

Steve Sisolak
Governor

Richard Whitley, MS
Director



**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

Ihsan Azzam,
Ph.D., M.D.
Chief Medical Officer

DIVISION OF PUBLIC & BEHAVIORAL HEALTH

Bureau of Health Care Quality and Compliance

LCB File No. R093-22

Informational Statement per NRS 233B.066

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

The proposed changes will revise Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) and are being proposed in accordance with the following authority: §§ 1-5, NRS 433.324, 433.631 and 433.639.

The proposed regulations are needed in order to come into compliance and/or align regulations with NRS 433.631 and NRS 433.639.

NRS 433.631 allows the Division to impose upon an adult who violates applicable sections of NRS 433.631, a civil penalty in an amount prescribed by regulation of the Board.

NRS 433.639 requires the Division to adopt regulations to establish civil penalties to be imposed against any person or entity that fails to comply with the requirements of applicable sections of NRS 433.639 and allows the Division, in consultation with each agency which provides child welfare services, to establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor described in the statutes who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or a violation of NRS 201.540, 201.560, 392.4633 or 394.366 made against him or her to continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report.

The proposed changes to Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) include the following:

Existing law prohibits a person from providing or supervising the provision of peer recovery support services for compensation as a regular part of his or her job duties or holding himself or herself out as authorized to provide or supervise the provision of such peer recovery support services unless he or she holds an appropriate certificate issued by the Nevada Certification Board or its successor organization. (NRS 433.631) Unless specifically authorized by the Division of Public and Behavioral Health of the Department of Health and Human Services, existing law also prohibits a person who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or certain related violations from serving as an employee or

independent contractor who provides or supervises the provision of peer recovery support services in a position where the person has regular and substantial contact with minors. (NRS 433.639) Section 2 prescribes a process for the investigation of a complaint alleging a violation of those requirements. It also authorizes the Division to disclose any information collected as part of such an investigation to the Nevada Certification Board or its successor organization.

Section 3 prescribes the civil penalties that the Division may impose for such a violation. It also authorizes a person aggrieved by the imposition of such a civil penalty to file an appeal with the Division.

Section 4 provides that: (1) a complaint and any documents and information considered by the Division when determining whether to impose a civil penalty are public records; and (2) all other documents and information relating to an investigation conducted pursuant to section 2 are confidential.

Existing law authorizes the Division to establish by regulation a process by which it may review evidence upon request to determine whether an employee or independent contractor who has, within the immediately preceding 5 years, had a substantiated report of child abuse or neglect or certain related violations made against him or her may continue to provide or supervise the provision of peer recovery support services and have regular and substantial contact with minors despite the report. (NRS 433.639) Section 5 of this regulation establishes such a process.

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;

The public workshop and hearing notices were posted in locations accessible to the public. Please refer to the public workshop notice and public hearing notice for a listing of posting locations.

Public comment was solicited via a public workshop on June 8, 2022, and a public hearing held on December 2, 2022.

PUBLIC WORKSHOP – SUMMARY OF PUBLIC RESPONSE

Ten individuals, excluding Division of Public and Behavioral Health staff, attended the hearing, although some of the individuals may have attended to hear other public workshop agenda items. No one testified or submitted written statements to be considered as the public workshop regarding the proposed regulations.

PUBLIC HEARING –SUMMARY OF PUBLIC RESPONSE

Ninety-one (91) individuals attended the public hearing, either virtually or in person. As there were several agenda items, not all attendees may have been in attendance for the hearing on these proposed regulations. No one testified in support or in opposition to the proposed regulations. No one submitted written statements to be considered at the public hearing regarding the proposed regulations.

Any 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:

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 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 (June 8, 2022)

Ten individuals, excluding Division of Public and Behavioral Health staff, attended the hearing, although some of the individuals may have attended to hear other public workshop agenda items. No one testified or submitted written statements to be considered as the public workshop regarding the proposed regulations.

PUBLIC HEARING (December 2, 2022)

Ninety-one (91) individuals attended the public hearing, either virtually or in person. As there were several agenda items, not all attendees may have been in attendance for the hearing on these proposed regulations. No one testified in support or in opposition to the proposed regulations. No one submitted written statements to be considered at the public hearing regarding the proposed 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.

The Division of Public and Behavioral Health requested input from peer recovery support specialists. Section 36 of Senate Bill 69 eliminated the licensure and regulation of peer support recovery organizations by repealing the applicable sections of NRS 449; therefore, the Division did not have any licensed peer support recovery organizations to conduct a small business impact study. To obtain feedback from the peer recovery support specialist industry the Nevada Certification Board, which certifies Peer Recovery Support Specialists, sent out an email to certified peer recovery support specialists, and others on their listserv, such as those behind on their applications or renewals, with information on how the industry could provide their feedback on the proposed regulations, including a link to the Division’s webpage, with links to the proposed regulations and small business impact questionnaire.

In addition, the above information was sent to the Division’s licensed health care facilities through its medical and nonmedical Listservs.

The Division also consulted with the Division of Child and Family Services, the Clark County Department of Family Services, and the Washoe County, Human Services Agency, in accordance with Section 15.6 of Senate Bill 69.

A Small Business Impact Questionnaire was sent to Peer Recovery Support Specialists certified by the Nevada Certification Board and others as noted above. On 3/25/2022, the Nevada Certification Board, notified the Division that the Certification Board’s listserv was at 308 subscribers and that 105 people had opened the above-mentioned email. 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 (Three responses were received out of 308 small business impact questionnaires distributed)			
Will a specific regulation have an adverse economic effect upon your business? Yes = 2	Will the regulation (s) have any beneficial effect upon your business? Yes = 1 No = 2	Do you anticipate any indirect adverse effects upon your business? Yes = 1 No = 2	Do you anticipate any indirect beneficial effects upon your business?

No = 1			Yes = 1 No = 2
<p>Comments Any charge to these facilities will increase the hardship on any other business they have expenses accounts with.</p> <p>Potentially up to \$10,000, if found non-compliant until remedied. This would be up to 8% of our annual budget as we are a very small operation with 2 FT and 2 PT employees and area non-profit.</p>	<p>Comments It will help our clients with substance abuse to live better lives making our job easier.</p> <p>I do not see any cost savings to us from this.</p>	<p>Yes, cost will increase</p> <p>This could have an adverse effect if someone complained about our support services. However, I do not anticipate that anyone would register a valid complaint.</p>	<p>It might be beneficial as it codifies our responsibilities and rights if a complaint is made against our Peer Support Specialists.</p>

PUBLIC WORKSHOP (June 8, 2022)

Ten individuals, excluding Division of Public and Behavioral Health staff, attended the hearing, although some of the individuals may have attended to hear other public workshop agenda items. No one testified or submitted written statements to be considered as the public workshop regarding the proposed regulations.

PUBLIC HEARING (December 2, 2022)

Ninety-one (91) individuals attended the public hearing, either virtually or in person. As there were several agenda items, not all attendees may have been in attendance for the hearing on these proposed regulations. No one testified in support or in opposition to the proposed regulations. No one submitted written statements to be considered at the public hearing regarding the proposed regulations.

Other interested persons may obtain a copy of the summary by calling, writing or emailing:

Nevada Division of Public and Behavioral Health
 Bureau of Health Care Quality and Compliance
 Attention: Leticia Metherell
 727 Fairview Drive, Suite E
 Carson City, NV 89701
 Phone: 775-684-1030
 Email: lmetherell@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.

After consideration of public comment, the regulations were adopted without changing any part of the proposed regulations. The reasons for adopting the proposed regulations without changing any part of the proposed regulations include:

NRS 433.639 requires the Division to adopt regulations to establish civil penalties to be imposed against any person or entity that fails to comply with the requirements of NRS 433.639. The adopted regulations bring the Division into compliance with NRS 433.639. In addition, NRS 433.631 allows the Division to impose upon an adult who violates this section a civil penalty in an amount prescribed by regulation of the Board of Health. The adopted regulations provide a civil penalty not to exceed \$100 for each violation (not to exceed \$10,000 in the aggregate) after an investigation is conducted and substantiated and notice is given pursuant to NAC 439.345. The adopted regulation was not changed because this fiscal impact can be avoided by remaining in compliance with the provisions of NRS 433.631 or 433.639. In addition, a person or entity may avoid prolonged daily monetary penalties by coming into compliance with the applicable statutes as soon as the relevant person or entity has been notified of the violation and comes into compliance with the applicable statutes.

6. The estimated economic effect of the regulation on the business which it is to regulate and on the public. Anticipated effects of Chapter 433 of the Nevada Administrative Code (LCB File No. R093-22) on the businesses which it regulates:

A. *Adverse effects:* The overall adverse financial effects are anticipated to be none to minimal for most small businesses, with the potential for an adverse financial impact on small businesses that are found not to be in compliance with the sections of statutes which allows for the imposition of a civil penalty. It will not have an adverse effect on small businesses and/or individuals that remain in compliance with NRS 433.631 and NRS 433.639. For example, a person or entity, after employing a person to provide or supervise the provision of peer recovery support services in a position where the person has regular and substantial contact with minors or retaining a person as an independent contractor to provide or supervise the provision of peer recovery support services in such a position, does not complete a child abuse and neglect screening or terminate the employment or contract of the employee or independent contractor, in accordance with NRS 433.639, may be subject to the civil penalties established in the proposed regulations.

In addition, it may also have an adverse financial impact on adults who violate NRS 433.631 for providing peer recovery support services for compensation as a regular part of their job duties or holds themselves authorized to provide such services without holding a valid certificate as a peer support specialist issued by the Nevada Certification Board, or supervise the provision of such services, without holding a valid certificate as a peer recovery support specialist supervisor issued by the Nevada Certification Board.

Indirect adverse effects - The proposed regulations may result in an individual filing a complaint with the Division related to statutory violations; therefore, resulting in increased staff time and potential costs to address the complaint.

B. *Beneficial:*

There is no direct financial beneficial effect anticipated for small businesses. Indirect beneficial effects may allow individuals that would normally be disqualified from providing or supervising the provision of peer recovery

support services and have regular and substantial contact with minors despite, the report, to continue to work and provide these services, if the petition submitted pursuant to section 5 of the proposed regulations to continue to provide these services is granted. This may reduce costs related to staff turnover.

C. Immediate:

There are no immediate beneficial or adverse effects expected for individuals and small businesses that remain in compliance with the applicable statutory requirements. For those found to be in non-compliance with the applicable statutory requirements, there may be a negative financial impact if civil penalties for non-compliance are imposed in accordance with the proposed regulations. Penalties imposed pursuant to the proposed regulations must not exceed \$10,000 in the aggregate. The exact amount of the financial impact is unknown because it is unknown the number of individuals that will be found to be in non-compliance; therefore, subject to a monetary penalty.

D. Long-term:

The long-term negative financial effects would be dependent on whether individuals and small business remain in compliance with the applicable statutory requirements. As this is unknown, the amount of the negative financial impact cannot be determined. There may be a positive financial impact for individuals and small businesses in which the owner or employees are found to have a substantiated report of child abuse or neglect or found to be in violations of certain statutes pursuant to Section 5, who work with minors, and are able to continue to work after a successful petition to the Division allowing the individual to provide peer recovery support services to minors.

Anticipated effects on the public:

A. Adverse:

There are no anticipated negative financial impacts expected on members of the public not engaged in providing or supervising the provision of peer recovery support services. The anticipated impacts for members of the public providing or supervising the provision of peer recovery support services would be the same as the adverse effects indicated in “1. Anticipated effects on the business which NAC 433 regulates”. There are also no anticipated adverse financial effects for members of the public who utilize peer recovery support services.

B. Beneficial:

The anticipated beneficial effects for members of the public providing or supervising the provision of peer recovery support services would be the same as the beneficial effects indicated in “1. Anticipated effects on the business which NAC 433 regulates”.

C. Immediate:

The anticipated immediate effects for members of the public providing or supervising the provision of peer recovery support services would be the same as the immediate effects indicated in “1. Anticipated effects on the business which NAC 433 regulates”.

D. Long-term: The anticipated long-term effects for members of the public providing or supervising the provision of peer recovery support services would be the same as the long-term effects indicated in “1. Anticipated effects on the business which NAC 433 regulates”.

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

There is no significant cost anticipated for the enforcement of the proposed regulations by the Division. No additional positions were requested as a result of the passage of NRS 433.631 and NRS 433.639 to carry out the provisions of the proposed regulations as it is anticipated this workload can be incorporated into the Division's current regulatory and enforcement workload. There may be costs associated with conducting a complaint investigation, including but not limited to, potential travel costs, but the amount to be used is unknown; therefore, an estimated cost could not be determined. If no complaints are received the costs would be zero, if complaints were submitted, it would be based on the number of complaints received, if travel were required, and other related items, which is unknown.

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.

The proposed regulations do not overlap or duplicate any other Nevada state regulations 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; and

There are no known federal regulations that regulate the same activity.

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 proposed regulations establish a civil monetary penalty in accordance with NRS 433.631 and NRS 433.639. The proposed regulations allow the imposition of a civil monetary penalty to any person or entity, for each violation of applicable sections of NRS 433.631 and NRS 433.639, of \$100 for each such violation. In addition, a monetary penalty for each day of noncompliance from the date the noncompliance is identified until compliance is verified, may be imposed. The aggregate civil penalty that may be imposed against a person or entity may not exceed \$10,000.

The total annual amount DPBH expects to collect, if any, is unknown as it is dependent on whether the criteria to impose a civil monetary penalty are met. If there are no violations of the applicable statutes then DPBH would collect nothing, if there are alleged violations, then it would be dependent on the number of violations that are substantiated and whether daily monetary penalties are imposed or not.

The money would be used for the Division's operating costs to carry out the provisions of the statutes and proposed regulations.