

NEVADA STATE BOARD OF OPTOMETRY



Small Business Impact Statement re R101-24 August 14, 2024

Background

NRS/NAC 636 govern optometry. R101-24, comprised of 21 sections, is necessary to update the regulations associated with NRS 636, as well as to comply with recent statutory changes of AB432 recently codified in NRS 636:

Section 2 limits graduate students and residency program residents to procedures within the scope of the optometrist who is physically present at the clinic when the student or resident performs the procedure, and for residents allows the performance of emergency care outside the presence of an optometrist or ophthalmologist to a duration of not more than 10 hours after consulting with the appropriate optometrist or ophthalmologist associated with the clinic.

Section 3 provides that a license issued by the Nevada State Board of Optometry is a revocable privilege.

Section 4 requires a license applicant's reporting requirements to include any history of professional negligence.

Section 5 requires an optometrist to review certain health records of a patient before or contemporaneous to providing health care services through optometric telemedicine, and prohibits an optometrist who is engaging in optometric telemedicine or remote patient monitoring from issuing a prescription for ophthalmic lenses without first performing a manifest refraction.

Section 6 clarifies that the Board may take disciplinary action against a licensee who has voluntarily surrendered his or her license, not renewed his or her license, or retired from the practice of optometry.

Section 7 requires the Board to keep the personal contact information of each licensee confidential, except where the personal contact information is also the public contact information of the licensee.

Section 8 makes a conforming change in NAC 636.120 to reference NAC 636.140 instead of repealed NAC 636.130.

Section 9 revises what constitutes proper broadcast advertising.

Section 10 revises what constitutes proper ophthalmic product or device advertising.

Section 11 revises what constitutes proper spectacle lenses advertising.

Section 12 imposes certain requirements for the sale of contact lenses intended to be used as scheduled replacements or disposable lenses.

Section 13 revises what constitutes proper advertising of optometric examinations with specific disclaimers.

Section 14 removes the requirement that an optometrist display his or her current renewal card to instead make available upon request, and provides an optometrist has the ultimate responsibility for: (1) the actions of each employee of the optometrist performed within the scope of the employment; and (2) the care of the patient of the optometrist.

Section 15 replaces a 10 working day requirement to a 90 calendar day deadline for the submission of fictitious name applications upon the change of any percentage of ownership.

Section 16 provides that the Board may enter an adverse decision or order against a party without proof of actual injury caused by the conduct of that party if the conduct of the party is grounds for disciplinary actions under NRS 636.295.

Section 17 revises the aspects of a prescription for certain contact lenses.

Section 18 imposes a \$100 fee on a person who seeks to changes his or her legal name at a time other than when his or her license is renewed.

Section 19 allows the approval of continuing education courses for ophthalmology-specific courses approved by the American Medical Association or any ophthalmology residency program affiliated with an accredited medical school.

Section 20 requires the licensee or applicant's reporting of any civil action against the licensee or applicant or optometry practice or business or fictitious name business registered with the licensee or applicant no later than 30 days after the initial service of process upon the licensee or applicant.

Section 21 repeals NRS 636.110 and 636.130, neither of which affect the operations of a small business.

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 (NRS 233B.0609(1)(a))

On October 26, 2023 and November 28, 2023, the Board discussed the potential topics and text for the regulation at its regular board meetings. At each of those Board meetings, the public had access to two periods of opportunity for public comment inclusive of any impact on a small business. Additionally, the Board President regularly accepted public comment when a person had a relevant comment during the Board's discussions.

The Board issued multiple Newsletters to its membership through its email-distribution list alerting the membership to an upcoming workshop and conducted a stakeholder meeting for such

purposes prior to such workshop, where any impact on small business was allowed to be discussed at those times.

After the statutorily requisite amount of time after the posting of a Notice of Workshop, on January 24, 2024 the Board held a NRS 233B-compliant public workshop in-person at Nevada State Business Center, 3300 W. Sahara Ave., Red Rock Room, 4th Floor, Suite 440, Las Vegas, NV. 89102 to gain input regarding the language that became R101-24. No member of the public participated. No participant in the discussion presented any evidence or argument that the proposed language would have a positive or negative impact on small business.

On March 28, 2024 and April 25, 2024, the Board conducted meetings. Public comment was solicited prior to such meetings, and entertained at all such meetings.

After the statutorily requisite amount of time after the posting of a Notice of Intent to Take Action on Regulation, on July 31, 2024 the Board conducted a meeting/hearing and adopted R101-24.

Agendas associated with the above referenced meetings were posted consistent with NRS 241 timely, and physically and electronically as stated in the Agendas- Nevada State Board of Optometry office, Reno, NV 89523, Nevada State Board of Optometry website: <https://nvoptometry.org>, and Nevada Public Notice website: <http://notice.nv.gov>

Any public comment or testimony provided concerning the proposed regulations could have been obtained from the Board of Optometry by mail, telephone request or by email at any time. Interested persons may obtain a summary of responses to the Board's solicitation of comments by contacting the Board office via email at admin@nvoptometry.org.

Manner in which the analysis was conducted (NRS 233B.0609(1)(b))

See above. The Board engaged in discussions about each section of the Regulation, wherein any small business impact, if any, was able to be discussed by any interested party.

Estimated economic effect of the proposed regulation on the small business which it is to regulate, including, without limitation both adverse and beneficial effects and both direct and indirect effects. (NRS 233B.0609(1)(c)(1-2))

Adverse and beneficial effects on optometry- the Board does not perceive any adverse economic effects. The Board perceives positive effects upon optometry for the legality of optometric telehealth providing greater access to optometric services to the public in both synchronous and asynchronous manners, and simultaneously placing regulations upon the licensees to protect the public when telehealth is utilized. *See* Section 5. Advertisements via broadcasting and advertisements for ophthalmic products, devices, and spectacle lenses arguably deal with intrastate commerce and the economy. *See* Sections 9-11, 13. Certain requirements for the sale of contact lenses intended to be used as scheduled replacements or disposable lenses have been refined. *See* Section 12. Other portions of the regulation have no impact on the economy, and are more so regulatory in nature.

Adverse and beneficial effects on the public- the Board does not perceive any adverse effects on the public. The Board perceives positive effects upon the public for the legality of optometric telehealth providing greater access to optometric services to the public in both synchronous and asynchronous manners, and simultaneously placing regulations upon the licensees to protect the public when telehealth is utilized. *See* Section 5. Advertisements via broadcasting and advertisements

for ophthalmic products, devices, and spectacle lenses have been clarified, and may be seen as related to intrastate commerce and the economy and therefore discussed hereto. *See* Sections 9-11, 13. Certain requirements for the sale of contact lenses intended to be used as scheduled replacements or disposable lenses have been refined. *See* Section 12. Licensees and potential licensees are to timely report any professional negligence lawsuit history. *See* Sections 4, 21. Doing so will allow the Board additional information to screen proper candidates for licensure or renewed licensure, where the public will benefit from having properly screened licensees before being allowed to practice upon the citizens of Nevada. Other portions of the regulation have no impact on the economy, and are more so regulatory in nature.

Immediate and long-term effects on optometry- utilization of optometric telehealth will assist optometrists providing access to healthcare to patients in rural communities and to increase access to patients with pre-existing relationship with their optometrists. *See* Section 5. Different kinds of continuing education are allowed, which will benefit the optometry community's knowledge base which will likewise increase the quality of service provided to the public. *See* Section 19.

Immediate and long-term effects on the public- utilization of optometric telehealth will assist the public in access to healthcare, particularly those in rural communities. *See* Section 5. Under the supervision of an optometrist or ophthalmologist, graduate students can perform certain procedures which will increase short-term training and experience to the long-term benefit of the public having better trained optometrists entering the workforce. Emergency care can be rendered by residency program residents of a duration of not more than 10 hours after consulting with the appropriate optometrist or ophthalmologist associated with the clinic. *See* Section 2. To the benefit of the public, this allows the public to receive emergency care otherwise not available to them under prior law.

Description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of the methods. (NRS 233B.0609(1)(d))

The agency states it did not use any such methods. As summarized above, none of the above 21 sections “impose a direct and significant economic burden” or “directly restrict the formation, operation or expansion of a small business” (*see* NRS 233B.0608). Nor is there any anticipation that any of the above 21 sections will have an impact upon a small business or a negative impact on the formation, operation, or expansion of a small business in Nevada.

Estimated cost to the agency for enforcement of the proposed regulation (NRS 233B.0609(1)(e))

The Board estimates that the adopted regulation will result in minimal costs, if any, to the agency for enforcement after the initial costs of implementing the regulations, providing education to licensees and updating the Board's website with forms and fees reflecting the regulation changes. The Board expects that staff costs will be absorbed into the existing workloads of current staff. There is no perceived cost to the licensees governed under NRS 636. There is no perceived cost to the public.

Known violations or known alleged violations of the regulation will result in an investigation as authorized under NRS 636, and possible prosecution and discipline. Attorneys' fees and costs via the Board's assigned deputy attorney general may be incurred upon the Board for such prosecution.

If the proposed 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 (NRS 233B.0609(1)(f))

Section 18 imposes a new fee for a name change in the amount of \$100. This fee is rare, and such fee will be used to offset the cost of providing information via the Board's website, processing applications, issuing certificates and licenses and regulating licensees in the same manner imposed upon any other professional licensee in Nevada. License and certification fees fund the entire operation of the Board with no reliance on the State General Fund. The Board anticipates less than five (5) per every renewal cycle, but is a necessary fee to allow, e.g., divorcees or newly married persons, to practice under the name of their choice and being consistent with NRS 41.270, et seq.

If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary. (NRS 233B.0609(1)(g))

N/A. None of the regulation overlaps with any other state, local, or federal agency/regulation. No other chapter governs optometrists or the practice of optometry besides NRS 636/NAC 636.

The reasons for the conclusions of the agency regarding the impact of a regulation on small business (NRS 233B.0609(1)(h))

A plain reading of R101-24's text demonstrates that none of its 21 sections regard how optometry clinics, nearly all of which are small businesses as defined in NRS 233B, are to be conducted or are being mandated to spend capital in certain ways. See also Section 2 of this Statement wherein the membership, the public, and all interested persons were privy to these discussions by virtue of the Board's physical postings and online postings and no person expressed any impact on small business.

I, Adam Schneider, Esq., Executive Director of the Nevada State Board of Optometry, certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business, and that the information contained in the statement above is accurate. (NRS 233B.0609(2))

Dated: 8/14/2024

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Executive Director
Nevada State Board of Optometry