

**MINUTES OF THE
SENATE COMMITTEE ON HUMAN RESOURCES AND EDUCATION**

**Seventy-fourth Session
May 4, 2007**

The Senate Committee on Human Resources and Education was called to order by Chair Maurice E. Washington at 11:42 a.m. on Friday, May 4, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Maurice E. Washington, Chair
Senator Dennis Nolan
Senator Joseph J. Heck
Senator Valerie Wiener
Senator Steven A. Horsford
Senator Joyce Woodhouse

COMMITTEE MEMBERS ABSENT:

Senator Barbara K. Cegavske, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman James Settelmeyer, Assembly District No. 39

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Committee Policy Analyst
Joe McCoy, Committee Policy Analyst
Sara Partida, Committee Counsel
Patricia Vardakis, Committee Secretary

OTHERS PRESENT:

Carlos Brandenburg, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services

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Jeanette K. Belz, Nevada Psychiatric Association
Julie Slabaugh, Deputy Attorney General, Office of the Attorney General
Jennifer Dunaway, Bureau of Licensure and Certification, Health Division,
Department of Health and Human Services
K. Neena Laxalt, Nevada Nurses Association
Alfredo Serrano, R.N.
Sally Gentile Johnson, R.N.
Renee Ruiz, Service Employees International Union
Bill Welch, Nevada Hospital Association
James Wadhams, Nevada Hospital Association

CHAIR WASHINGTON:

We will open the hearing on Assembly Bill (A.B.) 490.

ASSEMBLY BILL 490 (1st Reprint): Revises provisions governing the sealing of records concerning a person's admission to a hospital or mental health facility under certain circumstances. (BDR 39-1376)

CARLOS BRANDENBURG, Ph.D. (Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services):
Assembly Bill 490 creates serious problems for the Division of Mental Health and Developmental Services, Department of Health and Human Services. The language of the bill includes clinical records as part of the records that are to be automatically sealed. We offer an amendment to A.B. 490. On page 2, line 3 of A.B. 490, the word "clinical" would be removed.

Currently under the *Nevada Revised Statute* (NRS) 433A.701 through .711, the sealing of records would be automatic once a person is admitted to a psychiatric hospital. The problem is the person is still being treated and when the person is released, the hospital needs to be able to share the information with other division agencies and physicians. This bill would preclude this practice.

CHAIR WASHINGTON:

Explain how the language should read.

DR. BRANDENBURG:

The language applies to the court records and the clinical records.

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CHAIR WASHINGTON:
Was this missed in the Assembly?

DR. BRANDENBURG:
Yes.

CHAIR WASHINGTON:
Has Assemblywoman Leslie been made aware of this oversight?

DR. BRANDENBURG:
Yes. Assemblywoman Leslie has no objection but wanted language submitted for the change.

SENATOR HECK:
You want line 3 on page 2 of A.B. 490 to read, "The court shall seal all court records."

CHAIR WASHINGTON:
What was the impetus for the bill?

DR. BRANDENBURG:
I do not know.

JEANETTE K. BELZ (Nevada Psychiatric Association):
We testified in favor of A.B. 490 in the Assembly. I understand the intent of the request of Dr. Brandenburg. I would like to inform the Nevada Psychiatric Association (NPA) of the proposed change. I do have a letter ([Exhibit C](#)) from the NPA supporting A.B. 490.

SENATOR HECK:
If the change is made, would the language on lines 32 through 37 on page 2 and lines 1 and 2 on page 3 of A.B. 490 also need to be deleted?

DR. BRANDENBURG:
Yes.

SENATOR HECK:
It is curious that the court would want to seal clinical records because they are already protected by the Health Insurance Portability and Accountability Act

of 1996 (HIPAA). There is a whole set of regulations that govern the release of that information.

DR. BRANDENBURG:

All clinical records are protected under HIPAA and under NRS 433 where only the patient can release those records. The issue was to make certain the court records were sealed.

CHAIR WASHINGTON:

Was that because of crimes that had been committed?

JULIE SLABAUGH (Deputy Attorney General, Office of the Attorney General):

This arose from a case in Washoe County where a store was sued and information regarding the mental health records of one of their employees was released. This person was civilly committed in a court proceeding which is public record. The clinical records were included because of the current statute that allows for sealing state court and clinical records. In that case, it is the person who is the subject of the records who is petitioning the court to seal the records. This individual needs to show that they are recovered from their mental illness or have been in substantial remission for over two years. It is the person who is the subject of the records who would want the court and clinical records sealed. The intent was to seal the court record.

CHAIR WASHINGTON:

We will close the hearing on A.B. 490 and open the hearing on A.B. 283.

ASSEMBLY BILL 283 (1st Reprint): Requires certain care facilities to maintain and provide certain information to parents, guardians or legal representatives of persons cared for in the facilities. (BDR 38-1124)

ASSEMBLYMAN JAMES SETTELMAYER (Assembly District No. 39):

Many of my constituents are in the position of having to place their parents in a home. Due to time constraints, it is difficult to do all the research necessary before making these decisions. What this bill seeks to do, which already is in law, is to allow these persons to request the information of any known substantiated violations of that facility within the last 12 months. If a child or parents are placed in either day care or elder care, the facility would make known any violations that have been committed in the last 12 months.

Currently, people have the ability to call and request this information. Before any information is given, the inquiring party must provide a written letter and then in two to four weeks the information will be received. Most people do not have that time to wait.

CHAIR WASHINGTON:

Would the same provisions for child-care facilities then apply to those facilities for the elderly?

ASSEMBLYMAN SETTELMAYER:

Yes.

CHAIR WASHINGTON:

Would this apply to senior citizen centers?

ASSEMBLYMAN SETTELMAYER:

It would not apply to a public facility but would apply if it is a private facility. This bill also applies to disabled individuals if they are entering themselves into a private facility.

SENATOR WIENER:

What changes have been made in A.B. 283 by the Assembly?

ASSEMBLYMAN SETTELMAYER:

I went to the Legislative Counsel Bureau and gave them the information necessary for the bill. There was a bill in another state that addressed children. I informed them that I wanted to expand that language to included elder care but only addressing situations of substantiated law. I did not want to have a situation where a disgruntled employee could have letters written and this would influence people away from a legitimate business. They included the fire reviews and every other regulation. We wanted the information to be simplified.

There were discussions in the Assembly concerning drop-in facilities. I contacted these facilities and the policy is everyone must register and then the information is provided to them. There was some concern as to whether a facility could keep track of the violations over a 12-month period. If that would be the case and a facility has the problem of many violations, this is precisely why the bill is needed.

SENATOR HECK:

I am concerned about the language in the bill that states, "Any summaries of complaints provided to the facility." The language does not specify what types of complaints are to be provided.

ASSEMBLYMAN SETTELMAYER:

That was entertained during the Assembly hearings on A.B. 283. It was explained that when the Department of Health and Human Services receives a complaint, they determine whether the complaint is worthy of a follow-up. Then they do an investigation. If there is a problem, a summary is done. This would mean we could get the information after there was enough material to go forward. It would not affect a situation such as a disgruntled employee.

CHAIR WASHINGTON:

What type of complaints are referred to in section 3, on page 4 of A.B. 283?

ASSEMBLYMAN SETTELMAYER:

I do not know.

MARSHEILAH D. LYONS (Committee Policy Analyst):

The language is referencing administrative actions that could be taken by the Health Division.

SENATOR HECK:

It is possible that a disgruntled employee could file a complaint that there were unsafe practices occurring in the facility. The case is adjudicated and found to be not a valid complaint, but is then listed on the form and given to prospective clients. This causes concern.

CHAIR WASHINGTON:

Please explain to the Committee the process and how you would determine whether a complaint could be made public information?

JENNIFER DUNAWAY (Bureau of Licensure and Certification, Health Division, Department of Health and Human Services):

Our agency receives complaints from any source. We have a system of prioritizing those complaints based on the seriousness of alleged harm. The claim will be investigated within a certain time frame based on the priority. If it

is determined that the claim is unsubstantiated, we notify the facility and it would not be posted anywhere.

As a result of this proposed bill, we have developed a format for summarizing complaints that can be posted to our Website. We have indicated in the format what the nature of the deficiency would be and whether the facility provided an acceptable plan of correction as well as whether a sanction was imposed. This would tell the action taken.

CHAIR WASHINGTON:

Do you provide the facilities with the summary of the complaints?

Ms. DUNAWAY:

We always send a statement of deficiencies to each facility that we survey for a complaint investigation or another survey activity. The facility is provided with that information. If there are findings, we outline what the deficient practice is in the statement of deficiencies. If there are no findings, they are provided with a written document saying the complaint was unsubstantiated.

CHAIR WASHINGTON:

Is a deficiency the same as a summary of complaints?

Ms. DUNAWAY:

A deficiency is a written description of the findings of noncompliance to the regulation. A summary is what we will post to the Website that will provide easy to understand information.

CHAIR WASHINGTON:

Is a complaint a deficiency?

Ms DUNAWAY:

A complaint is an allegation of harm or concern for the environment or for the care of the individual recipient.

CHAIR WASHINGTON:

Does the allegation need to be substantiated by the Bureau of Licensure and Certification?

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Ms. DUNAWAY:

We will conduct an investigation and then make a determination of whether the facility is in violation of the regulations or the statutes.

SENATOR WIENER:

Are the only complaints that the Bureau would reference for public information be those that have validity to them?

Ms. DUNAWAY:

Our investigation is a matter of public record. The information would tell the person whether the claim was substantiated.

CHAIR WASHINGTON:

I will entertain a motion on A.B. 283.

SENATOR WIENER MOVED TO DO PASS A.B. 283.

SENATOR NOLAN SECONDED THE MOTION.

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

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CHAIR WASHINGTON:

We will open the hearing on A.B. 577.

ASSEMBLY BILL 577 (1st Reprint): Requires certain medical facilities to establish a program for safe handling of patients. (BDR 40-1035)

K. NEENA LAXALT (Nevada Nurses Association):

The purpose of A.B. 577 is to study the safe handling of patients in hospitals. This has been an issue in nursing for a long time with injuries related to nursing and nurses. It is important to know what equipment, policies and procedures are being used. Originally this bill was mandatory toward the hospitals. The parties involved met and drafted a compromise to the original bill. This is not the end-all of the issue but it is a step in opening discussion and further compromises. This will enable hospitals to put together programs that provide the safe handling of

patients and safety procedures. The bill will require the hospitals to report their progress to the Legislature.

ALFREDO SERRANO R.N.:

I am a registered nurse and have been taking care of patients for over 30 years. Injuries caused by the manual lifting, transferring and repositioning of patients is the leading cause of disabling injuries of nurses. The average nurse lifts and transfers the equivalent of 1.8 tons a day. Nurses and other hospital workers have higher injury and illness rates than workers employed in mining, manufacturing and construction. In surveys where nurses have left nursing, 12 percent stated they left because of disabling neck, back or shoulder injuries from manual lifting. We know that safe patient handling programs that substitute the use of mechanical and transfer devices for manual patient lifting and transfers can dramatically cut the occasions when these injuries occur. The evidence is reflected in dozens of peer review scientific studies with the introduction of safe patient handling programs.

Studies have shown patient care is improved as accidental injuries to patients from falls during lifts and transfers are reduced. Patients incurred fewer serious skin injuries and patients report they feel more comfortable and secure during transfer.

Lifting heavy and disabled patients causes a challenge to all nurses. Ending a career in nursing or harming a patient would be devastating to us. Nurses are here today because we want to provide better patient care and we are asking for your support of safe-lifting legislation. Assembly Bill 577 is a step in the right direction. We urge the committee to vote in favor of A.B. 577.

SENATOR NOLAN:

Over the years there has been development in automated equipment and strategies on moving patients. With all of the innovations in this area, why is there a need for another study?

MS. LAXALT:

This is not a study piece of legislation. This is aimed toward the hospitals to get a perception of where Nevada stands on this issue and then reporting the findings to the Legislature. This will provide a summation of what the hospitals are doing to help with this problem; what equipment is being provided; what the rates of injuries are and the hospital's workers' compensation claims.

SENATOR NOLAN:

Based on the bill, this information will be reported to the Legislature. They would review the information provided and make a decision on any legislation that would be necessary. Is this the intent of the bill?

MS. LAXALT:

Yes. The issue would be explored and results would be presented to the Legislature so that we would find what the existing situation is in Nevada and what is needed. Legislation could then be forthcoming after we know where we stand.

SENATOR NOLAN:

Are the practice of safe lifting and the purchase of equipment issues in the collective bargaining process?

SALLY GENTILE JOHNSON R.N.:

The reason I am able to be here is due to the fact I am on light duty because of back problems. Two of my nursing coworkers have had major back surgery and are approximately forty years of age, which is still young. My physician said that many of his patients who are nurses have back problems. My injury is from wear and tear and the hospital does not recognize this as a work-related problem.

I was part of the negotiating team, and to my recollection the issue was not raised. There is some equipment in the hospital, but we still use sheets to pull patients up in bed. There are patients that weigh 600 pounds or more. It is ideal to have eight people lifting a patient, but that is not practical. The sliding boards are not always available. This puts everyone at risk. This is an important issue and needs your attention.

SENATOR HECK:

The number one occupational injury and cause of lost work is lower back pain. It is a billion-dollar-a-year expense to the nation. It is not only an issue for worker safety but also for patient safety. In Clark County, the Emergency Medical Service system providers are required to have a bariatric ambulance.

Based on the language on page 2, lines 24 through 29 of A.B. 577, if the hospital has a staffing committee do they have the option to form a committee on the safe handling of patients? The language should be more permissive.

Ms. JOHNSON:

The hospital where I work is developing a lifting team, but developing and having one in place is not the same. We are trained in body mechanics and proper techniques, but when a nurse is faced with a patient who is obese there could be problems.

SENATOR HECK:

The language states that if a hospital already has a committee on staffing then that committee "shall" be the committee on safe lifting. If a hospital wants to have a separate committee on this particular issue, they should have that option.

Ms. LAXALT:

That was a paragraph on which we compromised. The most important part of the compromise was to have a skilled nursing person on the committee who is not a member of management.

RENEE RUIZ (Service Employees International Union):

The intent of the language was to allow the hospitals to use an existing committee and not take nurses away from the bedside.

CHAIR WASHINGTON:

It appears that the language on page 2, section 7 of A.B. 577 outlines the procedures for the forming and responsibilities of the safe handling committee. If the hospital does not consider the recommendations of the committee, would the language in section 10 apply?

BILL WELCH (Nevada Hospital Association):

Yes. As the bill was discussed, the proponents of the legislation wanted to ensure there would be consequences if the hospital did not follow the intent of the regulation.

Assembly Bill 577 is more than a study bill. There are requirements that the hospitals must implement. The study is to not only evaluate the number of injuries or costs but what the hospitals are doing to be responsive to this process.

CHAIR WASHINGTON:

Section 9 of A.B. 577 speaks of what needs to be included in the annual report. I understand this is to be a report, not a study, and is to be submitted to both health care committees.

JAMES WADHAMS (Nevada Hospital Association):

The bill creates a procedure for reporting to the Legislature. It is mandatory for committees to be established. The word "shall" appears repeatedly throughout the bill. Programs and protocols must be adopted. Assembly Bill 577 is effective October 1, 2007. The bill is being requested to assure there is adequate training. The bill addresses new construction such as the consideration for developing design to accommodate or incorporate automatic equipment.

The first consideration of the interest groups and the Nevada Hospital Association was to put together teams, design protocols for the safe handling of patients and use of lifting equipment. We support A.B. 577 as printed in the first reprint. This bill will enhance attention to worker safety. There is a nursing shortage and we do not want to lose our nurses.

CHAIR WASHINGTON:

Is the bill necessary to have the Occupational Safety and Health Administration make it mandatory for hospitals to put policies and procedures in place?

MR. WADHAMS:

Workplace safety is critical.

CHAIR WASHINGTON:

Senator Heck had a concern about the word "shall" and not giving the hospitals any latitude.

MR. WELCH:

We were trying to provide language so that hospitals did not need to create another committee, if committees existed. If there are no committees in place, then the hospitals must form a committee and the committee must have bedside nurses as members and not be entirely staffed by management.

MS. RUIZ:

The Service Employees International Union is in total agreement.

SENATOR HECK MOVED TO DO PASS A.B. 577.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CEGAVSKE AND NOLAN WERE ABSENT FOR THE VOTE.)

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CHAIR WASHINGTON:

We have received written testimony from Laurel Helfen-Lardent, Manager of Injury Prevention, Saint Rose Dominican Hospitals ([Exhibit D](#)), which will be entered into the record.

There being no further issues before us today, I will adjourn the meeting of the Senate Committee on Human Resources and Education at 12:39 p.m.

RESPECTFULLY SUBMITTED:

Patricia Vardakis,
Committee Secretary

APPROVED BY:

Senator Maurice E. Washington, Chair

DATE: _____