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## DIVISION OF PUBLIC & BEHAVIORAL HEALTH

### Clinical Forensic Services

### Certification of Evaluators of Criminal Competency

### LCB File No. R181-18

### Informational Statement per NRS 233B.066

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

The purpose of the amendment is to bring Nevada Administrative Code (NAC) Chapter 178,417 into compliance with Nevada Revised Statutes (NRS) 178.417.

- NRS 178.417, Section 2. requires the Division of Public and Behavioral Health (DPBH) to adopt regulations governing the certification of a person who evaluates competency of a defendant to stand trial or receive pronouncement of judgement pursuant to NRS Chapter 178.400 through 178.460. NRS 148.417 also requires that the Division will establish regulations regarding the setting of reasonable fees for issuing and renewing such certificates, as well as requirements for continuing education for renewal of a certificate. NRS 178 also defines who may qualify to be certified as an examiner of competency and includes, per the passage of Senate Bill (SB) 227 of the 79<sup>th</sup> State of Nevada Legislative Session, Advanced Practice Registered Nurses (APRNs,) who have psychiatric training and who have been certified by the DPBH. The addition of APRNs to NRS 178.400 requires that this discipline be added to the NAC 178.417 list of those disciplines eligible to be certified as competency evaluators.

#### 2. 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 by disseminating an electronic copy of the proposed regulation along with the Small Business Impact Questionnaire which is attached. These documents were sent with a request for comment to all the certified competency examiners in the State of Nevada. At the present time that list constituted 86 licensed psychiatrists, psychologists, and clinical social workers. The information was also provided to the Executive Director of the State of Nevada Board of Nursing for dissemination to Advanced Practice Registered Nurses who would qualify to apply for certification as competency evaluators. This information was sent out electronically on July 10<sup>th</sup>, 2020. The information was also available in hard copy by request from Lake's Crossing Center Administrative staff.
- A **Public Workshop** was held on November 18<sup>th</sup>, 2020. The workshop was held via Webex pursuant to Governor Sisolak's March 22, 2020, Declaration of Emergency Directive 006, the requirement contained in NRS 241.023 (1) (b) that there be a physical location is suspended in order to mitigate possible exposure or transmission of COVID-19 (Coronavirus).

#### Summary of Hearing Comments:

1. A representative of the nursing association indicated full support of the amended regulation and expressed endorsement of the proposed fees.
2. There was no testimony opposing the regulation.

3. There were some questions from attendees regarding procedures for final approval of the regulation.

A **Public Hearing** was held on January 6, 2021. The Public Hearing to adopt proposed regulation R181-18 was held via Webex only pursuant to Governor Sisolak's March 22, 2020, Declaration of Emergency Directive 006.

Summary of Hearing comments:

1. Testimony was provided by the Division in support of adopting the regulation.
2. Public comment was provided by a representative of the Public Health Association in support of adopting the regulation. The Division's delay on establishing these regulations due to difficulty with the pandemic were noted and comment indicated in support of adopting the regulation, despite the delay due to those barriers.
3. There was no testimony against adopting the regulation.

How other interested persons may obtain a copy of the summary:

Any other person interested in obtaining a copy of the summary may e-mail, call, or mail in a request to Elizabeth Neighbors, Ph.D., Statewide Forensic Program Director, Division of Public and Behavioral Health at:

Division of Public and Behavioral Health  
Lake's Crossing Center  
500 Galletti Way  
Sparks, Nevada 89431  
Phone: 775-688-6651  
e-mail: [eneighbors@health.nv.gov](mailto:eneighbors@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 proposed 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 proposed regulation, the following information, if provided to the agency conducting the hearing:**

Persons attending the Public Workshop on November 18, 2020:

Janet Ashby [jashby@health.nv.gov](mailto:jashby@health.nv.gov)  
Sydney Banks [sb@jkbelz.com](mailto:sb@jkbelz.com)  
Shera Bradley [sbradley@health.nv.gov](mailto:sbradley@health.nv.gov)  
Lea Cartwright [lc@jkbelz.com](mailto:lc@jkbelz.com)  
Joseph Filippi [jpfilippi@health.nv.gov](mailto:jpfilippi@health.nv.gov)  
Arianne Fisher [afisher@health.nv.gov](mailto:afisher@health.nv.gov)  
Allison Genco [allison@ferraipa.com](mailto:allison@ferraipa.com)  
Omar Khan [mokhan@wellpath.uls](mailto:mokhan@wellpath.uls)  
Jo Malay [jmalay@health.nv.gov](mailto:jmalay@health.nv.gov)  
Elizabeth Neighbors [eneighbors@health.nv.gov](mailto:eneighbors@health.nv.gov)  
Valorie Padovino [vbTher@jkbelz.com](mailto:vbTher@jkbelz.com)  
Rachel Pinkerman [inkerman@health.nv.gov](mailto:inkerman@health.nv.gov)  
Leon Ravin, MD [lravin@health.nv.gov](mailto:lravin@health.nv.gov)  
Theresa Wickham [twickham@health.nv.gov](mailto:twickham@health.nv.gov)

## Summary of testimony at Public Workshop:

A representative of the Nursing Board testified in support of the regulation changes and expressed endorsement of the inclusion of APRNs in the regulation as well as the proposed fees.

## Persons attending Public Hearing on January 6, 2021:

Linda Anderson lindaa@nphf.org  
Janet Ashby jashby@health.nv.gov  
Sydney Banks sb@jkbelz.com  
Joseph Filippi jpfilippi@health.nv.gov  
Fulmanti Manato jamesor@gmail.com  
Jo Malay jmalay@health.nv.gov  
Elizabeth Neighbors enighbors@health.nv.gov  
Leon Ravin, MD lravin@health.nv.gov  
Pierron Tackes ptackes@ag.nv.gov  
Theresa Wickham twickham@health.nv.gov

## Summary of testimony at Public Hearing:

- Elizabeth Neighbors, Ph.D., Statewide Forensic Director for DPBH offered testimony recommending the adoption of the regulation.
- Linda Anderson, Public Health Association, offered testimony in support of adopting the regulation.

## Written comment was offered by:

Norton Roitman, M.D.: This written comment was offered in response to the notification of proposed regulation and dissemination of the Small Business Impact Questionnaire. The suggestion in his written comment was that the statute and regulation should contain different provisions regarding which disciplines may complete competency evaluations. He suggested that evaluations involving medications should be done by psychiatrists or professionals who are trained regarding psychopharmacology. He also opined that the regulation should be clearer about the standards used for quality assurance. The panels doing review for quality assurance should include both public and private forensically trained personnel.

Martha Mahaffy, Ph.D.: Requested that Ethical Standards for Advanced Practice Registered Nurses should also have included the requirement to follow Ethical Standards for performing forensic assessments.

Steven Berger, M.D.: Dr. Berger stated in written comment that the fees for all disciplines should be the same because all disciplines are performing the same evaluations and require similar training.

#### **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:**

DPBH requested input from all certified competency examiners in the State of Nevada. The Small Business Impact Questionnaire was also sent to the Nevada Board of Nursing to post on their website and distribute as they saw fit, although, to date, only one Advanced Practice Registered Nurses has sought certification as a competency examiner. None of the entities notified have more than 150 employees. Most are very small businesses or independent providers.

A web based Small Business Questionnaire and a copy of the proposed regulation were sent on July 27, 2020 to:

- Email addresses of all certified competency evaluators.
- The Executive Director of the Nevada State Board of Nursing with a request to post on their website and disperse as the Board considered appropriate.
- The Division of Public and Behavioral Health Clinical Services website:  
[http://dpbh.nv.gov/Programs/Clinical\\_Services\\_-\\_Administrative\\_Health/](http://dpbh.nv.gov/Programs/Clinical_Services_-_Administrative_Health/)

The questions included in the Small Business Impact Questionnaire were:

- 1) How many employees are currently employed by your business?
- 2) Will a specific regulation have an adverse economic effect on your business?
- 3) Will the regulation have any beneficial effect upon your business?
- 4) Do you anticipate any adverse effect upon your business?
- 5) Do you anticipate any indirect beneficial effect on your business?

Summary of Responses:

Approximately seven (7) responses were received to the questionnaires that were sent to 86 evaluators, the Nursing Board and the DPBH Clinical Services website. The summary is included below, and the full Small Business Impact Statement is attached.

Summary of Response

**Summary of Comments Received**

**(7 responses were received out of 86 small business questionnaires distributed to certified examiners and posted on the NSBON and DPBH websites)**

<b>Will a specific regulation have an adverse effect on your business?</b>	<b>Will the regulation have any beneficial effect of your business?</b>	<b>Do you anticipate any indirect adverse effect upon your business?</b>	<b>Do you anticipate any indirect beneficial effect upon your business?</b>
Yes – 3	Yes – 0	Yes – 0	Yes – 1
No – 2	No – 2	No – 5	No – 4
Unknown – 2	Unknown – 2	Unknown – 2	Unknown - 2
Respondents who responded yes, primarily commented that they were concerned with adding cost to their licensing fees and training costs to maintain credentials.	No direct benefit to providers was mentioned,	No indirect adverse effect was mentioned in comments.	One respondent commented that quality assurance measures may benefit by producing better quality reports.

<b>Number of Respondents out of 86</b>	<b>Adverse economic effect?</b>	<b>Beneficial effect?</b>	<b>Indirect adverse effect</b>	<b>Indirect beneficial effect</b>
7	3	0	0	1

\*To review all comments submitted please reference Attachment: Small Business Impact Questionnaire for R181-18.

How other interested persons may obtain a copy of the summary:

Any other interested party may obtain a copy of the summary by e-mailing, calling, or mailing Janet Ashby, AAIV at the following contact sites:

Janet Ashby  
Administrative Assistant IV  
Nevada Division of Public and Behavioral Health  
Lake's Crossing Center  
500 Galletti Way  
Sparks, NV 89431  
(775)688-6654  
jashby@health.nv.gov

**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 statement should also explain the reasons for making any changes to the regulation as proposed.**

The Division considered the public comment that was offered by the individuals mentioned. The observation that only psychiatrists should perform evaluations involving pharmacological issues is not a possible change because Nevada Statute dictates otherwise. It also would not conform to national practice. There is a requirement that the treatment team psychiatrist be included as an evaluator in all inpatient assessments of competency restoration already. Consequently, no change was contemplated regarding that concern.

The suggestion that Forensic Ethical Standards for APRNs be included in the regulation was considered. No such standards have been identified to date.

The suggestion that fees for all disciplines should be the same was also considered. The differential fees are consistent with the differential charges for evaluations done by the different disciplines. Licensed Clinical Social Workers (LCSW) and APRN evaluators cannot charge as much for their evaluations because they only do misdemeanors, which has been a long-established community standard. Thus, there was consideration for this difference in establishing fees, but it was determined the difference in fees for the disciplines was appropriate.

**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 effect,**

Economic Effect on Business:

There does not appear to be an economic adverse effect on the businesses this regulation will oversee. The costs are a onetime initial certification fee and a relatively limited yearly renewal fee thereafter, which represents a very small percentage of the revenue these businesses are likely to generate. The benefit to passing the regulation will be better quality continuing education offerings for which the

evaluators would normally have to pay. In addition, the quality assurance program that will be added, supported by the fees, will improve the quality of reports for the community.

**Economic Effect on Public:**

The community will benefit from the fact that the fees will support enhanced training and knowledge for evaluators. This training should help to assure that determinations of competency are accurate and that no defendant goes forward with adjudication when they are not competent to do so. Conversely the added training should also help to screen individuals, who are not in need of psychiatric restoration intervention, from consuming resources unnecessarily.

**Immediate and Long-Term Effects on Business:**

Immediate effects will be the upgrade in continuing education offerings due to the ability to contract with providers outside of the Division. Long-term effects will hopefully attract a larger pool of evaluators and improve the general quality of reports provided to the court. Additional long-term effects should be a better organized and efficient provision of the certification process.

**Immediate and Long-Term Effects on Public:**

This greater efficiency should provide a long-term benefit to the community and the courts by keeping the system running more efficiently and shortening the necessary time invested in the adjudication process involving competency restoration. In general, it may also keep the community safer by providing better treatment to offenders.

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

The estimated cost to the agency of the enforcement of the regulations is \$16,475.

**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.**

There are no overlapping state or federal regulations with this proposed regulation.

**9. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions; and**

The regulation does not include any provisions that are more stringent than a federal regulation.

**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.**

The agency expects to collect about \$12,200 annually. These funds will be used as follows:

- Support the costs of tracking, maintaining, and issuing the certificates certifying the examiners.
- Contracting with various presenters in specialized areas of forensic assessment and treatment to provide ongoing continuing education to support the certification of examiners.
- Provide staff for report review and quality assurance procedures.

- Provide materials to staff for professional education regarding competency evaluation and develop a statewide newsletter to help examiners stay abreast of changes in the criminal justice system in Nevada.

**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).**