

LCB File No. R010-06

**PROPOSED REGULATIONS OF THE
STATE BOARD OF HEALTH**

ADMINISTRATION OF PUBLIC HEALTH

Explanation- Matter in brackets ~~omitted material~~ is material to be omitted; Matter in *italics and underlined* is new.

The following sections have not been revised or modified:

NAC 439.130, 439.150, 439.190, 439.195, 439.200, 439.230, 439.240, 439.250, 439.260, 439.270, 439.300, 439.301, 439.302, 439.304, 439.305, 439.307, 439.310, 439.320, 439.330, 439.340, 439.341, 439.345, 439.346, 439.347, 439.348, 439.350, 439.360, 439.370, 439.375, 439.378, 439.380, 439.390, 439.395, 439.500, 439.510, 439.520, 439.525, 439.530, 439.540, 439.551, 439.560, 439.570, 439.575, 439.580, 439.590, 439.610, 439.612, 439.614, 439.616, 439.618, 439.620, 439.622, 439.650, 439.700, 439.800, 439.802, 439.804, 439.806, 439.808, 439.810, 439.812, 439.813, 439.814, 439.816, 439.818, 439.820, 439.822, 439.824, 439.826, 439.828, 439.830, 439.831, 439.834, 439.836, 439.838, 439.840, 439.842, 439.844, 439.844, 439.846, 439.848, 439.850, 439.852, 439.854, 439.856, 439.858, 439.860, 439.862, 439.900, 439.902, 439.904, 439.906, 439.908, 439.910, 439.912, 439.915, and 439.920

PETITION FOR ADOPTION, AMENDMENT OR REPEAL OF REGULATIONS

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

NAC 439.010 Petitions to adopt, file, amend or repeal regulations. (NRS 439.200) 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:

NAC 439.020 Mailing of petition to board members. (NRS 439.200) The Secretary of the Board shall mail to each member of the Board a copy of the petition and accompanying material within ~~10~~ *15* days of its receipt.

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

NAC 439.030 Action by Secretary of Board. (NRS 439.200)

1. The Secretary of the Board shall within ~~30~~ *45* days of receipt of the letter 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:

NAC 439.040 Hearing on petition. (NRS 439.190, 439.200)

1. If procedures for the adoption, amendment or repeal of a regulation are initiated, the Secretary 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 Board may or may not adopt the regulation.

DECLARATORY ORDERS AND ADVISORY OPINIONS

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

NAC 439.100 Petition for declaratory order or advisory opinion. (NRS 439.200)

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 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]~~ **Eight** copies of the letter must be submitted.

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

NAC 439.110 Mailing of petition to board members. (NRS 439.200) The Secretary of the Board shall mail to each member of the Board a copy of the letter within ~~[10]~~ **15** days of its receipt.

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

NAC 439.120 Action by Secretary of Board. (NRS 439.200)

1. The Secretary of the Board shall within ~~[30]~~ **45** days of the receipt of the letter 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.

PROCEDURE FOR MEETINGS OF THE STATE BOARD OF HEALTH

Sec. 8. NAC 439.160 is hereby amended to read as follows:

NAC 439.160 Incomplete applications. (NRS 439.200) 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 ~~[Human Resources]~~ **Health and Human Services** recommends the continuance of consideration of an incomplete application.

Sec. 9. NAC 439.170 is hereby amended to read as follows:

NAC 439.170 Consent calendar. (NRS 439.200)

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 ~~[Human Resources]~~ *Health and Human 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. 10. NAC 439.180 is hereby amended to read as follows:

NAC 439.180 Order of testimony for considering matter. (NRS 439.200) 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 ~~[Human Resources]~~ *Health and Human 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.

VARIANCES

Sec. 11. NAC 439.210 is hereby amended to read as follows:

NAC 439.210 Application to State Board of Health. (NRS 439.150, 439.200) An application to the State Board of Health for a variance must be:

1. Submitted in writing to the Secretary of the Board at the Health Division of the Department of ~~[Human Resources]~~ *Health and Human Services*, ~~[Capitol Complex,]~~ Carson City, Nevada ~~[89710]~~ *89701*.
2. Accompanied by a payment of ~~[\$150 to cover the costs of:]~~ *the actual cost to publicly notice the application and notice of the date of the public hearing. The Health Division of the Department of Health and Human Services shall update, at least quarterly, the actual cost to publish in the state's general circulation newspaper the application and notice of public hearing and shall post this information on its website;*
~~[(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)]~~ (a) Printing and clerical services required to prepare the requested variance for submission to the State Board of Health.
3. The Secretary of the Board may waive the requirement that the applicant pay the costs set forth in subsection 2 upon a showing of extreme economic hardship.

Sec. 12. NAC 439.220 is hereby amended to read as follows:

NAC 439.220 Publication of notice of application and date of hearing. (NRS 439.190, 439.200)

1. The Secretary of the State Board of Health shall have notice of the application and the date of the public hearing on it published 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. 13. NAC 439.280 is hereby amended to read as follows:

NAC 439.280 Schedule for compliance. (NRS 439.200)

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.

SMALL BUSINESS IMPACT STATEMENT
(Nevada Revised Statutes 233B.0608)

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:	113
Q1- # Meeting Small Business Definition	87
Q2- # Having Direct Adverse Effect:	4
Q3- # Having Direct Beneficial Effect:	1
Q4- # Having Indirect Adverse Effect:	4
Q5- # Having Indirect Beneficial Effect:	1

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. 9th 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.

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 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.