

**DIVISION OF PUBLIC & BEHAVIORAL HEALTH
BUREAU OF HEALTH CARE QUALITY AND COMPLIANCE
Medical Facilities and Other Related Entities
LCB File No. R156-18**

Informational Statement per NRS 233B.066

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

A new law passed during the 2017 legislative session, NRS 449.2425, requires the Division to adopt regulations establishing a system for awarding a star rating to certain health care facilities on compliance with certain requirements relating to staffing, which must be posted on the Internet website of the Division, in the facilities that are rated and, if the facility maintains an Internet website that is accessible to the public, on the website; and procedures by which such a health care facility may appeal a finding of a violation of those requirements or request a follow-up inspection. The proposed regulations bring the Division into compliance with NRS 449.2425.

Public Workshop - March 6, 2018

A public workshop was held on the proposed regulations (when they were incorporated into R109-18) at the Division of Public and Behavioral Health located at 4150 Technology Way in Carson City and it was video conferenced to Southern Nevada Health District, 280 S. Decatur Blvd, in Las Vegas.

Thirty-four (34) individuals signed the sign-in sheet in the Carson City location, three signing in support, nine people signing in support and/or opposition of portions of the proposed regulations, one individual noted “Amend” and the remaining individuals on the sign in sheet did not indicate their position.

Fifty-four (54) individuals signed the sign-in sheet in the Las Vegas location, with one person signing in support, one person signing in opposition, three individuals signing in support and/or opposition of portions of the proposed regulations, and the remaining individuals on the sign in sheet not indicating their position.

The sign-ins above would have included those attending the public workshop for R109-18 which included the language in R156-18.

Below is a high-level summary of the testimony provided during the public workshop on issues related to R156-18. Please refer to the attached written testimonies for more in-depth details on the testimony provided during the public workshop.

- Definition of a hospital unit should be based on acuity of care and the current definition in NRS is too broad. Others expressed agreement with how a hospital unit is currently defined.
- There is no description as to how the star ratings should be posted.
- The placard to be issued by the Division with the star rating needs to more clearly define which statutes are being referenced.

- Concern was expressed that scope and severity are mentioned along with the appropriate star rating without mention of how NAC/NRS defines scope and severity. The concern was that although scope and severity are defined in regulations the regulatory citation is not mentioned in the proposed regulations. It was requested scope and severity definitions be added for clarification purposes.

Written testimony provided as part of the process to obtain feedback noted that “...we are concerned that some facilities (hospitals) will now be required to post two ratings, derived from different systems (one federal and one state-specific) that are based on wholly different sets of criteria. SB 482 is designated to educate and inform consumers. Therefore, we are hopeful that this new requirement does not dilute the impact of the CMS rankings and that consumers are somehow apprised of the different intent of the two rating systems.”

Public Hearing – January 10, 2019

A public hearing was held on the proposed regulations, LCB File No. R156-18, at the Division of Public and Behavioral Health located at 4150 Technology Way in Carson City and it was video conferenced to the Division of Public and Behavioral Health, Bureau of Health Care Quality and Compliance, located at 4220 S Maryland Parkway, Suite 810, Building D, in Las Vegas.

Eight individuals signed in at the Las Vegas location. One individual signed in support and the remaining individuals did not note their position on the proposed regulations. No individuals in the Las Vegas location provided oral testimony.

Two individuals signed in at the Carson City location. One individual signed in with a neutral position and the other individual did not indicate her position on the proposed regulations.

Oral testimony provided during the public hearing included the following:

Clarification was requested relating to the timeframe of the follow up inspection. It was explained that the proposed regulations did not include a timeframe in which the follow up inspection would need to be completed by. It was explained the Division would be willing to amend the proposed regulations to require that the follow up inspection be completed within 30 days of the request for a follow up inspection.

It was explained that after a star rating is finalized the star rating would stand until the next inspection or staffing related complaint investigation at which point it would be re-evaluated based on the results of the inspection or complaint investigation.

The question was asked that if a hospital was in compliance with its plan of correction would that cause the star rating to go back up. It was explained that the plan of correction is not the mechanism that would change the star rating but instead the hospital would have to submit an appeal or a request for a follow up inspection in order to have the star rating re-evaluated.

It was asked who the placard would be sent to. It was explained that the placard would be sent to the CEO/administrator of the hospital.

It was asked if the first placards sent to the hospitals would start with a 5-star rating. It was explained that the Division would not automatically send out placards but will be developing a plan on how to carry out the provisions of the statutes and regulations.

It was asked if the hospitals would be required to post the star rating after the public hearing. It was noted that if adopted by the Division, the regulations would have to go before the Legislative Commission before the regulations became effective.

Testimony was provided that an errata was being moved forward to correct an error in the LCB draft of the proposed regulations, in which the reference to subsection 3, in subsection 5 of section 6, should refer to subsection 4 instead and that this was confirmed with LCB.

Staff recommended the Division approve the LCB draft with the errata and the amendment to require that the follow up inspection be completed within 30 days of the request for a follow up inspection. The recommendations were accepted by the Division and the LCB draft of the regulations were adopted with the changes.

How other interested persons may obtain a copy of the summary

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Leticia Metherell, RN, CPM, HPM III at the Division of Public and Behavioral Health at:

Division of Public and Behavioral Health
Bureau of Health Care Quality and Compliance
727 Fairview Drive, Suite E
Carson City, NV 89701
Leticia Metherell
Phone: 775-684-1045
Email: lmetherell@health.nv.gov

3. A statement indicating the number of persons who attended each hearing, testified at each hearing, and submitted written statements regarding the adopted 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 adopted 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

A public hearing was held on January 10, 2019. Two individuals signed in at the Carson City location and eight individuals signed in at the Las Vegas location. For a summary of the testimony provided please refer to number 2. For the list of attendees, please refer to the Carson City and Las Vegas public hearing attendance sign-in sheets included with this informational statement.

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.

The Division of Public and Behavioral Health (Division) requested input from Nevada’s licensed health care facilities and made a concerted effort to determine whether the proposed regulations are likely to impose an economic burden upon a small business.

All licensed health facilities were sent an email notification on November 21, 2017 (an updated email was also sent on November 27, 2017 with an updated web link to the small business impact questionnaire), requesting that all interested individuals complete the small business impact questionnaire. A link to the small business impact questionnaire and proposed regulations was provided. The proposed regulations were also posted on Division’s website. 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?

Summary of Response

Summary of Comments Received (115* responses were received out of 1,406 small business impact questionnaires distributed)			
Will a specific regulation have an adverse economic effect upon your business?	Will the regulation (s) have any beneficial effect upon your business?	Do you anticipate any indirect adverse effects upon your business?	Do you anticipate any indirect beneficial effects upon your business?
Yes- 114 No - 1	Yes - 6 No- 107	Yes - 112 No – 1	Yes - 2 No – 112

	No Answer - 2	No Answer - 2	No Answer – 1
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*included responses to components of R109-18 which included responses to the language in R156-18 but was not limited to it.

Comments relating to the adverse economic effects of the proposed regulations specific to R156-18 included:

- Adversely impacting businesses that receive a low star rating.
- Increased costs related to posting star rating information and increased cost to maintain a daily staffing committee.

How other interested persons may obtain a copy of the summary

Any other persons interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Leticia Metherell, RN, CPM, HPM III at the Division of Public and Behavioral Health at:

Division of Public and Behavioral Health
Bureau of Health Care Quality and Compliance
727 Fairview Drive, Suite E
Carson City, NV 89701
Leticia Metherell
Phone: 775-684-1045
Email: lmetherell@health.nv.gov

5. If, after consideration of public comment, the regulation was adopted without changing any part of the adopted 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 adopted.

The Division made several revisions to the proposed regulation based on industry feedback.

- The proposed regulations were modified to further specify the placards content and format including outlining the size, font and other characteristics of the star rating posting. The content of the placard also clarifies what the star rating measures with the associated statutory reference through the required placard title, “Nevada Division of Public and Behavioral Health – Requirements Relating to Staffing based on NRS 449.241 to 449.2428, inclusive – Star Rating.” This will also help distinguish this State staffing star rating placard from the CMS star rating.
- The proposed regulations were further revised during the public hearing process by amending the proposed regulations to require that the follow up inspection be completed within 30 days of the request for a follow up inspection.

The following revisions were not made to the proposed regulations:

- The definition of “Unit” was not changed in the proposed regulations because “Unit” is defined in statutes, NRS 449.2418; therefore, no changes to this definition can be made in regulations.
- Scope and severity definitions were not added to LCB File No. R156-18 because no changes were made to these sections of regulation; therefore, they would not be included as an amendment in the proposed regulations moving forward.

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 businesses which NAC 449 regulates:

Adverse effects: There may be adverse effects to facilities with a low staffing star rating if consumers utilize this as a quality measure when choosing a facility.

Beneficial effects: There may be beneficial effects to facilities that obtain high staffing star rating if consumers utilize this as a quality measure when choosing a facility.

Immediate effects: The above effects would become effective upon passage of the proposed regulations.

Long-term effects: The long-term effects would be a continuation of the immediate effects over time.

Anticipated effects on the public:

Adverse effects: No anticipated adverse effects on the public is anticipated.

Beneficial effects: Greater transparency to the public who will be able to see a facility’s State star rating related to staffing posted in a conspicuous place near each entrance to the facility that is regularly used by the public and, if the facility maintains an Internet website that is accessible to the public, on that website. The star rating would also be posted on the Division’s website.

Immediate effects: The above beneficial effects would become effective upon passage of the proposed regulations.

Long-term effects: The long-term effects would be a continuation of the immediate effects over time.

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

Most of the work related to the proposed regulations to carry out NRS 449.2425 would be incorporated into the Bureau of Health Care Quality and Compliance’s current inspection and investigation workload; therefore, the cost to the agency is expected to be minimal. The

Division will look at issuing the star rating placards to facilities through an electronic means, therefore reducing copying and mailing costs.

8. A description of any regulations of other state or government agencies which the adopted 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 adopted regulations do not overlap or duplicate other state or 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.

The adopted regulations do not include provisions which are more stringent than federal regulations.

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 way the money will be used.

The proposed regulations do not establish a new fee and does not increase an existing fee.