

NEVADA STATE BOARD OF OPTOMETRY



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NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of
LCB File No. R066-19

The Nevada State Board of Optometry

Tuesday, January 21, 2020 at Noon

The public is invited to attend telephonically, (712) 451-0223, Access code: 292304, or may appear & participate at the Board's physical location at 937 Mica Dr. #17, Carson City.

The following information is provided pursuant to the requirements of NRS 233B.0603: LCB File No. R066-19.

1. What is the need for and purpose of the proposed regulation or amendment?

The regulation is necessary to comply with the provisions of Assembly Bill (AB) 77 of the 2019 Legislative Session. AB77 complies with the Board's statutory duty to ensure the effectiveness of Chapter 636 of the Nevada Revised Statutes ("NRS"), carries out the provisions of NRS 636, and is to conform with and implement revisions as necessitated by the statutory changes to NRS 636 resulting from passage of Assembly Bill 77 in the 80th Session (2019) of the Nevada Legislature (revising and updating nearly the entirety of the chapter to conform to current practices in the profession and the licensing of optometrists in light of the changes in the educational and practical requirements of the profession, and bringing the procedural requirements of the chapter in line with communication and technological advances in the licensure, regulation and practice of optometry in Nevada). Following its enactment, the provisions of Assembly Bill 77 were (will be) codified in NRS 636.

2. What are the terms of substance of the proposed regulation?

The adopted regulation adds to and amends Chapter 636 of the Nevada Administrative Code provisions for the following:

- *Establish the prerequisites, requirements, conditions, and manner of submission by a natural person, of his or her initial application for a certificate by endorsement to treat persons diagnosed with glaucoma where such person: 1) holds a comparable license issued by the District of Columbia or any state or territory of the United States; (2) possesses qualifications that are equal to or substantially similar to the qualifications required for issuance of a license to engage in such activities in the state of Nevada; and (3) satisfies other requirements as directed or authorized by Assembly Bill 77 as adopted by the 2019 Session of the Nevada Legislature.*
 - *Provide for the establishment of a certificate to own a mobile optometry clinic to provide optometric services to certain populations.*
 - *Establishing constraints on certain advertising by optometrists and related entities, and the operation and performance of optometric services in relation to a retail business.*
 - *Updating procedural provisions relating to proceedings before the Board.*
 - *Fixing fees for licensure and certification and for other services provided by the Board, primarily to conform existing fees to a two- year licensing and certification period, establishing fees for three new certificates, and sufficient operating reserves for the agency's functioning at least for the second year of a two-year licensure period.*
 - *Detailing requirements, timing and fees for biennial renewal of optometric licenses and submission of continuing education, and allowing for issuance of new licenses and reduction of fees to be prorated for the remaining licensure period.*
3. What is the estimated economic effect of the regulation on the business which it is to regulate and on the public?

(a) Both adverse and beneficial effects. The Board does not foresee any major adverse effects of the adopted regulation to the business of optometry or to the public, although the transition to new systems may cause short-term disruption of Board operations and potentially delayed renewals.

The Board anticipates that the beneficial effects of the adopted regulation will include cost savings and reduced burdens on those who meet the criteria for treating persons diagnosed with glaucoma or who wish to offer mobile or substitute optometry services as provided in the adopted regulation. Additionally, clarification of the allowable relationships between optometry, ophthalmology and other businesses, the allowable fee arrangements for co-managed patients, the restrictions on shared facilities and service provision, and other aspects of the adopted regulations should help both optometrists, management companies, private equity investors and others understand how to best operate within the regulatory framework, and save time, energy and money in the process. All in all, these regulations should lessen the burden of administrative requirements on optometrists' business activity while maintaining the Board's public protection role.

(b) Both immediate and long-term effects. The Board anticipates both the immediate

and long-term beneficial effects of the adopted regulation will protect the health and welfare of Nevadans without unnecessarily burdening business activity and, in the longer term, should reduce administrative time and cost by regulators and licensees alike.

4. What is the anticipated adverse impact, if any?

a. *Optometrists*

No adverse impact is anticipated by this regulation.

b. *Public*

No adverse impact is anticipated by this regulation.

5. Do other regulations address the same problem(s)??

No.

6. Are alternate forms of regulation sufficient to address the problem(s)?

No.

7. What value does the regulation have to the public?

The regulation provides standards of care, training and education qualification for the delivery of optometry, while increasing access through proposed mobile optometry certification to medically underserved areas.

8. What is the anticipated cost of the regulation, both direct and indirect?

The Board estimates that the adopted regulation will result in minimal costs, if any, to the agency for enforcement after the initial costs of implementing the regulations, providing education to licensees and updating the Board's website with forms and fees reflecting the regulation changes. The Board expects that staff costs will be absorbed into the existing workloads of current staff; however, until it experiences a two-year licensing cycle, the actual costs and effects will be unknown.

9. Does the regulation establish a new fee or increase an existing fee?

To the extent that the anticipated 2-year fees may be interpreted as new fees, those fees are nearly the same or lower than those currently imposed for two one-year periods. Any cost savings anticipated from renewing licensure or certificates biennially are reflected in the fees to be imposed.

The fees are to be used to offset the cost of providing information via the Board's website, processing applications, issuing certificates and licenses and regulating licensees, in the same manner imposed upon any other professional licensee in Nevada. License and certification fees fund the entire operation of the Board with no reliance on the State General Fund.

The Board is unable to estimate the annual amount of new application fees that may be collected for the added certifications of mobile optometry, substitute optometry or certification to treat glaucoma by endorsement. These three programs were created by the recent statutory changes and adopted regulations. With regard to the biennial licensure period, several fees

were reduced due to the diminished staff time and costs required once the Board moves to a two-year renewal system.

10. Provide a statement which identifies the methods used by the agency in determining the impact of the proposed regulation on a small business, prepared pursuant to subsection 3 of NRS 233B.0608.

On June 25, August 8, October 1, October 11, November 5 and December 3, 2019, the Board discussed the potential text for the regulation at its regular board meetings. At each of those Board meetings, the public had access to two periods of opportunity for public comment. Additionally, the Board President regularly accepted public comment when a person had a relevant comment during the Board's discussions. Attending and participating in several of the discussions were representatives from the Nevada Optometric Association and the Nevada Academy of Ophthalmology, as well as various licensees. Based upon the discussion, the Board made some changes to the proposed language. No participant in the discussions presented any evidence or argument that the proposed language would have a positive or negative impact on small businesses.

On July 29 and 30, and again on October 1, 2019, the Board noticed and held public workshops to gain input regarding the language that became R06-19. Attending and participating in the workshop were representatives from the Nevada Optometric Association and the Nevada Academy of Ophthalmology, as well as several private optometric practitioners. No participant in the discussion presented any evidence or argument that the proposed language would have a positive or negative impact on small businesses.

Additionally, on September 10, 2019, the Board directed a survey via e-mail to every seventh optometry licensee, alphabetically, of the 504 licensees on file that date. Approximately 8% of those surveyed submitted a response. The Board considered those responses at its next regular meeting and modified the draft regulations to address each concern raised by survey respondents.

11. Provide a description of any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates, and a statement why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, state the name of the regulating federal agency.

None of the proposed regulation changes duplicates or is more stringent than any federal, state, or local standards regulating optometry.

12. If the regulation is required pursuant to federal law, provide a citation and description of the federal law.

The regulation is not required pursuant to federal law.

13. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, provide a summary of such provisions.

None of the proposed regulation changes duplicates or is more stringent than any federal, state, or local standards regulating optometry.

Persons wishing to comment upon the proposed action of the Nevada Board of Optometry may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to:

Nevada Board of Optometry
P.O. Box 1824
Carson City, NV 89702
Email: admin@nvoptometry.org

Written submissions must be received by the Nevada Board of Optometry on or before January 14, 2020. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada Board of Optometry may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be Adopted will be on file at the State Library, Archives and Public Records, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be Adopted will be available at the Nevada Board of Optometry, 937 Mica Drive #17, Carson City, NV 89702, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to [NRS 233B.0653](#), and on the Internet at <http://www.leg.state.nv.us/>. Copies of this notice and the proposed regulation will also be mailed to members of the public at no charge upon request.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

The Board posted this notice at the board office, on the board website (nvoptometry.org), the State of Nevada Public Notices website (<https://notice.nv.gov>), to all persons on the agency's public distribution list for public meetings, and in the following locations:

- Office of the Nevada Attorney General, 5420 Kietzke Lane, Reno & 555 E. Washington Ave. #3900, Las Vegas; and Douglas County Courthouse, 1616 8th Street, Minden.

Notice has been either emailed or faxed to each NV County Public Library listed below for posting;

NEVADA COUNTY PUBLIC LIBRARIES

Carson City Library 9000 North Roop Street Carson City, Nevada 89701-3101 Posting@carsoncitylibrary.org	Lincoln County Library 63 Main Street Pioche, Nevada 89043 Fax: (775) 962-5244
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Churchill County Library 553 S. Main Street Fallon, Nevada 89406-3306 dfwargo@churchillcontylibrary.org	Lyon County Library System 20 Nevin Way Yerington, Nevada 89447-2399 Fax: (775) 463-6646
Storey County Treasurer and Clerk's Office Drawer D Virginia City, Nevada 89440 Fax: (775) 847-0921	Mineral County Public Library P.O. Box 1390 Hawthorne, Nevada 89415 Fax: (775) 945-0703
Douglas County Public Library 1625 Library Lane Minden, Nevada 89423-0337 Fax: (775) 782-5754	Pershing County Library 1125 Central Avenue Lovelock, Nevada 89419 Fax: (775) 273-0421
Nevada State Library, Archives, and Public Records 100 North Stewart St., Carson City, NV 89701 Fax: 775-684-3330 jholt@admin.nv.gov	Nevada State Legislature 401 S. Carson St., Carson City, NV 89701 Fax: 775-684-6705 c/o Legislative Police Meghan.egli@lcb.state.nv.us
Washoe County Library 301 South Center St., Reno, NV 89505 Fax: 775-327-8390 library-postinggroup@washoecounty.us	Clark County Library 1401 E. Flamingo Rd., Las Vegas, NV 89119 scott@lvccld.org or balsaran@lvccld.org or okabayashij@lvccld.org
Elko County Library, Elko pdunn@elkocountynv.net or krkincai@elkocountynv.net	Battle Mountain Branch Library (Lander County) 625 South Broad Street Battle Mountain, Nevada 89820 Fax: (707) 269-1900 or (707) 269-7062
Eureka County Library 10190 Monroe Street Eureka, Nevada 89316	Tonopah Public Library (Nye County) P.O. Box 449 Tonopah, Nevada 89049 Fax: (775) 482-5143
Humboldt County Library 85 East 5 th Street Winnemucca, Nevada 89445-3095 Fax: (775) 623-6438	White Pine County Library 950 Campton Street Ely, Nevada 89301 Fax: (775) 289-3640
Esmeralda County Library Corner of Crook & 4 th Street P.O. Box 430 Goldfield, Nevada 89013-0430	

The Board will take reasonable measures to accommodate persons with disabilities who wish to attend the meeting. please call Executive Director Caren C. Jenkins at (775) 883-8367 in advance to make arrangements.

MEETING MATERIALS: Following this page, please either make free copies of the regulation available, post one copy of the entirety of the regulation found at https://nvoptometry.org/wp-content/uploads/2019/12/R_066-19_PREV-FINAL-NOTICE.pdf or provide this link to the public. The public may also request them in advance by email at admin@nvoptometry.org. THANK YOU!