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TESTIMONY – AB 132

Chairperson Rawson:

My name is Karen Dickerson. I am the Deputy Attorney General who represents the Division of Child and Family Services.

I am here today to testify on behalf of my client with regard to Nevada's compliance with federal laws and how that impacts federal funding.

Chapter 432B was enacted so that Nevada would be in compliance with CAPTA, the Federal Child Abuse Prevention and Treatment Act . This was done to ensure Nevada's maximization of federal funding for child abuse and neglect prevention and treatment programs. Under Title 42, U.S. Code, Chapter 67 of CAPTA eligibility requirements, the state must preserve the confidentiality of all records in order to protect the rights of the child and of the child's parents or guardians.

AB 132 may also violate the Federal Social Security Act in that Title 42, U.S. Code, Chapter 7 states that "In order for a State to be eligible for payments [for foster care and adoption assistance], it shall have a plan approved that . . . provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan . . ."

I have a summary of those compliance issues and the related legal cites for the committee.

Briefly:

Under CAPTA, a state has a duty to report immediately any lack of compliance. Various CFRs detail compliance and/or notification procedures and also fund withholding procedures.

Based on these statutes and CFRs, the only safe assumption is that all funds from these programs, both under CAPTA and the Social Security Act, will be endangered as soon as confidentiality procedures are breached.

Our research determined that no more than ten states have presumptively open hearings, and as yet, those states have not suffered any federal disallowances in their funding. However, that fact should not give this committee any level of comfort on the passage of this bill.

Some of the members of this committee may remember a Hospital Tax Formula the Nevada legislature put into place in the early 1990's. A number of years later, the federal government noticed the state of Nevada, and several other states which had similar laws, that the Hospital Tax Formula was out of compliance with HCFA (Health Care Finance Administration). They then required Nevada to repay all federal matching monies paid to the state since implementation of that law several years earlier.