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**ASSEMBLY COMMITTEE
ON
HEALTH AND HUMAN SERVICES**



WORK SESSION DOCUMENT

May 12, 2003

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ASSEMBLY HEALTH AND HUMAN SERVICES
DATE: 05/12 ROOM: 313B EXHIBIT C1-9
SUBMITTED BY: Marla McDade Williams



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WORK SESSION
ASSEMBLY COMMITTEE ON HEALTH AND
HUMAN SERVICES

May 12, 2003

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The following measures will be considered for action during the work session:

- **Senate Bill 82** (Requested by the Legislative Committee on Health Care)
Hearing—May 7, 2003

Makes various changes concerning public health laws. (BDR 40-677)

No testimony was provided in opposition to this measure; however, a representative of the American Civil Liberties Union of Nevada proposed one set of amendments. The attached items discuss these amendments.

Additionally, concerns have been raised concerning court-ordered involuntary treatment and a person's ability to know his rights if he has been involuntarily detained. Should the committee wish to include a specific "bill of rights" for a person who is involuntarily detained, members may wish to consider adopting the following concept:

Require the health authority to adopt regulations setting forth the rights of a person who is involuntarily isolated or quarantined. Such regulations must include a requirement to provide a person with a list of his rights, and they must specify the time by which a person must be given the list.

- **Senate Bill 327** (Requested by Senator Valerie Wiener)
Hearing—April 23, 2003

Provides for reuse of certain prescription drugs. (BDR 39-66)

This bill was scheduled for consideration on April 30, 2003, but no action was taken at that time. Since then, one specific recommendation for an amendment to the bill has been discussed. Accordingly, the following language includes the amendment.

Delete language in the bill that allows drugs to be transferred to a nonprofit pharmacy.

This language appears in subsection 2(b), which includes lines 14 through 24 on page 3; subsection 5(b), which includes lines 42 through 43 on page 3; subsection 5(d) of Section 2, which includes lines 2 and 3 on page 4; and subsection 1(b) of Section 4, which includes lines 12 through 14 on page 4.

DISCUSSION OF PROPOSED AMENDMENT FOR SENATE BILL 82

The attached document concerning Senate Bill 82 (First Reprint) contains seven amendments recommended for the measure by Richard Siegel, Ph.D., President, American Civil Liberties Union (ACLU) of Nevada. The following points discuss these amendments and, where applicable, suggest language that members of the committee may wish to consider concerning the amendments.

Point 1

As noted, the ACLU recommends deleting language from the bill as it relates to past actions of a person and the court proceedings.

Discussion

In accommodating this recommendation, the committee may:

Amend Section 21 of the bill on page 12 by deleting, after "petition." the words "The court may consider," and deleting lines 22 through 27.

This section would then read:

Sec. 21. In proceedings for involuntary court-ordered isolation or quarantine, the court shall hear and consider all relevant testimony, including, but not limited to, the testimony of examining personnel who participated in the evaluation of the person alleged to have been infected with or exposed to a communicable disease and the certificates, if any, of a health authority or a physician, licensed physician assistant or registered nurse accompanying the petition.

Point 2

Upon reviewing the measure after testifying, this recommendation has been withdrawn.

NOTE: Section 29 of the measure amends *Nevada Revised Statutes* (NRS) 441A.120. This statute is the first substantive statute in Chapter 441A. Although the language in the bill is located at Section 29, when the measure is codified in the NRS, this concept will lead the chapter.

Point 3

The ACLU recommends adding a specific right to refuse treatment. This concept was presented in the Senate Committee on Human Resources and Facilities and subsequently adopted by that body.

Discussion

Currently, the premise concerning the right to refuse treatment is carried throughout the bill by using the terms "consensual medical treatment." (See Section 9, page 4, line 33, and Section 10, page 6, line 2.) Further, if a court orders involuntary treatment, the court must consider the "rights of the person and the desires of the person concerning treatment" (Section 24, page 13, lines 18 and 19).

While acknowledging that the terms "consensual medical treatment" may have been written into the bill to accommodate his amendment, Dr. Siegel notes that one's ability to consent to treatment is different than being told that he has a specific ability, or right, to refuse treatment.

Should the committee wish to discuss this issue further, including whether it is appropriate to establish a specific right to refuse treatment, members may wish to hear from a representative of the public health community.

Point 4

The ACLU recommends changing the number of days for which a court-ordered isolation may be renewed to 14 days or less.

Discussion

As noted in testimony on this measure, there are circumstances for which an extended period of time may be required for an isolation or quarantine. Further, when such actions are taken, the public health community is cognizant of the impact of such decisions on the individual as well as on society at large.

After talking with Dr. Siegel about this issue, he acknowledges that he is not adamant that the referenced period be 14 days or less. He is certain, however, that he would like the reference to 30 days (subsection 2 of Section 24 at line 31 on page 13) and 120 days (subsection 2 of Section 24 at line 34 on page 13) removed from the bill.

Accordingly, the State Epidemiologist, Randall Todd, Ph.D., has suggested that these periods are adequate.

In accommodating both of these parties, members may wish to adopt the following conceptual language:

At the end of the court-ordered period of isolation or quarantine, the health authority may petition to renew the detention of the person for additional periods not to exceed the expected duration of infectiousness or 120 days, whichever is shorter, for each renewal.

Point 5

In Point 5 of the ACLU's document, it appears this organization is advocating for a religious exemption from treatment, including immunization, particularly as it relates to involuntary, court-ordered isolation and quarantine.

Discussion

Subsection 1(b) of Section 24 includes language specifying that the court may order the most appropriate course of treatment for a person after considering his rights, including the specific rights of a person who depends on prayer for healing (NRS 441A.210). As noted previously, a person's ability to refuse treatment may be considered by a court, but he does not have a specific right to refuse treatment.

Although the following suggestion does not grant a person a religious exemption from treatment, should the committee wish to refer to one's religious preferences, this section may be amended to state the following:

Amend Section 24 by inserting "the rights of a person to follow the tenets of his religion," after NRS 441A.210 on page 13, line 20.

This language allows the court to consider a person's religious rights, but it does not extend the right of a person to claim a religious exemption from treatment.

Immunization Discussion

Dr. Siegel notes that he specifically wants to grant a right to refuse immunization as well. This term, however, is not referenced in the bill.

In considering this issue, the committee may wish to clarify that "treatment" as it is referred to in the bill, does not include prevention of disease. However, immunization or vaccination may be the recommended treatment for certain diseases. For example, Dr. Todd notes that the recommended treatment for small pox, if a person has been exposed to the disease for less than three days, is vaccination. While a person has the right to consent to this mode of treatment, as noted in preceding text, Dr. Siegel advocates that he also have a specific right to refuse an immunization as part of his treatment for small pox.

The committee must determine whether, as a public policy, members want to extend a specific right to refuse immunization as part of one's course of treatment, or whether allowing one to consent to being immunized as his course of treatment is sufficient.

Point 6

This recommendation has been withdrawn because it was addressed in the amendment that was approved by the Senate Committee on Human Resources and Facilities. (See paragraph [b] of subsection 2 of Section 8 on page 4, lines 16 through 18, and subsection 3 of Section 9 on page 5, lines 11 through 14.

Point 7

The ACLU withdrew this recommendation during its testimony on the bill.

Point 8

It appears that Section 13 of the bill includes language requiring the administrative officer of a public or private medical facility to "reasonably attempt to ascertain the identification and location of the spouse or legal guardian" of a person who is involuntarily admitted into the facility. Further, the section states that "if reasonably possible" the officer must mail notice of the admission by certified mail to the spouse or legal guardian.

Discussion

This section requires the administrative officer of a facility to do what he can to notify a person's spouse or legal guardian. This step appears to be the first step in a series of steps that must be followed to pursue an involuntary isolation or quarantine.

Dr. Siegel notes that Section 13 should be strengthened. Accordingly, the committee may wish to adopt the following concept:

Specify that if a person is unconscious or otherwise unable to communicate because of mental or physical incapacity, a medical facility, the health authority, or the court should be required to notify the person's spouse or legal guardian via the telephone in addition to using the mail. The entity that is required to make the notification depends on whom the person who is unable to communicate first comes into contact. Further, if no contact is made with a person's spouse or legal guardian by the first entity, the subsequent entities should be required to make the notifications.

ACLU of Nevada

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TO: Assembly Committee on Health and Human Resources

FROM: Richard Siegel, Ph.D., President of American Civil Liberties Union

RE: Comments on S.B. 82

DATE: May 7, 2003

We at the ACLU of Nevada have consulted with diverse national experts in law and public health and with such local experts as Gregory Hayes, M.D. (a former county health administrator and now Professor of Health Ecology and Public Health at UNR). We offer important suggestions for further changes in S.B. 82 that are designed to remove questionable legal and policy elements of the coercive aspects of this bill.

Our primary objections involving proposed amendments are:

1. The present bill is characterized by its dominant use of a mental health involuntary commitment model that fits communicable disease quite poorly. For example, Sec. 24 allows courts to hear testimony of "any past actions of the person alleged to have been impacted." Past actions pertain to mental health issues, not contagion. This is not the only place where the inappropriate use of the mental health legal model creates a distorted bill. (120 day orders by a court are also related to mental health, not a contagion model).

Please amend out the language in Section 24 on past actions.

2. The notation of "least restrictive environment", a superceding legal concept, appears in Sec. 29, on page 15. We ask for an amendment that places the need for least restrictive environment according to current medical practice at the beginning of the bill in Sec. 1, as a basic principle of the legislation. Courts will apply this standard, and our health officials should have it in mind from the start.
3. Sec. 24 notes courts must consider the rights and desires of the person(s) to not be isolated or quarantined. There must be added through an amendment stating such other pertinent constitutional and statutory rights involved, including (and not limited to) the:
 - Right to refuse treatment as indicated in federal and such other Nevada Law.
4. Sec. 24. Proposed involuntary court-ordered isolation or quarantine now runs 30 days with renewal by petitions by up to another 120 days at a time.
 - a. Please amend to 14 days or less the first and second orders. How long does any contagious disease last? Not 30-150 days.
5. Where the religious or conscience exemption for treatment in Sec. 24 as is placed in earlier drafts of this bill. Please amend to make these exemptions explicit for immunization and treatment.
6. Sec. 8 refers to 72 hour emergency isolation or quarantine with continuation before court order if there is a written petition for involuntary court-ordered isolation or quarantine. Please amend to note that

such authority for emergency or temporary quarantine need be subject to a right to seek immediate injunctive relief or other court intervention to secure the immediate liberty of the subject person.

~~7~~ Emergency isolation may be applied for by a physician's assistant or registered nurse as well as a physician. In the bill a physician's assistant can also be one of two clinicians seeking or reviewing an order for quarantine lasting 30 days or more. Why so if such people are limited in their practice of medicine under current law or require physician direction and/or supervision? We ask for an amendment to ensure that such authority to initiate liberty deprivations and serve as the needed medical expert in court be available only to physicians in relation to such restrictions of liberty.

8. Notice to spouse or legal guardian should be written back into the bill. This notice should reflect "good faith effort" and both telephone and written notice.

We ask for an amendment requiring clear obligations of courts and health authorities to notify family.

Thank you for your attention. We look forward to working with the committee on these issues.