

DIVISION OF PUBLIC AND BEHAVIORAL HEALTH

June 20, 2014  
LCB File # R046-14

Information Statement per NRS 233B.066

(a) A clear and concise explanation of the need for the adopted regulation.

These regulations establish minimal licensing standards for Psychiatric Residential Treatment Facilities (PRTF) to ensure the safety of residents receiving services in PRTFs. These regulations also propose licensing fees for PRTFs. The proposed fees will cover the costs of implementation. The implementation of these regulations presents an opportunity to provide for a need within Nevada for adolescent psychiatric patients that are currently being transferred out of state to receive care and services. As of December 2013, 184 children were sent to facilities in other states to receive services. Although some adolescent psychiatric services are provided in Nevada, the facilities providing those services are licensed as psychiatric hospitals; because there's currently no licensure category nor regulations for psychiatric residential treatment facilities.

(b) 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 via the Notice of Public Hearing posted at Division locations, State Library and Archives, county libraries and the notice was mailed to affected stakeholders. The following is a summary of the testimony provided during the public hearing on June 20, 2014:

During the public hearing held before the State Board of Health (SBOH), staff presented LCB file #R046-14RP1 and explained the proposed errata. An opportunity was allowed for public comment and only one individual commented as follows: a representative from a licensed psychiatric hospital asked when the regulations would become effective and staff explained that after adoption, the regulations would have a hearing before the Legislative Commission, prior to implementation. No one testified in opposition to the proposed regulations.

The Board of Health adopted LCB File #R046-14RP1 along with the errata as presented.

A summary of the hearing for amendment of Nevada Administrative Code (NAC) 449, "Medical and Other Related Facilities" LCB File #R046-14RP1 and errata, can be obtained by contacting the State Board of Health, through the Division of Public and Behavioral Health, 4150 Technology Way, Suite 300, Carson City, Nevada 89706, phone: (775) 684-4200, fax: (775) 684-4211.

(c) The number of persons who:

- (1) Attended the hearing;
- (2) Testified at the hearing; and
- (3) Submitted to the agency written statements.

- 17 people attended the hearing in Las Vegas, 11 people attended the hearing in Carson City.
- Paul Shubert, Health Facilities Inspection Manager with the Division of Public and Behavioral Health presented the proposed regulations and errata. During public comment, Chris Jacobson, a representative of a licensed psychiatric hospital asked the question described in (b) above. No one testified in opposition.
- No one provided written statements at the public hearing.

(d) For each person identified in subparagraphs (2) and (3) of item (c), the following information if provided to the agency conducting the hearing:

Paul Shubert, Health Facilities Inspection Manager  
 4220 S. Maryland Pkwy, Bldg. D, Ste. 810  
 Las Vegas, NV 89119  
 702-486-6515 x228  
 pshubert@health.nv.gov  
 Bureau of Health Care Quality and Compliance

Chris Jacobson  
 Monte Vista Hospital  
 702-251-1257

(e) 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.

Small business impact questionnaires and workshop notices that included information on how to obtain a copy of the proposed regulations and errata were sent to all licensed psychiatric hospitals, via U.S. postal service and/or list-serve for those facilities signed on to the Division's list-serve account. The workshop notice and draft regulations were also posted on the Division's website and distributed through the Division's List Serv and posted in accordance with open meeting law. The Division provided several opportunities for impacted businesses to offer input and comments regarding the proposed regulations. The Division met with a group of psychiatric hospital representatives on 3/25/14 to discuss the effects of these regulations on the facilities currently providing services to adolescent psychiatric patients. A public workshop was conducted via video-conference on 4/23/14 in Las Vegas, Carson City and Elko. During the public workshop, there was general support for the regulations as written and additional discussion regarding sufficiency of the regulations.

Since there are no currently licensed nor operating PRTFs in Nevada, the agency solicited comments from similar facilities to determine whether these regulations would have any impact. For the most part, these facilities did not respond. So, in addition the agency analyzed information about how other states regulate PRTF facilities. The agency doesn't foresee these regulations will have a detrimental impact on small businesses; in fact the agency anticipates these regulations will provide a way for small businesses to enter into this market.

Out of 17 small business impact questionnaires distributed, only 3 responses were received. However none of the 3 respondents provided any data regarding the effect these regulations would have on small businesses. In fact 2 of the respondents replied only to the first question, identifying how many employees they have and the third respondent asked whether a response was mandatory.

The small business impact summary regarding the proposed language in LCB File #R046-14RP1 and errata, can be obtained by contacting the Division of Public and Behavioral Health, Bureau of Health Care Quality and Compliance, 727 Fairview Drive, Suite E, Carson City, NV 89701, phone: (775) 684-1030, fax: (775) 684-1073.

(f) The regulation was adopted with changes from the initial proposal. After the public workshop and prior to the public hearing, a comment was received regarding accreditation being required prior to licensure. Based on this comment, an errata was established.

- Errata (section 8 of the proposed regulations); is necessary to ensure applicants have an opportunity to become licensed and operational prior to obtaining accreditation, yet the changes will maintain the original intent to ensure facilities obtain/maintain accreditation in order to continue licensure

(g) 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:

- (1) Both adverse and beneficial effects; and
- (2) Both immediate and long-term effects.

- Beneficial effects: These regulations have been designed with minimal standards to ensure facilities are not over-regulated, the regulations focus mainly on health and safety concerns of the residents, while a dollar amount cannot be assigned, economic benefit is anticipated
- Adverse effects: The fees established by these regulations were determined based on the anticipated cost of implementation, however, the fees may require adjustment when actual costs are calculated
- Immediate effects: Applicants will be able to establish and operate PRTF facilities and provide services to adolescent psychiatric patients in Nevada and receive reimbursement for the same
- Long term effects: There's an anticipated beneficial economic effect with regard to Medicaid, based on the cost of providing in-state, rather than out-of-state services

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

The estimated cost to the agency for enforcement of the proposed regulations is negligible. The agency has well established mechanisms for implementation and enforcement of new regulations and inspection of PRTF facilities will be part of the routine periodic inspections and workload.

(i) 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 adopt certain sections of federal code regarding PRTF standards required for certification. These regulations are found at 42 C.F.R. §§ 441.150 to 441.156, inclusive, and §§483.350 to 483.376, inclusive. Duplication of these regulations is necessary to ensure facilities meet these standards for participation in the Centers for Medicare and Medicaid Services (CMS) certification/reimbursement program. However, prior to certification all PRTFs will need to obtain a state license so state licensure regulations are necessary.

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

The proposed regulations are not more stringent than the federal regulations, however they are more detailed, especially with regard to patient care and safety.

(k) 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.

There is no way to accurately predict the number of new applicants or beds to be made available within these types of facilities. However, looking at the need for those patients already being placed out-of-state (184) and anticipating at least 2 applicants splitting this number of beds, the fees would be calculated as follows:

Facility A initial licensure fee: \$15, 234 (total initial licensure fees)

Facility B initial licensure fee: \$15, 234 (total initial licensure fees)

Grand Total Fees To Agency: \$30,486

Fee calculations per facility:

\$9530 (facility application fee) +

\$5740 (bed fees) {92 (beds) x \$62 (per bed fee)}

= \$15,234 total per facility

Fees will be used to process applications, conduct inspections and conduct complaint investigations.