Services to determine the extent to which a project is consistent with the purposes set forth in NRS 439A.020 and the priorities set forth in NRS 439A.081.

Proposed amendments to Nevada Administrative Code (NAC) 439A update the following areas:

- Add definition of "Letter of Approval" to reference *Certificate of Need*;
- Interpret "routine services for health" to exclude services that require construction of a new facility or expansion, renovation or redesign of the existing office at a cost that exceeds \$2,000,000;
- Remove requirement for cashier's check under NAC 439A.365;
- Allow requests for extension to be communicated through a quarterly report under NAC 439A.465 and 439A.475;
- Remove exception for a facility which will be used solely for the offices of practitioners of health care under NAC 439A.595; and
- Repeal section on capital expenditures for which approval is not required under NAC 439A.338.

- 1) **A description of the manner in which comment was solicited from affected small business, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

Pursuant to NRS 233B.0608 (2)(a), the DHHS has requested input from all known stakeholders.

- Public comment was solicited through two online surveys for the small business impact questionnaire, as well as three public workshops and one public hearing, noticed through website postings, multiple electronic mailings to stakeholders, and hard copy mailings to state and county libraries for public posting.
- Following the first public workshop, representatives for Nevada Rural Hospital Partners and Nevada Hospital Association proposed revised language to remove the exclusion for physician-owned facilities. Subsequently, revised regulations were drafted and distributed to stakeholders for comment.
- Letters of support were received from several rural hospitals, with the following key statements:
 - The proposed regulation will provide much needed guidance and clarify the ambiguous nature governing the \$2,000,000 capital expenditure limit for health facility construction and equipment projects. . . Without the proposed clarification, a variety of medical or diagnostic clinics could skirt the current CON process [and] threaten existing medical providers, particular those in rural areas.
 - The state's CON construct should be fair and consistent in its applicability across all providers. The current interpretation that allows for a "medical office building or an office of a health practitioner to be used solely to provide routine health services. . ." to be exempt from the CON process places the government in the position of choosing winners and losers in the private marketplace.
 - The proposed regulation does not limit innovation or stifle competition. It simply ensures the continuation of a level playing field for all health care providers.
 - As CEO of Boulder City Hospital, I am acutely aware of the threat this regulation without the proposed changes can have on the only independent non-profit hospital in Nevada that is not part of a larger corporate structure nor is eligible to receive tax or mining subsidies.
 - When a large business comes in to provide services, they rarely offer the services to everyone. Instead they offer it to the insured and not the uninsured or underinsured. . . This shift means we take on a larger responsibility of absorbing the cost [and] will be forced to limit services or go out of business.
- The following statements were received via email and survey responses from health care facilities:
 - CON regulations protect our small hospital district allowing for long term operations. As a small county hospital service approximately 4000 residents, the introduction of other health service that would undercut our services will make it more difficult if not impossible to continue operation.
 - Potential to save a few hundred thousand by not oversaturating the market leading to all facilities census dropping.
 - (Indicating indirect beneficial effects) Prevents duplication of services that would raise our cost per unit of service. We treat Medicaid patients and uninsured patients while many boutique outpatient service providers that could enter the market would not.

- (Indicating indirect adverse effects) With master planning including the construction of a stick built building to replace our temporary modular clinic in the near future, this additional restriction will not only increase cost but the time for completion.

2) Describe the manner in which the analysis was conducted.

Staff considered the comments from the questionnaire and workshops and also conducted their own review of the proposed regulations and could not identify any negative impact on small business or why the regulations would not be beneficial.

3) The estimated economic effect of the proposed regulation on the small business which it is to regulate including, without limitation both adverse and beneficial effects and both direct and indirect effects.

The proposed regulation supports sustainability for existing health care facilities in rural communities by ensuring review of all proposed facilities construction or expansion, regardless of ownership. It has received overwhelming support from the small businesses it is to regulate.

4) Provide a description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

The legislative changes under SB247 from the 2015 Legislative Session support existing rural medical facilities by leveling the playing field for all facilities in rural areas. The proposed regulatory changes help to clarify program requirements to support a more transparent and streamlined application process. The Director adopted proposed language from small businesses ensuring that all proposed facilities construction or expansion, regardless of ownership, would demonstrate stable access to health care and stable costs of health care, under the Certificate of Need review.

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

No new costs are anticipated for enforcement of the proposed regulation.

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

The proposed regulation does not provide a new fee or increase an existing fee.

7) An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

The proposed regulation does not include more stringent provisions than the Nevada Revised Statutes.

8) Provide a summary of the reasons for the conclusions of the agency regarding the impact of a regulation on small businesses.

The letters of support and the comments received through an online survey, three public workshops and one public hearing were overwhelmingly positive. The changes proposed by small businesses help ensure stable access to care and stable cost of care in rural communities.

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Laura Hale at the Division of Public and Behavioral Health at:

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Certification by Person Responsible for the Agency

I, Richard Whitley, Director of the Department of Health and Human Services certify to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and the information contained in this statement was prepared properly and is accurate.

Signature  Date: 05/17/2016