

NEVADA STATE BOARD OF OPTOMETRY



NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption of
LCB File No. R101-24
[R101-24P.pdf \(state.nv.us\)](#)*

The Nevada State Board of Optometry

The Nevada State Board of Optometry will hold a public hearing at **3pm (pst) on the 31st day of July 2024** through telephonic and remote means:

<https://us06web.zoom.us/j/88942146264?pwd=2aBBcpzKHyqgFRt2H0bDxwi92IhET2.1>

Meeting ID: 889 4214 6264

Passcode: 420960

Telephone: 1 669 900 6833

The purpose of the hearing is to receive comments from all interested persons regarding **R101-24** [R101-24P.pdf \(state.nv.us\)](#)* of the regulations that pertain to chapter 636 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need and purpose of the proposed regulation or amendment

The regulation is necessary to comply with and further clarify the provisions of Assembly Bill (AB) 432 of the 2023 Legislative Session (for incorporation into NRS 636) and R066-19 (for incorporation into NAC 636).

2. If the proposed regulation is a temporary regulation, the terms and substance of the proposed regulation to be adopted, amended, or repealed, or a description of the subjects and issues involved.

N/A. R101-24 is not a temporary regulation.

3. Because the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation

A copy can be requested by emailing director@nvoptometry.org, searching www.nvoptometry.org under the Board Meetings tab, requesting a copy via fax 775-305-0105, presenting to Nevada State Board of Optometry located at 6170 Mae Anne Ave., Ste. 1, Reno, NV 89523, presenting to State Library, Archives and Public Records at 100 Stewart Street, Carson City, NV, and searching State of Nevada Register of Administrative Regulations at <http://www.leg.state.nv.us/>.

4. The estimated economic effect of the regulation on the business in which it is to regulate and on the public.

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 20.

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.

5. The methods used by the agency in determining the impact on a small business

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. Additionally, the Board President regularly accepted public comment when a person had a relevant comment during the Board's discussions. Attending and participating in several of the discussions were representatives from the Nevada Optometric Association, as well as various licensees. Based upon the discussion, the Board made some changes to the proposed language. No participant in the discussions presented any evidence or argument that the proposed language would have a positive or negative impact on small businesses. 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. No member of the public provided any comments prior to the formal public workshop as to any impact on small business.

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 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 businesses.

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. The Board at its April 24, 2024 meeting voted on same, ultimately resulting in proposed language to Legislative Counsel Bureau which is the present subject of this Notice.

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

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.

7. A description of and citations to any regulation of other state or local governmental agencies which the proposed regulation overlaps or duplicates, and a statement why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, state the name of the regulating federal agency.

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.

8. If the regulation is required pursuant to federal law, a citation and description of the federal law

N/A. The regulation is not required by federal law.

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

N/A. None of the proposed regulation changes duplicates or is more stringent than any federal, state, or local standards regulating optometry to the best of the Board's knowledge.

10. Whether the proposed regulation establishes a new fee or increases an existing fee.

Yes. \$100 for a name change. 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.

11. If the proposed regulation is a temporary regulation, each address at which the text of the regulation may be inspected and copied.

N/A. R101-24 is not a temporary regulation.

Persons wishing to comment upon the proposed action of the Nevada State Board of Optometry may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to:

Nevada State Board of Optometry
P.O. Box 1824
Carson City, NV 89702
-or-
Email: director@nvoptometry.org

Written submissions must be received by the Nevada State Board of Optometry on or before **end of business July 26, 2024**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Board of Optometry may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, Archives and Public Records, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will

be available at the Nevada State Board of Optometry, 6170 Mae Anne Ave., Ste. 1, Reno, NV 89523 for inspection and copying by members of the public during business hours and www.nvoptometry.org under the Boards Meeting tab at all times. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to [NRS 233B.0653](#), and on the Internet at <http://www.leg.state.nv.us/>. Copies of this notice and the proposed regulation will also be mailed to members of the public at no charge upon request.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

Nevada State Board of Optometry at 6170 Mae Anne Ave., Ste. 1, Reno, NV 89523
State Library, Archives and Public Records at 100 Stewart Street, Carson City, NV
nvoptometry.org
notice.nv.gov
Nevada Register of Administrative Regulations at <http://www.leg.state.nv.us/>

The Board will take reasonable measures to accommodate persons with disabilities who wish to attend the meeting. Please call (775) 883-8367 or email admin@nvoptometry.org in advance to make arrangements.

*MEETING MATERIALS: The public may request these, including R101-24 itself, in advance by email to admin@nvoptometry.org.

Proposed revision to Section 2

Sec. 2.

1. A student who is enrolled in a graduate course of study in optometry at an accredited school or college may perform a procedure pursuant to subsection 1 of NRS 636.0285 only if that procedure is within the scope of practice of the optometrist or ophthalmologist who is physically present at the clinic when the student is performing the procedure. **Nothing in this section allows for the student to perform a procedure outside the scope of a license to practice optometry issued pursuant to this chapter.**

2. A person who has received a degree of doctor of optometry and who is engaged in a residency program for optometry in this State may:

(a) Engage in the practice of optometry pursuant to subsection 2 of NRS 636.0285 only within the scope of practice of the optometrist or ophthalmologist who is physically present at the clinic when the person is in the practice of optometry. **Nothing in this section allows for the resident to engage in the practice of optometry outside the scope of a license to practice optometry issued pursuant to this chapter.**