

Steve Sisolak
Governor



Richard Whitley, MS
Director

**DEPARTMENT OF
HEALTH AND HUMAN SERVICES**
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
Helping people. It's who we are and what we do.



Lisa Sherych
Administrator

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

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Amendment of Regulations of the Board of Health

LCB File No. R037-22 related to Certification of Programs for the Treatment of Persons who Solicit Prostitution

NOTICE IS HEREBY GIVEN that the State Board of Health will hold a public hearing to consider amendments to Chapter 439 of Nevada Administrative Code (NAC). This public hearing is to be held in conjunction with the State Board of Health meeting on December 2, 2022, at 9:00 AM at the following virtual and physical locations.

Virtual Meeting Locations:

- [Click here to join the meeting](#); or
- Call in (audio only): 775-321-6111 (Phone Conference ID: 153 453 179#)

Physical Meeting Locations:

- Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard
Las Vegas, Nevada 89107
- Nevada Division of Public and Behavioral Health (DPBH)
Hearing Room No. 303, 3rd Floor
4150 Technology Way
Carson City, Nevada 89706

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

The proposed changes revise Chapter 439 of the Nevada Administrative Code (NAC) (LCB File No. R037-22) and are being proposed in accordance with the following authority: §§ 1-14 and 16-40, NRS 4.373, 5.055 and 439.200; § 15, NRS 4.373, 5.055, 439.150 and 439.200. These changes are needed as statutes have provisions for a justice of the peace or municipal judge to order customers of prostitutes convicted of a misdemeanor that constitutes solicitation for prostitution to participate in a program for the treatment of persons who solicit prostitution which is certified by the Division of Public and Behavioral Health. As no such certification currently exists, the proposed regulations establish certification of these programs.

The proposed changes to NAC 439 (LCB File No. R037-22) include the following:

NRS 4.373 (3) allows the justice of the peace to suspend the sentence for not more than 2 years upon the condition that the person actively participates in a program for the treatment of persons who solicit prostitution which is certified by the Division of Public and Behavioral Health. NRS 439.200 gives the State Board of Health authority to adopt, amend and enforce reasonable regulations consistent with law to protect and promote the public health generally. NRS 439.150 authorizes the State Board of Health to set reasonable fees for the licensing, registering, certifying, inspecting or granting permits for any facility, establishment or service regulated by the Division. These proposed regulations establish the certification and regulation requirements for programs of treatment for persons who solicit prostitution.

The proposed regulations establish the certification and regulatory requirements for a program for the treatment of persons who solicit prostitution including:

- Certification and renewal requirements
- Criteria for attendance of counseling sessions via distance media
- Required curriculum and instructional material requirements
- Program structure
- Certification and associated fees. Renewal fees are based on a two-year renewal cycle.
- Requires programs to offer a payment sliding scale
- Requirements for the completion and termination of a course
- Program record retention schedule
- Confidentiality requirements
- Offender agreement requirements
- Provisions relating to formal training and continuing education
- Program facilitator requirements
- Program director requirements
- Disciplinary action and appeal rights
- Inspection and complaint investigation requirements

2. A statement explaining how to obtain the approved or revised text of the proposed regulation.

Any persons interested in obtaining a copy of the approved or revised text of the proposed regulations 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. The estimated economic effect of the regulation on the business which it is to regulate and on the public. Anticipated effects of Chapter 439 of the Nevada Administrative Code (LCB File No. R037-22) on the businesses which it regulates:

A. *Adverse effects:* The associated certification fees may cause a negative financial impact.

B. *Beneficial:* This new certification type will open a new business opportunity to those interested in operating a program of treatment for persons who solicit prostitution. Indirect beneficial effects include a new business opportunity that may lead to new or additional income for an individual operating this new business type.

C. *Immediate:* There would be an immediate certification cost to any small business wanting to operate a program of treatment for persons who solicit prostitution which accepts clients in which a justice of the peace orders an individual to actively participate in a program for the treatment of persons who solicit prostitution pursuant to NRS 4.373, or a municipal judge who issues such an order pursuant to NRS 5.055.

D. *Long-term:* Long-term financial beneficial effects are an additional business opportunity for small businesses that are interested in operating a program for the treatment of persons who solicit prostitution, and any associated revenue. The long-term financial adverse effects include pay all applicable certification fees, including on-going renewal fees every two years.

Anticipated effects on the public:

A. *Adverse:* There are no anticipated adverse financial effects on the public, except for individuals which are ordered to attend a program for the treatment of persons who solicit prostitution. In this case, the cost would be dependent on the fees charged to attend a program for the treatment of persons who solicit prostitution, and any associated travel costs.

B. *Beneficial:* There are no anticipated direct beneficial financial effects on the public.

C. *Immediate:* There are no known immediate beneficial or adverse financial effects on the public, except perhaps an immediate adverse financial effect on members of the public who are ordered to attend a program for the treatment of persons who solicit prostitution, as indicated in the above Adverse section.

D. *Long-term:* There are no known long-term financial beneficial or adverse financial effects on the public.

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

The methods used by the agency in determining the impact of the proposed changes to Chapter 439 of the Nevada Administrative Code (LCB File No. R037-22) on a small business are as follows:

Notice was sent to all certified domestic violence treatment program providers, certified at the time of the notice distribution, and individuals for which contact information was provided that may have an interest in programs for the treatment of persons who solicit prostitution by January 24, 2020, requesting that all interested individuals complete the small business impact questionnaire. An email notice with a link to the small business impact questionnaire and proposed regulations was provided to those with an email address. The proposed regulations were also posted on DPBH's website. 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?

This data was then collected and analyzed to help determine the impact on a small business. Because there are no currently certified programs for the treatment of persons who solicit prostitution, the questionnaire was sent to certified domestic violence treatment program providers, as there are similarities between the two programs, there may be certified domestic violence treatment program providers who would have an interest in also providing a program for the treatment of persons who solicit prostitution.

A public workshop was also held on July 20, 2022, to gain further information on the proposed regulations on business, including small businesses. There was one person that testified in support of the proposed regulations, and no one testified in opposition of the proposed regulations.

An analysis of industry input collected was conducted by a health program manager. The analysis involved analyzing feedback obtained from the small business impact questionnaire, the public workshop, and review of statutes to determine how the Division could implement a comprehensive program of treatment for persons who solicit prostitution while at the same time not being overly burdensome.

5. The estimated cost for the Division of Public and Behavioral Health for enforcement of the proposed changes to Chapter 439 of the Nevada Administrative Code (LCB File No. R037-22) are as follows:

The estimated cost to the agency for the enforcement of the proposed regulations is the amount of fees collected pursuant to Section 15 of the proposed regulations. This will depend on the number and type of applications received, for example, if one initial application is received the \$897 would cover two years of licensing and regulating this facility, with an additional \$449 every two years to maintain these services, for a total cost of \$1,346 to regulate and license one program over a four-year period.

6. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulations do not overlap or duplicate any other Nevada state regulations or federal regulations.

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

The proposed regulations do not provide provisions that are more than a federal regulation that regulates the same activity.

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

The total annual amount DPBH expects to collect is unknown because it is based on the number and type of applications received. For example, if no applications were received, DPBH would collect nothing. If one initial application was received, DPBH would collect \$897 but if 10 initial applications were received, it would receive \$8,970. It would also depend on the length of time each program remains certified, because the longer a program remains certified, the more fees DPBH would collect. DPBH will use the money to license and regulate these programs.

Persons wishing to comment upon the proposed action of Board of Health may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Board's Secretary, Lisa Sherych, to be received no later than November 17, 2022, at the following address:

Secretary, State Board of Health
Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 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.

Members of the public who are disabled and require special accommodations or assistance at the hearing are requested to notify Leticia Metherell, in writing, no later than five (5) working days before the hearing via email at: lmetherell@health.nv.gov or by mailing a request to:

Nevada Division of Public and Behavioral Health
Attention: Leticia Metherell
727 Fairview Drive, Suite E
Carson City, NV 89701

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 Division of Public and Behavioral Health
727 Fairview Drive, Suite E
Carson City, NV 89701

Nevada Division of Public and Behavioral Health
4150 Technology Way, Suite 300
Carson City, NV 89706

Nevada State Library
100 Stewart Street
Carson City, NV 89701

Southern Nevada Health District (SNHD)
Red Rock Trail Rooms A and B
280 S. Decatur Boulevard
Las Vegas, Nevada 89107

Nevada Division of Public and Behavioral Health
4220 S. Maryland Parkway, Suite 100, Building A
Las Vegas, NV 89119

A copy of the regulations, public hearing notice, and small business impact statement can be found on-line by going to:

http://dpbh.nv.gov/Reg/HealthFacilities/State_of_Nevada_Health_Facility_Regulation_Public_Workshops/

A copy of the public hearing notice can also be found at Nevada Legislature's web page:

<https://www.leg.state.nv.us/App/Notice/A/>

Copies may be obtained in person, by mail, or by calling the Division of Public and Behavioral Health at (775) 684-1030 in Carson City or (702) 486-6515 in Las Vegas.

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.