

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

**Seventy-Fourth Session
May 2, 2007**

The Committee on Health and Human Services was called to order by Vice Chair Susan I. Gerhardt at 1:38 p.m., on Wednesday, May 2, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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
Assemblyman Lynn D. Stewart
Assemblywoman Valerie E. Weber
Assemblywoman RoseMary Womack

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No.7
Senator Dina Titus, Clark County Senatorial District No. 7



STAFF MEMBERS PRESENT:

Sarah J. Lutter, Committee Policy Analyst
Katrina Zach, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Laura Hale, Social Services Chief, Grants Management Unit, Director's Office, Department of Health and Human Services
Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada
Conrad Hafen, Senior Deputy Attorney General, Office of the Attorney General
Michelle Clayton, Legislative Counsel, National Conference of Commissioners on Uniform State Laws
Ken Richardson, Executive Director, Nevada Donor Network
Lawrence Matheis, Executive Director, Nevada State Medical Association,
Terence Ma, Director of Technology, Touro University Nevada
Clay Thomas, Deputy Director, Department of Motor Vehicles
Charles Duarte, Administrator, Division of Health Care Finance and Policy, Department of Health and Human Services
Sabrina Raetz, Deputy Attorney General, Office of the Attorney General
Renny Ashleman, representing Nevada Health Care Association
Matthew L. Sharp, representing Nevada Trial Lawyers Association

Vice Chair Gerhardt:

The Committee will come to order. [Roll.] We will begin with Senate Bill 83.

Senate Bill 83: Revises provisions governing the Grants Management Advisory Committee of the Department of Health and Human Services. (BDR 18-593)

Laura Hale, Social Services Chief, Grants Management Unit, Director's Office, Department of Health and Human Services:

Senate Bill 83 will allow flexibility regarding appointments to the Grants Management Advisory Committee. We had difficulty getting full membership, so we want to change the language to allow designees to represent local social services. We want designated people to participate in the place of a director or superintendent. The amendment states the superintendent of a county or the director of a local agency appoints the designee. This is one of the many bills

that affect the Grants Management Unit, and it is my understanding there is an effort to incorporate these changes with Assembly Bill 182, which deals with the Fund for a Healthy Nevada.

Vice Chair Gerhardt:

I am concerned about the individuals that will be removed from the Grants Management Advisory Committee. I am curious why there will no longer be a representative from the Department of Juvenile Justice.

Laura Hale:

It is difficult to find a person to fill a specific position. Fernando Serrano was on the advisory committee, but when he became head of the Division of Child and Family Services, he had to leave the committee. The bill will make requirements for appointments more broad.

Vice Chair Gerhardt:

There was no mechanism for appointing someone in his place?

Laura Hale:

We did that, but it is simply a matter of making it more broad. If we cannot find a specific representative, then we can appoint someone with similar experience.

Vice Chair Gerhardt:

Not being allowed to rely on someone with a certain expertise is my only concern.

Laura Hale:

We replaced Mr. Serrano with a representative from the Department of Juvenile Justice.

Vice Chair Gerhardt:

What is the category?

Laura Hale:

Do mean under the new language?

Vice Chair Gerhardt:

Yes.

Laura Hale:

The person would have knowledge, skill, and experience in the provision of services to children.

Vice Chair Gerhardt:

Is that under the broader language?

Laura Hale:

Yes.

Assemblywoman McClain:

There were seven bills dealing with Fund for a Healthy Nevada. I combined five of those bills to make Assembly Bill 182. We combined S.B. 83 in that bill because the bill changed the management of the Grants Management Advisory Committee. There are three other bills that are in drafting.

Vice Chair Gerhardt:

Did we make any changes? Or is it what we are looking at right now?

Assemblywoman McClain:

It is what we are looking at right now.

Vice Chair Gerhardt:

I am sure there will be a large amendment.

Assemblywoman McClain:

It is in the Committee on Ways and Means.

Vice Chair Gerhardt:

Seeing no questions, we will close the meeting on S.B. 83, and move to Senate Bill 112 (1st Reprint).

Senate Bill 112 (1st Reprint): Enacts provisions governing the sale of products containing materials that are used in the manufacture of methamphetamine and other controlled substances. (BDR 40-27)

Senator Dina Titus, Clark County Senatorial District No. 7:

[Read ([Exhibit C](#)).]

Vice Chair Gerhardt:

Ms. Lutter compared the Attorney General's bill and your bill. You are right; it is very similar. Section 7 of the Attorney General's bill includes provisions on blister packs. From what I am gathering, we want to move ahead with your bill. What is your position on blister packs?

Senator Titus:

We want to add that provision to our bill. I believe that is in the federal statute and the Retail Association of Nevada is proposing an amendment.

Vice Chair Gerhardt:

There was another difference with the penalty.

Senator Titus:

Originally, there were criminal penalties for both the sellers and the buyers. We decided it is better that sellers be penalized with a civil penalty.

Vice Chair Gerhardt:

Does the Attorney General agree with this version?

Senator Titus:

Yes.

Liz MacMenamin, Director of Government Affairs, Retail Association of Nevada:

Senator Titus did an excellent job of bringing forth federal legislation that provides another tool for law enforcement. We have amendments to the bill.

[Read ([Exhibit D](#)).]

Vice Chair Gerhardt:

You want to change subsection 7 instead of 4 of Section 8?

Liz MacMenamin:

Actually, it is both subsections. The amendments state subsection 4 and 7. The Attorney General asked us to bring forward that amendment.

Assemblyman Hardy:

Is it two crimes and two trials at both the federal and state level? Who has jurisdiction?

Senator Titus:

The bill will allow the State to prosecute the crime first rather than the federal government. The State would have jurisdiction.

Assemblyman Hardy:

Would it be two crimes and two trials?

Senator Titus:

It would be one crime and one trial at the state level. As I understand it, state and federal government will collaborate. The case will not be tried in both courts.

Conrad Hafen, Senior Deputy Attorney General, Office of the Attorney General:

The primary reason for the state law is so the rural district attorneys can prosecute such crimes in their jurisdictions. Even though the federal law is in effect, federal officials may not have the resources to investigate related cases in rural jurisdictions and prosecute under the Combat Methamphetamine Epidemic Act of 2005. For the most part, federal officials will focus on large jurisdictions such as Clark County and Washoe County. The state law will give rural prosecutors the ability to enforce federal and state law. It is my understanding that officials at the federal and state level collaborate and determine what jurisdiction would have better resources to deal with the case. There is a statute that would preclude a state prosecutor from prosecuting a crime if the federal prosecutor has already obtained a conviction on the same type of crime. Does that happen? Yes, it does. However, we have a good working relationship with the United States Department of Justice Office of the Attorney General. It is our hope that rural prosecutors will be able to prosecute under the state law without interference from the U.S. Office of the Attorney General.

Assemblyman Hardy:

If someone is arrested at the federal or state level, how does that person get prosecuted in the federal system instead of the state system?

Conrad Hafen:

If someone violated the law in Clark County and the U.S. Office of the Attorney General filed the prosecution first, it is unlikely that the Clark County District Attorney's Office will file charges. However, if the Clark County District Attorney's Office or the Office of the Attorney General filed charges against an individual in Clark County for violating state law, it is unlikely that the U.S. Office of the Attorney General will file criminal charges. We have to coordinate with the U.S. Office of the Attorney General and the Drug Enforcement Administration (DEA). Again, the point of the state law is to give rural prosecutors the opportunity to enforce federal law.

Assemblyman Hardy:

Could we include a provision that does not burden state prisons with convicts of rural or federal cases?

Conrad Hafen:

Rural prosecutors do not have jurisdiction to prosecute under the Combat Methamphetamine Epidemic Act. We could not file state charges under the Act and that is why we need a state law.

Assemblyman Hardy:

I am talking about a population cap. The rural convicts will be sent to State prisons while urban convicts are sent to federal prisons. It will decrease the financial burden on the state prison system.

Conrad Hafen:

I appreciate that concern, but if the DEA or the U.S. Office of the Attorney General chooses not to investigate a certain case, the case must be prosecuted by state officials. The state law is required for state officials to prosecute the case.

Chair Leslie:

Rather than go through more testimony, we should accept a motion.

Vice Chair Gerhardt:

Does anyone oppose the bill? [There was no response.]

ASSEMBLYWOMAN LESLIE MOVED TO AMEND AND DO PASS
SENATE BILL 112 (1ST REPRINT).

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Vice Chair Gerhardt:

We will close the meeting on Senate Bill 112 (1st Reprint) and move to Senate Bill 169 (1st Reprint).

**Senate Bill 169 (1st Reprint): Adopts the Revised Uniform Anatomical Gift Act.
(BDR 40-968)**

Senator Terry Care, Clark County Senatorial District No. 7:

Senate Bill 169 (1st Reprint) deals with the Uniform Anatomical Gift Act. The National Conference of Commissioners on Uniform State laws is an organization with about 250 members who actively participate in the appointments made by the states. Members include lawyers, judges, law school professionals, practitioners, and legislators.

The commission adopted a new act in 1987. There have been many changes and advances in technology and research so that a number of states created their own amendments to the original act. As a result, the law is no longer uniform. The intent is to update the original act and its amendments, and there is a nationwide effort to bring uniformity to this area. This legislation will create uniform rules for donor research.

Ethical issues, attitudes, and concerns have changed, and they are addressed in the bill. Numerous people developed the amendments that led to the first reprint of the bill. We heard testimony from doctors, coroners, and representatives from the donor community as well as the Department of Motor Vehicles (DMV). I will turn it over to Michelle Clayton; she can explain the act in greater detail.

Michelle Clayton, Legislative Counsel, National Conference of Commissioners on Uniform State Laws:

[Submitted ([Exhibit E](#)), ([Exhibit F](#)), ([Exhibit G](#)), ([Exhibit H](#)), ([Exhibit I](#)), ([Exhibit J](#)).]

This act is popular among legislators this year. There are 25 introductions, 9 enactments, and 10 pending legislations. It is a major national push to improve the organ donation law because it has become very nonuniform. Organ donations occur across state lines, so it is very important that the law be uniform.

The amendments deal with medical examiner and coroner protocols with the Organ Procurement Organization. Even though many states will not be enacting the uniform provisions, state medical examiners and procurement organizations will collaborate to develop appropriate protocols. I am pleased because everyone agreed to this. The other amendments deal with research and education. We want to make sure that the act does not inadvertently impact the research and education aspects of organ donation.

The act provides appropriate language in harmonizing federal law with state law and strengthens the individual's right to donate or not to donate. It helps the procurement organizations by providing clearer rules and standards for donor registries. The online donor registries are important to increase organ donations. I hope the Committee will support this bill.

Vice Chair Gerhardt:

Can you briefly summarize the bill?

Michelle Clayton:

Section 2 has new definitions. "Disinterested witness" is a person who verifies that an individual wants to donate. Two witnesses must be present, and one of them must be "disinterested." This is a way to protect a prospective donor. In the past, people would sign up to be donors, but after their deaths, their families did not want them to donate. As a result, organs could not be donated because of the wishes of the donor's family. This act will strengthen the first person consent and the disinterested witness ensures the donor's wishes will not be overturned.

Chair Leslie:

Would the disinterested witness be the person who witnesses the donor submitting his or her driver's license?

Michelle Clayton:

I am talking about an oral donation. Someone makes an oral statement that he wants to be donor, and a disinterested witness must be present.

Chair Leslie:

Is the driver's license process not worth doing?

Michelle Clayton:

It is absolutely worth doing. The DMV provides information to the donor registry.

Chair Leslie:

It seems there is an override mechanism.

Michelle Clayton:

No. The new bill will strengthen the individual's right to donate. In the past, hospitals and procurement organizations were reluctant to honor those wishes.

Chair Leslie:

Is there a provision in the bill that addresses the driver's license issue?

Michelle Clayton:

I am not familiar with how Nevada's system works.

Chair Leslie:

I want to know if that is happening.

Michelle Clayton:

It has happened in some states, and that is why we want to strengthen

Chair Leslie:

We will hold that question; we want to get through the bill.

Michelle Clayton:

The definition of "organ procurement organization" is important as it provides the organizations with more guidance. Section 9 provides a list of people that can donate. There are new definitions on electronic language that recognizes emails, the donor registry, and so on. There are about 20 new definitions; they are useful in clarifying the law.

Section 22 states who may make an anatomical gift before the donor's death. Section 23 describes the various ways a donor can make a gift. Section 24 describes how to amend or revoke a gift before the donor's death. One should be very clear about his wishes on organ donation, and this act ensures those wishes will be honored. Section 29 deals with who can receive an anatomical gift; it clarifies which organs go to the organ banks. Section 30 deals with the search of an individual's driver's license, and Section 31 deals with the delivery of the gift document. Section 32 is about the rights and duties of procurement organizations and provides more clarification of what the DMV does with the donor registry.

A new provision in Section 34 states, "A person shall not, in order to obtain a financial gain, intentionally falsify, forge, conceal, deface, or obliterate a document of a gift, an amendment for revocation of a document of a gift, or a refusal." Section 35 provides immunities for those acting in good faith, and protections for the organ procurement organizations. Section 37 lists the new donor registry requirements, which include the basic standards for donor registries. Section 38 deals with advance health care directives, and we provided an amendment to this section. In a case in which a prospective donor has a living will and signed to be an organ donor, the agent and the doctor will decide what the patient would have wanted. Section 39 and Section 40 provides provisions on medical examiners and coroners.

Assemblywoman Parnell:

A friend's son died at nine years old, and the family was asked if they would like do an organ donation. The family agreed; it was a positive side to a tragic incident. They found out that the organs were not taken, and they were devastated. I am wondering if the new language would have prevented this situation.

Michelle Clayton:

It is one of our goals that organ donation occurs in as many cases as possible, but it depends on the resources of each state. The National Association of

Medical Examiners is working with the Association of Organ Procurement Organizations to make sure protocols are developed so that situation does not happen.

Assemblywoman Parnell:

I passed the issue to constituent services; there was an investigation to figure out what went wrong. Once I find out more information, perhaps there will be time to amend the bill.

Senator Care:

I circulated the act to the Nevada Donor Network and the Office of the Clark County Coroner. Both had concerns about Sections 30 and 40; other legislators were also concerned. It was decided that the donor network and coroner should develop protocols.

Michelle Clayton:

There is nothing in the statute that deals with the protocols between medical examiners and the donor network. I hope the act would be an improvement.

Assemblywoman Parnell:

I want to make sure that the language does refer to the body. For instance, a body tested positive for drugs. Certain organs should not be used, but there are other parts of the body that could be donated.

Michelle Clayton:

Approximately 50 people can be helped by the organ donation of one person.

Assemblywoman Weber:

Are there prohibitions in the bill? I have a background in blood donation. What happens when an organ donor ends up in prison where infectious disease is prevalent? Does the bill address infectious disease and prohibitions?

Michelle Clayton:

No, I do not think it does. Blood bank laws are different from anatomical gift laws.

Assemblywoman Weber:

Is it exempt?

Michelle Clayton:

I do not think that is within the scope.

Ken Richardson, Executive Director, Nevada Donor Network:

The Nevada Donor Network is a federally designated organ procurement organization for southern Nevada. To answer Ms. Weber's question, we follow the guidelines provided by the Center for Disease Control and Prevention (CDC) and Food and Drug Administration (FDA). We are subject to their regulations for infectious disease; it is regulatory, not statutory. The guidelines do not need to be included in the bill.

Regarding the question on first person consent, former Assemblywoman Dawn Gibbons and former Attorney General Frankie Sue del Papa collaborated in 2001 to make changes to the act, which created Nevada's donor registry. It works very well. Because of the DMV and a third party contractor, we have been a first person consent state since 2001. If an individual indicates that he wants to be a donor, his consent is primary so no one can overrule that. The proposed legislation will not change that; it will simply strengthen the existing statute.

Chair Leslie:

That was my understanding. When Ms. Clayton said that was not happening, it raised some concerns. Does that comment not apply to Nevada?

Ken Richardson:

Correct, it does not apply to Nevada.

Chair Leslie:

So it has not happened in Nevada?

Ken Richardson:

In practice, we are notified when someone passes away. We access the donor registry to determine if the individual is an organ donor. There are 700,000 Nevadans signed to the registry.

Michelle Clayton:

I want to apologize if I caused any confusion. This has been a problem across the country since 1968.

Chair Leslie:

That is fine just as long as it is not a problem for us.

Ken Richardson:

Since 2001, we have not had that problem.

Vice Chair Gerhardt:

Section 22 states who can be a donor. For example, a 16 year old wants to be donor and indicates that on his driver's license. What happens when the parents do not want that for their child?

Ken Richardson:

There is potential conflict. The age of 16 is not the age of consent; the individual must be 18 years old. Even though the 16 year old wishes to be an organ donor, we must seek the consent of the legal guardians.

Michelle Clayton:

The legislation allows minors to indicate their wishes.

Vice Chair Gerhardt:

Under those circumstances, it will assist the parents.

Michelle Clayton:

Yes.

Assemblywoman McClain:

What if someone is not on the registry? Will the family be allowed to donate the individual without his consent?

Michelle Clayton:

If someone is not on the registry, then he has not made the decision.

Assemblywoman McClain:

If someone wishes to refuse organ donation, will that be indicated on the driver's license?

Michelle Clayton:

No.

Assemblywoman McClain:

If there is no indication of refusal on the driver's license, we do not truly know if the individual refused organ donation. Perhaps the individual might want to donate.

Ken Richardson:

We advise people to talk to their families about their wishes. Some people want to be donors, but do not want to indicate that on their drivers' licenses because the moment they do, they will die. There is a certain amount of superstition in that context. We encourage folks to talk with their families. Unfortunately,

donor registries include only people who want to be organ donors. It does not include people who do not want to donate or who are undecided.

Vice Chair Gerhardt:

Can one put his wishes in a living will? The family does not necessarily get the final word?

Ken Richardson:

That is correct.

Lawrence Matheis, Executive Director, Nevada State Medical Association:

We are presenting an amendment on behalf of the Organ Tissue Task Force, which is co-chaired by First Lady Dawn Gibbons and former Attorney General Frankie Sue del Papa.

[Read ([Exhibit K](#)).]

Chair Leslie:

Are there provisions for donations of bodies for research? My dad had cancer, and he donated his body for research. After his body was used for research, they were supposed to return his remains to my mother, but that was not done. Eventually, we found his remains. Does the bill address that situation?

Lawrence Matheis:

I believe that was addressed last session, but I will have to get back to you on that.

Chair Leslie:

Does the act address that situation?

Michelle Clayton:

No, we do not deal with whole body donations, but we are contemplating a uniform law in this area because it is highly unregulated.

Lawrence Matheis:

I believe protocols were developed last session.

Vice Chair Gerhardt:

Does the act address what happens to out-of-state visitors who are organ donors?

Michelle Clayton:

The document of gift is valid if it is valid in Nevada and the home state.

Lawrence Matheis:

[Continued to read ([Exhibit K](#)).]

Vice Chair Gerhardt:

We will take your amendments to work session. Senator Care, are you fine with that amendment?

Senator Care:

Yes, there is no objection.

Lawrence Matheis:

I will rewrite the amendments and place them in the appropriate order.

Ken Richardson:

I want to clarify what Senator Care said. We worked with the Office of the Clark County Coroner to address the conflict between organ donation and preserving forensic evidence. We put together workable protocols that will resolve those issues while preserving the intent of the act.

Terence Ma, Director of Technology, Touro University Nevada:

I went to the meeting of American Association of Anatomists in Washington D.C. and everyone in the profession supports this bill. We strongly urge the Committee to pass the bill.

Clay Thomas, Deputy Director, Nevada Department of Motor Vehicles:

I would like to thank Senator Care for listening to us and Mr. Matheis for developing the amendments.

Vice Chair Gerhardt:

Seeing no other questions, we will close the hearing on Senate Bill 169 (First Reprint) and open the hearing on Senate Bill 529 (First Reprint).

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

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

[Submitted ([Exhibit L](#)) and ([Exhibit M](#)).]

[Read ([Exhibit L](#)).]

Vice Chair Gerhardt:

Mr. Duarte, I am going to interrupt you. I need some clarification. What happens when an individual who has Medicaid gets a settlement from an accident? Will the State take a part of that settlement?

Charles Duarte:

No, not exactly.

Sabrina Raetz, Deputy Attorney General, Office of the Attorney General:

In that scenario, the individual's medical bills are paid by Medicaid and the person sues the liable third party through an attorney. They are able to acquire a recovery through a judgment, award, or settlement. Prior to *Arkansas v. Ahlborn* [*Arkansas Department of Health and Human Services et al. v. Heidi Ahlborn* 547 U.S. 268 (2006)], attorneys would deduct fees and the Medicaid program would take the value of the lien or the remaining settlement. Ms. Ahlborn argued that the states did not have the right to do that. Under the federal law, the Medicaid programs could recover only the judgment, settlement, or award that was allotted to medical damages. The U.S. Supreme Court upheld Ms. Ahlborn's case.

Vice Chair Gerhardt:

Will this bill change the existing statute so that it complies with the U.S. Supreme Court ruling?

Sabrina Raetz:

Attorneys receive lump sum payments; there is no allocation for medical damages. States tried to determine how to allocate a portion of a judgment, settlement, or award for medical damages because there was no way of doing that. What portion of someone's award is allocated to medical damages? We are trying to develop cost effective ways to determine what portion of the awards are allotted to medical damages. In some instances, there are cases that go to trial, and a jury or a judge will allocate the award. This does not include these cases. Generally, a settlement is reached, but the award is not allocated. This bill attempts to provide allocations for medical damages.

Vice Chair Gerhardt:

How often does an allocation not take place?

Sabrina Raetz:

It happens in most cases. Since the Ahlborn case, I had only one case where that happened.

Vice Chair Gerhardt:

The legislation will allow the State to collect 100 percent of the lien?

Sabrina Raetz:

Absolutely not.

Vice Chair Gerhardt:

How are we getting those percentages?

Sabrina Raetz:

We will not collect. Medicaid tried to develop reasonable means to allocate awards; they wanted a clear statutory payment system. Section 8 states there is a three-way split. In cases where there is no allocation of the settlement, the award will be split equally between the attorneys, the recipient, and Medicaid.

Charles Duarte:

We have data on four state laws. In all those examples, there are different proposed percentages. Nevada has the lowest proposed percentage; I believe it is one-third.

Sabrina Raetz:

That is correct. After the Ahlborn decision, plaintiff attorneys decided not to allocate a portion of the award to medical damages. My colleague and I have been on cases where attorneys allocated only \$7,000 to medical damages of a \$500,000 award.

Vice Chair Gerhardt:

Section 18 states, "The full value of the Department's lien created pursuant to section 2 of this act." Is it whichever is less?

Sabrina Raetz:

That is right.

Assemblywoman McClain:

If you collect one-third of the award, half of that will go to the federal government?

Charles Duarte:

Yes, we have to repay the federal government with a portion of the recovery. The bill complies with the decision of the Ahlborn case. We are proposing an efficient, reasonable, and fair way to allocate a portion of any settlement to Medicaid costs. We discussed this with the American Trial Lawyers Association, and they are opposed. If we are required to go to trial on all cases,

we will need to impose a fiscal note. The Office of the Attorney General's caseload will increase, additional staff will be needed, and the net amount of the recoveries will decrease because of the increase of costs. We are very concerned about this during lean fiscal times. We are missing an opportunity to retain a level of recovery that we have through our current subrogation program.

[Continued to read ([Exhibit L](#)).]

Assemblywoman McClain:

How does someone qualify for Medicaid if he has health insurance?

Charles Duarte:

Medicaid is an entitlement program that is based on disability, age, income, and assets. It is not based on whether or not the individual has secondary health insurance. Many people have employer sponsored insurance, which is always a primary insurance. Medicaid pays after the primary insurance pays. Another secondary insurance is Medicare. Currently, about 22 percent of our recipients have secondary insurance.

Assemblywoman McClain:

I knew about Medicare, but I did not think a Medicaid recipient would have health insurance. Medicaid is based on income, right?

Charles Duarte:

That is correct. Many recipients are working people; they might have employer sponsored coverage or perhaps the employer pays the full cost of coverage for his employee premiums.

Assemblywoman McClain:

Their income level is that low?

Charles Duarte:

It is very likely. There are a lot of low-wage earners who have health insurance. We try to identify them and their health insurance companies. It is a benefit to providers because commercial health insurance pays better than Medicaid.

Vice Chair Gerhardt:

It probably is not as comprehensive.

Renny Ashleman, representing Nevada Health Care Association:

Mr. Duarte consulted with us on the provider tax. We support that portion of his proposed legislation. We are proposing several amendments.

[Read ([Exhibit N](#)).]

Vice Chair Gerhardt:

Did any attorney groups view the amendments?

Renny Ashleman:

Some representatives from elder care attorney groups were involved indirectly. We did a survey of the problems in this area; this language came from the survey. I cannot say that all of them endorsed the language, but from my familiarity with the survey, I do not think they would have a problem with this language.

Matthew L. Sharp, representing Nevada Trial Lawyers Association:

I am here on behalf of the Nevada Trial Lawyers Association. We oppose the lien provisions of the bill. The decisions of the Ahlborn case were unanimous, and this case provides a real life example of what we are talking about. When an individual comes to my office seeking recovery from a personal injury claim, our law provides a remedy in the form of money. The money can pay for medical bills, lost earnings, pain, distress, and so on. In the context of a personal injury claim, we do not have a problem paying Medicaid a fair portion of the settlement.

We do not live in a perfect society. If a drunk driver runs over a child and leaves the child brain damaged for life, the responsible party usually does not have enough insurance to compensate the child. The amount Medicaid recovers should be fair and proportionate to the settlement. This is what the U.S. Supreme Court decided.

According to the U.S. Supreme Court opinion, Heidi Ahlborn, a young college student, suffered severe and permanent injuries from a car accident. She was brain damaged and unable to complete her college education. Her case settled for \$550,000. The total cost of her damages, stipulated by Medicaid, was \$3 million. The U.S. Supreme Court decided that if a case like that is settled for \$550,000, Medicaid reimbursements should be proportionate to the total recovery. In this case, it was one-sixth of the total recovery. It is an equitable remedy.

People may wonder why the case was settled at \$550,000 instead of \$3 million. There are a number of reasons. In Nevada, an individual recovers

an amount proportionate to his own negligence. For example, if someone is at fault 10 percent, he would recover 90 percent of the damages. You do not want to discourage the most severely injured individuals from pursuing a lawsuit or force the lawsuit into trial because Medicaid wants to be reimbursed. We want fair settlements. It is onerous for attorneys to represent Medicaid instead of their clients. A client risks losing a case and paying for fees, but Medicaid is at no risk in these situations. Medicaid does not put any time into the case, yet it wants one-third of the recovery irrespective of the compensation.

Heidi Ahlborn received \$550,000 from the case, and she would allot one-third for attorney fees and one-third for Medicaid, leaving her with less than 30 percent of the total recovery for a lifetime of lost earnings and brain damage. That is not fair. How would the Committee establish an interest in Medicaid? According to the U.S. Supreme Court, the federal law limits Medicaid rights in proportion to the amount that is recovered. We suggest two things: do not change the law because the existing statute already complies with Medicaid, or if the law will be changed, develop a simple mechanism that allows Medicaid the ability to seek a good faith termination from the court. There are people that believe this will result in a fiscal note. At a certain point, Medicaid has a responsibility to step up and protect our interests. They should not be able to ride the coattails of the attorney and the client without financial risk.

For example, an individual is injured by a drunk driver, but the driver has only \$50,000 of insurance. Under this bill, many lawyers will decide it is not worth the client's time or risk. The attorneys and Medicaid will get their portion of the settlement, but what about the client? There has to be a balance so people will have the ability to pursue their rights, and Medicaid gets a fair portion. Court intervention is required in the event the attorneys and Medicaid cannot agree to an amount.

Assemblyman Hardy:

I did not hear a response to the scenario where the client does not receive money for medical damages.

Matthew L. Sharp:

I am not going to say that certain abuses will not occur. There are some people who do not act ethically. If an attorney refuses to allot a portion for medical damages, the law says one is entitled to pay the fees and costs of the opposing party. There were cases like Ahlborn where attorneys legitimately believed their clients were not getting full compensation.

Assemblywoman Pierce:

How did this work before the Ahlborn case?

Matthew L. Sharp:

I do not think it worked very well. Medicaid was entitled to a first dollar recovery. Medicaid would get first dollar recovery in a \$500,000 settlement with \$3 million in total damages and \$200,000 in medical bills. We disagreed with that interpretation; we attempted to negotiate with Medicaid.

Vice Chair Gerhardt:

Did you talk with other interested parties about your concerns?

Matthew L. Sharp:

I had discussions with Medicaid representatives. They feel strongly about their position, and we feel strongly about our position. We did not reach a resolution.

Vice Chair Gerhardt:

Mr. Duarte, can you meet again so both sides can reach middle ground? We need legislation that addresses everyone's concerns.

Charles Duarte:

Yes. Prior to this session, we held a public workshop on this bill, and no public comment came forward in opposition to the bill. We had discussions with Mr. Sharp and we had scheduled to meet again yesterday. He did not call; I assumed he still opposed the bill and had nothing more to provide. We are always open to compromise, but we do believe it will impede our ability to recover funds.

Vice Chair Gerhardt:

I think we need to look at the issue more. Ms. Pierce, would you consider chairing a subcommittee or working group?

Assemblywoman Pierce:

Yes, a working group.

Vice Chair Gerhardt:

Who would be on this group? I will volunteer my services. How about Ms. Weber? Let us take another look at this issue. Obviously, this is not a workable plan. Are there other questions? [There was no response.] This meeting is adjourned [3:40 p.m.].

RESPECTFULLY SUBMITTED:

Katrina Zach
Committee Secretary

APPROVED BY:

Assemblywoman Susan I. Gerhardt, Vice Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: May 2, 2007

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A	Committee on Health and Human Services	Agenda
	B	Committee on Health and Human Services	Attendance Roster
S.B. 112	C	Senator Dina Titus, Clark County Senatorial District No. 7	Prepared Testimony
S.B. 112	D	Liz MacMenamin, Retail Association of Nevada	Proposed Amendments
S.B. 169	E	Michelle Clayton, National Conference of Commissioners on Uniform State Laws	<i>National Conference of Commissioners on Uniform State Laws</i>
S.B. 169	F	Michelle Clayton, National Conference of Commissioners on Uniform State Laws	Letters
S.B. 169	G	Michelle Clayton, National Conference of Commissioners on Uniform State Laws	<i>Revised Uniform Anatomical Gift Act 2006</i>
S.B. 169	H	Michelle Clayton, National Conference of Commissioners on Uniform State Laws	<i>Uniform Anatomical Gift Act: Summary</i>
S.B. 169	I	Michelle Clayton, National Conference of Commissioners on Uniform State Laws	<i>Health Law Analysis</i>
S.B. 169	J	Michelle Clayton, National Conference of Commissioners on Uniform State Laws	<i>Uniform Anatomical Gift Act: Why States Should Adopt the UAGA</i>
S.B. 169	K	Lawrence Matheis, Nevada State Medical Association	Proposed Amendments
S.B. 529	L	Charles Duarte, Department of Health and Human Services	Prepared Testimony
S.B. 529	M	Charles Duarte, Department of Health and Human Services	Articles
S.B. 529	N	Renny Ashleman, Nevada Health Care Association	Proposed Amendments