NOTICE OF PUBLIC HEARING

Intent to Change Regulations

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 441 A of the Nevada Administrative Code (NAC). This public hearing is to be held in conjunction with the State Board of Health meeting on August 13, 2010. The NAC 441 A regulation changes will be heard in the order placed on the State Board of Health agenda.

The proposed changes to NAC 441 A for communicable diseases will provide further explanation of "sex worker" and contain additional screening and protective guidelines in NAC 441A.800.

The State Board of Health hearing is scheduled to begin at 9:00 a.m. on Friday, August 13, 2010 at the following locations:

Videoconference to:
Legislative Building
401 S. Carson Street
Room #2134
Carson City, Nevada

Board Attending:
Grant Sawyer Building
555 E. Washington Avenue
Room #4412
Las Vegas, Nevada

1. Anticipated effects on the business which NAC 441 A regulates:
   - A. Adverse: higher medical screening costs incurred by legal sex workers
   - B. Beneficial: increased medical screening and protection during sexual acts for legal sex workers
   - C. Immediate: increased medical screening and protection during sexual acts for legal sex workers
   - D. Long-term: decreased potential transmission of sexually transmitted diseases (STDs) in legal brothels in Nevada

2. Anticipated effects on the public:
   - A. Adverse: none
   - B. Beneficial: early identification of STDs among legal sex workers; increased use of barriers (condoms, etc.) during sexual acts
   - C. Immediate: early identification of STDs among legal sex worker
   - D. Long-term: decreased potential transmission of STDs in legalized brothels in Nevada

3. Estimated cost to the Health Division for enforcement of the proposed regulation: $0

The amendments do not establish any new fees or increase any existing fees.
The proposed regulations do not overlap or duplicate any other Nevada State Regulations.

Members of the public may make oral comments at this meeting. Persons wishing to submit written testimony or documentary evidence in excess of two typed, 8-1/2" x 11" pages must

submit the material to the Board's Secretary, Richard Whitley, to be received no later than August 1, 2010, at the following address:

Secretary, State Board of Health
Nevada State Health Division
4150 Technology Way, Suite 300
Carson City, Nevada 89706

Written comments, testimony, or documentary evidence in excess of two typed pages will not be accepted at the time of the hearing. The purpose of this requirement is to allow Board members adequate time to review the documents.

A copy of the notice and proposed regulations are on file for inspection and/or may be copied at the following locations during normal business hours:

Nevada State Health Division
Office of Epidemiology
4150 Technology Way, Suite 211
Carson City, Nevada 89706

Nevada State Library
100 Stewart Street
Carson City, NV 89701

Copies may be obtained in person, by mail, or by calling the Office of Epidemiology at (775) 684-4192. Copies are also available for review at all physical locations of program offices or main public libraries in each county where no agency office exists.

AGENDA POSTING LOCATIONS
NEVADA STATE HEALTH DIVISION – 4150 Technology Way, Carson City
SOUTHERN NEVADA HEALTH DISTRICT – 625 Shadow Lane, Las Vegas
WASHOE COUNTY HEALTH DISTRICT – 1001 E. 9TH Street, Reno
GRANT SAWYER BUILDING – 555 E. Washington Ave., Las Vegas
LEGISLATIVE BUILDING – 401 S. Carson Street, Carson City
BUREAU OF EARLY INTERVENTION SERVICES—1020 Ruby Vista Drive, Elko
On the Internet at the Nevada State Health Division website: **www.health.nv.gov**

Copies may also be obtained from any of the public libraries listed below:

(Carson City Library)
(900 North Roop Street)
(Carson City, NV 89702)

(Churchill County Library)
(553 South Maine Street)
(Fallon, NV 89406)

(Clark County District Library)
(833 Las Vegas Boulevard North)
(Las Vegas, NV 89101)

(Storey County Public Library)
(95 South R Street)
(Virginia City, NV 89440)

(Humboldt County Library)
(85 East Fifth Street)
(Winnemucca, NV 89445-3095)

(Lander County Library)
(625 South Broad Street)
(Battle Mountain, NV 89820-0141)

(Tonopah Public Library)
(167 Central Street)
(Tonopah, NV 89049)

(Douglas County Library)
(1625 Library Lane)
(Minden, NV 89423-0337)

(Elko County Library)
(720 Court Street)
(Elko, NV 89801-3397)

(Esmeralda County Library)
(Corner of Crook & Fourth Street)
(Goldfield, NV 89013-0484)

(Pershing County Library)
(1125 Central Ave.)
(Lovelock, NV 89419-0781)

(Lincoln County Library)
(63 Main Street)
(Pioche, NV 89043-0330)

(Lyon County Library)
(20 Nevin Way)
(Yerington, NV 89447-2399)

(Mineral County Library)
(110 1st Street)
(Hawthorne, NV 89415-1390)

(White Pine County Library)
(950 Campton Street)
(Ely, NV 89301)

(Washoe County Library)
(301 South Center Street)
(Reno, NV 89501)

Per NRS 233B.064(2), upon adoption of any regulation, the agency, if requested to do so by an interested person, either prior to 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.

Members of the public who are disabled and require special accommodations or assistance at the meeting are required to notify the Office of Epidemiology, 4150 Technology Way, Suite 211, Carson City, Nevada, 89706, Phone (775) 684-4192, at least 24 hours prior to the date of the workshop.

Anyone who wants to be on the mailing list must submit a written request every six months to the Nevada State Health Division at the address listed in the previous paragraph.

PROPOSED REGULATION OF THE

STATE BOARD OF HEALTH

LCB File No. R089-10

July 12, 2010

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §§1-3, NRS 441A.120.

A REGULATION relating to communicable diseases; revising provisions governing the testing for communicable diseases of certain persons employed by or seeking employment with a licensed house of prostitution; revising provisions requiring the wearing and use of a prophylactic by certain employees and patrons of a licensed house of prostitution; and providing other matters properly relating thereto.

Section 1. Chapter 441A of NAC is hereby amended by adding thereto a new section to read as follows:

As used in this section and NAC 441A.800 to 441A.815, inclusive, "sex worker" means a prostitute who is employed by or has a contract to work in a licensed house of prostitution.

Sec. 2. NAC 441A.800 is hereby amended to read as follows:

441A.800 1. A person seeking employment as a [~~prostitute in a licensed house of prostitution~~] ***sex worker*** shall submit to the State [~~Hygienic~~] ***Public Health*** Laboratory [~~in the Division~~] or a medical laboratory licensed pursuant to chapter 652 of NRS and certified by the [~~Health Care Financing Administration~~] ***Centers for Medicare and Medicaid Services*** of the United States Department of Health and Human Services:

(a) A sample of blood for a test to confirm the presence or absence of human immunodeficiency virus infection (HIV) and syphilis. ~~[; and]~~

(b) ~~[A]~~ ***If the person is female and has a uterine cervix, a*** cervical specimen for a test to confirm the presence or absence of gonorrhea and *Chlamydia trachomatis* by culture or antigen detection or ~~[DNA probe.]~~ ***nucleic acid testing.***

(c) If the person is female and does not have a uterine cervix, a high vaginal specimen for a test to confirm the presence or absence of gonorrhea and Chlamydia trachomatis by culture or antigen detection or nucleic acid testing.

(d) If the person is male or transgendered, a urethral specimen for a test to confirm the presence or absence of gonorrhea and Chlamydia trachomatis by culture or antigen detection or nucleic acid testing.

(e) If the person is seeking employment in a licensed house of prostitution which does not have a written policy that explicitly prohibits engaging in any form of anal intercourse, a rectal specimen for a test to confirm the presence or absence of gonorrhea and Chlamydia trachomatis by culture or antigen detection or nucleic acid testing.

2. A person must not be employed as a ~~[prostitute in a licensed house of prostitution]~~ ***sex worker*** until the State ~~[Hygienic]~~ ***Public Health*** Laboratory ~~[in the Division]~~ or a medical laboratory licensed pursuant to chapter 652 of NRS and certified by the ~~[Health Care Financing Administration]~~ ***Centers for Medicare and Medicaid Services*** of the United States Department of Health and Human Services has reported that the tests required pursuant to subsection 1 do not show the presence of infectious syphilis, gonorrhea, *Chlamydia trachomatis* or infection with the human immunodeficiency virus (HIV).

3. A person employed as a ~~[prostitute in a licensed house of prostitution]~~ ***sex worker*** shall submit to the State ~~[Hygienic]~~ ***Public Health*** Laboratory ~~[in the Division]~~ or a medical laboratory licensed pursuant to chapter 652 of NRS and certified by the ~~[Health Care Financing Administration]~~ ***Centers for Medicare and Medicaid Services*** of the United States Department of Health and Human Services:

(a) Once each month, a sample of blood ~~[, identified by the name of the prostitute as it appears on her local work permit card,]~~ for a test to confirm the presence or absence of:

(1) Infection with the human immunodeficiency virus (HIV); and

(2) Syphilis.

(b) Once each week ~~[,]~~ ***if the sex worker is female and has a uterine cervix,*** a cervical specimen ~~[, identified by the name of the prostitute as it appears on her local work permit card,]~~ for a test to confirm the presence or absence of gonorrhea and *Chlamydia trachomatis* by culture or antigen detection or ~~[DNA probe.]~~ ***nucleic acid testing.***

(c) Once each week if the sex worker is female and does not have a uterine cervix, a high vaginal specimen for a test to confirm the presence or absence of gonorrhea and Chlamydia trachomatis by culture or antigen detection or nucleic acid testing.

(d) Once each week if the sex worker is male or transgendered, a urethral specimen for a test to confirm the presence or absence of gonorrhea and Chlamydia trachomatis by culture or antigen detection or nucleic acid testing.

(e) Once each week if the sex worker is employed in a licensed house of prostitution which does not have a written policy that explicitly prohibits engaging in any form of anal

intercourse, a rectal specimen for a test to confirm the presence or absence of gonorrhea and Chlamydia trachomatis by culture or antigen detection or nucleic acid testing.

4. If a test required pursuant to this section shows the presence of infectious syphilis, gonorrhea, *Chlamydia trachomatis* or infection with the human immunodeficiency virus (HIV), the person shall immediately cease and desist from employment as a ~~[prostitute in a licensed house of prostitution.]~~ ***sex worker.***

5. Each sample and specimen required pursuant to this section must be collected under the supervision of a licensed health care professional and must be identified by, as applicable:

(a) The name of the sex worker from whom the sample or specimen was collected, as that name appears on the local work permit card of the sex worker; or

(b) The name of the person from whom the sample or specimen was collected, as that name appears on the application of the person for a local work permit card.

6. Each laboratory test required pursuant to this section must be approved by the Food and Drug Administration of the United States Department of Health and Human Services for the purpose for which it is administered or must have been validated by a laboratory certified by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 263a.

Sec. 3. NAC 441A.805 is hereby amended to read as follows:

441A.805 ***1.*** A person employed as a ~~[prostitute in a licensed house of prostitution]~~ ***sex worker*** shall require each patron to wear and use a latex ***or polyurethane*** prophylactic while ***the patron is*** engaging in ***any form of*** sexual intercourse ~~[.]~~ ***involving the insertion of the penis into the vagina, anus or mouth of the sex worker,*** oral-genital contact or any touching of the sexual organs or other intimate parts of a person.

2. A person employed as a sex worker shall wear and use a latex or polyurethane prophylactic while the sex worker is engaging in any form of sexual intercourse involving the insertion of the penis into the vagina, anus or mouth of the patron, oral-genital contact or any touching of the sexual organs or other intimate parts of a person.

SMALL BUSINESS IMPACT STATEMENT
(Nevada Revised Statutes 233B.0608)

Proposed Regulations Nevada Administrative Code (NAC) 441A

Background:

The Office of Epidemiology within the Health Division is requesting approval to change regulations for Chapter 441A for Communicable Diseases. Revisions include further explanation of "sexual intercourse," as defined in 441A.800 and 441A.805 and further information testing requirements.

Interested individuals can obtain a copy of the information packet, including the Small Business Impact Questionnaire, sent to all anticipated affected businesses (55), from Julia Spaulding, Nevada State Health Division, 4150 Technology Way, Suite 211, Carson City, Nevada 89706. FAX (775) 684-5999.

1. **A 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.**

Pursuant to NRS 233B.0608(2)(a), the Nevada State Health Division requested input from all anticipated affected individuals.

A "Small Business Impact Questionnaire" and "Notice of Public Workshop" and the proposed regulation amendments have been sent to all available brothel mailing addresses, local health authorities, local Sheriff's Departments, county health officers, and other community members who requested the information.

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?

The specific responses to these questions may be found in the attached document titled: "Small Business Impact Questionnaire Summary- NAC 441A." Below is a table indicating the number of responses.

Total Number of Responses:	4
Q1- # Meeting Small Business Definition	4
Q2- # Having Direct Adverse Effect:	4
Q3- # Having Direct Beneficial Effect:	4
Q4- # Having Indirect Adverse Effect:	4
Q5- # Having Indirect Beneficial Effect:	4

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

Adverse effects would be additional laboratory testing costs in regard to rectal swabbing. Beneficial effects would be increased screening and health protection and health benefit by identifying infection if present and treating it immediately and appropriately. Further benefit is to eliminate the gender-specific language of the current regulations and allow men and transgendered individuals, in addition to females. One brothel noted that it is an opportunity to broaden the services offered to clients. Another brothel noted that they had reservations about hiring transgendered persons because it may harm the industry. The brothels wanted to engage with the Health Division and other public health professionals and law enforcement to try and address the illegal prostitution in Nevada and feel that if the public understood the differences between illegal and legal prostitution, there would be benefit to all.

3. A description of the methods that the Health Division considered to reduce the impact of the proposed regulation on small businesses and statement regarding whether the agency actually used those methods.

The Health Division's Office of Epidemiology changed the draft regulations to reflect that the recommended additional testing (rectal swabs) would only be required if the brothel did not have a written policy that explicitly prohibits anal intercourse. This allows those brothels that do not offer anal intercourse as a service to be excluded from the additional screening requirements and associated screening fees that would be incurred by the workers.

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

There is no anticipated additional cost to the agency for enforcement of the proposed regulation.

5. Total amount the Health Division expects to collect from any fees and the manner in which the money will be used.

These regulations do not establish new fees.

6. An explanation of why any duplicative or more stringent provisions than federal, state or local standards regulating the same activity are necessary.

No duplication or more stringent provisions are either created or are already in existence.