

Joe Lombardo
Governor



Richard Whitley,
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Director



Cody Phinney,
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Administrator

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

INFORMATIONAL STATEMENT PER NRS 233B.066

LCB FILE NO. R085-23

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

Health care facilities listed in NRS 449.119, or an intermediary service organization set forth in NRS 449.4304 that are statutorily required to conduct background checks currently pay the costs associated with having their fingerprints rolled and pay a fee to the Department of Public Safety. The current fingerprint fee structure charged by the Department of Public Safety is \$40.25. This includes a \$13.25 FBI fee and a state fee of \$27 for a total cost of \$40.25. This does not include the cost of obtaining the actual fingerprints. This cost varies depending on where an individual is fingerprinted. NRS 449.123 allows a facility, hospital, agency, program, or home to recover from the employee or independent contractor whose fingerprints are submitted to the Department of Public Safety not more than one-half of the fee imposed by the Department of Public Safety's Central Repository. The fee charged by the Department of Public Safety, and the fee to obtain the actual fingerprints, do not include the cost to analyze the criminal history, make a determination of employment eligibility, and enter the employment eligibility results into the Nevada Automated Background Check system. It also does not include the cost to support the website. Historically, the Division has absorbed these costs. The Division is no longer able to incur this expense and is now in a position where these costs must be recovered, as authorized in NRS 439.948.

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 Comment

The public workshop notice, proposed regulations and small business impact questionnaire were posted in the locations listed on the notice of public workshop, including on the Division of Public and Behavioral Health's website. The public workshop notice was posted on the Nevada Legislature's Administrative Regulation Notices, Meetings and Workshops web page.

Public Workshop – October 6, 2023

A public workshop was held on October 6, 2023. There was one person that testified in support of the proposed regulations, and no one testified in opposition of the proposed regulations.

One person noted he just wanted to attend the public workshop. He did not provide testimony.

The person that testified in support of the proposed regulations noted that she was in agreement with the assessment of the fee. She noted that she thought it was fair. She noted that she felt the background check is very necessary because you are giving care to seniors and that the background check be conducted before hiring a person or an applicant.

Public Hearing – March 1, 2024

A public hearing was held on March 1, 2024. One person testified. She did not indicate whether she was in support or opposed to the proposed regulations but instead requested clarification on how the provisions of the proposed regulations would be carried out. A health program manager for the Division of Public and Behavioral Health testified that:

- The fee being assessed in the proposed regulation is an additional fee to the fee charged by DPS and the fee to have the actual fingerprints rolled.
- The fee would be assessed anytime a background check is conducted, including upon initial hire and every five years.
- All of the details on how the fee would be collected have not been worked out, but the fee would be collected via the Nevada Automated Background Check system and would include an option to pay via credit card or eCheck.
- Facilities would be required to pay the fee, but the proposed regulations allow a facility to recover the cost of the fee from the applicant. It is not required that a facility recover the cost from the applicant, but instead it would be up to the facility's policy as to whether they wanted to pay the cost or recover the cost from the applicant.

No one submitted written statements to be considered at the public hearing regarding the proposed regulations, although two individuals provided written comments in the chat function of the virtual meeting which included:

“This would run off most of my applicants. My caregiver applicants are already delayed in paying the \$8 for fingerprinting.”

“I don't think the folks who proposed this understand that in the homecare industry the caregivers can barely afford the \$8 for fingerprints, a TB test, or a physical. This just limited our ability to staff a much-needed industry.”

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, HPM III 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

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 – October 6, 2023

A total of four (4) individuals (not including Division of Public and Behavioral Health) attended the public workshop, of which three individuals attended virtually and one individual attended in person. Only one

person provided testimony, and another noted he just wanted to attend the public workshop. He did not provide testimony.

No one provided written statements at the workshop regarding the proposed regulation. The one person that provided testimony identified herself as Rosalinda Ruiz.

Public Hearing – March 1, 2024

Eighty-five (85) 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.

One person testified. She did not indicate whether she was in support or opposed to the proposed regulations but instead requested clarification on how the provisions of the proposed regulations would be carried out.

No one submitted written statements to be considered at the public hearing regarding the proposed regulations, although two individuals provided written comments in the chat function of the virtual meeting.

Names

- 1) Sylvie Smith: Provided oral testimony at the public hearing.
- 2) Tina Holland; email: tina@carsonangels.com: Provided written comments in the chat function of the virtual meeting.
- 3) Tina Mahoney: Provided written comments in the chat function of the virtual meeting.

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.

Pursuant to NRS 233B.0608 (2)(a), the Division of Public and Behavioral Health has requested input from actively licensed facilities, hospitals, agencies, programs or homes listed in NRS 449.119 and from intermediary service organization, as set forth in NRS 449.4304, that may be economically impacted by the proposed regulations. An email with a link to the Small Business Impact Questionnaire and proposed regulations were sent to actively licensed facilities, hospitals, agencies, programs or homes listed in NRS 449.119 and to intermediary service organizations as set forth in NRS 449.4304 on July 6, 2023.

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 Fifty-two (52) responses were received from small businesses.*

Will a specific regulation have an adverse economic effect upon your business?

Yes – 39 No – 13

Comment Summary:

-High yearly cost. -Additional reimbursement to employees would be expensive and unfair. -High recruitment/turnover rate would raise costs. -New fee would be incurred by every new and current employee when up for renewal. -No adverse impact. -Employees go through the hiring/background process but never come back. -Additional fee on top of other expenses such as unemployment, worker's

compensation liability insurance, state-mandated trainings, physicals, and TB tests. -Significant cost for conducting business with contractors.

Will the regulation(s) have any beneficial effect upon your business?

Yes – 6 No – 46

Comment Summary: -No benefits. -Saving a lot of money if fee is only \$14. –

Business can shoulder fee expenses for permanent employees but not contractors. -Will save time and money if fee results in faster background check results.

Do you anticipate any indirect adverse effects upon your business?

Yes – 31 No – 20

Comment Summary: -Will have to cut costs in other areas to make up for the new fee. -Slower hiring and longer delays in hiring. -Higher hiring costs. -Decrease number of candidates, resulting in limited staff. -Additional expenses on contractors. -Raise hourly rate for the end consumer. -Close business. -More work in obtaining additional documentations. -Higher expenses without raise in Medicaid reimbursement rate.

Do you anticipate any indirect beneficial effects upon your business?

Yes – 11 No – 41

Comment Summary:

-No indirect benefits. -Any reduction in cost will help small businesses. -Make sure that contractors are properly checked even if they are not considered permanent employees of the agency. -Rates for private pay consumers will be increased. -Fee increase without reimbursement increase. -\$14 is okay now unless fee is raised at a rapid rate. -It would be beneficial to not keep running fingerprints to each applicant if they have already been fingerprinted under the facility's employment. -Fee would result in lower pay offers to employees. -Total expense to hire a new caregiver would be \$875-900 to comply with requirements.

*The above is a summary of the responses received from small businesses. Please refer to Attachment A for all comments received from the 52 responses. Responses were received from three (3) businesses that did not meet the definition of a small business and are not included in this 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, HPM III 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

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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.

The proposed regulations were modified after industry feedback was received from the small business impact questionnaire. The proposed regulations were modified to allow a facility to recover the cost of the fee from the person subject to the investigation. The reason for this change was to give facilities flexibility (to pay the fee or recover it from the applicant) and to provide them a mechanism to help offset the cost of the application fee.

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.

Anticipated effects of Chapter 439 of the Nevada Administrative Code, LCB File No. R085-23, on the businesses which it regulates:

A. *Adverse effects:* The proposed regulations would increase expenses for small businesses, and per comments received in the Small Business Impact Questionnaire, may have a negative financial impact on a small business. Indirect adverse effects, per comments received in the Small Business Impact Questionnaire, noted that the proposed regulations may result in additional costs being incurred by employees or consumers, reduction of spending in other areas to accommodate a new fee, a decrease in candidates hired resulting in fewer staff for client care, or close of business.

B. *Beneficial:* As the Division has been absorbing these costs and will now be accessing a new fee, it is anticipated that there will be no beneficial economic effects on a small business. Indirect beneficial economic effects may include individuals that are not serious about accepting a position from applying which may help offset this cost to small businesses.

C. *Immediate:* The immediate financial impact on a small business would be felt with the beginning of the collection of the fee. The consequences of collecting those fees would be dependent on the situation of each facility, for example, one facility may choose to pay the fees and not recover the costs from applicants, whereas another facility may choose to recover the costs from applicants. It is also anticipated that the costs would be greater for larger facilities with a larger number of employees, and less for smaller facilities with a smaller number of employees.

D. *Long-term:* The financial impacts would continue long term with the continued assessment of the fee. The consequences of collecting such fees would vary dependent on the situation of each facility, as noted in C. above.

Anticipated effects on the public:

A. *Adverse:* Adverse financial effects on the public may include facilities recovering the cost of the fee by raising the prices it charges its clients or recovering the costs by charging the fee to applicants who are required to undergo a background check as a condition of employment.

B. *Beneficial:* The beneficial impact includes sustainability of the background check program supported by these fees to ensure public safety.

C. *Immediate:* The immediate impacts on the public will vary depending on how each facility chooses to carry out the provisions of the proposed regulations. For example, for a facility that chooses to absorb these costs and not increase its prices there may be no impact; whereas there may be an impact on members of the public seeking employment at one of these facilities or seeking services from one of these facilities, if the facility passes on the cost to the applicant or client, as applicable.

D. *Long-term:* The long-term impacts on the public will vary depending on how each facility chooses to carry out the provisions of the proposed regulations. For example, for a facility that chooses to absorb these costs and not increase its prices there may be no impact; whereas there may be an impact on members of the public seeking employment at one of these facilities or seeking services from one of these facilities, if the facility passes on the cost to the applicant or client, as applicable.

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

There are no anticipated costs to the agency for enforcement of the proposed regulations.

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.

There are no known overlap or duplicate provisions regulating to the same activity.

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

There are no known federal regulations which 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 services associated with the proposed fee are dependent on the number of background checks requested by facilities each year. As a result, the total annual amount DPBH expects to collect cannot be determined in advance. Based on annual budget estimates, DPBH anticipates at least \$650,000 may be collected should the proposed fee be enacted. The Division expects to collect sufficient funds to offset the current operating cost to conduct an investigation into the background and personal history of a person pursuant to NRS 439.942 to 439.948.