

**ADOPTED REGULATION OF THE
STATE BOARD OF HEALTH**

LCB File No. R089-10

Effective October 15, 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.

HEALTH DIVISION

Bureau of Health Statistics, Planning, and Emergency Response, Office of Epidemiology LCB File #R089-10

Information Statement per NRS 233B.066

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

In order to receive public comment, mailings went out to notify the public of the Board of Health meeting and hearing of 441A through the Board of Health listserv and the documents were posted online at health.nv.gov, as well as at the physical locations specified in the public notice. Further, mailings went out to all local health authorities, brothels, county health officers, and local sheriff's departments. The only public comment received was a letter from Shady Lady Ranch in Nye County supporting the changes in full. There were 5 persons that provided testimony for the Board of Health meeting. Other interested parties can receive documentation of the changes and public comments through the Nevada State Health Division.

2. The number of persons who:

- (a) Attended the hearing: 140 persons
- (b) Testified at each hearing: 5 persons (Ms. Spaulding, Dr. Green, Mr. Flint, Dr. Middaugh, and Dr. Todd)
- (c) Submitted to the agency written statements.
The NSHD received two written statements from Dr. John Middaugh, Southern Nevada Health District, and Bobbi Davis, Owner, Shady Lady Ranch

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Mailings went out to all local health authorities, brothels, county health officers, and local sheriff's departments. The only public comment received was a letter from the Shady Lady Ranch in Nye County supporting the changes in full. There were 5 persons that provided testimony for the Board of Health meeting. Other interested parties can receive documentation of the changes and public comments through the Nevada State Health Division.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change. The statement should also explain the reasons for making any changes to the regulation as proposed.

The State Board of Health approved these proposed regulation amendments without any changes.

5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and in each case must include:

(a) Both adverse and beneficial effects; and

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.

(b) Both immediate and long term effects.

Anticipated effects on the business which NAC 441 A regulates:

Adverse: higher medical screening costs incurred by legal sex workers

Beneficial: increased medical screening and protection during sexual acts for legal sex workers

Immediate: increased medical screening and protection during sexual acts for legal sex workers

Long-term: decreased potential transmission of sexually transmitted diseases (STDs) in legal brothels in Nevada

Anticipated effects on the public:

Adverse: none

Beneficial: early identification of STDs among legal sex workers; increased use of barriers (condoms, etc.) during sexual acts

Immediate: early identification of STDs among legal sex worker

Long-term: decreased potential transmission of STDs in legalized brothels in Nevada

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

There are no estimated costs to the agency for the proposed regulation.

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

There are no overlapping state or federal laws or regulations that overlap with the proposed regulation.

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

There are no federal laws that apply to the proposed regulation.

9. If the 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.

There is no fee associated with the proposed regulation.

10. If the proposed regulation is likely to impose a direct and significant economic burden upon a small business or directly restrict the formulation, operation or expansion of a small business. What methods did the agency use in determining the impact of the regulation on a small business?

The NSHD worked with the affected small businesses (brothels) to limit the costs associated with increased laboratory testing.

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.