

**LEGISLATIVE REVIEW OF THE NEVADA STATE BOARD
OF OPTOMETRY'S ADOPTED REGULATIONS AS
REQUIRED BY ADMINISTRATIVE PROCEDURES ACT,
NRS 233B.066**

**Informational Statement
LCB FILE NO. R066-19**

The Nevada State Board of Optometry submits the following statement for its adopted amendments to Nevada Administrative Code (“NAC”) Chapter 636.

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

To comply with the Board’s statutory duty to ensure the effectiveness of Chapter 636 of the Nevada Revised Statutes (“NRS”), carry out the provisions of NRS 636, and 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.

Specifically, the adopted regulation adds to and amends NAC 636 to:

- 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.

2. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary.

In early September, copies of the text of the proposed regulation and notice of various workshops were e-mailed to over 500 licensees, as well as to other interested parties on the Board's mailing list and to any persons who had specifically requested such notice. These documents were also made available at the Nevada State Board of Optometry website at <http://www.optometry.org> and the Nevada Public Notice Website at <http://notice.nv.gov>. In addition to these Internet locations, the notices were posted at various prominent government offices throughout the state, such as the Grant Sawyer State Office Building in Las Vegas, the Douglas County Courthouse in Minden, the Office of the Nevada Attorney General in Reno and at the Board's office location in Carson City.

Publicly noticed in the same manner as stated above, the Revised Proposed Regulation R066-19 dated December ____, a Notice of Intent to Act Upon the Regulation and the Small Business Statement were provided to all county libraries for posting. Notice of intent to act upon the regulation, accompanied by the LCB's draft of revised proposed regulation and the Board's small business statement, was submitted to the LCB for posting on the Nevada Legislative website.

In late 2018, in anticipation of the Board's expected proposals to the Nevada Legislature, each optometrist licensed in Nevada was invited to provide input for changes to NRS and NAC chapters 636. Numerous public workshops, brainstorming sessions and invitations to provide input revealed a plethora of changes needed to the statutory and regulatory materials. Once the Legislature approved AB 77 in the 2019 session, making sweeping changes to the optometry statutes, the Board again reached out to licensees and members of the interested public to gather input for the regulations in light of the changed statutes. Three workshops were noticed, promoted and held. One took place in Reno on July 29, 2019, a statewide telephonic workshop was held on July 30, 2019 with significant participation from southern Nevada, and a final public workshop was held telephonically on October 3, 2019. Further, in addition to solicitation of such comments through its website, the Board reached out to a variety of Stakeholders, including the privately operated Nevada Optometric Association.

As reflected in the Board minutes, no public comment was received regarding the impact of the regulatory changes on small businesses. What's more, the Board subsequently solicited additional receipt of written comments, testimony, or documentary evidence, and advised that oral comments on the proposed regulations may be made at the next Board meeting. The Board received no public response other than from individuals who had actively participated in the development of the regulations.

Minutes of the workshops are attached hereto as Exhibit A, Part I, II and III

Thereafter, for its Board meetings on August 8, 2019 and October 3, 2019, the Board issued and posted notice of its intent to act upon a regulation based upon the Draft of Revised Proposed Regulation, again soliciting comments. All public response was heard and considered, and the Board adjusted the proposed regulation based on that input. The Board further issued and posted its Notice of Public Meetings with the Agendas for adoption hearings to be held on October 1, 2019 and December 3, 2019, including adoption of the proposed amendments to NAC 636.

As duly noticed, the public hearing for adoption of the proposed regulation was held by telephone, with full public access from anywhere in the nation. Minutes of the public hearing are attached hereto as "Exhibit B."

Any public comment or testimony provided concerning the proposed regulations could have been obtained from the Board of Optometry office in Carson City by mail, telephone request or by email at any time. Interested persons may obtain a summary of responses to the Board's solicitation of comments by contacting the Board office via email at admin@nvoptometry.org.

3. The number of persons from the public who:

Attended the July 29 Workshop in Reno	20
Testified at the July 29 Workshop	17
Attended the July 30 telephonic Workshop	14
Testified at the July 30 Workshop	8
Attended the October 1 telephonic Workshop	13
Testified at the October 1, Workshop	3
Attended the October 1, 2019 Adoption Hearing	3
Testified at the October 1, 2019 Adoption Hearing	1
Submitted written comments at the adoption hearing	0

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented (if provided to the agency), for each person who testified at each hearing and submitted to the agency written statements.

This information, to the extent that it is available, is provided in the minutes of the workshops and hearings.

5. 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.

Comments were solicited from affected businesses in the same manner as they were solicited from the licensees or the public as provided in the response to Item #2, above. In addition, in September, every 7th licensee was surveyed to gather input about the regulation’s impact on them as small businesspersons. A summary of those responses are submitted with this document, and may be obtained from the Board office by emailing admin@nvoptometry.org.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

At the conclusion of the noticed public hearing on December 3, 2019, the permanent

LCB Draft of Revised Proposed Regulation R066-19, dated December 1, 2019. Having contemplated the goals to be served by the regulations, and the text of the proposed regulations since the time they were originally drafted and revised, as well as considering them throughout the workshop and hearing proceedings, the Board determined that the LCB draft adequately set forth the desired language in such manner as to not merit significant change(s) to the provisions. However, LCB insisted on preparing a second draft of the proposed regulations, which appears before you today, reflecting those changes approved by the Board.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and**
- (b) Both immediate and long-term effects.**

Effect on Optometrists:

- (a) Both adverse and beneficial effects. The Board does not foresee any major adverse effects of the adopted regulation to the business of optometry, although the transition to new systems may cause short-term disruption of Board operations. The Board anticipates that the beneficial effects of the adopted regulation to result in 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 in Nevada, as provided in the adopted regulation, without unnecessarily burdening business activity but 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 that will protect the health and welfare of Nevadans without unnecessarily burdening business activity and, in the longer term, should reduce time and cost for regulators, licensees and patients alike.

Effect on the Public:

- (a) Both adverse and beneficial effects. The Board does not foresee any major adverse effects of the adopted regulation to the public, although the transition to new systems may cause short-term disruption of Board operations. The Board's public protection role will also have increased attention without the repetition of renewing licenses annually. Beneficial effects include increased focus on services available to patients and a reduction in the administrative burdens on licensees, allowing more time for patient contact. Mobile optometry will serve patients with limited ability to travel and patients in rural areas who may not have current access.
- 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 time, burden and cost for regulators, licensees and patients alike.

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

The Board estimates that the adopted regulation will result in minimal costs, if any, to the agency for enforcement. The Board expects that any costs will be absorbed into the existing workloads of current staffing levels; however, until it experiences a two-year licensing cycle, the actual effects will be unknown.

9. 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, the name of the regulating federal agency.

There are no other state or government agencies regulations known by the Board that the proposed regulation overlaps or duplicates.

10. 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 regulation does not include provisions that are known to be more stringent than a federal regulation which regulates the same activity.

11. If the regulation provides a new fee or increases an existing fee, the amount the agency expects to collect and the manner in which the money will be used.

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 processing applications, issuing certificates and licenses and regulating the 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 application fee(s) that may be collected for the added certification of mobile optometry, substitute optometry or certification to treat glaucoma by endorsement.