MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-Third Session
March 28, 2005

The Committee on Health and Human Services was called to order at 1:34 p.m., on Monday, March 28, 2005. Chairwoman Sheila Leslie presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Sheila Leslie, Chairwoman
Ms. Kathy McClain, Vice Chairwoman
Mrs. Sharron Angle
Ms. Susan Gerhardt
Mr. Joe Hardy
Mr. William Horne
Mrs. Ellen Koivisto
Mr. Garn Mabey
Ms. Bonnie Parnell
Ms. Peggy Pierce
Ms. Valerie Weber

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Mrs. Heidi Gansert, Assembly District No. 25, Washoe County

STAFF MEMBERS PRESENT:

Barbara Dimmitt, Committee Analyst
Joe Bushek, Committee Attaché

OTHERS PRESENT:

Frankie Sue Del Papa, Ex-Attorney General, Co-chairman, Organ and Tissue Donor Task Force, Carson City, Nevada
Cassandra Smith, Regional Supervisor, Sierra Eye and Tissue Donor Services, Sacramento, California
John McDonald, M.D., Ph.D., Dean, School of Medicine, University of Nevada, Reno
Mitchell Forman, Dean, Touro University of Nevada, Las Vegas, Nevada
Adriana Escobar-Chanos, Consumer Advocate, Bureau of Consumer Protection, Office of the Attorney General, State of Nevada
Tom Fronapfel, Administrator, Field Services Division, Nevada Department of Motor Vehicles
Dan Musgrove, Legislative Advocate, representing University Medical Center of Southern Nevada, Las Vegas, Nevada
Lacy Thomas, Chief Executive Officer, University Medical Center of Southern Nevada, Las Vegas, Nevada
John Ellerton, M.D., Chief of Staff, University Medical Center of Southern Nevada, Las Vegas, Nevada
Mary Liveratti, Deputy Director, Nevada Department of Human Resources
Tina Gerber-Winn, Chief, Continuum of Care, Division of Health Care Financing and Policy, Nevada Department of Human Resources
Wendy Simmons, Administrator, Park Place, Assisted Living Residential Neighborhood for Seniors, Reno, Nevada
Tammy Sisson, Administrator, Lend-A-Hand Senior Services, Reno, Nevada
Robert Desruisseaux, Chairman, Strategic Plan Accountability Committee, Nevada Department of Health and Human Services
Pam Graham, Chief, Bureau of Licensure and Certification, Health Division, Nevada Department of Human Resources
Connie McMullen, Member, Strategic Plan for Seniors Accountability Committee, Nevada Department of Health and Human Services
Sandra Ballard, Director of Professional Services, Home Health Services of Nevada, Fernley, Nevada

Chairwoman Leslie:
[Called the meeting to order. Roll called.] We have a number of Committee and state agency bills to be introduced by tomorrow. I will just read them all; however, if there is an objection to any of them, we can take them one by one. I think we can take a motion on introducing all of them at once.

- BDR 57-791—Makes revisions relating to health care coverage for immunizations for children in certain health care plans (Assembly Bill 522).

- BDR 40-1123—Ensures that local public health authorities have the right to inspect and take enforcement action on certain urban farms (Assembly Bill 523).

- BDR 40-713— Revises provisions concerning allocation of certain money from Fund for a Healthy Nevada (Assembly Bill 521).

- BDR S-1393—Provides for various services to assist homeless persons (Assembly Bill 520).

- BDR 40-273—Revises the authority of the Department of Agriculture in relation to the Medical Marijuana Program (Assembly Bill 519).

- BDR 40-169—Revises provisions governing the Senior Rx Program (Assembly Bill 524).

ASSEMBLYWOMAN McCLAIN MOVED FOR COMMITTEE INTRODUCTION OF BDRs 57-791; 40-1123; 40-713; S-1393; 40-273; AND 40-169.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairwoman Leslie:
We'll open the hearing on A.B. 234.

Assembly Bill 234: Revises various provisions relating to anatomical gifts. (BDR 40-860)

Assemblywoman Heidi Gansert, Assembly District No. 25, Washoe County:
Assembly Bill 234 transfers the Organ and Tissue Donor Task Force from the Attorney General's Bureau of Consumer Protection to the University of Nevada School of Medicine. The transfer has been mutually agreed upon by all three parties.

[Assemblywoman Gansert, continued.] The Task Force was established in 2001 through legislation sponsored by Assemblywoman Dawn Gibbons, Senator Ray Rawson, and several of their colleagues, with the support of Attorney General Frankie Sue Del Papa.

Assembly Bill 497 of the 71st Legislative Session, which created the Task Force, required the Department of Motor Vehicles to work in conjunction with the Attorney General's Bureau of Consumer Protection to create and maintain an accurate list of individuals who pledged to be organ donors. The Task Force mission was to better serve and inform potential organ and tissue donors about the extraordinary need for organ donation and how they could give the gift of life. Further, it was to create a proactive coalition among donation organizations, healthcare professionals, and members of the community to serve and enhance the lives of those in need of organ and tissue donations. The Task Force has been very successful with the ongoing support of its founders, Dawn Gibbons and Frankie Sue Del Papa.

As mentioned previously, all three parties agreed the transfer to the School of Medicine is in the best interests of our State. We ask today that you support A.B. 234 to allow that transfer. I do have one amendment that should have been distributed to you (Exhibit B). The bill reads that the transfer happens immediately upon passage of the bill. What we would like to do is give the Task Force six months to move from the Bureau of Consumer Protection to the School of Medicine.

Chairwoman Leslie:
You're talking about Section 11 where it says, "This act is effective ...." Instead, it would be effective January 1, 2006?

Assemblywoman Gansert:
Yes. We just want to make sure they have six months to move their offices.

Chairwoman Leslie:
Is there something in the bill about the DMV [Department of Motor Vehicles]?

Frankie Sue Del Papa, Ex-Attorney General, Co-chairman, Organ and Tissue Donor Task Force, Carson City, Nevada:
There is a section in A.B. 234 that refers to the DMV continuing what they are currently doing. When you go to a DMV office, they will ask if you would like to be an organ donor. There also is a provision within the statute that they ask if you would like to make a voluntary donation. Some DMV offices are doing that; some are not. DMV also handles our vanity license plates. Twenty dollars from every one of those license plates goes into the fund that pays for our public

relations campaign that encourages more people to become organ donors. All the former functions DMV had been performing would remain intact and unchanged.

[Frankie Sue Del Papa, continued.] Organ donation is at a critical stage in our state and in the country. Everyday, over 80,000 people are waiting for an organ or tissue donation. In conversations with the Governor, I said there needed to be a greater state influence by some entity with a medical background. The Governor suggested I approach the Medical School. Assembly Bill 234 will take this issue to another level.

Chairwoman Leslie:
That makes sense to me; the Medical School is a much better fit. Looking at Section 7 on page 4, subsection 5(c)(1) it looks like new language. That's why I'm confused about the DMV and what their role is. Lines 12 and 13 read, "At the time of the issuance or renewal of a driver's license, the Department shall, without limitation ...."

Frankie Sue Del Papa:
Maybe LCB [Legislative Counsel Bureau], in drafting this, decided to clarify, because there is an additional clarification at line 26 having to do with taking out the Living Bank. This may be cleanup language because we have a different registry now than we did when the legislation was initially in place. We had encouraged LCB to make the language a little bit more generic and not so specific because, as time goes on, there could be another transfer vis-à-vis the registry.

I am not aware of any structural or process changes that are significant. My understanding in both the request for the legislation and in speaking with DMV and all the parties involved, is that DMV's efforts would remain the same as in the past. This will allow them to collect information and transfer it to the proper entities entitled to receive it.

Assemblywomen Parnell:
If you look at lines 10 through 18 on page 1, it looks to me as though there is additional information about where someone can go to register. However, I doubt it would require additional DMV staff.

Assemblywoman Gerhardt:
Is bone marrow handled in the same way these other gifts are?

Cassandra Smith, Regional Supervisor, Sierra Eye and Tissue Donor Services, Sacramento, California:
Bone marrow is one of the gifts of life, but it is not handled the same way that we handle eye, tissue, and organs.

Assemblywoman Gerhardt:
I am on the tissue and organ registry, and it crossed my mind while reading A.B. 234 that I've had several address changes since I agreed to those donations. Wouldn't it be a good idea to have all of those things under one hat so current information could be kept?

Cassandra Smith:
It would be a great idea; however, Nevada does not have a bone marrow registry. We depend on entities such as Nevada Blood Services to do the initial draw, and then all of that information is sent to southern California. They do the additional medical/social history that has to be taken, and then they send it to the Bone Marrow Registry. I think a lot of potential donors are lost as a result.

John McDonald, M.D., Ph.D., Dean, School of Medicine, University of Nevada, Reno:
I am pleased to be here in support of this bill. Organ donation is indeed the gift of life. I'm pleased to say that the Nevada Donor Network, which does organ procurement in the southern part of the state, has really done a very good job. It is a tribute to the Task Force that they've supported this initiative. We're pleased and very willing to take on this task. It's an important part of medical care.

One of the challenges is that many opportunities are potentially missed. I, too, am on a list for bone marrow donation and I also have moved several times. I suspect they would not be able to find me if there was a match. That underscores the magnitude of this job we're prepared and anxious to take on. I ask that you consider the financial implications for the School of Medicine, and, perhaps, find a way to couple this to license fees or some other small additional charge which could be added to support the additional administrative cost to the School.

Chairwoman Leslie:
You mean if we were to add bone marrow [to the registry], or that you need additional monies just to do this?

John McDonald:
This is being run almost on a volunteer basis at DMV.

Frankie Sue Del Papa:
When the current registry was put into place, I tried to put it in the Health Division. As we all know, the State has had an ongoing, recurring financial situation vis-à-vis staffing and there was no appetite for putting it in the Health Division. I was Attorney General at that time, so I gave it a home in the Consumer Advocate's Office because, in a way, this is a consumer advocate issue.

There is a staff person who has been doing this job as part of all of her other responsibilities in the Consumer Advocate's Office. We have not discussed the possibility of moving that staff person, or moving a half-time position, from the Consumer Advocate's Office to the Medical School. If we were to take that into consideration, we would have to go back and clear it with the new Consumer Advocate and the Attorney General. The Dean is absolutely correct. This is a major function and it takes a lot of time to do.

I really believe the State would be better served if we were able to make this transition. The Governor thought so as well, given the funding he previously supported for the Medical School and the Transplant Center.

Chairwoman Leslie:
Assembly Bill 234, which we have before us, does not have a fiscal note and does not contemplate any moving of staff or any additional monies. If you want us to consider that, we will and then send it to Ways and Means. If you don't want us to consider it, we will pass it on with the transfer the way it is written.

Assemblywoman Gansert:
What we're probably going to do is have a discussion and ask you to take up the bill in a work session.

Chairwoman Leslie:
That's fine. I'm not speaking for the Committee; however, since the Dean has raised this issue, you might want to consider it and decide which way you want to go. Be aware that when bills go to Ways and Means, many times they don't come out.

It sounds, Dean, as though you're ready to go with the transfer. What is not clear in my mind is if you're willing to do it with no additional money.

John McDonald:
We'll find a way to make it work. It's critical enough. We would like to do it right for the State. We want it to work and be outstanding. In order to reach that level of achievement, we will need some additional resources.

Assemblywoman Weber:
I used to be the coordinator of the bone marrow registry for the state of Nevada and am a registered donor. The national marrow donor program is based out of Minneapolis, Minnesota, and you can go on their website to change your address.

Mitchell Forman, Dean, Touro University of Nevada, Las Vegas, Nevada:
Touro University of Nevada houses the College of Osteopathic Medicine and a master's-level physician's assistant (PA) study program. The [Touro] Medical School admitted its inaugural class of 78 students in August of last year, and 36 physician's assistant students in October of last year. We are opening a College of Health and Human Services that will consist of an occupational therapy program, a master's-level nursing program, and three educational programs. In fact, our nursing program is the first private nursing program approved in the State.

Chairwoman Leslie:
Are you here to testify on A.B. 234, the bill on organ and tissue donors?

Mitchell Forman:
I wanted to explain that there is another medical school in the state.

Chairwoman Leslie:
The Committee is very confused about whether you are for the bill or against the bill. Please confine your comments to the bill.

Mitchell Forman:
The language of A.B. 234 does not even acknowledge the existence of Touro University of Nevada, the second medical school in the state and the only medical school in southern Nevada. Our medical, PA, and occupational therapy students require cadavers to learn gross anatomy and the important anatomic relationships enabling them to care for patients. Our initial attempts to purchase cadavers from the University of Nevada have been unsuccessful. We are addressing A.B. 234, which transfers certain duties pertaining to anatomical gifts to the University of Nevada School of Medicine.

No one entity owns the health care of Nevada. It is a collaborative effort and this bill should reflect this partnership between the UNR [University of Nevada, Reno] School of Medicine, Touro University, and, perhaps, UNLV [University of Nevada, Las Vegas] School of Dentistry.

Adriana Escobar-Chanos, Consumer Advocate, Bureau of Consumer Protection, Office of the Attorney General, State of Nevada
I'm here today to lend my support to A.B. 234 with respect to the transfer of the Task Force from the Bureau of Consumer Protection to the University of Nevada Medical School. I have also spoken with Attorney General Sandoval and he is also in support of this.

With respect to the transferring of funds from the Bureau of Consumer Protection to the University, I have not spoken to anyone, and I am not certain whether the Attorney General has been informed. This is a phenomenal group and I think it is extremely important for our state. I do think it is much more compatible in the University Medical School than at the Bureau of Consumer Protection. Our mandates generally deal with regulated utilities, deceptive trade, securities, anti-trust, and similar areas.

I am not certain how we would be able to transfer monies. As the Consumer Advocate, I would personally oppose it because those funds are necessary for our purposes and programs.

Chairwoman Leslie:
We understand that point. Would you make that known to the bill's sponsor? We have your testimony in support of the bill as it is written now.

Tom Fronapfel, Administrator, Field Services Division, Nevada Department of Motor Vehicles:
We have concerns regarding Sections 7 and 8 of the bill. It appears that they are too broadly written as proposed and as revised. We would like to see those two sections limited such that the information that is disseminated by the Department to those organizations involved in organ donor programs be limited to those organizations or entities that maintain a contractual relationship with the Department to receive that information.

As Ms. Del Papa indicated, we currently provide information to driver's license and identification card applicants for the Organ Donor Program and we will be happy to continue to do that.

Chairwoman Leslie:
Can you explain what you mean by those organizations you have contractual relationships with?

Ted Fronapfel:
Previously, Living Bank International was the organization we had a contract with to provide the personal information for those individuals who chose to

become organ donors at the time they applied for a driver's license or identification card. Living Bank International has now been succeeded by Statline which is, again, under a contractual relationship with the Department to receive certain personal information in a given format. They are contractually obligated to maintain the privacy of that information.

Chairwoman Leslie:
Would you work with the bill's sponsor and provide her with that information?

Ted Fronapfel:
I would be happy to do that.

Chairwoman Leslie:
We'll close the hearing on A.B. 234 and open the hearing on A.B. 327.

Assembly Bill 327: Authorizes county hospitals to compensate physicians for provision of certain medical services to indigent patients. (BDR 40-928)

Dan Musgrove, Legislative Advocate, representing University Medical Center of Southern Nevada, Las Vegas, Nevada:
NRS [*Nevada Revised Statutes*] 450 addresses only county-owned hospitals. Assembly Bill 327 deletes language that precludes the hospital from reimbursing physicians who attend and/or provide services to the indigent.

Lacy Thomas, Chief Executive Officer, University Medical Center of Southern Nevada (UMC):
Assembly Bill 327 deletes the provision of NRS 450.180 and NRS 450.440 that prohibits county hospitals from compensating physicians who provide medical services to indigent patients. Our research determined this provision has been in effect since at least 1927. As the only public hospital in Clark County, University Medical Center is statutorily required to provide medical services to all residents of Clark County. The State statute that currently exists makes this task difficult.

We have entered into several creative contractual relationships with various physicians and physician groups so that all residents can receive quality services. Amending NRS 450.180 and 450.440 will further assure that the patient needs of our community are met. Periodically, we have been challenged by timely delivery of patient care because we do not have a payment source for physicians who need to render that care. This can cause a patient to remain

hospitalized beyond medically acceptable standards, and adds to the cost of patient care.

[Lacy Thomas, continued.] We appreciate your support of this bill. It will improve our ability to render the most cost-effective patient care and allow us to continue to be a fiscally responsible public agency.

Chairwoman Leslie:
What was the reason, initially, for this to be the law?

Dan Musgrove:
That's a good question. We tried to do the research but it has been in statute since 1927 and there weren't any legislative records. Perhaps there were different payment standards back then. In today's world, it's tough for us to attract physicians who aren't already working for UMC to come and provide indigent medical care and it delays us getting expedited medical care. This legislation would exempt that preclusion from payment to those physicians.

Chairwoman Leslie:
What other hospital in our state does this affect?

Lacy Thomas:
I am not aware of any other hospital besides UMC.

Assemblyman Horne:
Mr. Musgrove talked about creativity in paying the doctors. I see there is no fiscal note attached to A.B. 327, but doctors have been seeing indigent patients. If we're going to delete the provision that prohibits being paid for seeing indigents, isn't that going to be an increased cost?

Dan Musgrove:
There will be an impact on the county in terms of social services provided to indigents. This is just enabling language to begin the process of developing a payment method. In the long run, I think we'll save money because we're going to get expeditious medical care to these folks a lot sooner.

Lacy Thomas:
Mr. Musgrove's remarks are quite accurate. There is no cost to the State. There will be some additional costs to the county, but I think we will actually save money because we'll be able to render care to patients expeditiously and not be in the position, as we are sometimes, of having extended patient stays because we have no payment source for the physician providing care.

Vice Chairwoman McClain:
This will be for indigent patients only, correct?

Lacy Thomas:
Correct.

Vice Chairwoman McClain:
How do you plan on paying for it? Would it be fee-for-service, or would the provider be considered an employee at the time they would be caring for this person? How does medical malpractice fit into this scenario since you're paying private physicians?

Lacy Thomas:
This wouldn't impact the medical malpractice [insurance] physician's carry right now. This simply gives us the opportunity to develop creative financial solutions for compensating physicians. We have not put together a pay scale or fee payment plan yet. We need to amend the statute first. This will give us more flexibility in providing resources to our physicians who do take care of indigent patients.

Vice Chairwoman McClain:
I'm wondering about the county's liability cap. Will a physician fall under their own medical liability or under the county's cap?

Lacy Thomas:
They are not county employees; they have their own malpractice insurance.

Dan Musgrove:
That has been one of the problems attracting physicians. They become the deep pocket because of the $50,000 limitation—the county cap. There are a number of reasons why it's tough to attract physicians to UMC. It is not a good environment for their medical malpractice. At least this way we can provide fees for their services.

Assemblywoman Koivisto:
You're going to be paying these doctors; they're not going to be volunteers falling under the Good Samaritan laws and having no liability?

Lacy Thomas:
The deletion of this restriction in the statutes gives us the flexibility to determine how we will compensate physicians. This is not a guarantee that we will pay everyone who sees an indigent patient. What it does is eliminates the preclusion to do so and allows us to develop a strategy. When we look to

engage a physician, we are finding resistance because of the compensation issue. In many cases, we will still have relationships where the contract requires physicians to see all patients whether they are paying or not. Again, passage of A.B. 327 eliminates a provision that stops us from being able to compensate physicians when the need arises.

Dan Musgrove:
If my memory from A.B. 1 of the 18th Special Session serves me right, it was really only for trauma. The Good Samaritan legislation did not include nonemergency care that might need to be provided so we don't have any coverage or incentive for doctors to want to assist in nonemergency care issues.

Assemblywoman Koivisto:
I want you to clarify that these providers are going to be paid and they are not going to be volunteers. You're not going to be bringing in retired doctors doing this out of the goodness of their hearts.

Lacy Thomas:
This provision allows us that flexibility. It does not guarantee we'll pay every physician who sees an indigent patient.

Assemblyman Hardy:
As I see it, there are times you may need the services of a specialist who may not be on the staff at UMC. That specialist may be across town and may have skills, abilities, or expertise needed under certain circumstances. This would allow you to tell such specialists that they could go to UMC and consult for the benefit of teaching, because UMC is a teaching institution, or for some amount of remuneration.

Lacy Thomas:
That's a good example.

Assemblyman Mabey:
I am an ex-resident physician of UMC and I can tell you what happens there. Typically, the residents for all the different specialties have their assigned patients as well as their assigned attending physicians. Because of the malpractice issues that have recently arisen, most of the attending physicians quit. They would not go to UMC because they were the deep pockets. They had to all be employees of the medical school. UMC just can't get physicians to see some of these patients unless they're going to be compensated.

Dan Musgrove:
UMC has a responsibility to the community to give the best medical care we can to our indigent population. This provision that has been in statute, for whatever reason, since 1929, has put some tremendous obstacles in front of us in doing what we feel is our responsibility to the community, which is serving that indigent population with the absolute best medical care we can provide.

Vice Chairwoman McClain:
This is strictly for the indigent?

Dan Musgrove:
Yes, ma'am.

Vice Chairwoman McClain:
Why don't you just hire more staff?

Lacy Thomas:
That might solve a particular problem for a certain specialty, but we simply can't identify which type of specialty we might need for any given patient.

Vice Chairwoman McClain:
The fee-for-service would probably be Medicaid rates?

Lacy Thomas:
I'm not prepared to discuss that. We haven't gotten that far.

Vice Chairwoman McClain:
What good is it going to do if it's Medicaid rates? I guess the Committee is confused. This is a big, open-ended request with no details.

Dan Musgrove:
For us to even begin this process we have to get this statute changed. This does not mean that tomorrow we will begin paying doctors. We don't even know if the Legislature will grant removal of the exemption to us. This allows us to begin the process of working with the physicians and seeing if they're willing to do it. It may or may not help, but, with the Legislature only meeting every two years, we had to begin this first step with the language change. There is still nothing requiring the hospital to even begin paying physicians.

John Ellerton, M.D., Chief of Staff, University Medical Center of Southern Nevada, Las Vegas, Nevada:
Physicians do have an ethical responsibility to look after indigent patients and they will continue to do that. Based on the vast number of complicated services

that are provided at UMC as a tertiary teaching hospital, A.B. 327 is essential in allowing us to organize that care instead of having to creatively look at how to compensate physicians doing large amounts of work for the indigent and for those who will never pay. As a medical staff, our major goal is to provide quality care for the patients. This is an important step and would allow us to expand, rationalize, and organize it in a predictable way and provide equally good care for everybody who is in the hospital.

[John Ellerton, continued.] I think this is really essential. Dealing with these issues on a day-to-day basis, as I do, this is going to be a big help. As Mr. Thomas said, it doesn't mean we are going to pay everybody and it doesn't mean everybody is going to demand everything. It just means we have more flexibility. Giving the ability to do this means we can move forward and figure out how to do it, whether it's a Medicaid rate or whatever. I'm sure we can come to some agreement.

Assembly Bill 1 of the 18th Special Session did provide a zero cap for physicians at non-profit and government institutions providing gratuitous care. So under some circumstances, paying for the services would eliminate that cap. On the other hand, many patients who come to UMC still have no insurance at all, and no chance of being covered by the county or becoming part of Medicaid. Their care will still be gratuitous, and I can assure you that the physicians' ethical, moral, and legal responsibility to provide that care will be enforced by the medical staff, because that is a part of what we do.

Vice Chairwoman McClain:
We'll close the hearing on A.B. 327 and open the hearing on A.B. 337.

Assembly Bill 337: Requires licensure of agencies which provide personal care services in homes of elderly persons and persons with disabilities. (BDR 40-375)

Mary Liveratti, Deputy Director, Nevada Department of Human Resources:
I am here to present A.B. 337, which was requested by the Department of Human Resources. Assembly Bill 337 is the work of a group of individuals concerned with the lack of consistency and guidelines for personal care attendants who provide non-medical services. The work group included representatives of the home care industry, assisted living industry, state agencies, and advocates for people with disabilities.

[Mary Liveratti, continued.] Currently, home health agencies are required to be licensed, but home care agencies that provide personal care services are not. Consumers are under a false impression that an agency's personal care assistants (PCAs) are required to have a background check and a minimal level of competency before performing tasks for a person with a disability. The intent of this bill is to provide accountability, consistency, and guidelines for agencies that employ PCAs. The work group discussed certifying individual PCAs but decided it was more appropriate to establish licensing for the agencies providing the service.

We would like to propose a few minor changes to the bill (Exhibit C). On page 2, line 4, we would like to delete "person or governmental" to clarify that the intent is to license agencies and not individuals. Also on page 2, we would like to amend lines 31 and 32. The NRS section should be changed from NRS 449.0151 to NRS 449.0045. This change will place new language in the section on facilities for the dependent rather than under the section for medical facilities. It will more closely align the agencies with non-medical services as intended by the work group.

Tina Gerber-Winn, Chief, Continuum of Care, Division of Health Care Financing and Policy, Nevada Department of Human Resources:
I submitted testimony that I won't read, but would like entered into the record (Exhibit D), detailing some of our history with personal care aid agencies. The one thing I would like to add is that the intention of A.B. 337 is to license agencies and those would include respite care providers. Under the Medicaid state plan, we do not provide respite care. It is a waiver benefit package, so we did not want to lead you to the conclusion we provide respite care under the State plan. We are in support of the concept of licensing of agencies.

Wendy Simmons, Administrator, Park Place, Assisted Living Residential Neighborhood for Seniors, Reno, Nevada:
[Presented a letter in support of A.B. 337 to Committee members (Exhibit E).] Tammy Sisson and I have been talking for a number of years about the dire need for some kind of regulatory parameters and oversight for home care agencies. We were having a bill draft prepared at the same time the Department was bringing a similar action forward. From that, we blended the two work efforts towards a common goal. We just want to protect and provide consumer advocacy for individuals who use in-home care givers as supplied by an agency.

As a provider in the residential care industry, I have not found regulations to be a problem. These regulations are coming under the NRS 449 statutes and, in the past five years, our industry has worked exceptionally well with the Bureau of Licensure and Certification to redefine, readdress, and generate new and revised

regulations. It is a tremendous vehicle for protecting our seniors and, as a provider who is heavily regulated, I stand in strong support.

[Wendy Simmons, continued.] The Bureau of Licensure and Certification is a fee-based agency. It doesn't have General Fund monies. There will undoubtedly be a fiscal impact to the Bureau of Licensure and Certification; however, there will be fees charged for these agencies to be licensed, and I think the impact to the Bureau will be diminished by the fees they can collect from the home care agencies we have in Nevada right now. It will be detrimental to our seniors if we do not proceed forward with this legislation, and I feel there is no financial component that is insurmountable.

I am excited about the ingenuity, inventiveness, and extra effort put forth by the Bureau of Licensure and Certification. I commend the Bureau for aggressively pursuing a grant that included $1.8 million for electronic background checking in a more expeditious fashion. The following long-term facilities are incorporated within that grant: skilled nursing facilities; home health agencies; long-term care hospitals; hospitals that provide swing beds; residential care providers; intermediate care providers; and personal care providers. We do not have a venue for background checking personal care providers, and that's one more point of endorsement for this particular legislation.

Facilities have been doing these background checks for quite a while now through your past legislative action. It works, it's wonderful, and it gives everybody additional peace of mind.

Tammy Sisson, Administrator, Lend-A-Hand Senior Services, Reno, Nevada:
Home care agencies are agencies that employ caregivers who go into the individual homes of seniors and provide assistance with the activities of daily living, including bathing, personal care, grocery shopping, errands, housekeeping, respite care, and transportation. These agencies do not provide any medical services.

I started my home care agency 13 years ago. I pioneered the concept, which has since become one of the fastest-growing avenues of care. There are currently more than 80 agencies in Nevada and over 300 franchises across the country. These agencies employ a large number of individuals and, because there are no set standards of care, they are not held accountable for the services they provide. Because the industry is a wide-open market, the concern is that the owners and those they employ are not required to adhere to standards of care. Although you would think a business owner would make it mandatory to drug test, background check, require current CPR [cardiopulmonary resuscitation] and first aid, and provide training to their

employees, there currently is no supervisory board to ensure adherence to these requirements.

[Tammy Sisson, continued.] Another area of concern is due to the lack of standards of care. These agencies are not required to report abuse and neglect. How many seniors have been exploited and those misdeeds gone unreported, keeping in mind that the employees of these agencies are providing care in the client's home in an unsupervised environment? There are several states that do require licensing for home care agencies, such as Oregon, Washington, Vermont, and Maryland. California and Arizona are in the process.

As a home care agency owner, I am excited about A.B. 337. Written standards will bring professionalism and accountability to the home care industry. Licensing will allow clients and family members to call a regulatory board to check on an agency before hiring them. In addition, if a client has been exploited or neglected by a caregiver employed by an agency, licensing will enable them to have recourse, holding the agency responsible.

When we first heard about A.B. 337, Wendy and I formed a group of all the providers to find out the level of support there would be for the bill and hear their concerns and any opposition. We established the Caregiver Association of Northern Nevada (CANN). This is a formal work group of providers that, for the past two years, has been working toward establishing licensing standards for our industry. We have been working closely with a similar work group in southern Nevada. The majority of the agencies are in strong support of A.B. 337. I have sent a letter apprising them of the current legislation, in addition to a questionnaire on which they may air concerns and identify opposition.

As a home care agency owner, I am extremely concerned that, if the State of Nevada does not recognize the importance of licensing, the seniors, their families, and those agencies that are in support of this will ultimately suffer. This industry is not going to slow down. By taking action now, we are putting the needs of the seniors in our communities first.

As an example, I met a family that hired a caregiver through an agency who stole $160,000 from the gentleman she was caring for. I asked whether the agency that sent the caregiver had done a background check. They indicated she had a sheriff's card, but those are only good for three years, so no background check had been done. This could have been prevented. The agency went out of business and the caregiver wasn't bonded because there was a felony on her record.

[Tammy Sisson, continued.] Two weeks ago a woman came into my agency and applied for a caregiver position. She was a registered nurse (RN), so I asked why she was willing to work for $8 or $9 an hour when she was an RN. She explained that she didn't like the 12-hour shifts and wanted to spend more time with her children. I noticed her application showed her currently working for another agency in town. I had her fill out a preliminary report and called the Board of Nursing. They told me her license was suspended. Why hadn't the agency employing her now checked this out?

The solution to both examples is a proactive approach. Licensing and minimum standards will enable both the agency and the client to make informed decisions. We all need to ask who we want taking care of our loved ones, and eventually ourselves. The time to take action is now.

Assemblywoman Parnell:
How would Section 1 of the bill affect entities like RSVP [Retired Senior Volunteer Program]?

Wendy Simmons:
That is one reason we recommended the amendment (Exhibit C) in which "person or governmental" be removed. I don't anticipate it affecting the Senior Companion Program. Correct me if I'm wrong, but I think that can be clarified through regulation in the NAC [*Nevada Administrative Code*]. The intent of all the partners working on A.B. 337 has not been to be exclusionary or be a detriment to entities like the Alzheimer's Association, which might be doing a respite-care-type program.

Assemblywoman Parnell:
I'm supportive of this [legislation], but I'm on the RSVP Board of Directors and I don't want to do anything that would end their Home Companion Program.

Robert Desruisseaux, Chairman, Strategic Plan Accountability Committee, Nevada Department of Health and Human Services:
Our committee has not had an opportunity to review this particular bill, so we are neutral. However, I did want to express our support of the concept requiring agency licensure. We do have concerns that, in moving forward with A.B. 337, we do not impact individual personal care attendants and the licensure of those individuals. There has also been concern expressed by individuals who work in the area of microboards. A microboard is an individual with a disability who basically becomes his own corporation. That individual then becomes his own provider of care and contracts with individuals in the community. Those individuals could be family members, neighbors, or friends. We want to be sure

any legislation you go forward with would not impact those individuals or hinder their ability to provide their own self-directed care.

Vice Chairwoman McClain:
The way A.B. 337 is written now, it would not. Is that correct?

Robert Desruisseaux:
I believe it would not. My only concern is the definition of "agency." If we're defining "agency" as an organization, how do we define that? Are there ways we can protect entities such as microboards? We would not want to include those entities as "organizations" or "provider agencies."

Vice Chairwoman McClain:
We need to make sure the definition of "agency" is accurate. Then you have to stay on top of whatever regulations are ....

Robert Desruisseaux:
I believe that will be difficult. Even defining it by how many people are being served could impact some of these individuals.

Pam Graham, Bureau Chief, Bureau of Licensure and Certification, Health Division, Nevada Department of Human Resources:
Passage of A.B. 337 would require the Health Division and the State Board of Health to promulgate regulations for licensure of these personal care agencies. The Bureau of Licensure and Certification would anticipate an increase in oversight and workload activity for investigation of complaints and for initial and periodic licensure surveys. Our concern is related to difficulty in recruitment for some of our positions, particularly nursing, dietitian, and social worker staff.

There is a fiscal note attached. The costs are associated with the development of regulations, and for licensure time and effort, which will be paid by the facilities.

Connie McMullen, Member, Strategic Plan for Seniors Accountability Committee, Nevada Department of Health and Human Services:
The Accountability Committee has tracked this bill since its first draft. It has also been reviewed by the Commission on Aging and two of its subcommittees; the Assisted Living Advisory Council; the Bureau of Licensure and Certification; and the Coalition of Home Care Agencies. There is one thing we are all positively in agreement upon: licensed home care agencies' personal care attendants should be licensed. Assembly Bill 337 provides a reasonable and legal course of action and allows for protection of elders, who often must rely on strangers to receive the care they need.

[Connie McMullen, continued.] The only revisions I would suggest to A.B. 337 are:

- Defining the number of people a personal care attendant can provide care for before having to be licensed.
- Because this industry is so transitory, conducting background checks annually, instead of every five years, if financially feasible.
- Raising the limit of surety bonds required in case of wrongful death.

If adopted, A.B. 337 will establish an industry standard for all professional providers, as required by law. I also want to acknowledge the Bureau of Licensure and Certification for their efforts to expand fingerprint and background checks involving caregiver providers. This is so necessary. This practice will really provide a lot of safeguards.

Sandra Ballard, Director of Professional Services, Home Health Services of Nevada, Fernley, Nevada:
We have ten branch offices, mostly in rural parts of the state. We have a skilled nursing division that I direct, and we have a homemaking division which would fall under A.B. 337. Presently, all our employees meet the same standards set by the State licensing board. Our concern is the cost this bill might cause us. Even if an agency is already licensed by the State, we would still have to pay a new licensing fee for our homemaking department. Right now, that would cost about $10,000, and we would have to have a new surety bond to cover that department.

In Section 4(d) of A.B. 337, we would really like to see language stating agencies licensed to do business under one of the other medical facilities listed, "shall be exempt from obtaining a separate license or surety bond for their personal care aid operations, but shall be bound by all the requirements of the law."

Vice Chairwoman McClain:
That makes sense to us.

Tammy Sisson:
In regards to needing separate licensing, the understanding we have is that home health care agencies are already licensed, and you don't have PCAs under that program.

Sandra Ballard:
We don't now. Presently our PCA program is not under that; it's under the agency itself. It's part of our agency.

Vice Chairwoman McClain:
Make your concerns known to Pam Graham and see what can be worked out.

Assemblyman Hardy:
I understand A.B. 337 doesn't affect anyone who is volunteering to help anyone?

Tina Gerber-Winn:
Our intention is not to regulate individuals who are volunteering to help others.

Assemblyman Hardy:
How does it affect the random person who is between jobs and who fills in for a caregiver?

Tina Gerber-Winn:
My impression is if someone hires a caregiver who is an individual, this would not impact them. If that individual worked for an agency, he or she would have to meet the requirements.

Assemblyman Hardy:
That's why I read line 3, "Agency to provide personal care services means any person…"?

Vice Chairwoman McClain:
We're taking that out. That's the amendment (Exhibit C).

We'll close the hearing on A.B. 337.

Chairwoman Leslie:
Seeing no other business, this Committee is adjourned [at 2:55 p.m.].

RESPECTFULLY SUBMITTED:

Joe Bushek	Paul Partida
Recording Attaché	Transcribing Attaché

APPROVED BY:

Assemblywoman Sheila Leslie, Chairwoman

DATE:

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: March 28, 2005 **Time of Meeting: 1:34 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A	********	Agenda
A.B. 234	B	Assemblywoman Gansert	Proposed amendment
A.B. 337	C	Mary Liveratti / Nevada Department of Human Resources	Proposed amendment
A.B. 337	D	Tina Gerber-Winn / Nevada Department of Human Resources	Prepared testimony in support of the bill.
A.B. 337	E	Wendy Simons / Park Place, Assisted Living Residential Neighborhood for Seniors	Letter in support of the bill