



DIVISION OF PUBLIC & BEHAVIORAL HEALTH

Health Care Quality and Compliance

Health Facilities Licensing

LCB File No. R016-20

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 449 into compliance with Nevada Revised Statutes (NRS) 449.103 and NRS 449.104.
 - **NRS 449.103** requires the Board of Health to adopt regulations which requires a facility, defined as a medical facility, facility for the dependent or facility which is otherwise required by regulations adopted by the Board pursuant to NRS 449.0303 to be licensed, to conduct training relating specifically to cultural competency for any agent or employee of the facility who provides care to a patient or resident of the facility so that such an agent or employee may better understand patients or residents who have different cultural backgrounds, including, without limitation, patients or residents who are:
 - (a) From various gender, racial and ethnic backgrounds;
 - (b) From various religious backgrounds;
 - (c) Lesbian, gay, bisexual, transgender and questioning persons;
 - (d) Children and senior citizens;
 - (e) Persons with a mental or physical disability; and
 - (f) Part of any other population that such an agent or employee may need to better understand, as determined by the Board.
2. The training relating specifically to cultural competency conducted by a medical facility, facility for the dependent or facility which is otherwise required by regulations adopted by the Board pursuant to [NRS 449.0303](#) to be licensed pursuant to subsection 1 must be provided through a course or program that is approved by the Department of Health and Human Services.
 - **NRS 449.104** requires the Board of Health to adopt regulations that require a medical facility, facility for the dependent or facility which is otherwise required by regulations adopted by the Board pursuant to [NRS 449.0303](#) to be licensed to:
 1. Develop policies to ensure that a patient or resident is addressed by his or her preferred name and pronoun and in accordance with his or her gender identity or expression;
 2. Adapt electronic records to reflect the gender identities or expressions of patients or residents with diverse gender identities or expressions, including, without limitation:
 - (a) If the facility is a medical facility, adapting health records to meet the medical needs of patients or residents with diverse sexual orientations and gender identities or expressions, including, without

limitation, integrating information concerning sexual orientation and gender identity or expression into electronic systems for maintaining health records; and

(b) If the facility is a facility for the dependent or other residential facility, adapting electronic records to include:

- (1) The preferred name and pronoun and gender identity or expression of a resident; and
- (2) Any other information prescribed by regulation of the Board.

These are new statutes that were passed during the 2019 legislative session and require the Board of Health to adopt regulations to carry out the provisions of the statutes.

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 Workshop - January 29, 2020

A public workshop was held via videoconference on Wednesday, January 29, 2020 at 10 a.m. at the following locations:

Division of Public and Behavioral Health	Division of Public and Behavioral Health	Division of Health Care Financing and Policy
Bureau of Health Care Quality and Compliance	Bureau of Health Care Quality and Compliance	1010 Ruby Vista Drive #103, Elko, NV 89801
727 Fairview Drive, Suite E Carson City, NV 89701	4220 South Maryland Parkway, Suite 810, Building D Las Vegas, NV 89119	

Below is a summary of the feedback provided during the public workshop.

- GENERAL COMMENTS
 - Can existing regulations be fixed instead of rewriting them?
 - Deadlines specified in the regulations are too tight – they should be extended so facilities can meet the standards.
 - Annual review needs a longer time period to respond...not enough time to be thorough.
 - Changing “maternal” to “pregnant may be appropriate but is beyond the scope of the bills”.
 - Reference to Indirect Discrimination is not in the bills, is vague, and not understood, so should be omitted. LTC (long term care) provider is not responsible.
 - “Agent” should be clarified. It doesn’t include most physicians.
- TRAINING
 - The draft regulation doesn’t distinguish between courses from the training division, a private group, or in house to the facility.
 - The state needs to offer a standard program and allow the facility to modify.
 - The State needs to create an online program offered at no cost to the facility (multiple comments).
 - Section 5 – course content – inclusion of ‘self-reflection’ is unusual. Long term care provider is not responsible. Providing the document should be sufficient and should not be required.
 - Training pulls the caregiver away from provider care – regulations should be minimal to meet statutory requirement but nothing more.
 - The curriculum advisory group (CCAG) doesn’t include a member from a facility.

- CCAG is not authorized by the bills, though may need to be considered/no statutory requirement/no health care facility involvement.
- MEDICAL RECORDS
 - Altering historical medical records is dangerous, and the H&P (History and Physical) process during intake should cover necessary issues.

Public Hearing – September 4, 2020

A public hearing was held via teleconference only 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 the possible exposure or transmission of COVID-19 (Coronavirus).

Summary of hearing comments:

- Full support of regulations
- Support of regulations – Benefits to the LGBT plus community includes:
 - Addressing lack of adequate training in facilities
 - Addressing discrimination faced in health care facilities

No one testified in opposition to the adopted regulations.

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, co-Bureau Chief 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 OR
 Online:

http://dpbh.nv.gov/Reg/HealthFacilities/State_of_Nevada_Health_Facility_Regulation_Public_Workshops/

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:

- (a) Name
- (b) Telephone Number
- (c) Business Address
- (d) Business telephone number
- (e) Electronic mail address; and
- (f) Name of entity or organization represented

Public Workshop - January 29, 2020

A total of thirty-eight (38) individuals signed the public workshop sign in sheets. Of those, two individuals noted they were opposed, and one person noted they were in support. The remaining individuals did not indicate whether they were in support or opposed to the proposed regulations.

Please see attached public workshop sign in sheets for name, entity or organization represented, and electronic mail address.

Public Hearing – September 4, 2020

Forty (40) participants joined the call but as there were other agenda items on the State Board of Health meeting it is unknown if all participants called in for LCB File No. R016-20.

The following two individuals testified in support of the adopted regulations:

- Andre Wade representing Silver State Equality
- Stephen Page representing HRC-Nevada

No one testified in opposition to the adopted regulations.

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 impacted licensed health care facilities in Nevada with 150 or fewer employees, and from subscribers to two opt-in email lists of persons who are interested in information relative to the aforementioned health facilities.

A web-based Small Business Impact Questionnaire and a copy of the proposed regulations were sent on Nov. 13, 2019, to:

- Email addresses associated with all currently licensed Nevada health care facilities (1,903 addresses)
- Medical facilities listserv (approx. 510 email addresses)
- Nonmedical facilities listserv (approx. 414 email addresses)

The questions 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 Responses

Out of approximately 2,827 small-business impact questionnaires distributed, 58 responses were recorded as received. (Responses to all questions are not mandatory, so the overall number recorded responses do not necessarily correlate to the number of responses to any given question.)

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 – 18 No – 14	Yes – 7 No – 23	Yes – 18 No – 11	Yes – 7 No – 20
Comments* – The bullets below summarize major points from respondent comments. -Length of training (more than 1 hour is extreme strain) -Changes to computer system -Proposed regs state “almost nothing” about curriculum. -Need free, online training -Changes to computer tracking -Possible daily fines for noncompliance -Requirement for experienced, qualified instructor	Comments* - Some beneficial effects included: - “Home health staff and field staff will be considerate to all different cultures we take care at home.” - “We have an extremely diverse workforce in our city. It is important for team building and better caregiving to teach this information to the employees.”	Comments* – The bullets below summarize major points from respondent comments*. -Increased reporting -Cost passed to residents. -Overhead costs -Time spent on processes vs. resident care -Adding significant costs for training -Penalties (for noncompliance) -Increase in cost for onboarding of new employees	Comments* – Some indirect beneficial effects included: - “Better trained team members with awareness of a variety of areas is always helpful. It comes down to time involvement and content/follow up required- and how that is balanced with other regulations and priorities.” - “Helps my field staff how to handle different culture of patients.” - “I think as humans within this world, it is important to offer education on how to live and enjoy peoples differences and various cultures and religions.”

*To review all comments submitted please reference Attachment: Cultural Competency Proposed Regulations Small Business Impact Questionnaire Responses.

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, Co-Bureau Chief 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 OR

Online:

http://dpbh.nv.gov/Reg/HealthFacilities/State_of_Nevada_Health_Facility_Regulation_Public_Workshops/

- 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 proposed regulations were revised based on feedback during the regulation development process as well as from LCB. The major changes included:

- 1) Adding the course materials that must be included in a course or program.
- 2) Removing the establishment of a Cultural Competency Advisory Group.
- 3) Limiting the scope of the organ inventory a medical facility is required to obtain, only if the gender identity or expression of the patient or resident is different than the gender identify or expression of the patient or resident that was assigned at birth.
- 4) Allows a facility to develop and adopt a written policy on how a complaint filed with the facility is documented, investigated and resolved and removed prescriptive language, allowing facilities flexibility in developing a policy tailored to each individual facility.
- 5) Revised the requirements related to providing statements, notices and information required by the regulations to be in other languages as the Department determines is appropriate based on the demographics of Nevada. It also requires facilities to make reasonable accommodations in providing statements, notices and information, pursuant to the proposed regulations, for patients or resident who are unable to read, are blind or visually impaired, have communication impairments, or do not read or speak English or any other language in which the statements, notices and information are written.

The reasons for the changes include bringing the adopted regulations into compliance with the rule making process, to provide increased flexibility to facilities in carrying out the adopted regulations and to accommodate patients and residents noted in number 5 above, while limiting the impact to facilities.

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.

Beneficial effects: Although some respondents included beneficial effects on their business as noted in the summary of responses section, it was not clear that these would result in direct economic beneficial effects, but responses to the small business impact questionnaire included that teaching the information in the regulations is important for team building and better caregiving and that better trained team members with awareness of a variety of areas is always helpful.

According to the Georgetown University, McCourt School of Public Policy, Health Policy Institute:

“A culturally competent health care system can help improve health outcomes and quality of care, and can contribute to the elimination of racial and ethnic health disparities. Examples of strategies to move the health care system towards these goals include providing relevant training on cultural competence and cross-cultural issues to health professionals and creating policies that reduce administrative and linguistic barriers to patient care.”

“People with chronic conditions require more health services, therefore increasing their interaction with the health care system. If the providers, organizations, and systems are not working together to provide culturally competent care, patients are at higher risk of having negative health consequences, receiving poor quality care, or being dissatisfied with their care.”

According to internal analysis, improved patient satisfaction through better interactions with staff may lead to improved public relations and a larger customer base. Cultural competency training, stricter anti-

discrimination requirements, and adapting health records to meet the medical needs of patients may mitigate risk from poor patient care and may reduce potential for lawsuits and associated financial loss.

Adverse effects: Although the Division does recognize that there may be a direct adverse financial effect to certain facilities to carry out the provisions of the adopted regulations, the regulations carry out the provisions of NRS 449.0302, and NRS 449.101 to NRS 449.104 while taking measures to reduce the financial impact of the adopted regulations on small businesses. Possible monetary sanctions for noncompliance with training and posting requirements may also result in an adverse effect, but in most instances facilities will be required to submit and implement a plan of correction to come into compliance without the imposition of monetary penalties; therefore, the overall administrative penalty impact on small business is expected to be minimal.

Immediate effects: Licensed health care facilities impacted by the statutes will be required to implement the antidiscrimination measures outlined in statutes and in the adopted regulations and impacted facilities will begin to conduct training relating specifically to cultural competency for any agent or employee of the facility who provides care to a patient or resident of the facility so that such an agent or employee may better understand patients or residents who have different cultural backgrounds.

Long-term effects: Anticipated improved health outcomes and quality of care as residents and patients who receive culturally competent care are less at risk of having negative health consequences, receiving poor quality care, or being dissatisfied with their care.

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

These proposed regulations will not add any costs to the current regulatory enforcement activities conducted by HCQC. The facilities impacted by the new laws are already licensed and inspected by HCQC and these new training and posting/patient notification requirements can be incorporated into HCQC's current workload.

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.

Although certain federal regulations address discrimination in health care facilities, such as the Centers for Medicare and Medicaid Services (CMS), State Operations Manual, Appendix PP – Guidance to Surveyors for Long Term Care Facilities, they do not address all of the areas required to come into compliance with NRS 449.103 and NRS 449.104, which fill gaps in the federal standards.

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

A summary of provisions which are more stringent than federal regulations includes regulatory requirements required to carry out the provisions of Nevada Revised Statutes including:

- a) The posting requirement pursuant on NRS 449.101; and
- b) The regulations requiring training relating specifically to cultural competency for any agent or employee of an impacted facility pursuant to NRS 449.103.

It also includes regulations requiring a facility to develop and adopt a written policy on how a complaint by a resident or patient who has experienced prohibited discrimination files with the facility is documented,

investigated and resolved and requires a facility to maintain a log that lists certain information related to the complaint.

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.

These adopted regulations do not provide for a new fee or increase to any existing fee associated with health facility licensing.