

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session  
March 2, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:00 a.m. on Wednesday, March 2, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Randolph J. Townsend, Chair  
Senator Warren B. Hardy II, Vice Chair  
Senator Sandra Tiffany  
Senator Joe Heck  
Senator Michael Schneider  
Senator Maggie Carlton  
Senator John Lee

**STAFF MEMBERS PRESENT:**

Kevin Powers, Committee Counsel  
Scott Young, Committee Policy Analyst  
Shirley Parks, Committee Secretary

**OTHERS PRESENT:**

Raymond McAllister, Professional Firefighters of Nevada  
Roger Bremner, Administrator, Division of Industrial Relations, Department of  
Business and Industry  
Bobbette Bond, Hotel Employees and Restaurant Employees International Union  
Welfare Fund  
Jack Jeffrey, Southern Nevada Building and Construction Trades Council  
Fred L. Hillerby, Washoe Health System; Nevada State Board of Dental  
Examiners  
David Kallas, Las Vegas Police Protective Association  
Craig Michie

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 2

Adam Segal, Clark County Firefighters Health Trust  
Don Jayne, Nevada Self Insurers Association  
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual  
Company  
Nancyann Leeder, Nevada Attorney for Injured Workers, Department of Business  
and Industry  
Patrick T. Sanderson, Laborers Local No. 872  
Raymond Rodriguez, Nevada Legal Services  
James Wadhams, Nevada Dental Association

CHAIR TOWNSEND:

We will open the hearing on Senator Heck's bill, Senate Bill (S.B.) 121, followed by Senator Schneider's presentation of S.B. 126. There will be a discussion and possible action on S.B. 85.

SENATE BILL 85: Revises provisions governing practice of dentistry.  
(BDR 54-179)

SENATE BILL 121: Revises provisions governing payment of certain workers' compensation claims. (BDR 53-1021)

SENATE BILL 126: Establishes Office for Injured Employee Assistance.  
(BDR 18-246)

SENATOR JOE HECK (Clark County Senatorial district No. 5):

I am presenting S.B. 121 today. This bill revises the provisions governing the payments of certain workers' compensation claims and is submitted on behalf of the Professional Firefighters of Nevada. Every employer has the responsibility of ensuring an injured worker timely access to appropriate medical care. While this care is often provided without delay, the payment to the health care provider for services rendered is sometimes caught up in bureaucratic red tape associated with the denial of the claim by a third-party administrator. In these cases, the injured worker will often pay for services out of his or her own pocket or use the benefits of private health insurance. Subsequently, when the claim is adjudicated and accepted by the third-party administrator, current law requires the workers' compensation carrier to pay the health care provider who then in turn is to reimburse the worker for any out-of-pocket expenses. Requirements of the law do not specify that the private insurance company be reimbursed for expenses paid on behalf of the injured employee. Senate Bill 121

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 3

will require workers' compensation carriers to directly reimburse the private carrier for health care costs incurred on behalf of the injured employee.

RAYMOND McALLISTER (Professional Firefighters of Nevada):

I am here to represent the Professional Firefighters of Nevada. This bill is presented to you as a result of a problem that we are experiencing with some of our firefighter health insurance trusts. I believe this problem exists in some other industries of Nevada, as well. Currently under state law, if a worker is injured, he can file a claim for workers' compensation. If it is denied, he can appeal the claim. This is what is taking place. During the adjudication of the workers' compensation claim, the Firefighter Health Insurance Trust pays the fees in protest. When adjudication is finished and if we are successful in our appeal, Nevada law requires the insurance trust be reimbursed with the rates of workers' compensation. The provider is then paid and we in turn get our money from the provider. We spend more on legal fees, sometimes unnecessarily, only to find out the cost of the legal fees is more than the amount we originally would have received.

CHAIR TOWNSEND:

This is not a new issue for this Committee. Is this mostly a problem with private health insurance?

MR. McALLISTER:

Yes. What we are attempting to do is cut out the middleman. Instead of paying back the provider, once we win an appeal on a claim we will reimburse the trust at the rate paid under workers' compensation. Basically, this is the request of S.B. 121.

SENATOR HARDY:

There are certain defined rates that are paid on industrial insurance. Is it possible to increase these rates? Do we need to address this?

MR. McALLISTER:

We pay the provider at a contracted rate and when it is reimbursed to the provider it is at the rate allowed by workers' compensation.

SENATOR HARDY:

This is no problem for you. Are you going to pay, under protest, the amount that would otherwise be paid by industrial insurance?

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 4

MR. MCALLISTER:

No. We are going to pay the full amount of a contracted rate that we may have with the provider. We will still have a shortage, but if the insurer pays back our Firefighters Health Insurance Trust directly, we can make an educated decision whether it is financially reasonable to go back and pursue a legal lawsuit.

SENATOR HARDY:

Would this bill require the health provider reimburse the difference?

MR. MCALLISTER:

Yes. The bill requires the health provider pay the difference. Once we file a claim and we pay from our trust, we have already fully compensated the provider. The provider now, for reimbursement to us, will again bill the insurer. Once the claim is adjudicated, the insurer will with the second billing by the provider, pay the provider. The provider has now been compensated twice. Within 30 days they are supposed to pay us the money we originally paid out of the trust.

SENATOR HARDY:

Presumably the health care provider knows this is an industrial insurance claim that is in the process of adjudication. Is this true?

MR. MCALLISTER:

It is not necessarily the case. When a third-party administrator is billed by the health care provider on a workers' compensation, they have actually sent a letter stating, the health care provider determines if a claim is workers' compensation related. After the provider responds, the third-party administrator will then make a decision whether or not to pay the claim. Third-party administrators also refuse to pay the claim unless a doctor verifies it is workers' compensation related. The doctor bills the Firefighters Health Insurance Fund. The law says we will pay the provider only. I have Ryan Beaman, President, Professional Firefighters of Nevada, with me today and he has some specific examples of where this has taken place. He has prepared a packet for each member of the Committee ([Exhibit C](#), original is on file in the Research Library) to help identify the problems addressed by S.B. 121.

SENATOR HARDY:

This may cause a disincentive for the doctor to identify a workers' compensation claim. He could potentially be paid less.

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 5

MR. McALLISTER:

Our trust was paying the claims, in protest, but we found ourselves unable to continue to meet the need because we were not reimbursed by the providers. Now, health insurance trusts have decided not to pay the claims. We cannot pay in protest any longer as we are not receiving reimbursement to cover these payments.

SENATOR CARLTON:

A doctor sees an injured worker and he is denied workers' compensation. An appeal is made. It is overturned. So it is a workers' compensation claim. Do we have a way to track how many times these appeals are overturned?

MR. McALLISTER:

I have some information on this. I am not sure of the exact percentage. One third-party administrator recently paid for ten claims that were adjudicated and overturned in our favor. We have another 21 claims pending. Of these, 18 claims have been denied. There is no incentive for the insurer to accept the claims because our trust is paying the vast majority of the costs up front.

SENATOR CARLTON:

I have noticed this is true of workers' compensation in other industries. Every claim is an automatic denial. Say no, and then make someone prove their case. It would be good to know the overturn rates. Your fund is in jeopardy, and so are many others. There are people who will not see a workers' compensation doctor. They will see their own private doctor because of possible denial issues. I would like to see how many denials are overturned.

CHAIR TOWNSEND:

Mr. Bremner, are there statistics available?

ROGER BREMNER (Administrator, Division of Industrial Relations, Department of Business and Industry):

We do not have those numbers. Those statistics are probably available with Bryan A. Nix, Senior Appeals Officer, Hearings Division, Department of Administration. Many individuals do not understand the process of appeal.

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 6

SENATOR HECK:

Whatever statistics are produced, the problem will be grossly underestimated. Appeals happen internally and the overturns happen within the organization before actually coming to a hearing or an appeal.

CHAIR TOWNSEND:

An injured party walks into a doctor's office, with a broken arm. How would the doctor determine this injury is work related?

SENATOR HECK:

An injured employee would seek attention at an urgent-care or emergency-room facility. Based on what the employee tells the examining physician what happened, the physician would determine if it was work related. If the injury was work related a C4 form would be filled out. This starts the workers' compensation process. The workers' compensation carriers now have the option of accepting or not accepting the documentation as work related. The care and services already rendered are to be paid even with an ongoing medical investigation. The injured worker will need to apply to his private insurance company to make the payment.

CHAIR TOWNSEND:

So it is a function of the injured party as communicated to the attending physician.

SENATOR HECK:

That is correct.

BOBBETTE BOND (Hotel Employees and Restaurant Employees International Union Welfare Fund):

We are in support of this bill. We are interested in anything that will get both the provider and the participant out of the middle of the reimbursement process. The bill, S.B. 121, is a step towards achieving this goal. The intent of workers' compensation was to pay if they believed an injury was work related. The current process slows down the patient's care. A direct reimbursement relationship with the workers' compensation carriers themselves would solve many of these problems.

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 7

JACK JEFFREY (Southern Nevada Building and Construction Trades):

The previous testimony makes the case for this bill. We want to go on record in support of S.B. 121. The building trade's council represents all the construction unions in Clark County. We all have trust funds and we have basically the same problems.

CHAIR TOWNSEND:

I did not know these claims could be covered by trust funds.

FRED L. HILLERBY (Washoe Health System):

I support what the bill is trying to do, but I have a concern. Look at the bill on page 3, starting with line 15 where we have deleted the provider of health care from potentially being a recipient of this payment once the appeal has been upheld. Sometimes in the hospital world, the injured worker cannot pay the billing himself. The insurer will not because it is not deemed a qualified claim. The hospital will take a promise of payment once the workers' compensation is cleared up. What might happen is the provider would not get paid and the employee and the health insurer may get paid when the claim is completed. The bill needs an amendment. The payment goes to the provider of health care unless the injured employee or insurance carrier made the payment.

MR. McALLISTER:

We have an amendment to propose to the Committee ([Exhibit D](#)).

KEVIN POWERS (Committee Counsel):

The way the statute reads, a conditioned precedent to reimbursing the injured employee or the health or casualty insurer is found in paragraph (b) of subsection (1) which is on the top of page 3. One of the condition precedents has to be that the injured employee pays in protest for the treatment or a health or casualty insurer pays on behalf of the injured employee. That triggers the rest of the statute.

CHAIR TOWNSEND:

We are here to help make this right. Mr. McAllister has an amendment. It may help to clarify this issue.

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 8

MR. MCALLISTER:

Yes, this amendment clarifies what Nevada law prescribes, encompassing all insurers.

CHAIR TOWNSEND:

In the end, Mr. Powers will decide how it will be amended to be sure everyone who needs to be, is included.

DAVID KALLAS (Las Vegas Police Protective Association):

We are here to support this bill. Additionally, the bill is about efficiency and equability. Regarding our trust, we would rather be spending our time providing benefits instead of being a collection agency. We would like to go out to providers and get the money belonging to our trust. Providers would rather spend time taking care of their clients, making sure their injuries are taken care of and not worrying about the bill payment.

CHAIR TOWNSEND:

Are there any questions of Mr. Kallas? Are there any others in support of this bill? Is there anyone in southern Nevada with questions?

CRAIG MICHIE:

I had a personal experience with a work-related injury. I went to the doctor and gave the circumstances and information about the incident. Once it was deemed to be a work-related injury, it was important the insurer take action to treat it. I was denied. Once this occurred, the medical provider had a problem. They needed approval from the insurer before they would begin treatment. Because there was no authorization given, treatment of my injury was left in limbo. For me, an alternative was to go to a private health care provider through the Culinary Workers Health Fund. I went to the health care provider and explained my circumstances, they would not offer treatment. I was denied treatment not only from the workers' compensation insurer but also from the private health care provider, because it was a work-related injury. There seem to be barriers to treatment. I was required to sign a statement that I would no longer pursue my lawful rights under workers' compensation in order to receive treatment.

CHAIR TOWNSEND:

Mr. Michie, you were denied health care at both levels for possible treatment, the workers' compensation and the Culinary Workers Health Fund. Were you



Senate Committee on Commerce and Labor  
March 2, 2005  
Page 9

covered by the employer under workers' compensation? Did you have an insurer through the Culinary Workers Health Fund? Is this what you are telling us?

MR. MICHIE:

Yes. I have an insurer through the Culinary Workers Health Fund. I work through a union and I am dispatched to the job with different employers. I do not have the traditional relationship of employee to employer.

CHAIR TOWNSEND:

We appreciate your telling us about this problem, but this bill only addresses payment issues.

MS. BOND:

Mr. Michie's denial of health care while the appeal process is going on is exactly what S.B. 121 will address. If the injured worker is able to get paid by workers' compensation once determination is made on a case, and could get paid directly, it would free up the nonworkers' compensation doctors. They could treat the injured worker and not be concerned about later reimbursement. Senator Heck's bill would allow payment up front for treatment.

MR. MICHIE:

If an injured worker is out-of-pocket for tests while waiting for medical treatment for an injury, the worker should be directly reimbursed by the provider for the full amount paid. There should be no additional fees taken from the benefit amount.

CHAIR TOWNSEND:

Thank you. Are there any other questions for Mr. Michie?

ADAM SEGAL (Clark County Firefighters Health Trust):

This bill is focused and it will be successful. It facilitates the plan-to-plan reimbursement after there clearly has been a determination that an injury is workers' compensation. This bill makes it so much easier from a financial and administrative standpoint. There are other problems this bill will not address: proper dealing with initial denials, time limits on the appeals process and the amounts ultimately covered on the schedule of benefits.

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 10

DON JAYNE (Nevada Self Insured Association):

In concept, we support the intent of this bill. The language is good. This sort of approach will help with payment from the provider to the claim directly and we feel it certainly has merit. Anything we can do to get treatment for the injured worker is a good thing.

CHAIR TOWNSEND:

Is there anyone else with comments on this bill? We will close the hearing on S.B. 121 and open the hearing on Senator Schneider's bill, S.B. 126.

SENATOR SCHNEIDER:

Every Legislative Session it seems we do something on workers' compensation. Last Legislative Session several people from this Committee were part of a study on this issue. Senator Heck's bill helped bring a focus to the many problems, as well. Most of us, in this room are knowledgeable people about how the health care system works. The average worker, if injured on the job and who may not have union support, would not know how to access the system. My idea would be to expand the program and get an ombudsman involved who would bring assistance to the injured worker. The ombudsman could guide and push them through the system. The Legislative Counsel Bureau (LCB) has prepared a bill draft, S.B. 126, as a starting point. Contact from the employer would notify the ombudsman about the employee so he could begin to move the injured worker through the system. The bill requests a fee through workers' compensation that the employer pays to cover the office of ombudsman. Over the long run with the system functioning like this, fees go down over a period of time. There are other agencies that could help with streamlining this whole process. An ombudsman could be a strong advocate for the injured worker. An appropriate placement of this program would be with the Office of the Governor. This placement would send a strong message for all needed communication.

SENATOR LEE:

I want to talk about the assessments mentioned in S.B. 126. Are we talking about a pool of money slowly starting to fill that will handle these claims in section 16 and section 20 of the bill? Will this take a period of time or do you plan to have money in the system ready for use?

SENATOR SCHNEIDER:

The money will come in slowly. The July date is probably premature. I would suggest the Governor appoint some people in early October and this ombudsman program might kick in by the first of the year. It takes time to set up these offices.

SENATOR CARLTON:

I have constituents who call with questions about how to move through the system. I understand it is hard for them to find the way.

SENATOR SCHNEIDER:

Hopefully, this will take some of the pressure off many who are, in a way "shop stewards." Because of their knowledge of the system, the unions work real hard to ensure employees get the best help. They are being swamped with requests. Nonunion people are the majority of workers in the State and they have no help. This bill would supplement the union activities and make it easier for their people.

SENATOR CARLTON:

There are a lot of nonunion classifications inside the industry. They are included in self-insured for workers' compensation. Hopefully they have an avenue for benefits as well.

SENATOR SCHNEIDER:

When a worker goes in for treatment and is denied instantly, automatically they feel trapped; frightened because of inexperience, they do not know what to do. They do not understand health care. They are not sure of the doctor or the insurance company. They do not know who to trust. The idea is to get someone in place who can really help them.

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada, A Mutual Company):

I would like to respond to Senator Lee. The assessment process involves the Division of Industrial Relations which is in charge of collecting the assessment fees. Through the statute, the Division is asked to collect fees for various purposes including the fees currently collected, for example, to run the Office for Consumer Health Assistance. Costs of running the Division are included. There are all kinds of other assessed funds related to subsequent injuries. The Division collects data from the insurers and self-insurers regarding premiums

they collect; the number of claims; how much reserve they have; and through a formula process, they bill on an annual basis each insurer, a fee to run all of these programs. Once the budget process is done in the Legislature, the Division will know the numbers it needs to collect from insurers for its share of running these various offices. This goes into next year's assessment. It is a onetime fee paid annually to the Division. This bill asks for a focus on workers' compensation instead of what the Office for Consumer Health Assistance is doing now. It covers workers' compensation. Currently insurers are paying for a portion of this office which is then paid by the employers through their premiums.

MR. JAYNE:

The numbers for the 2004 and 2005 Legislature-approved budget for the Office for Consumer Health Assistance was about \$800,000. It would appear this identifies eight people on staff. We do not know the cost of staffing a parallel office based on the components of the bill, but whatever the amount, it would most probably be somewhat in addition to the current office staff positions who are now working on workers' compensation. We spend large amounts of money and go to different offices via the assessment process trying to find a way to get through this complicated system. The Department of Administration, Hearings Division and Appeals, currently spends over \$6 million and has 45 employees working there. Conceptually, can we do a better job at the initial hearing level to find resolve? We talked earlier about statistics on how many claims are denied and how many are overturned. It would be helpful for us to look at these numbers. Are there problems that cannot be measured? I have not seen these statistics in years; our support would be to do something at the hearing level to improve dispute resolution. We may need to focus on this mission to resolve these problems. The Nevada Attorney for Injured Workers, in the last legislative budget, was well over \$2 million with 29 employees in that office. I am not sure what can be done there. In lieu of attorneys, possibly we could have paralegals in some of the operation.

CHAIR TOWNSEND:

May we have those numbers again, please?

MR. JAYNE:

Going back to the prior legislative budget for the Nevada Attorney for Injured Workers I found online \$2,464,000 and 29 employees. In the Hearing Division, I found \$3,637,000 and 45 employees.

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 13

CHAIR TOWNSEND:

How many employees are in the Office for Consumer Health Assistance? How much money is involved?

MR. JAYNE:

I have found eight employees based on the 2004, 2005 approved budget. The amount is \$798,947. This is health related and workers' compensation related and I am not sure how many are dedicated to workers' compensation.

CHAIR TOWNSEND:

These are the \$11-an-hour people.

MR. JAYNE:

This is worthy of discussion. We have been dealing with this issue over and over.

CHAIR TOWNSEND:

Is it a Committee understanding that the Office for Consumer Health Assistance deals with people who are having problems from the medical component of workers' compensation? Are people taking their complaints there? In previous testimony on the Office for Consumer Health Assistance, I do not remember anyone bringing up workers' compensation from this office.

Would the Nevada Attorney for Injured Workers (NAIW) give us some insight as to the types of things they are getting in their office? This might help us understand better some of the needs. Senator Schneider has done a noble thing with this bill. He is trying to find a way to help the thousands who have difficulty and questions. He wants an easier way to handle the individual's problem. Whether it is a doctor, a provider or an employer, the injured worker needs some help moving through the system. What are you hearing from the clients that come to see you?

NANCYANN LEEDER (Nevada Attorney for Injured Workers, Department of Business and Industry):

As it happens, during the last year I asked the receptionist in our Las Vegas Office to try to keep records on who has referred us, how people find out about us, the issues people were calling about and where they are located. We spent time this past weekend trying to collate this information among the paralegal staff in each office who is the main provider of information. Most people call

asking general questions. Last year, there were 3,762 call increases to our office. About one-half of the questions were about the system, about one-half of the referrals were from the Hearings Division which means the person had already gotten that far into the system. The next largest figure was from private attorneys, doctors, insurers, hospitals and other kinds of providers. We did get one referral from the Office for Consumer Health Assistance. There were, years ago, when the office was first started, two people who answered questions about workers' compensation. We would deal with both of them on occasion, one in the north and one in the south. When the Office for Consumer Health Assistance contracted in southern Nevada, with no physical presence in the north, the questions were answered there. We receive some questions about workers' compensation but, not many. We are not charged with helping a person through the claims system.

CHAIR TOWNSEND:

We understand, but we wanted to know what kind of inquiry you receive based on Senator Schneider's effort here.

MS. LEEDER:

We do not get calls on medical treatment. Remember, most of our issues are referrals from the Hearings Division. Our inquiries go beyond how the system works to issues like acceptance, permanent partial disability, reopening a case and other components of compensation which is in fact, tracking much like our usual caseload.

CHAIR TOWNSEND:

I thought you might receive more general questions.

MS. LEEDER:

About one-half of the calls are more general in nature.

CHAIR TOWNSEND:

Are you saying about one-half of the people are already in the system in some way?

MS. LEEDER:

Yes. This is by referrals. I do not know if these are the same people. We do have pamphlets that give general information and it is distributed to insurers,

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 15

providers, unions and others who send us referrals. We know they are used because often we have requests for more pamphlets.

CHAIR TOWNSEND:

Since you are here testifying, is there any thing you need?

MS. LEEDER:

With reference to S.B. 126, section 18 refers to *Nevada Revised Statute* (NRS) 616A.425. Section 18, subsection 3, paragraph (b) of the bill refers to the statutory sections. I recommend an amendment to the bill to have our name inserted, instead of the statutory sections. This would be helpful. In section 8, there is a concern if a person becomes involved in trying to resolve an issue through this office and they miss the deadline to file their appeal. This means they have no redress. I have no proposed language for this, but this section of the bill needs some massaging on this particular point. After speaking with Senator Schneider yesterday, I understand there are some other language proposals and the bill will go to subcommittee.

SENATOR SCHNEIDER:

I would perceive that one of the ombudsman's duties would be to help the injured worker with timely filings and deadlines.

CHAIR TOWNSEND:

There have been assigned ombudsmen in the past. Jake McGill and several others used to testify regularly. Mr. Ostrovsky, do you have something to add?

MR. OSTROVSKY:

We do not like the structure of this bill. We are willing to work with Senator Schneider and others to restructure language that would work. Our concern is that we already participate through the Office for Consumer Health Assistance. The first question we have to ask is if that office is not achieving its goal, then how will this office be strengthened? Do we need someone specifically in the office who would be identified statutorily as the ombudsman for workers' compensation? It is our position that we would rather fix the existing office than create a whole new office. There is a lot of expense involved with creating a new office. An alternative would be to strengthen and use the existing structure. Specifically, we would change the language in subsection 3 of section 8 to read, "identify complaints" and strike the words "and investigate" in any bill. Investigation should come through referral.

Investigative powers create a large administrative bureaucracy. There are other language changes to discuss. We support the concept. Anything that will make it easier to resolve problem cases makes it better for all of us. We will work with Senator Schneider and the Committee if they want to expand the ombudsman concept.

CHAIR TOWNSEND:

Apparently, the Office for Consumer Health Assistance has the jurisdiction to provide workers' compensation help for the injured worker. Mr. Ostrovsky's point is that this office should be the one where these problems are resolved. We did not realize they had this kind of jurisdiction. Many people would find it hard to locate this office for assistance. The effort of the bill may have brought to light a problem we can perhaps fix from within our existing structure.

MR. JEFFREY

We support the concept. Workers' compensation has been a long-standing issue of concern through the years. History has proven an ombudsman program is the most helpful for the injured worker over time.

CHAIR TOWNSEND:

We have heard today about complex cases as identified by Mr. Ostrovsky. There are also clear-cut cases, with obvious resolve; then there are those people in the grey area. If there are people with expertise to assist these injured workers through the system, we need to locate them and enlist their help. We need to hear from the Office for Consumer Health Assistance. This testimony will give us a better understanding of their mission from their perspective.

MR. JEFFREY:

As far as the bill is concerned, we do support the concept. I have several comments about my perceptions for this position. In the past, the ombudsman took a claim in the initial stages because when someone was injured on the job, they had no idea what to do except go to the doctor. The original ombudsmen were people who had worked in many areas of concern to help workers. They moved people through the system numerous times by starting the claims process and following up, among other things, to oversee proper medical treatment. This could work today. Being involved in government would not be a priority. It would not take legal experience to do this. More important is to have "people experience" and know how and who to locate for specific problems. I see this position as a mediator who would act before the hearings level, in



fact, taking the worker to the hearing. At one time, the hearing process was more of a negotiation than it is now. This process has become much more complicated. The injured worker needs an ombudsman to take them through the system and educate them about what steps to take in order to progress. Cases now are being made at the hearing level and so there may be a need for more legal expertise. This would be my one concern.

CHAIR TOWNSEND:

Earlier, someone brought up the issue of appeal deadlines. There are no free passes. Mr. Young, do we have a subcommittee on Friday?

SCOTT YOUNG (Committee Policy Analyst):

Yes. A subcommittee meets Friday on S.B. 123, the energy assistance bill.

CHAIR TOWNSEND:

We will try to follow that meeting with the presentation to the subcommittee on Industrial Insurance with Senator Schneider. We need to hear from someone in the Office for Consumer Health Assistance about what they are doing, what they are hearing, how many complaints they handle and how many questions and inquiries are submitted regarding injured workers as opposed to health issues. If the injured worker knew more about this office, it would receive more usage. This bill is really for the person who has no place to go. This person may not have an organization or union for support. Many times they end up in the system and call Ms. Leeder's office. Senator Schneider has identified the problem for the worker who has no one to answer questions, in fact has no idea where to go.

SENATOR SCHNEIDER:

In the 1970s, everyone had union houses. In that time, the State population was under 1 million people. Now we have thousands, for example, just in the building trades, who get injured daily and have nowhere to go. Since we have had the big workers' compensation debate in 1993, this State's population has more than doubled. Most of the new employees are nonunion people who are not receiving assistance. They do not understand the laws. We will add another 1 million to the population within the next 10 years.

MR. JEFFREY:

In actuality, most unions do not do a good job when it comes to workers' compensation. Unions have business agents who are policing the collective

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 18

bargaining issues. This is their training and background. The larger unions have a specific representative who handles workers' compensation issues.

SENATOR HARDY:

Mr. Jeffrey's articulate historical perspective instructed all of us in the value of institutional memory; it certainly was an impressive testimony to witness.

CHAIR TOWNSEND:

Friday's subcommittee at 9:15 a.m. will take more testimony. We will identify the problems in general and how best to deal with them. We will get the facts in a roundtable approach and then make adjustments to this bill so injured workers receive their benefits.

PAT T. SANDERSON (Laborers Local No. 872):

I am a retired worker from Laborers Local No. 872 in Reno. I worked in northern Nevada for 43 years. I wanted to speak about the Office of the Governor in Carson City with Gayle Sherman and in Las Vegas with Redentor Villanueva. Each of these capable staff people could give me good information and direction whenever I needed assistance with injured members.

CHAIR TOWNSEND:

Are these the two people that were mentioned in Ms. Leeder's office?

MR. SANDERSON:

No, they work directly for the Office of the Governor.

I found that most of the time claims would be denied and the injured worker would be so intimidated they did not know how to pursue the claim. When one of these two staff people from the Governor's Office made a call on behalf of the injured worker, attitudes changed and help became more willing. The ombudsman is a good idea because they will have a similar understanding of the system. I appreciate this bill and I will help support it.

CHAIR TOWNSEND:

Are there questions for Mr. Sanderson? Mr. Michie, are you aware of the subcommittee meeting on Friday at 9:15 a.m.?

MR. MICHIE:

I have some final comments. I appreciate what Senator Schneider is doing through this bill. I have a problem with the Office of the Governor and the privatization of workers' compensation.

CHAIR TOWNSEND:

Mr. Michie, this Committee understands privatization. It is the rule of law in the State today. We are trying to find ways to make the system better. We would like to stay focused on Senator Schneider's bill.

MR. MICHIE:

The point is you cannot have an office that represents the opposition interests and at the same time expect they are going to do an appropriate duty towards those injured. With regard to the Office for Consumer Health Assistance where the director is a doctor, it seems they are dealing with larger problems which are more legal in nature and less medical. Instead of this office handling the majority of claims, they might be better served with the NAIW. This office is already set up for advocacy. They address the legal issues which touch on the medical as well. The ombudsman would also fit in very well. Funding is an important concern because we had ombudsmen in the past, and we do not know what happened, but they are no longer employed. Some background may be needed as to why they are no longer part of a staff. Questions as to their success, their workload, their methods of operation within the system and how they were able to get results are important issues for review. Evaluation of these key offices could be enlightening. Current statistics should always be available as a good resource. Lastly, I have not seen any union or union representative have any idea about this legislation and are even less capable of passing it down to their union stewards and others. The injured worker will not be well served by the union. Perhaps other people should be invited.

CHAIR TOWNSEND:

Mr. Michie, we would welcome your insight as to how to "invite people"

MR. MICHIE:

The answer could be to have a lay panel available.

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 20

CHAIR TOWNSEND:

You put that in writing and send it to us, and we will consider it. We will, as in the past, continue to do what we can for workers' compensation. The hearing on S.B. 126 is closed.

RAYMOND RODRIGUEZ (Nevada Legal Services):

I support the bill in concept. I would suggest when a claim is denied a notice is given to the claimant to notify the Office for Consumer Health Assistance. In this way, the claimant they can access information early within the system and this will help them through the system. I echo Ms. Leeder's remarks, facilitating resolve through this office is a terrific idea, but it should not be a substitute for a lawyer's assistance. It should be made clear to people they cannot miss time frames. They should be encouraged to consult with an attorney in order to have another opinion about the resolution to their problem.

CHAIR TOWNSEND:

These are very important comments. Please share these suggestions with Ms. Leeder. She will be here for the subcommittee meeting on Friday, March 4, 2005. Senator Heck, what is your desire on your bill?

SENATOR HECK:

There was no opposition to S.B. 121.

CHAIR TOWNSEND:

There was an amendment offered in good faith in regard to the technical side of the bill. We do not want to adopt an amendment that may be in good faith, but perhaps is inappropriately drafted. How do you want to handle it?

MR. POWERS:

I agree with the intent of the amendment. The definition of health insurer in the bill is under-inclusive, and so the amendment needs to be amended. It should be amended to provide that it is any insurer or other organization providing health coverage in accordance with State or federal law, to ensure we are covering any plan that deals under this or any other federal law.

SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 121.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TIFFANY WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:

Mr. Wadhams, we have asked you back to give us your insight about S.B. 85, so we may take appropriate action concerning this bill.

JAMES WADHAMS (Nevada Dental Association):

The association I represent spoke in favor of the bill as amended ([Exhibit E](#)).

CHAIR TOWNSEND:

Is this is your recollection, Senator Carlton? Were there any additional amendments? Mr. Young were there any additional amendments?

MR. YOUNG:

Regarding S.B. 85, there was some additional language to the amendment. I think it did not change substantively any language. It was a different version than the one we looked at.

SENATOR HECK:

The amendment was drafted, but I will hold it at this time. Another dental bill is being proposed where we may be able to insert the amendment.

SENATOR HARDY:

I have a concern. We have all received so much communication on this bill. The intent of the legislation is admirable and worthy. The Western Regional Exam has come under attack by many folks who have contacted me. My independent research has revealed to me that it is difficult to attack this particular exam because so many states accept it as an authoritative exam. One suggestion would be to require all components of the test be passed before it is accepted. The problem seems to come when someone can fail one portion of the exam and still be certified. I think the bill should address the mechanics of the testing service.

MR. WADHAMS:

The mechanics of the exam are not addressed in the bill. I would be happy to relay this to my client.

CHAIR TOWNSEND:

Senator Carlton, are you familiar with the mechanics of the actual test?

SENATOR CARLTON:

Yes. Senator Hardy shared his concerns with me and I had Mr. Hillerby contact the board to hear the details. Because of all the discussions we have had, it was hard to remember each individual component. Those taking the test have to pass with a 75 percent overall. If they do fail one of the components, they have to retake that portion of the exam. The new regulation this year requires that they have to pass that component with a 55 percent. This information seemed to alleviate many concerns of Mr. Wadhams' association. This was not a major component of the bill because we knew the board was going to be responsible for the test, and would have a say in test content. This is how we would resolve some of these concerns. Mr. Hillerby has some of the other numbers.

MR. WADHAMS:

The president of the Nevada Dental Association attended the house of delegates meeting. They confirmed that day their support of these proposed amendments. These issues can be broken down somewhat; however, not every dentist in Nevada is in agreement. The association, through its process, represents the vast majority of dentists who support this exam. It is accepted by the licensing authority in approximately 30 states.

SENATOR HARDY:

Point of clarification, yes, and 30 states do accept this test, but they require that all the components are passed. I have no problem with the other states acceptance to this test, but I want to make sure it is accepted by our State with the same set of requirements. It is not my intent to derail this bill, but I am not comfortable moving it forward without this issue being addressed.

SENATOR HECK:

Senator Carlton has clarified this issue for me. We may have been relying on old information. I have the requirements on the Web site now. It states, "Passing the exam requires the successful completion of each of the four sections described below." It then lays out the total amount of points per section, all adding up to 100 points.

SENATOR HARDY:

We have some assurance this will continue due to the fact our board will now have some input into the testing process. As a matter of legislative record, it is my expectation all test components will be successfully completed and passed and this requirement will remain and be the standard our State accepts.

CHAIR TOWNSEND:

Mr. Hillerby, we are trying to get to the heart of the matter on S.B. 85, that is the 30 states that accept this Western Regional Exam and the requirement stating all four sections of the exam need to be completed and passed.

MR. HILLERBY:

I am representing the Nevada State Board of Dental Examiners. Senator Hardy raised this question to me earlier. Two of our board members referred me to Dr. David Lowe who is head of the Western Regional Examiners. I contacted him and his response was the following: "Effective this year the passing rate for the Western Regional Exam is 75 percent overall total. For each individual section, a score of 55 percent or above is passing. If anyone fails to pass a section, they must come back and retest and pass the exam at 75 percent the second time. If they fall below the overall 75 percent the first time, then they must take it over again and pass with a 75 percent." We will have representation on the Western Regional Board. As members of the board, all states do comply with these rules.

SENATOR HECK:

A member state of the board accepts the board with all its current rules. They have a disclaimer for the nonmember states that accept the exam and in those states there are requirements for passing everything at 75 percent.

SENATOR HARDY:

Are the 30 states that are referenced here member states? A passing grade of 55 percent is a little weak. I encourage the board as they become involved to enhance this percentage. For the record, "I would hope that we take some measures to increase the standard to ensure that the tests are passed in sufficient levels."

MR. HILLERBY:

I will relay these concerns to the board. As you are aware, we want to ensure the public's safety.

Senate Committee on Commerce and Labor  
March 2, 2005  
Page 24

SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 85.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

There being no more business before the Senate Committee on Commerce and Labor, the meeting is adjourned at 10:14 a.m.

RESPECTFULLY SUBMITTED:

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Shirley Parks,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

DATE: \_\_\_\_\_