

STATE OF NEVADA
BOARD OF DISPENSING OPTICIANS

SMALL BUSINESS IMPACT STATEMENT REGARDING PROPOSED REGULATION
LCB FILE NO. R117-26

PREPARED PURSUANT TO NRS 233B.0608 AND NRS 233B.0609

The Nevada Board of Dispensing Opticians is proposing a regulation to amend Chapter 637 of the Nevada Administrative Code, pertaining to dispensing opticians. The proposed regulation would establish: 1) specific standards of practice and a duty of care for opticians, 2) requirements for optical establishments regarding record-keeping and confidentiality, storage of optical devices, and the provision of specific services to patients, 3) specific requirements for patient care related to the type of optical business, whether in-person or remote, 4) requirements for apprentice education programs approved by the Board and the method of approval, 5) requirements for management of an optical business and standards for determining whether an unlicensed person is managing an optical business, and 6) administrative fines for violations of certain provisions.

The proposed regulation would also increase or create fees for: 1) an application for an initial license as a dispensing optician or apprentice dispensing optician, 2) the annual renewal of a license as an optician or apprentice dispensing optician, and 3) the Laws and Ethics Examination administered by the Board pursuant to NAC 637.160.

The Board determined the proposed amendments will have a direct, but minimal, adverse financial impact upon small businesses that directly pay or reimburse their employees for their annual licensing fees, but they will not directly restrict the formation, operation, or expansion of small businesses in Nevada.

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

Manner of Solicitation: The Board reviewed the proposed regulations at its regular board meetings throughout 2025 and 2026 and collected public comment regarding the proposed fee increases. A Small Business Impact Survey was then distributed, along with a link to the proposed regulation, on 9/17/26. The survey was sent via email to approximately 580 licensees and other interested parties, including representatives for both state and national optical business associations. The survey included questions related to potential increased business costs due to proposed fee increases and/or compliance with proposed record-keeping and other requirements for optical businesses.

Summary of Responses: The Board received 5 total responses to the survey. Of the respondents, 4 were determined to be small business owners or operators. **Of the 4 responders who own/operate a small business:**

- **Business Models Represented:** 75% (3 respondents) indicated they operate a fully in-person business model, with no online dispensing services offered. 25% (1 respondent) indicated a hybrid, but separate, model with in-person dispensing services completely isolated from the online-dispensing services offered.
- **Costs of License Fee Increases:** 25% (1 responder) indicated there would be no increased costs, or a 0% increase in annual operating costs for their business due to the proposed fee increases. 50% (2 responders) indicated there would be a \$1-\$499 increase, representing a 1%-4% increase to their overall annual operating budgets. 25% (1 responder) indicated there would be \$2,500 - \$9,999 increase, representing 15% - 19% of annual business costs.
- **Effects of Record-Keeping and Audit Requirements:** 25% (1 respondent) did not anticipate any new workflow constraints due to the proposed requirements, and indicated the business already keeps the required records and can supply them to the Board upon request; 25% (1 respondent) anticipated minor workflow constraints, including a slow-down to customer onboarding and a need for staff training; 50% (2 respondents) anticipated moderate workflow constraints, including a need for staff training and/or purchasing or upgrading software, data storage, or filing tools.
- **Costs of Record-Keeping and Audit Requirements:** 25% (1 respondent) did not anticipate any upfront costs or increases to monthly costs or staff time due to the proposed requirements; 50% (2 respondents) anticipated an upfront cost of \$1-\$999 and a \$1-\$199 increase to monthly costs, as well as 1-9 additional staff hours per month to comply with the requirements; 25% (1 respondent) anticipated an upfront cost of \$1000 - \$4999, \$200- \$499 per month in increased costs, and 20-29 additional staff hours per month to comply with the requirements.
- **Compliance Timeline:** 25% (1 respondent) indicated their business could comply immediately with the proposed regulations; 25% (1 respondent) indicated they would require 30-90 days of lead time to comply with the requirements, and 50% (2 respondents) indicated they would require 6 months – 1 year to come into compliance.

To obtain a copy of the summary of the survey responses, please submit your request to the Board's office by email at: info@nvopticians.org.

2. The manner in which the analysis was conducted.

Fee Increases: The proposed fee increases are contained in Section 17 of the regulation. In addition to requesting input from stakeholders, licensees, and small business owners via the survey, Board staff analyzed its own records to determine the number of licensees employed at individual optical businesses, particularly those that qualify as small businesses. The Board determined that, of the independently owned, local optical businesses, the majority employ only one or two licensed opticians or apprentice opticians. The Board identified three small businesses that employ three licensed opticians, and one small business that employs four licensed opticians.

While there is no requirement that businesses reimburse their employees for their annual licensing fees, many employers choose to do so. If the annual fee for the renewal of an optician license increases from \$350 to \$500, a small business that employs four opticians and reimburses its employees for these fees would incur an additional \$600 in annual business costs. Most small businesses that employ one or two opticians would incur a \$150 - \$300 annual increase. Board staff

did not see any data to support a \$2,500 - \$9,999 annual increase, as indicated by one survey respondent.

Record-Keeping and Audit Requirements: The proposed record-keeping and audit requirements for optical businesses are contained in Section 8 of the regulation. The Board made efforts to craft requirements that would be appropriate and effective at preventing unlicensed dispensing, but would not be overly costly or burdensome to businesses. To do so, Board staff researched current federal and state requirements for medical and insurance records, as well as the policies of other State boards.

It is important to note that under federal guidelines, any individually identifiable data that relates to the past, present, or future provision of health care to an individual is protected healthcare information. Because licensed opticians handle lens prescriptions, pupillary distance measurements, base curve adjustments, and other private health information, their dispensing activities and the information they collect from patients are classified as Protected Health Information (PHI) under HIPAA. Also, both eyeglasses and contact lenses are classified as regulated medical devices by the U.S. Food and Drug Administration (FDA). Because a licensed practitioner must write a prescription to dispense these devices, the records documenting their fabrication, fitting, and delivery are part of the patient's continuous medical history, making them also subject to HIPAA requirements. While HIPAA does not mandate a specific retention period for medical records, it does require businesses to keep 6 years of compliance records related to patient privacy practices.

In addition to federal HIPAA requirements, if a retail establishment accepts and processes federal vision or health insurance, such as Medicare or Medicaid, specific CMS (Centers for Medicare & Medicaid Services) conditions apply. For standard Medicare Fee-For-Service, health care providers must retain all patient medical and billing records for at least 5 years after the closure of the associated cost report, and if the retail location partners with Medicare Managed Care (Medicare Advantage), the required retention period increases to 10 years.

The proposed regulation would require businesses to maintain 5 years' worth of accurate and legible records of optical orders that are dispensed to patients pursuant to a prescription. The records must include the name and license number of the optician who created and dispensed the order. The Board determined this is the bare-minimum requirement for the Board to fulfill its mandate to prevent unlicensed dispensing in the State, and for businesses to avoid potential liability related to claims of unlicensed dispensing activity. It is also on par with the requirements of other State boards that regulate medical providers who operate in a retail setting. Hearing aid specialists are the medical professionals most analogous to dispensing opticians in scope of practice and dispensing model, in that they often operate within a retail setting, but dispense medical devices and interact with protected healthcare information and federal insurance policies. NAC 637B.045 requires hearing aid specialists and dispensing audiologists to prepare and retain health care records of fitting, servicing, or dispensing hearing aids for each client for 5 years.

Portions of the regulation were drafted specifically in response to licensee requests for guidelines related to online dispensing. The proposed regulations aim to ensure that patient medical records

are securely maintained and accessible only to licensed personnel authorized to dispense optical orders, regardless of business model. The requirements acknowledge the reality of a growing online sector of the industry, while maintaining protocols for compliance with HIPAA confidentiality guidelines. The requirements would allow for and maintain regulatory consistency between bricks-and-mortar stores and newer online business models, while removing ambiguity surrounding the legality of online dispensing.

The Board's analysis indicated that in order to comply with federal and corporate guidelines, most optical businesses are already keeping the necessary records to comply with the proposed regulation. Likewise, most businesses that utilize an online ordering system have security measures in place to prevent unauthorized access to patient records, which is a HIPAA requirement. Those businesses that do not currently keep these records in a readily accessible and legible format may be subject to liability if they are the subject of a complaint under the jurisdiction of HIPAA, CMS, the Board, or another State agency.

3. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate, including, without limitation: (1) both adverse and beneficial effects; and (2) both direct and indirect effects.

Direct Adverse Effects: The Board determined there would be a minor adverse effect on small businesses that pay or reimburse their employees' annual license fees. The impact would be \$150 - \$300 annually for most small businesses, and \$400 to \$600 annually for about four small businesses.

Indirect Adverse Effects: Small businesses that are not already in compliance with federal mandates regarding retention of insurance records or patient privacy policies may incur some slow-down in client onboarding, or an increase in staff time related to training or record-keeping.

Direct Beneficial Effects: Businesses that are operating an online-only or hybrid dispensing model will be assured of the legality of their business model and will have clear guidelines for best business practices going forward.

Indirect Beneficial Effects: Businesses will have clear guidelines regarding the creation and retention of medical records and audit requirements, which will prevent liability issues in the case of consumer complaints or claims of noncompliance by federal or state agencies.

4. A 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 those methods.

The Board considered several methods of reducing the impact of the regulation on small businesses, including:

Gradual Fee Increases: The Board considered gradually raising licensing fees over the course of several years, but determined the expense and regulatory upheaval of pursuing multiple regulation changes would mitigate the benefits of collecting additional funds. The Board also researched the timeline of previous fee increases and determined that, while fees were raised in 2023, they had

previously remained static since 2004, almost 20 years, leaving the Board out of pace with increased operating costs.

Simplified or Modified Compliance: The Board is suggesting the removal or revision of provisions of the draft regulation that would be overly onerous, including:

- **Sanitation and cleanliness guidelines:** The Board recommends the removal of Section 10(2), which would require individual opticians to submit their procedures for cleaning and sanitizing equipment to the Board for approval; the Board recommends instead that standard guidelines be created and distributed to the opticians by the Board.
- **Prescription Verification:** The Board recommends a revision to move the requirements for prescription verification from Section 10 (relating to online optical vendors) to Section 11 (applicable to all opticians, regardless of business model), and to remove validation measures that are overly onerous or redundant.
- **Access to Patient Records and Ophthalmic Products:** The Board recommends a revision to Sections 8(b) and (c) to clarify that certain authorized individuals may access confidential patient records for insurance or billing purposes, and to distinguish between requirements for bricks-and-mortar establishments, where unlicensed personnel should not have access to finished ophthalmic products awaiting final dispensing to patients, and online optical vendors, which may allow unlicensed personnel to deliver finished products after final authorization by an optician.

Delayed Implementation: While not required by regulation, the Board intends to allow a 6-month grace period after implementation of the proposed regulation before conducting workplace inspections or other compliance measures, in consideration of the projected timeline supplied by survey respondents. Adjusting the compliance deadline forward will give small businesses ample time to adjust business practices, update software, or train staff on compliance practices.

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

The Board does not anticipate that enforcement of the new regulation will create any additional up front or annual costs for the Board. Existing Board staff will incorporate these updates into routine oversight functions.

6. 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.

The proposed regulation would increase fees for the initial issuance of a dispensing optician or apprentice dispensing optician license, the annual renewal of either type of license, and introduce a new fee for the Board-administered Laws and Ethics Exam. If all proposed fees are enacted, the Board anticipates an annual income increase of approximately \$85,000. The Board will use the additional funds to correct a deficit in the Board's budget due to increases in general operating costs, required maintenance, upgrades, and security for online license applications, including ADA and language-access requirements, and increased legal and representation costs during legislative session years due to bill tracking requirements and/or proposing legislation.

7. 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.

This regulation does not duplicate any federal, state, or local standards, but rather serves as a functional prerequisite to federal HIPAA requirements. Most opticians already keep records of their dispensing activities that legally qualify as medical records under HIPAA's privacy rules. This regulation officially recognizes those existing records, while setting a clear requirement that complete medical records must be created for every single patient moving forward. The regulation governs the generation and lifecycle of the records, while HIPAA strictly governs the privacy of the records once created.

Additionally, while HIPAA's guidelines include privacy provisions for medical information that is collected online, such as requiring unique login identifiers and passwords, the proposed regulation ensures that each licensed optician who works with online orders is provided with one such HIPAA-compliant account. Section 8(1)(b) of the regulation, which prohibits access to confidential records by unlicensed staff, does exceed HIPAA's "minimum necessary" standard for access to confidential information. However, HIPAA guidelines are a floor, rather than a ceiling, and such a provision is entirely appropriate in a setting that requires licensed personnel to handle all aspects of the dispensing process.

8. The reasons for the conclusions of the agency regarding the impact of the regulation on small businesses.

The Board concludes that the proposed regulation represents a balanced regulatory framework that will provide the necessary funds and enforcement tools for the Board to protect the public, while minimizing costs and administrative burdens for small businesses. This conclusion is supported by the low volume of negative survey feedback, and the complementary or parallel requirements of other state and federal agencies.

I certify that, to the best of my knowledge and belief, a concerted effort was made to determine the impact of the proposed regulation on small businesses and that the information contained in the statement is accurate.

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