

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

**Seventy-Fourth Session
May 18, 2007**

The Committee on Health and Human Services was called to order by Chair Sheila Leslie at 12:10 p.m., on Friday, May 18, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Sheila Leslie, Chair
Assemblywoman Susan I. Gerhardt, Vice Chair
Assemblyman Bob L. Beers
Assemblyman Joseph P. (Joe) Hardy
Assemblywoman Ellen Koivisto
Assemblywoman Kathy McClain
Assemblywoman Bonnie Parnell
Assemblywoman Peggy Pierce
Assemblywoman Valerie E. Weber
Assemblywoman RoseMary Womack

COMMITTEE MEMBERS ABSENT:

Assemblyman Lynn D. Stewart (Excused)

GUEST LEGISLATORS PRESENT:

Senator Joseph J. Heck, Clark County Senatorial District No. 5



STAFF MEMBERS PRESENT:

Sarah J. Lutter, Committee Policy Analyst
Patricia Evans, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Bill Bradley, representing the Nevada Trial Lawyers Association
Charles Duarte, Administrator, Division of Health Care Financing and
Policy, Department of Health and Human Services
Renny Ashleman, representing the Nevada Health Care Association

Chair Sheila Leslie:

[Meeting called to order. Roll called.] Please mark Mr. Stewart absent. This is our last work session. We have six bills we are going to consider. Ms. Lutter, please review Senate Bill 5.

Senate Bill 5 (1st Reprint): Requires the establishment of the Cancer Drug Donation Program. (BDR 40-19)

Sarah J. Lutter, Committee Policy Analyst:

[Read from prepared text ([Exhibit C](#)).]

Chair Leslie:

The Committee liked the intent of this bill, but was uncomfortable with the immunity provision. How does the Committee feel about conceptual amendment number one? We wanted the person who is donating the drug to have immunity. The concern was that we did not see why the pharmacy, medical facility, health clinic, or provider of health care should have less immunity than they usually have. Number two, the Committee did not want to exempt drug manufacturers from liability. The choice is whether to completely eliminate Section 10, subsection 2, or eliminate it and substitute the Nevada Trial Lawyer language.

Assemblywoman Gerhardt:

If we eliminate the section completely, does it not do what is in the second section? Probably taking it out would be the easiest path.

Chair Leslie:

That is my understanding. Does anyone else wish to get on record?

Assemblywoman Valerie Weber:

I feel uncomfortable about the chain of events from donation to final user. I think quality is compromised, and I will not be supporting the bill.

ASSEMBLYWOMAN GERHARDT MOVED TO AMEND AND
DO PASS AS AMENDED SENATE BILL 5 (R1).

ASSEMBLYWOMAN KATHY McCLAIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN WEBER VOTED NO.
ASSEMBLYMAN STEWART WAS ABSENT FOR THE VOTE.)

Chair Leslie:

The next bill is Senate Bill 142 (R1).

Senate Bill 142 (1st Reprint): Revises provisions governing certain forms used by hospitals in this State. (BDR 40-602)

Sarah J. Lutter, Committee Policy Analyst:

[Read from prepared text ([Exhibit D](#)).]

Chair Leslie:

The next one is Senate Bill 171 (R1).

Senate Bill 171 (1st Reprint): Creates the Nevada Academy of Health. (BDR 40-952)

Sarah J. Lutter, Committee Policy Analyst:

[Read from prepared text ([Exhibit E](#)).]

Chair Leslie:

I have discussed my concern with Senator Heck. I am concerned with the Legislature giving up authority over these matters. Some of the duties that the Legislature had assigned to the Legislative Committee on Health Care were to examine the system of education, to coordinate programs, and provide education to those who provide medical care. Those are some of the same things this group is going to do. It is important to have technical advice because most of us do not have that type of technical expertise.

Senator Joseph J. Heck, Clark County Senatorial District No. 5:

There has to be a connection between the Academy of Health, and the Legislative Committee on Health Care. The concept behind the Academy was to be more of an independent health care think-tank to provide

recommendations to the Legislature and the Governor. My concern with the amendment is that it would impede the ability of the Academy to develop along the line of the Nevada Arts Council which would allow it to develop into a 501(c)3 - a non-profit corporation - to get grants and other moneys, thereby not creating a fiscal note. The Academy does not want to be duplicative. It wants the Legislative Health Care Committee to task the Academy with certain projects and to utilize the information which the Academy develops. If it is a true advisory committee as listed in this amendment, that fact may hamper some of its efforts.

Chair Leslie:

How would it hamper its efforts?

Senator Heck:

If an advisory committee is formed by the Legislative Committee on Health Care, it would not be possible for the Academy, as a direct extension of the Legislature, to form a 501(c)3. The Steering Committee would be able to go over grants and gifts to be able to foster the Academy's activities.

Chair Leslie:

If it wants to be a 501(c)3, why would it not file its corporation papers independently of the Legislature?

Senator Heck:

The Academy is the governing board as outlined in the original document. There would need to be a separate foundation associated with the Academy that would be the actual 501(c)3.

Chair Leslie:

What you want is to have the Legislature set it up with the membership as outlined in the original bill, and allow it to have its own 501(c)3?

Senator Heck:

In order not to have a fiscal note to the State of Nevada for doing these activities, there would be an associated fee to participate in the Academy. There would have to be a way for that money to be expended to foster the expenses incurred.

Chair Leslie:

How often will the Academy meet?

Senator Heck:

I do not think it will meet more than four times a year.

Chair Leslie:

Those kinds of costs, the secretarial kinds of cost, would be absorbed by the Legislative Committee on Health Care, because there is usually a budget allocated to the interim committee. What other activities would require a 501(c)3?

Senator Heck:

That would be the only one. The Academy has envisioned having the governing board and separate councils which would look at specific issues such as payer debt, disease, geriatric, and health professional issues. These were recommendations of the previous Governor's Commission on Medical Education Research and Training.

Chair Leslie:

If it wants to be a 501(c)3, it should do that. If it wants Legislative authority from us, it needs to be connected more closely to the Legislative Committee on Health Care. The language in one of these amendments is not enough for me. If you want to do a 501(c)3, we should not process the bill, because non-profit entities have their own boards. They are separate from government, as they should be.

Assemblywoman McClain:

If you tried in the interim, as an extension of the Legislative Committee on Health Care, the findings might be they need to be on their own.

Assemblywoman Gerhardt:

If we do go with the sixth option, are we foregoing Senator Heck's other amendments, or are there some things that we can include?

Chair Leslie:

It is confusing.

Sarah J. Lutter:

If it were an advisory committee, the structure of the governing body could be maintained in the bill. The Chair of the Legislative Committee on Health Care could designate those who would be the members that would be appointed to that advisory committee. There would not be any per diem, which was proposed by Senator Heck. The term limits would not be relevant at that point. Proposed amendments 4 and 5 would not pertain if the Committee chose to accept the amendment related to becoming an advisory committee. The Mock-Up ([Exhibit F](#)) changes the bill to where Section 8 is the substantive provision bill at that point, besides the termination date in two years.

Assemblywoman Gerhardt:

So you are saying that we would not be using the other amendments?

Chair Leslie:

The point is the amendment I am proposing takes all that into account. Is that how you understand it, Senator Heck?

Senator Heck:

Yes.

Assemblyman Hardy:

I need to disclose that I am a family physician. I serve on the Advisory Board of Directors for Occupational Therapy. I serve as a volunteer on the Board of Directors for The Coalition of Improving and Expanding Nevada Health Care. Because of my discomfort on where this could go, I am abstaining from discussion and voting.

Chair Leslie:

Are there any other thoughts? Senator Heck, a last thought? Ms. McClain has an excellent point in that we should take these two years, have it as an advisory committee, and return with some recommendations. If the recommendation is that something should be done, it would be clearer.

Senator Heck:

We are having the next Steering Committee meeting Tuesday of next week. If there are some tweaks, we can do it in Conference.

Chair Leslie:

That is a good thought. Ms. Gerhardt is there a motion?

ASSEMBLYWOMAN GERHARDT MOVED TO AMEND AND
DO PASS AS AMENDED SENATE BILL 171 (R1).

ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN HARDY ABSTAINED.
ASSEMBLYMAN STEWART WAS ABSENT FOR THE VOTE.)

Chair Leslie:

Let us go to Senate Bill 228.

Senate Bill 228: Enacts provisions related to certain medical review committees. (BDR 40-986)

Sarah J. Lutter, Committee Policy Analyst:

[Read from prepared text ([Exhibit G](#)).]

Chair Leslie:

Let us go back to the first amendment suggested by Senator Heck.

Assemblywoman Parnell:

I was concerned when the original language used the medical record of a patient.

Chair Leslie:

Are there any other comments from the Committee? [There were none.] In number two, Senator Heck suggests that we replace the existing language and the Nevada Trial Lawyers Association is saying to allow it.

Senator Heck:

The initial issue raised by the Trial Lawyers in the first hearing was that they felt the law provided greater protections to autopsy records than would be provided under the Peer Review privilege. That is why I took out that language and put in the "privilege" language that is under the Peer Review statute.

Chair Leslie:

Do the Trial Lawyers have anything else to say? [No response.] Ms. Gerhardt?

ASSEMBLYWOMAN GERHARDT MOVED TO AMEND AND DO
PASS AS AMENDED SENATE BILL 228.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY. (ASSEMBLYMAN STEWART
ABSENT FOR THE VOTE.)

Chair Leslie:

Ms. Lutter, please give us a review of Senate Bill 529 (R1).

Senate Bill 529 (1st Reprint): Revises certain provisions relating to Medicaid.
(BDR 38-601)

Sarah J. Lutter, Committee Policy Analyst:

[Read from prepared text ([Exhibit H](#)).]

Chair Leslie:

On behalf of the Committee, we thank Ms. Pierce and Ms. Gerhardt for doing all this work. How does the Committee feel about the first six amendments that have been worked out by all parties? [No discussion.] Ms. Lutter, please review the first unresolved topic.

Sarah J. Lutter:

[Read from prepared text ([Exhibit I](#)).]

Chair Leslie:

Going back to its original language is the third option.

Sarah J. Lutter:

That was discussed during the working group meeting. It is possible to remove Section 2, and reinsert the original language.

Chair Leslie:

Ms. Pierce and Ms. Gerhardt, you have been through this more than the rest of us. Is there any particular feeling from either of you? Ms. Gerhardt?

Assemblywoman Gerhardt:

My concern is the injured party is not able to get any funds. I am leaning toward either taking Section 2 out completely, or going with option (a).

Assemblywoman Pierce:

That was well put by Ms. Gerhardt. What I now understand is that the referenced case, the *Ahlborn* case [Arkansas Department of Health and Human Services et al v. Ahlborn, 547 U.S. ____ (2006)] is new. This issue is moving its way through Legislatures across the country, and it is an issue which everyone is struggling. I would like to go back to the original language, then revisit the issue in two years when we see how other states are doing.

Bill Bradley, representing the Nevada Trial Lawyers Association:

The *Ahlborn* decision is a new area of the law. In the old process, Medicaid would assert its lien against the entire proceeds of the settlement. The *Ahlborn* case said that because there is a Federal Anti-Lien Statute against benefits, we want Medicaid to assert its lien only against the medical portion of that injured victim's claim. Medicaid may no longer lien the wage-loss component or the pain and suffering component. That worries Medicaid because it is wondering how to decide which part of this claim is medical. The United States Supreme

Court encouraged us to get involved, and we will work through the process together. We were concerned because when there is a serious injury, there is not enough coverage to compensate the person who was injured. In that scenario, we were worried about Medicaid tying up the whole amount and not making any funds available to the injured party. We will work with Medicaid to try to free up some funds for the person who needs to pay his mortgage, et cetera. We are okay with going back to the old language. It protected the injured persons' rights. We are creating better notice to make sure Medicaid knows there is a lawyer involved. I am struggling with the newness of *Ahlborn*. The Supreme Court gave a theoretical decision, but not much guidance on how to resolve the issue of which part of the claim is medical.

Chair Leslie:

Mr. Duarte, go ahead.

**Charles Duarte, Administrator, Division of Health Care Financing and Policy,
Department of Health and Human Services:**

Our understanding of *Ahlborn* is consistent with the Federal Centers for Medicare and Medicaid Services, as well as the Federal Department of Health and Human Services' Office of General Counsel's interpretation of the statute. We are trying to be consistent with their recommendations in terms of how to deal with the decision, and meet our federal requirements for recovering funds in cases where there is a settlement, or other kind of payment to the recipient for an injury in which we have claims which we have paid. We are concerned that if the State of Nevada has weak statutes associated with the ability to get subrogation revenue that we could be subject to audit. We know this is a new area of law, a lot of states are dealing with it, and a number of states have passed statutes similar to what we have proposed. We understand the decision not to want to be on the leading/bleeding edge of statute development, and potential litigation, but we want to make sure we have the ability to come back, maybe during the interim, to report to the Interim Finance Committee on the potential impact on our ability to recoup subrogation revenues.

Chair Leslie:

I am not sure the Interim Finance Committee will be as appropriate as the Legislative Committee on Health Care, because we cannot change the statutes. I am leaning toward taking it out. Mr. Duarte, if we do that I would like to get this back to current law. Is that going to cause you tremendous grief?

Charles Duarte:

That will not cost me tremendous grief. We want to be careful in redrafting the bill so that we put back the appropriate sections of current law.

Chair Leslie:

We will work with you on that. We will have on the record today that is what we intend to do. If it comes out, and it is not right, and we need to fix it, we will fix it.

Bill Bradley:

There is no intent from the Trial Lawyers to not make sure Medicaid gets paid back. They do a great job for people who do not have anything else. We want to make sure there continues to be that balance.

Chair Leslie:

I will ask our staff to circulate the amendment to both of you before we amend it on the Floor. If there is a problem, we can fix it before we take it to the Floor.

Assemblywoman Weber:

How many cases are we looking at in the course of the last two years? What could the burden look like?

Charles Duarte:

I have been told there are about 400 open cases over the past 2 years, and about 500 closed cases. Even with weak notification requirement statutes in current law, we have been able to recoup about \$2.7 million in claims. Those are for recipients who have incurred over \$6 million in medical costs to Medicaid. We want to make sure we can continue to offset those costs, and at the same time make sure the recipient has enough to live on.

Chair Leslie:

I think we all share the same goal. This is a good decision. Is everyone okay with taking it out? [No response.] Let us go to the second unresolved issue.

Sarah J. Lutter:

[Continued to read from [Exhibit I](#).]

Chair Leslie:

Mr. Bradley, you want these out?

Bill Bradley:

What the *Ahlborn* case says is that Medicaid can bring its lien against only the medical part of the claim. What the Supreme Court said in *Ahlborn* is that Medicaid needs to get involved in these cases, learn more about the case, and attend some of the depositions so they can understand the medical portion of the claim. Under current law, Medicaid can do that in any claim I file under

Nevada Revised Statutes (NRS) 422.293. It is allowed to file a piece of paper with the court which allows Medicaid to come into the case and participate in every aspect of the case. The current statute also says in part, "if the recipient does not have an attorney, then Medicaid may bring its own Right of Action", and we are comfortable with that. But, if there is an attorney involved, Medicaid does not need its own Right of Action to bring in independent action. We are concerned that by creating an additional Right of Action outside the claim that we are bringing, that it provides some jeopardy because you intend a certain outcome with your statutes. When you hand this to two lawyers, they have a heyday with it. Despite the fact that Medicaid does not think it may jeopardize that injured person's rights, we feel it would. If the recipient is represented, join us and work in a cooperative spirit. If the recipient is not represented, he has his Right of Action. He does not need it if we have already filed.

Chair Leslie:

From your point of view, if we give Medicaid an independent right to recover the claim and to sign-off on settlement agreements, that means the insurance company and Medicaid might make a deal, and the unrepresented party might be stuck with that deal?

Bill Bradley:

That is a potential. It is our concern that the wrong lawyers would not understand your intent and try to interpret it that way.

Chair Leslie:

Your proposal is to leave the statute the way it is, and that would mean removing Sections 5 and 7 of the bill?

Bill Bradley:

Yes, and going back to the original language.

Charles Duarte:

The intent was to make sure that we had some standing in the actions brought by a plaintiff represented by an attorney. Our attorneys felt that we did not have a standing, that the judge did not have a reason to listen to us. While we appreciate the fact that we need to work together to identify the medical component of a claim, we do not think we have sufficient standing to be heard. This is not an area of law that is new to the nation. There are a number of states which are listed in the work session document. Those include Colorado, Florida, Mississippi, North Dakota, South Carolina, Wisconsin, Wyoming, and a number of others states who allow Medicaid to have an independent Right of Action. We understand the concerns and the potential problems that could be

wrought by our having independent action, but we do not think it should be a major concern.

Bill Bradley:

In NRS 422.293, subsection 1, it says in part "the Department is subrogated to the right of the recipient to the extent of all such costs, and may join or intervene in any action by the recipient or his successors in interest to enforce such legal liability." The United States Supreme Court has said to use that right to come in and get familiar with the case.

Charles Duarte:

All we are asking for is the same right that Worker's Compensation has, and because we are using state and federal funds, that we should have that right to intervene.

Chair Leslie:

Is this a deal breaker for you, Mr. Duarte?

Charles Duarte:

No, it is not Madam Chairman.

Assemblywoman Gerhardt:

I am concerned about the part that states Medicaid has to sign-off on the settlement agreement. We are addressing a lot of the problems on the items on which they agreed. The biggest problems were notification. They want to be involved, and they want to be at the table. We came to a lot of agreement on ways to make that happen, so I would suggest going with the first three items they agreed upon, leaving the law the way it is on the other two, and revisiting this issue in two years.

Chair Leslie:

At this point you agree with the Trial Lawyers to delete Sections 5 and 7?

Assemblywoman Pierce:

I agree, I think it has been said.

Assemblyman Hardy:

On Sections 5 and 7, I understand the concept of "may join," and I understand the concept of "having no standing." I have to go with the "standing" option that Medicaid is producing. You can join, but that does not mean you are allowed to participate depending on the mood of the court. We give the State of Nevada a standing in that process. We should be keeping Sections 5 and 7 and getting that standing in place.

Chair Leslie:

Dr. Hardy, you want to leave the Sections in? Would anyone else like to be heard on this point? We have Mr. Ashleman's amendment to consider, then we will take a vote.

Renny Ashleman, representing the Nevada Health Care Association (NHCA):

The purpose of the amendment comes from the following situation. The people who bring folks to a nursing home give us an application at the nursing home. It is not the application which goes to Medicaid, it is submitted to us for admission to the nursing home. At that time the crossovers are for other reasons, they are not pending Medicaid. If they give us this information, we inadvertently file a false application. If they do not give information, which they do not have an obligation to do, we give an incomplete application, and eventually the Medicaid Division gets it sorted out. Meanwhile, the patient has been paying, or not paying. The NHCA, or the Medicaid Division, is taking a loss. This amendment would put some teeth into that situation. [Read from prepared text ([Exhibit I](#)).] This helps to protect the patient from fraud committed by family or their representatives. I spoke with Mr. Bradley, and told him I would not raise an objection if he found technical problems.

Chair Leslie:

Mr. Bradley is nodding this head. We could approve it based conceptually on what you have presented. The intent is to make sure people are not fraudulent in their application.

Chair Leslie:

Let us see if there are any questions on Mr. Ashleman's point. Does anyone have any misgivings? [There were none.]

ASSEMBLYWOMAN GERHARDT MOVED TO AMEND AND
DO PASS AS AMENDED SENATE BILL 529 (R1).

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HARDY AND WEBER
VOTED NO. ASSEMBLYMEN STEWART AND BEERS WERE
ABSENT FOR THE VOTE.)

Chair Leslie:

Dr. Hardy, would you please communicate the message I gave you earlier to your freshman, Assemblyman Beers? Let us go to Senate Bill 533 (R1).

Senate Bill 533 (1st Reprint): Makes various changes relating to county hospitals.
(BDR S-1388)

Sarah J. Lutter, Committee Policy Analyst:
[Read from prepared text ([Exhibit J](#)).]

Chair Leslie:

Are there any comments or discussions from Committee members? [There were none.] Is there a motion?

ASSEMBLYWOMAN GERHARDT MOVED TO DO PASS
SENATE BILL 533 (R1).

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN KOIVISTO
VOTED NO. ASSEMBLYMEN STEWART AND BEERS WERE
ABSENT FOR THE VOTE.)

Chair Leslie:

Is there any other business to come before the Committee?

[Meeting adjourned at 1:20 p.m.]

RESPECTFULLY SUBMITTED:

Patricia Evans
Committee Secretary

APPROVED BY:

Assemblywoman Sheila Leslie, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: May 18, 2007

Time of Meeting: 12:10 p.m.

Bill	Exhibit	Witness / Agency	Description
	A	*****	Agenda
	B	*****	Attendance Roster
SB 5 (R1)	C	Sarah J. Lutter, Committee Policy Analyst	Work Session Document
SB 142 (R1)	D	Sarah J. Lutter, Committee Policy Analyst	Work Session Document
SB 171 (R1)	E	Sarah J. Lutter, Committee Policy Analyst	Work Session Document
SB 171 (R1)	F	Sarah J. Lutter, Committee Policy Analyst	Work Session Document
SB 228	G	Sarah J. Lutter, Committee Policy Analyst	Work Session Document
SB 529 (R1)	H	Sarah J. Lutter, Committee Policy Analyst	Work Session Document
SB 529 (R1)	I	Sarah J. Lutter, Committee Policy Analyst	Work Session Document
SB 533 (R1)	J	Sarah J. Lutter, Committee Policy Analyst	Work Session Document