

**PROPOSED REGULATION OF  
THE STATE BOARD OF HEALTH**

**LCB File No. R151-15**

January 25, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 439.200; §§2-6, NRS 439A.170, as amended by section 1 of Assembly Bill No. 39, chapter 94, Statutes of Nevada 2015, at page 360.

A REGULATION relating to the State Board of Health; revising provisions relating to taking action on certain petitions filed with the Board; revising application fees for the Physician Visa Waiver Program; revising provisions relating to the refund of those application fees in certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that any interested person who desires the adoption, filing, amendment or repeal of any regulation of the State Board of Health may petition the Board, and the Secretary of the Board must either deny the petition or initiate procedures to carry out the request of the petition within 45 days after receipt of the petition. (NAC 439.010, 439.030) **Section 1** of this regulation changes that requirement to 30 days.

Existing law requires the State Board of Health to adopt regulations providing for the administration of the Physician Visa Waiver Program, which is established in the Division of Public and Behavioral Health of the Department of Health and Human Services. The Board is also required to establish an application fee for a physician or an employer seeking a letter of support from the Program. (NRS 439A.170, as amended by section 1 of Assembly Bill No. 39, chapter 94, Statutes of Nevada 2015, at page 360) The maximum amount of the application fee was increased from \$500 to \$2,000 by section 1 of Assembly Bill No. 39, chapter 94, Statutes of Nevada 2015, at page 360. **Section 2** of this regulation provides a schedule of application fees based on whether the: (1) physician is a primary care provider or a specialist; (2) employer of the physician is a health facility or a third-party contractor; and (3) area in which the physician will work is a designated health professional shortage area.

**Section 3** of this regulation provides that a member of the Primary Care Advisory Council, which is authorized to review applications submitted for the Physician Visa Waiver Program, may designate a person to attend a meeting of the Council in place of the member. (NAC 439A.710, 439A.725) **Section 3** also requires the Council to meet annually and to select a Chair from among its members biennially.

**Section 4** of this regulation authorizes the Administrator of the Division of Public and Behavioral Health to refund one-half of the application fee submitted to the Physician Visa Waiver Program if the application is withdrawn before the Administrator has made a determination about issuing a letter of support and to refund all of the application fee if all the available spots for enrollment in the Program have been filled for that fiscal year. (NAC 439A.720)

**Sections 4-6** of this regulation revise the citation to the Internet website where a person may obtain an application for a letter of support for the Physician Visa Waiver Program. (NAC 439A.720, 439A.725 and 439A.745)

**Section 1.** NAC 439.030 is hereby amended to read as follows:

439.030 1. The Secretary of the State Board of Health shall, within ~~145~~ 30 days after receipt of the letter submitted pursuant to NAC 439.010, either deny the petition in writing, stating the reasons, or initiate the procedure for the adoption, amendment or repeal of regulations.

2. If the petition is denied, a copy of the letter of denial must be sent to each member of the Board.

**Sec. 2.** Chapter 439A of NAC is hereby amended by adding thereto a new section to read as follows:

*1. Except as otherwise provided in this section and NAC 439A.720, the application fees for a letter of support from the Division of Public and Behavioral Health are as follows:*

*(a) For a primary care provider employed by a health facility in a designated health professional shortage area.....\$500*

*(b) For a primary care provider employed by a health facility in a flex slot.....800*

*(c) For a primary care provider employed by a third-party contractor in a designated health professional shortage area.....1,100*

*(d) For a primary care provider employed by a third-party contractor in a flex slot.....1,400*

<i>(e) For a specialist employed by a health facility in a designated health professional shortage area.....</i>	<i>800</i>
<i>(f) For a specialist employed by a health facility in a flex slot.....</i>	<i>1,100</i>
<i>(g) For a specialist employed by a third-party contractor in a designated health professional shortage area.....</i>	<i>1,100</i>
<i>(h) For a specialist employed by a third-party contractor in a flex slot.....</i>	<i>1,400</i>

*2. If the actual cost to the Division of processing an application exceeds the amount listed in subsection 1, the Division shall impose an additional amount equal to that cost, except the total fee may not exceed \$2,000.*

*3. As used in this section:*

*(a) “Designated health professional shortage area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254e.*

*(b) “Flex slot” means an area which is not a designated health professional shortage area or a medically underserved area but which contains health facilities that are utilized by persons who reside in neighboring areas which are designated health professional shortage areas or medically underserved areas.*

*(c) “Medically underserved area” means an area designated by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 254b as containing a medically underserved population.*

*(d) “Primary care provider” means a physician or osteopathic physician who practices in the area of family practice, general practice, geriatrics, internal medicine, obstetrics and gynecology, pediatrics or psychiatry.*

*(e) “Specialist” means a physician or osteopathic physician who practices in any area other than an area specified for a primary care provider.*

*(f) “Third-party contractor” means the employer of a physician or an osteopathic physician who is not a health facility.*

**Sec. 3.** NAC 439A.710 is hereby amended to read as follows:

439A.710 1. The Primary Care Advisory Council is hereby created within the Division of Public and Behavioral Health. The Advisory Council consists of members appointed by the Administrator as follows:

- (a) One member who represents the ~~{Great Basin}~~ Nevada Primary Care Association, or a successor organization;
- (b) One member who represents a federally qualified health center in this State;
- (c) One member who represents the Nevada Office of Rural Health within the University of Nevada School of Medicine;
- (d) One member who is a physician licensed in good standing pursuant to chapter 630 of NRS and who has successfully completed an employment contract under the Program;
- (e) One member who represents the Nevada State Medical Association, or its successor organization;
- (f) Members who are health care professionals; and
- (g) Representatives from the communities being served by the Program.

2. In addition to the members appointed pursuant to subsection 1, the Administrator may appoint nonvoting members from the Division of Public and Behavioral Health or other governmental agencies who have knowledge of and experience in health care and the Program.

3. Each member of the Advisory Council serves for a term of 2 years. A member may be reappointed.

4. *Each member of the Advisory Council may designate a person to attend a meeting in place of the member. Such a designation must be made in accordance with NRS 241.025, as amended by section 5 of Senate Bill No. 70, chapter 226, Statutes of Nevada 2015, at page 1059.*

5. If a vacancy occurs during the term of a member, the Administrator shall appoint a person similarly qualified to replace that member for the remainder of the unexpired term.

~~15.1~~ 6. The Advisory Council shall meet at least ~~once each calendar quarter~~ *annually* and at such other times as specified by a call of the Chair.

~~16.1~~ 7. At the first meeting, and ~~annually~~ *biennially* thereafter, the Advisory Council shall select a Chair from among its members.

~~17.1~~ 8. The Chair of the Advisory Council may appoint a subcommittee to review applications, complaints and policies and procedures of the Program and make recommendations to the Advisory Council.

~~18.1~~ 9. As used in this section, “federally qualified health center” has the meaning ascribed to it in 42 U.S.C. § 1396d(l)(2)(B).

**Sec. 4.** NAC 439A.720 is hereby amended to read as follows:

439A.720 1. An application for a letter of support must:

- (a) Be complete.
- (b) Include the materials required by subsection 1 of NRS 439A.175.
- (c) Be on the form prescribed by the Division of Public and Behavioral Health.
- (d) Contain the notarized signatures of the employer and the J-1 visa physician.

(e) Except as otherwise provided in subsection 2, be accompanied by an application fee ~~to~~ ~~\$500 which~~ *pursuant to section 2 of this regulation. The fee* must be paid in equal amounts by the employer and the J-1 visa physician.

2. The Administrator may waive the portion of the application fee which must be paid by the J-1 visa physician or require the J-1 visa physician to pay that portion of the application fee pursuant to a payment plan if the J-1 visa physician is experiencing an economic hardship and the J-1 visa physician submits with the application documentation sufficient to demonstrate that the economic hardship exists.

3. *The application fee will not be refunded if the Administrator does not issue a letter of support for the applicant. The Administrator may refund:*

*(a) One-half of the application fee paid by the J-1 visa physician and one-half of the application fee paid by the employer if the application is withdrawn before the Administrator has made a determination whether to issue a letter of support; or*

*(b) All of the application fee paid by the J-1 visa physician and the employer if, at the time the application is received by the Division, all the available spots for enrollment of J-1 visa physicians in the Program have been filled for that fiscal year.*

4. An employer or a J-1 visa physician may obtain an application for a letter of support from the Division of Public and Behavioral Health on the Internet website maintained by the Division of Public and Behavioral Health at ~~http://health.nv.gov/PrimaryCare.html~~ <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/> or by submitting a written request for an application to the Division of Public and Behavioral Health, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.

**Sec. 5.** NAC 439A.725 is hereby amended to read as follows:

439A.725 1. An application for a letter of support must be filed with the Administrator by personal delivery, commercial carrier or mail.

2. The Advisory Council may review an application submitted pursuant to this section for completeness and compliance with the provisions of NRS 439A.130 to 439A.185, inclusive, ~~and~~ NAC 439A.700 to 439A.755, inclusive ~~and~~ *and section 2 of this regulation.*

3. Applications must be reviewed in the order in which they were received.

4. The Administrator is responsible for the review and the approval or denial of all applications. The Administrator shall provide notice of the approval or denial of an application to the applicant. If an application is incomplete, the Administrator shall provide notice to the applicant within 14 days after receipt of the application and provide a written explanation of the missing information or documentation. An application may be resubmitted with the additional required information or documentation.

5. The Administrator shall accept applications pursuant to this section until all available spots for enrollment of J-1 visa physicians in the Program have been filled. The Administrator shall post the status of the number of available spots for enrollment on the Internet website maintained by the Division of Public and Behavioral Health at

~~<http://health.nv.gov/PrimaryCare.htm>~~ <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/>.

6. The Administrator shall not issue a letter of support to:

(a) An employer who was penalized for a violation of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, *and section 2 of this regulation* or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

(b) A J-1 visa physician who was determined by the Administrator to have violated a provision of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, *and section 2 of this regulation* or convicted of a violation of a federal statute or regulation relating to immigration within the immediately preceding 2 years.

**Sec. 6.** NAC 439A.745 is hereby amended to read as follows:

439A.745 1. A complaint about an employer or a J-1 visa physician may be submitted to the Program on the Internet website maintained by the Division of Public and Behavioral Health at ~~[http://health.nv.gov/PrimaryCare\\_J-1.htm](http://health.nv.gov/PrimaryCare_J-1.htm)~~ <http://dpbh.nv.gov/Programs/Conrad30/Conrad30-Home/> or by submitting a written complaint to the Division of Public and Behavioral Health, Primary Care Office, 4150 Technology Way, Carson City, Nevada 89706.

2. The Administrator shall investigate or require the Advisory Council to investigate each complaint submitted pursuant to this section. The investigation must commence within 45 days after receipt of the complaint, except that if the complaint alleges that the safety of a patient was threatened, the investigation must commence as soon as practicable. The Administrator is responsible for the investigation of complaints submitted pursuant to this section.

3. If the Administrator determines that a violation of NRS 439A.130 to 439A.185, inclusive, or NAC 439A.700 to 439A.755, inclusive, *and section 2 of this regulation* has occurred, the Administrator:

(a) Shall, if the violation affected the health and safety of a patient, submit a report to the Board of Medical Examiners; or



(b) May, if the violation did not affect the health or safety of a patient, submit a report to the Board of Medical Examiners or to the Bureau of Health Care Quality and Compliance of the Division of Public and Behavioral Health.