

**ADOPTED REGULATION OF THE  
STATE BOARD OF HEALTH**

**LCB File No. R010-06**

Effective May 4, 2006

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-3, 5-11, 15 and 16, NRS 439.200; §§4, 13 and 14, NRS 439.190 and 439.200; §12, NRS 439.150 and 439.200.

A REGULATION relating to administration of public health; revising provisions governing various administrative procedures of the State Board of Health; and providing other matters properly relating thereto.

**Section 1.** NAC 439.010 is hereby amended to read as follows:

439.010 Any interested persons who desire the adoption, filing, amendment or repeal of any regulation of the State Board of Health may petition the Board by a signed letter to the Secretary of the Board, accompanied by relevant data, views and arguments. ~~[Six]~~ *Eight* copies must be presented.

**Sec. 2.** NAC 439.020 is hereby amended to read as follows:

439.020 The Secretary of the *State Board of Health* shall mail to each member of the Board a copy of the petition and accompanying material within ~~[10 days of]~~ *15 days after* its receipt.

**Sec. 3.** NAC 439.030 is hereby amended to read as follows:

439.030 1. The Secretary of the *State Board of Health* shall, within ~~[30 days of]~~ *45 days after* receipt of the letter *submitted pursuant to NAC 439.010*, either deny the petition in writing, stating the reasons, or initiate the procedure for the adoption, amendment or repeal of regulations.

2. If the petition is denied, a copy of the letter of denial must be sent to each member of the Board.

**Sec. 4.** NAC 439.040 is hereby amended to read as follows:

439.040 1. If procedures for the adoption, amendment or repeal of a regulation are initiated, the Secretary *of the State Board of Health* shall schedule a hearing on the regulation embodying the proposal. ~~[to be held at the next regular or special meeting of the Board.]~~

2. Notice must be given and the hearing held in accordance with NRS 233B.060.

3. Following the hearing, the *State Board of Health* may or may not adopt the regulation.

**Sec. 5.** NAC 439.100 is hereby amended to read as follows:

439.100 1. Any person with a direct and tangible interest in the applicability of any statutory provision, regulation of the State Board of Health or decision of the Health Division *of the Department of Health and Human Services* who desires a declaratory order or advisory opinion as to that applicability may petition for the order or opinion by letter to the Secretary of the ~~[State Board of Health.~~

~~—2.—Six] Board.~~

2. *Eight* copies of the letter must be submitted.

**Sec. 6.** NAC 439.110 is hereby amended to read as follows:

439.110 The Secretary of the *State Board of Health* shall mail to each member of the Board a copy of the letter *submitted pursuant to NAC 439.100* within ~~[10 days of]~~ *15 days after* its receipt.

**Sec. 7.** NAC 439.120 is hereby amended to read as follows:

439.120 1. The Secretary of the *State Board of Health* shall, within ~~[30 days of the]~~ **45 days after** receipt of the letter *submitted pursuant to NAC 439.100*, issue a temporary declaratory order or an advisory opinion and mail it to the petitioner.

2. A copy of each order or opinion must be mailed to each member of the Board.

**Sec. 8.** NAC 439.130 is hereby amended to read as follows:

439.130 1. All temporary declaratory orders become permanent at the next regular or special meeting of the *State Board of Health* unless modified or reversed by the Board.

2. All advisory opinions will be reviewed by the Board at its next regular or special meeting.

**Sec. 9.** NAC 439.160 is hereby amended to read as follows:

439.160 The Secretary of the State Board of Health shall return to the applicant any incomplete application submitted to the Board with:

1. An explanation of the deficiencies in the application;

2. A request that a complete application be resubmitted;

3. A statement notifying the applicant that any information received by the Secretary later than ~~[10]~~ **15** days before a scheduled meeting of the Board ~~[will]~~ **may** be presented to the Board at that meeting but consideration of the matter may be continued by the Board to its next meeting; and

4. A statement that the Health Division of the Department of *Health and Human Resources* ~~Services~~ recommends the continuance of consideration of an incomplete application.

**Sec. 10.** NAC 439.170 is hereby amended to read as follows:

439.170 1. The Secretary of the State Board of Health ~~[shall]~~ **may** place on a consent calendar ~~[every]~~ **each** uncontested item which receives a recommendation of approval from the Health Division of the Department of *Health and Human Resources* ~~Services~~.

2. Any item placed on the consent calendar may be removed from that calendar for more detailed consideration. Related items will be considered together.

**Sec. 11.** NAC 439.180 is hereby amended to read as follows:

439.180 In considering a matter, the State Board of Health will hear from interested persons in the following order:

1. Reports and recommendations of the Health Division of the Department of *Health and Human ~~Resources.] Services.~~*
2. Comments by the person who is requesting action by the Board, or his representative.
3. Comments from the general public.
4. Comments by the members of the Board.

**Sec. 12.** NAC 439.210 is hereby amended to read as follows:

439.210 *1.* An application to the State Board of Health for a variance must be:

~~[H.]~~ *(a)* Submitted in writing to the Secretary of the Board at the Health Division of the Department of *Health and Human ~~Resources, Capitol Complex,] Services,~~* Carson City, Nevada . ~~[89710.~~

~~—2.—Accompanied]~~

*(b) Except as otherwise provided in subsection 3, accompanied* by a payment of ~~[\$150 to cover the costs of:~~

~~—(a) Publication of notice of the application and notice of the date of the public hearing;~~

~~—(b) A review and analysis of the application conducted by a member of the staff; and~~

~~—(c) Printing and clerical services required to prepare the requested variance for submission to the State Board of Health.]~~ *the actual cost to provide public notice of the application and notice of the date of the public hearing.*

2. *The Health Division of the Department of Health and Human Services shall:*

(a) *Update, at least quarterly, the actual cost to provide public notice of the application and notice of the public hearing for purposes of paragraph (b) of subsection 1; and*

(b) *Post the information on the website of the Health Division.*

3. The Secretary of the Board may waive the requirement that the applicant pay the costs set forth in *paragraph (b) of* subsection ~~[2]~~ *1* upon a showing of extreme economic hardship.

**Sec. 13.** NAC 439.220 is hereby amended to read as follows:

439.220 1. The Secretary of the State Board of Health shall ~~[have]~~ *provide public* notice of the application and the date of the public hearing ~~[on it published]~~ *by publishing the notice* in one or more newspapers of general circulation within the area affected by the requested variance.

2. The notice must be published at least once, not less than ~~[14]~~ *10* days before the hearing and must specify the time, date and place of the hearing, the nature of the application and the regulation involved.

3. The Board will hold a public hearing on the application 40 or more days after the date on which the Secretary receives the application. The hearing will be held:

(a) At its next regularly scheduled meeting;

(b) At its next meeting in Carson City, Las Vegas or Reno, as requested by the applicant in his application; or

(c) As soon as the schedule of the Board permits.

**Sec. 14.** NAC 439.230 is hereby amended to read as follows:

439.230 The following procedures apply to the hearing:

1. The staff of the Health Division *of the Department of Health and Human Services* shall submit to the *State* Board *of Health* a report, including relevant data and a recommendation,

concerning the application. A copy of the report must be mailed to the applicant at least 5 days before the hearing.

2. Members of the Board may ask relevant questions of any person.

3. Any person with a demonstrated interest in the application may present evidence but not testimony which is argumentative or redundant.

4. The applicant has the burden of proof as to the necessity for the variance.

5. At the conclusion of the hearing and after consideration of all the evidence presented concerning the requested variance, the Board will:

(a) Grant the variance;

(b) Deny the variance; or

(c) If further information is needed, continue the hearing until such time as the information is obtained.

6. In granting a variance, the Board may impose such conditions as it deems necessary or desirable.

7. Failure of the applicant to comply with any of the conditions imposed by the Board constitutes grounds for immediate revocation of the variance.

**Sec. 15.** NAC 439.250 is hereby amended to read as follows:

439.250 1. Within 14 days after the hearing, the *State Board of Health* will provide the applicant with a written decision concerning the variance.

2. The decision will contain the Board's findings of fact on the matters described in NAC 439.240 and, if the variance is granted, will specify any conditions imposed by the Board and, in a case where appropriate, the date on which the variance expires.

**Sec. 16.** NAC 439.280 is hereby amended to read as follows:

439.280 1. The provisions of NAC 439.200 to 439.270, inclusive, do not preclude a person who is temporarily unable to comply or unable to comply fully with a regulation from negotiating a schedule for his compliance.

2. A district health officer may postpone the enforcement of a regulation of the State Board of Health enforced by the district board and agree with such a person to a schedule for his compliance with the regulation. If the period needed by such a person to comply exceeds 30 days, the schedule must be submitted to the district board of health for approval.

3. In those areas of the State which are not in a health district, or in case of a regulation enforced exclusively by the State Board of Health, the State Health Officer may postpone the enforcement of and agree to a schedule for compliance with the regulation. If the period needed by such a person to comply exceeds ~~30~~ 45 days, the schedule must be submitted to the State Board of Health for approval.

**NOTICE OF ADOPTION OF PROPOSED REGULATION**  
**LCB File No. R010-06**

The State Board of Health adopted regulations assigned LCB File No. R010-06 which pertain to chapter 436 of the Nevada Administrative Code on March 10, 2006.

**Notice date:** 2/6/2006  
**Hearing date:** 3/10/2006

**Date of adoption by agency:** 3/10/2006  
**Filing date:** 5/4/2006

**INFORMATIONAL STATEMENT**

**1. DESCRIPTION OF HOW PUBLIC COMMENT WAS SOLICITED, SUMMARY OF PUBLIC RESPONSE, AND AN EXPLANATION OF HOW OTHER INTERESTED PERSONS MAY OBTAIN A COPY OF THE SUMMARY.**

A Small Business Impact Questionnaire was mailed to all anticipated affected individuals (approximately 4,000) along with written correspondence detailing the proposed amendments, including a copy of the proposed regulation changes, on December 5, 2005. Please find attached a copy of the Small Business Impact Questionnaire Summary.

A public workshop was held on December 21, 2005, which was simultaneously videoconferenced from the Grant Sawyer Building (555 E. Washington Avenue, Room 4401, in Las Vegas, Nevada) to the Legislative Building (401 S. Carson Street, Room 2134, in Carson City, Nevada) to the Washoe County District Health Department (1001 E. 9<sup>th</sup> Street, South Auditorium/Conference Room B, in Reno, Nevada). Six people were in attendance at the workshop. No public comment was provided on the proposed regulation amendments at the public workshop. Notice of the public workshop was published in the Las Vegas Review Journal, the Reno Gazette Journal, the Elko Daily Free Press, and the Nevada Appeal on December 5, 2005. Notice of the public workshop and proposed regulation amendments were mailed to all bureau program offices, anticipated affected individuals, and interested parties on December 2, 2005. The Small Business Impact Statement was available at the workshop.

A public hearing (State Board of Health meeting) was held on March 10, 2006 via videoconference from the Grant Sawyer Building (401 S. Carson Street, Room 4401, in Las Vegas, Nevada) to the Legislative Building (401 S. Carson Street, Room 2134, in Carson City, Nevada). Notice of the public hearing regarding the Board's intent to adopt amendments was published in the Las Vegas Review Journal, the Reno Gazette Journal, the Elko Daily Free Press, and the Nevada Appeal on February 6, 2006. Notice of the public hearing, and proposed regulation amendments were mailed to all bureau program offices and county libraries, anticipated affected individuals, and interested parties on February 6, 2006. The notice of public hearing was also mailed to the Clark County Health District, the Washoe County District Health Department and the Nevada State Library and Archives on February 6, 2006.



Copies of the workshop minutes and Board of Health hearing minutes may be obtained by calling the Nevada State Health Division at (775) 684-4200, or by visiting the Health Division's website at: [www.health2k.state.nv.us/administration/meetings/](http://www.health2k.state.nv.us/administration/meetings/).

**2. THE NUMBER OF PERSONS WHO:**

**(A) ATTENDED THE HEARING;**

Nineteen people attended the March 10, 2006, State Board of Health hearing.

**(B) TESTIFIED AT EACH HEARING; AND**

No individuals testified at hearing.

**(C) SUBMITTED TO THE AGENCY WRITTEN STATEMENTS.**

Please see the Small Business Impact Questionnaire Summary. No other written comments were received.

**3. 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**

Comment was solicited from affected or potentially affected individuals and businesses by mailing a small business impact questionnaire, proposed regulation amendments, a copy of the small business impact summary, and the notice for the workshop and the Board of Health hearing. Copies of the workshop minutes and Board of Health hearing minutes may be obtained by calling the Nevada State Health Division at (775) 684-4200 or by visiting the Health Division's website at: [www.health2k.state.nv.us/administration/meetings/](http://www.health2k.state.nv.us/administration/meetings/). Copies of the Small Business Impact Statement may be obtained by calling the Nevada State Health Division at (775) 684-4200.

**4. IF THE REGULATION WAS ADOPTED WITHOUT CHANGING ANY PART OF THE PROPOSED REGULATION, A SUMMARY OF THE REASONS FOR ADOPTING THE REGULATION WITHOUT CHANGE.**

No testimony was received in opposition to the proposed regulation or which suggested changes to the proposed regulation.

**5. 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**

Anticipated effects on the business which NAC 439 regulates;

Adverse: The adverse effect on businesses is that they will be required to provide eight (8) copies of back-up materials in place of the current six (6). In addition, by increasing the existing \$150 fee to the actual cost to post the required public notices, all regulated entities seeking variances may end up paying \$200-\$400 more per variance request.

Beneficial: The anticipated beneficial effect will be that all board members will receive the same information as prepared by the petitioner.

Anticipated effects on the public:

Adverse: There are not anticipated to be any adverse effects on the public.

Beneficial: By requiring additional copies, taxpayers will not be subsidizing the cost of preparing sufficient copies of material that the State Health Division now prepares at government expense.

**(B) BOTH IMMEDIATE AND LONG TERM EFFECTS.**

Anticipated effects on the business which NAC 439 regulates.

Immediate: The immediate effect will be that petitioners and those seeking a declaratory order will now be required to provide two (2) additional copies of back ground materials.

Long-term: None specifically.

Anticipated effects on the public:

Immediate: This change would take effect quickly thereby reducing the time petitioners and those seeking declaratory orders are subsidized.

Long-term: Petitioners pay the actual cost of their requested changes.

**6. THE ESTIMATED COST TO THE AGENCY FOR ENFORCEMENT OF THE PROPOSED REGULATION.**

There is no anticipated additional cost to the agency for enforcement of the proposed regulation changes.

**7. 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 is no duplication or overlap of other state or local government agency's regulations.

**8. IF THE REGULATION INCLUDES PROVISION WHICH ARE MORE STRINGENT THAN A FEDERAL REGULATION WHICH REGULATES THE SAME ACTIVITY, A SUMMARY OF SUCH PROVISION.**

These proposed regulation amendments do not overlap or duplicate any other Nevada regulations or federal regulations.

**9. IF THE REGULATION PROVIDES A NEW FEE OR INCREASES AN EXISTING FEE, THE TOTAL ANNUAL AMOUNT THE AGENCY EXPECTS TO COLLECT AND THE MANNER IN WHICH THE MONEY WILL BE USED.**

These amendments increase existing fees to apply for a variance from \$150 to the actual cost to publicly notice the application and notice of the date of the public hearing. In CY '04, the Health Division received 43 variance requests; in CY '05, the Health Division received 30 variance requests. It can reasonably be expected that the Health Division will continue to receive an average of 37 variance requests per calendar year. The fees generated from these requests will vary depending upon the nature of the request and whether it affects a particular area of the state or the entire state as a whole. However, 100 percent of the fees collected will be used to publicly notice the variance application and notice of the date of the public hearing pursuant to Nevada Revised Statutes (NRS) 233B.

## SMALL BUSINESS IMPACT STATEMENT

Proposed Amendment of Nevada Administrative Code (NAC) 439

### ADMINISTRATION OF PUBLIC HEALTH

#### **Background:**

The purpose of the proposed revised regulations for the Administration of Public Health are to cover general housekeeping issues such as updating the name of the Department to the Department of Health and Human Services; increasing the number of copies required to submit to the Nevada State Board of Health from six (6) to eight (8) in order to petition to adopt, file, amend or repeal any regulation of the State Board of Health; increasing the number of copies from six (6) to eight (8) in order to request a declaratory order or advisory opinion; and adjusting deadlines for submission and distribution of materials to or from the State Board of Health. These amendments also increase the existing fee to apply for a variance to the State Board of Health from \$150 to the actual cost to publicly notice the application and notice of the date of the public hearing.

Interested individuals can obtain a copy of the information packet, including the Small Business Impact Questionnaire, sent to all anticipated affected businesses (approximately 4,000 individuals), from Debi Galloway, Executive Assistant, Nevada State Health Division at 505 East King Street, Room 201, Carson City, Nevada 89701.

#### **1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary.**

Pursuant to NRS 233B.0608(2)(a), the Nevada State Health Division requested input from all anticipated affected individuals.

Notice of the public workshop was published in the Reno Gazette Journal, the Elko Daily Free Press, the Las Vegas Review-Journal and the Nevada Appeal on December 5, 2005.

A Small Business Impact Questionnaire was sent to all anticipated affected individuals (approximately 4,000) along with written correspondence detailing the proposed amendments, including a copy of the proposed regulation changes, on December 5, 2005. 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?

The specific responses to these questions may be found in the attached document titled: "Small Business Impact Questionnaire Summary- NAC 439 Administration of Public Health." Below is a table indicating the number of responses.

Total Number of Responses:	154
Q1- # Meeting Small Business Definition	124
Q2- # Having Direct Adverse Effect:	8
Q3- # Having Direct Beneficial Effect:	4
Q4- # Having Indirect Adverse Effect:	7
Q5- # Having Indirect Beneficial Effect:	3

A public workshop was held on December 21, 2005, which was simultaneously videoconferenced from the Grant Sawyer Building, 555 E. Washington Avenue, Room 4401, in Las Vegas, Nevada, to the Legislative Building, 401 S. Carson Street, Room 2134, in Carson City, Nevada to the Washoe County District Health Department, 1001 E. 9<sup>th</sup> Street, South Auditorium/Conference Room B, in Reno, Nevada. Six people were in attendance at the workshop. No public comment was provided on the proposed regulation amendments at the public workshop.

A public hearing was held on March 10, 2006, via videoconference from the Grant Sawyer Building, 555 E. Washington Avenue, Room 4401, in Las Vegas, Nevada, to the Legislative Building, 401 S. Carson Street, Room 2134, in Carson City. Notice of the public hearing regarding the Board's intent to adopt amendments was published in the Las Vegas Review Journal, the Reno Gazette Journal, the Elko Daily Free Press, and the Nevada Appeal on February 6, 2006. Notice of the public hearing, and proposed regulation amendments were mailed to all bureau program offices and county libraries, anticipated affected individuals, and interested parties on February 6, 2006. The notice of public hearing was also mailed to the Clark County Health District, the Washoe County District Health Department and the Nevada State Library and Archives on February 6, 2006. Nineteen people were in attendance at the hearing. No public comment was provided on the proposed regulation amendments at the public hearing.

**2. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate including without limitation both adverse and beneficial effects and both direct and indirect effects.**

There will be an economic effect on the individuals/businesses who request a variance from the State Board of Health's regulations due to an increase in the existing \$150 fee to the actual cost to post the required public notices. All regulated entities seeking variances may end up paying \$200-\$400 more per variance request.

There are not anticipated to be any tangible adverse effects on petitioners other than being required to provide eight (8) copies of back-up materials in place of the current six (6), and that all regulated entities seeking variances may end up paying \$200-\$400 more per variance request.

The anticipated beneficial effects of the proposed regulation amendments will be that members of the State Board of Health will receive the same information as prepared by the petitioner. By requiring additional copies, taxpayers will not be subsidizing the cost of preparing sufficient copies of material that the State Health Division now prepares at government expense.

**3. A description of the methods that the Health Division considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used those methods.**

There are limited methods for a fee-funded agency to reduce the impact or off-set the cost for small businesses without receiving general fund appropriation from the Legislature. The fees charged for applying for a variance are based upon the geographical location of the applicant and the area(s) affected, not the size of the business. Further, staff will work with smaller businesses to ensure the need for a variance or combine issues effectively in a single request in an effort to reduce the impact.

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

There is no anticipated additional cost to the agency for enforcement of the proposed regulation changes.

**5. Total amount the Health Division expects to collect from any fees and the manner in which the money will be used.**

These amendments increase existing fees to apply for a variance from \$150 to the actual cost to publicly notice the application and notice of the date of the public hearing. In CY '04, the Health Division received 43 variance requests; in CY '05 (to date), the Health Division received 31 variance requests. It can reasonably be expected that the Health Division will continue to receive an average of 37 variance requests per calendar year. The fees generated from these requests will vary depending upon the nature of the request and whether it affects a particular area of the state or the entire state as a whole. However, 100 percent of the fees collected will be used to publicly notice the variance application and notice of the date of the public hearing pursuant to Nevada Revised Statutes (NRS) 233B.

**6. An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.**

No duplication or more stringent provisions are either created or are already in existence.