

**REVISED PROPOSED REGULATION OF THE  
STATE BOARD OF HEALTH**

**LCB File No. R010-06**

February 23, 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.