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

Seventy-Fifth Session
May 11, 2009

The Committee on Health and Human Services was called to order by Vice Chair Peggy Pierce at 1:36 p.m. on Monday, May 11, 2009, 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/75th2009/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 Debbie Smith, Chairwoman
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Ty Cobb
Assemblyman Mo Denis
Assemblyman John Hambrick
Assemblyman Joseph (Joe) P. Hardy
Assemblywoman Sheila Leslie
Assemblywoman April Mastroluca
Assemblywoman Bonnie Parnell
Assemblywoman Ellen B. Spiegel
Assemblyman Lynn D. Stewart

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3
Senator Barbara Cegavske, Clark County Senatorial District No. 8

STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Chris Kanowitz, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Barbara Howe, Wellness Program Manager, Bureau of Child, Family, and Community Wellness, Health Division, Department of Health and Human Services
Christopher Roller, Director, State Advocacy/State Health Alliances, American Heart Association of Nevada, Las Vegas, Nevada
Elizabeth MacMenamin, Carson City, Nevada, representing Retail Association of Nevada, Carson City, Nevada
Robin Keith, President, Nevada Rural Hospital Partners, Reno, Nevada
Rosalind Tuana, Executive Director, Board of Examiners for Social Workers, Reno, Nevada
Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance, Health Division, Department of Health and Human Services
Michael Willden, Director, Department of Health and Human Services
Romaine Gilliland, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Lawrence Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada
Paul Schubert, Health Facilities Surveyor IV, Bureau of Health Care Quality and Compliance, Health Division, Department of Health and Human Services

Vice Chair Pierce:
[Roll called. The Chairman reminded Committee members, witnesses, and members of the audience of Committee rules and protocol.]

We will start with Senate Bill 7 (1st Reprint). Senator Wiener is here to present the bill. It makes various changes to the Advisory Council on the State Program for Fitness and Wellness.

Senate Bill 7 (1st Reprint): Makes various changes to the Advisory Council on the State Program for Fitness and Wellness. (BDR 40-23)

Senator Valerie Wiener, Clark County Senatorial District No. 3:
Today I appear before you to present S.B. 7 (R1), which addresses some changes in the State Program for Fitness and Wellness, primarily regarding the Advisory Council. The program has been in place for four years, since the 2005 session. We have been tweaking it along the way, and we have been doing some extraordinary work. I say "we" although I am an ex officio member; I do attend the meetings.

In this bill, we are increasing the Advisory Council membership from 7 to 11 and authorizing the appointment of additional nonvoting members. Among the new members will be one representative from the Assembly and one from the Senate. The bill allows the membership to elect the chair and vice chair. Currently, the State Health Officer does that, which caused some concerns when we did not have a State Health Officer. The members will be able to appoint committees and subcommittees to study issues. We found through the four years of this particular council and program that there are extraordinary stakeholders who want a voice in the processing. A significant number of collaborations have evolved between these stakeholders and people who are fulltime providers and professionals in the health care community.

The Committee overcame some challenges. Sometimes members were not able to attend and they did not have a designee, which was allowed. The bill provides for removing a nonlegislative member. It also allows contracts between public and private entities. The Committee has specialized needs; for example, we had to create a memorandum of understanding (MOU) with the Department of Education to establish a website with preventative health care measures for children. The children can access the website and learn more about how to be healthy children. The bill also provides for the awarding of grants. There is a provision for the money to be pushed out for another two years, so the money that was already appropriated will continue to flow.

What has been wonderful about this program—besides the fact that fitness and wellness are a personal passion for me—is that it has evolved to be an extraordinary one-of-a-kind clearinghouse for best practices, information, and programs that are available statewide. Information is available on the website, and this is the place to go for anyone who wants to know where to find something and what the best practice might be. There are substantial links that will continue to be established between associations, organizations, companies, and other providers. People are learning to go to the website to learn to do the best in the most cost-effective way.

Our work has just begun, though; it has only been in place for four years. We have a lot more work to do—a lot more people to reach—and it is for these reasons, and my passion for the program and the Advisory Council, that I seek your support for S.B. 7 (R1).

Vice Chair Pierce:
There would be 11 voting members, and the Advisory Council could appoint as many nonvoting members as they want, or is there a limit on that?

Senator Wiener:
There is no limit; they would be ex officio members as I am. I believe Mr. Willden is an ex officio member too. Anyone who is a nonvoting member has something to contribute, and they are expected to be at the meetings. There was no provision for a Legislator to be a voting member, so I have been attending and contributing without being able to vote. It is not as though it is going to be a free-for-all; it is for those who have the expertise to lend where their input will be the most valuable to the conversation.

Vice Chair Pierce:
So, there is no limit on how many can be members?

Senator Wiener:
No.

Vice Chair Pierce:
In the existing language, in section 6, subsection 2, it talks about "initial terms of 2 years." Is that the Legislators? Or are all of their terms for 2 years?

Senator Wiener:
Yes. It is highly possible that someone on the Advisory Council who was a voting member, but whose term has run out, could become a nonvoting member because of the expertise he has gathered along the way and his contributions to the conversation.

Assemblywoman Parnell:
Although it is not the appropriate place for this since this is the policy committee, but, I see that there is an appropriation request on the last page. Is that still in?

Senator Wiener:
It is because it is pushing out the money by two years that was appropriated two years ago. That was the intent.

Assemblywoman Parnell:
Is it requesting the amount of $100,000 for this biennium?

Senator Wiener:
No. It is just extending what they have already been appropriated for another two years.

Assemblyman Hambrick:
Looking at page 3 of the proposed legislation, section 2, subsection 3, paragraph (b), lines 3 through 5, I am used to seeing language very similar to this on other boards. I would love to see the third word in "Remove a nonlegislative member" stricken. If someone is not doing their job, regardless of what position they have, they should be asked to step down. I do not care whether they are of this body or the upper house.

Senator Wiener:
Right now, there are no legislative members anyway. I am it, and I am ex officio. We came up with something that allows me to sit with the group. The reason that I even suggested that we add a representative from each house was to create momentum for legislative activity that might support what they are doing. I bring at least one bill every session that deals with fitness and wellness. It was a way to encourage the legislative participation for the continuity that might be there. The thought was to find people who were inspired enough to attend the meetings so they would participate. There are people who are so passionate about these issues that I do not know that it would even be an issue. Their attendance would be good, but the key is the members who could be removed. The reason it has expanded a little was so we could get a quorum. We had challenges at times because of the specificity of the appointments, like getting a registered dietician—there are not very many in the state—or someone from the Nevada Association for Health, Physical Education, Recreation, and Dance (NAHPERD). It was important that those voices be at the table. We did have trouble at first when we were trying to get people to fill those specific spots. We had one or two appointees who were not able to show up to meetings, but we had no way to replace them. My thought was that we should do everything we can to encourage the nonlegislative members to participate because they can have the continuity of legislative activity to support the Advisory Council.

Assemblyman Hardy:
If it comes under the open meeting law, we are going to have to notice everyone. The logistics of trying to get nonvoting members will become very interesting, along with trying to send out agendas to everyone. I am not sure

that we need to limit the nonvoting member count. It is an open meeting, so anyone can go.

Senator Wiener:
We have not had any problems in posting, but if there are still concerns about that, I can turn this over to Barbara Howe and she can respond.

Barbara Howe, Wellness Program Manager, Bureau of Child, Family and Community Wellness, Health Division, Department of Health and Human Services:
We follow the open meeting law, so the quantity of people involved really does not matter. You post at the same places and, with email distribution lists, it is quite easy to add 50 or 100 people and not have a lot more work.

Assemblyman Hardy:
I come from old school, and some people do not do email. I receive a hard copy because the Water Authority gives me a box to check, and I get a packet with the agenda. It is not only posting the meeting, but getting the agenda out in so many days before the meeting so the members receive the agenda in a timely fashion. People can also go to the library or one of the three posting places where you can access these things. So, if you are sending an agenda to enough people who are not familiar with how to do electronics, you have another problem. That is the reality of some of these meetings that I go to; you have to send things in hard copy.

Assemblyman Cobb:
Are you considered an Executive Branch entity?

Barbara Howe:
Yes, I am. I work for the Health Division.

Assemblyman Cobb:
The Council itself is considered an Executive Branch entity?

Barbara Howe:
I do not think so, because it is established in statute.

Assemblyman Cobb:
I serve on what is called the Emergency Response Commission, but it is an Executive Branch agency, which means I cannot vote on the Commission. My question is: are you, as a council, considered an Executive Branch agency? If you are, we cannot establish two voting members on your council.

Barbara Howe:
Madam Vice Chair, you and I serve on the Attorney General's Technological Crime Advisory Board, and we have a vote. I do not know how to respond to that.

Vice Chair Pierce:
We will get back to you, Mr. Cobb.

I am told that the key is that it is an advisory board. That is the difference; it advises.

Barbara Howe:
I would like the members of the Committee to understand that this Council is very vital for Nevada's ability to secure federal grant money related to wellness. You should know that it is very rare that an advisory council like this is established in statute. In fact, I think only one other state, New York, has done it. Many other states choose to have it come out of the Governor's office, which makes it change with the political tides. There is a stability and a sustainability in statute that makes it very good for us to secure federal wellness money. That the Board is functioning and doing things also helps. This makes us more competitive.

I also want to emphasize that the federal money that we get and the State General Fund money are very important. Federal grants typically require that you are already doing the work and that you are going to put in some of your own resources. I would like the Committee members to know that we just received the Centers for Disease Control and Prevention (CDC) grant where these Fitness and Wellness Council dollars were used as a match to secure that funding.

[Ms. Howe submitted prepared written testimony (Exhibit C), but did not read it.]

Vice Chair Pierce:
What is the grant for?

Barbara Howe:
This one is a small CDC grant for environmental and policy change initiatives around lifestyle choices. I could use your own building as an example. We would put healthy food in the vending machines or maybe a cycling bike out in the lobby. You have to deal with people's daily lives and put healthy choices as the easy choice. This grant will do that in four counties in Nevada.

This money allowed us to have training. We brought the National Association of School Nurses to Las Vegas for a day at the end of April to train our own school nurses in child obesity and prevention education.

Christopher Roller, Director, State Advocacy/State Health Alliances, American Heart Association of Nevada, Las Vegas, Nevada:
We support the passage of S.B. 7 (R1) and the work of the Nevada Fitness and Wellness Advisory Council. This is a very important entity here in the state, as Ms. Howe indicated. It is very unique here in Nevada; we do not have a lot of these types of councils around the country. The work we have done so far has been extraordinary in terms of the number of folks we have brought together. I am a voting member of the Council, so I have seen firsthand the work that the Council is able to do in creating the clearinghouse and bringing all of the different agencies, organizations, employers, and different types of entities across the state together in a common cause of creating a program for fitness and wellness in schools, worksites, and senior communities. This bill would allow us to expand that scope, not only to add new members but to be able to broaden our reach to other populations throughout the state and make a difference in terms of the health and well-being of our state. Bringing down our health care costs is very important, and one way to do that is to get people to eat properly, exercise, and change their lifestyles in ways that will prevent chronic diseases.

The mission of the Heart Association is simple: to reduce death and disability due to heart disease and stroke. One major way to do that—since vascular diseases are highly preventable—is through proper nutrition, exercise, lifestyle changes, and modifications. The availability of information and education that is needed for individuals to be able to make good choices can really make a difference in the health of the state and a reduction in costs.

There have been several different worthy projects funded by the grant money that was available from the Council. This includes the creation of a website that allows the Council to reach folks via the web. Everyone involved can link up and have a common area where they can see the different programs available throughout the state and the efforts being coordinated through this Council.

[Mr. Roller submitted prepared written testimony (Exhibit D), but did not read it.]

Vice Chair Pierce:
Is there anyone in opposition to S.B. 7 (R1)? [None.]

We will close the hearing on S.B. 7 (R1).

We will open the hearing on Senate Bill 17 (2nd Reprint). This is also Senator Wiener's bill, and it revises provisions governing health care records.

Senate Bill 17 (2nd Reprint): Revises provisions governing health care records. (BDR 54-607)

Senator Valerie Wiener, Clark County Senatorial District No. 3:
I am here to present S.B. 17 (R2), which started as a simple bill that would push the accessibility to health care records to a greater limit. I had several meetings with people who had concerns. We had a lot of compromise, a lot of consolidation of thought, and work. The measure before you is the second reprint, and what it provides is that health care providers, who are licensed as such under *Nevada Revised Statutes* (NRS), are required to keep a person's medical records for seven years. In the initial bill, it was for a person no less than 28 years old, but we changed that to 25 years old—which is 7 plus 18, which takes them into adulthood. It requires signage in places like hospitals and other locations where there are health care providers licensed under the NRS, and notice would be sent home from the doctor, hospital, or other health care provider letting people know that their records would be maintained for seven years. A lot of concern arose around the records of doctors who close their practices, doctors who die, or doctors who sell—or attempt to sell—their practices, and this is the measure that we came forward with.

Since this bill made its way out of the Senate, I worked with the Retail Association and pharmacists. This is a friendly amendment (Exhibit E) that I am providing for you today. I talked to the Pharmacy Board and, typically, pharmacists keep records for about two years. When you think of the volume that they have, and the nature of their role and relationship with patients, what I put in here is the requirement that pharmacies have signage that records are available through their primary health care providers, and they are able to access those prescriptive documents from them. There are retail clinics in many of the drugstores now; the health care records reside with the doctor who is providing the service, which is consistent with all of the other provisions. The State Board of Pharmacy will provide information on their website regarding health care records. Since they started keeping records, they have kept—and will continue to keep—records of any controlled substances and who has filled that prescription. If I wanted to know what my controlled substance history was, I could contact the Pharmacy Board and get that

information. This is a friendly amendment that is compatible with the work that the original bill set out to do, and I pledge that in the interim, if there is any kind of a kink, or something I need to do, I will continue to work with the pharmacists and the Retail Association to address those concerns.

Assemblyman Hardy:
What is the rationale for going from five to seven years? There had to be a reason.

Senator Wiener:
Seven is how long attorneys keep records. We thought we would create consistency among professions. Often, five is short enough to lose contact with a physician or not have access, so we moved it up to what lawyers are required to do with client records. It is also consistent with federal requirements. In the original bill, I went 21 years of age plus the 7 years to get 28; and then I moved it back to 18 plus 7, which brings us to 25. That does not exceed federal requirements.

Assemblyman Hardy:
So, the federal requirement is 25 years old?

Senator Wiener:
That is what I understood from one of the stakeholders. If I go beyond that, I am exceeding federal law.

Assemblyman Hardy:
So the federal law is also seven years?

Senator Wiener:
That I do not know. All I know is that we went with how long lawyers keep their records; five was too short, and seven seemed consistent.

Actually, this is a bill based on a request from someone who did not know about the five years and at six years went looking for records that were not available. The bill also requires that all of the professional licensing websites post the information about records, so people will know where to go and how long their records will be viable and obtainable. We are still scratching our heads about those who were selling a practice or retiring.

Assemblyman Hardy:
Then I see in the mock-up of the amendment (Exhibit E) that there would be a sign?

Senator Wiener:
There would be signs where health care providers are located that state patients can access their records for seven years. Also, a hospital or provider would send a notice either on the first visit with all the other paperwork or on a subsequent visit where they have contact with the patient.

Assemblyman Hardy:
Then the signage would be according to regulation as to how big and how wide and how bold?

Senator Wiener:
Yes. I attempted to do sign specificity in another bill many years ago, and I have learned that it is a lot of work. I think regulations are just fine when someone else does it who is used to it.

Assemblywoman Spiegel:
This sounds like a great bill, but I do have a question. Is this a rolling seven years or is it seven years from when the patient discontinues the relationship with the doctor? If someone has been going to a physician since they were 21 and they are now 45, would only the last 7 years be required to be kept?

Senator Wiener:
My intention would be that it would be their medical history plus seven. The additional 7 starts at 18 when children are involved.

Assemblywoman Parnell:
With all the attention that President Obama has put on electronic medical records, and the emphasis with the stimulus money, do we have any idea what his long-term plans are relating to this issue? We would hate to get something in statute now and then find something that trumps it. It would be interesting to see the relationship between this bill and what they might have in mind, because it does seem to be a very big part of his agenda.

Senator Wiener:
I started working on this before he started developing his health care agenda, but one of the points of conversation was about electronic records, and there are those who may keep them forever. The information does not have to be a

paper exchange as long as the information can be made available in whatever form. It is open to progress.

Vice Chair Pierce:
A "provider of health care"—how is that defined?

Senator Wiener:
That is already statutorily provided. That is why, in the amendment, one of the providers of health care is the pharmacy, although they do business differently. The original order for pharmaceutical products would be in those medical records. It would probably be more accurate because there are those pharmaceutical products that people may have a prescription for but do not fill. At least the doctor would have a record of what was prescribed. It is all in NRS, and I allowed drafting to go ahead with anything considered a health care provider.

Assemblyman Hardy:
What happens if the providers die, go somewhere else, et cetera? How do you punish them if they do not store records somewhere?

Senator Wiener:
I did not put anything punitive in here, but these are professions that are licensed by their Boards. I would go to the Board if they are not performing according to what is required by statute, and I would expect the Boards to deal with them however they deal with people who do not play by the rules.

Assemblyman Hardy:
So, if the Board has the ability to levy fines or remove licenses, it would be according to that Board. I guess I am looking for legislative intent. Are you looking for penalties similar to fines assessed for everything else, or do you want them in jail, or what?

Senator Wiener:
I would not go that far. My intent started from the perspective of the consumer who needs access to his records, to know that there is somewhere to go, and to extend the time of availability. It is not about being punitive; it is about information being available. It would be up to the Board. I do not know how they do their business, but it would be in accordance with statute.

Assemblyman Hardy:
Would this allow civil suits to come from the consumer to the health care provider?

Senator Wiener:
I had not gone that far. I do not know.

Elizabeth MacMenamin, Carson City, Nevada, representing Retail Association of Nevada, Carson City, Nevada:
The Senator has addressed the concerns that we had, and we are in support of the proposed amendment to S.B. 17 (R2).

Robin Keith, President, Nevada Rural Hospital Partners, Reno, Nevada:
In general, we are supportive of the bill. The concern that I have came out of today's conversation about linking all of the patient's history into one continuous medical record, but we are not there. Until we start electronic health records, we have pieces of paper everywhere. In facilities that are much bigger than ours, I suspect their paper issues are more complex. I have to go on record that requiring all of that to be linked is problematic for us. I did not have any objection to this bill until that. I appreciate what you said, and it is a desirable thing; I just do not know if we can do it.

Senator Wiener:
I am amenable to whatever the Committee feels is appropriate for those who do not have the technology yet. I know that rural hospitals have greater challenges than some of the metropolitan ones. I have been working step-by-step with the Nevada Hospital Association. I am also amenable to language that would address the hospitals' ability to comply. The intent is to make information available to patients in new ways. I want good, doable policy to move forward. Whatever is required, I will work with you.

Vice Chair Pierce:
I am not clear what part of the bill you are talking about that creates a link.

Robin Keith:
I agree. It is not in the bill. I thought you said that it was your intent. I assumed from the questions and responses to the answers that it was your intent. Maybe I am putting words in your mouth.

Senator Wiener:
Maybe intent and hope are two different things. For example, if someone had a hospital stay within the past seven years and wanted to get his records, he could. I do not know how viable it would be for someone to have to go out and put all the pieces together. My intent is that people have access to records in that seven-year window.

Vice Chair Pierce:
From that hospital.

Senator Wiener:
Yes. And with regard to doctors providing care for children, the clock does not start ticking until age 18 because a 4-year-old does not want to look for records.

Assemblywoman Spiegel:
If I have been seeing the same doctor for 15 years as a patient, I would have an expectation that my physician would not have thrown out my medical records. Something that happened 15 years ago might be the root cause of something that is happening today. If I had been seeing that physician for the entire time, I would want and expect my physician to have all of those records. That is why I was asking if that was a rolling seven years versus seven plus.

Senator Wiener:
That would be my thought too. To me, if you had not seen the doctor for a while, it would be seven years from the last visit.

Robin Keith:
Yes. If I understood all of that, it is access to records in a seven-year window?

Assemblywoman Spiegel:
Yes.

Assemblyman Hardy:
I envision the physician's office that gets a hospital discharge summary, but a copy is at the hospital. As a physician, I do not necessarily need to keep the summary or the lab results. I am going to shred that stuff because copies are somewhere else.

Senator Wiener:
I cannot begin to understand how a physician would set up and maintain medical records, but I would think anything you have direct contact with—meaning that if you ordered the test or gave a prescription—those are your acts. You may not have the results, but part of your record would be that you ordered it, or that you had prescribed something. That would be part of the interaction that you had with the patient, but other licensed health care providers would be required to have their part of the records. I worked with the pharmacies and retailers because the doctor would at least have in the record that he had prescribed something whether or not it was filled. That is part of the interaction that doctor had with that patient.

Assemblyman Hardy:
If I may establish some legislative intent on your mock-up (Exhibit E), page 2, lines 12 through 14, "shall retain the health care records of his patients as part of his regularly maintained records for 7 years after their receipt or production." So, for my regularly maintained records, I am not going to keep my progress notes that I made and ordered in the hospital; that is going to be in the hospital record. Even though it is my record and I ordered it, I do not need to keep it. I interpret your "regularly maintained records" as not creating a new burden of storage on physicians who happen to have hospital privileges.

Senator Wiener:
My intent with this was not to place an extraordinary burden or additional tasking on any health care provider beyond a normal day's business. If you are in receipt of copies of lab reports, et cetera, they would be part of the patient's record.

Assemblyman Hardy:
I get records from the hospital, huge stacks of paper with all of the lab tests, but they are already in the hospital record. I am going to review it and notice what is abnormal. I may scan it or save it in a paper chart, but I am not going to keep everything that comes from a hospital record.

Senator Wiener:
In drafting this, it was not the intent to add additional burden. It was for the consumer's access to records. My hope is that the information is available from one of the primary health care providers.

Assemblyman Hardy:
I shred lab results from hospitalizations. I do not need results that exist and are discoverable somewhere else. I like the language on line 13, "regularly maintained records." I would leave that there and not try to do legislative intent to keep all of the lab tests.

Senator Wiener:
I am with you. I thought I had said that, but I apologize if not.

Rosalind Tuana, Executive Director, Board of Examiners for Social Workers, Reno, Nevada:
When we reviewed this bill in the beginning, we talked to a couple of attorneys. In their opinion, the way this is written, the records for anyone you started seeing when they were less than 25 years old would have to be maintained forever. We would like clarification on that.

Senator Wiener:
I worked with a couple of Legislative Counsel Bureau attorneys, and that was never part of the conversation. What we understood was that, up to 18, that child could not make health decisions without access to the records. That is why I added seven years so they could access records if needed.

Chairwoman Smith:
It does read, if the patient is under 25, the records may not be destroyed. We may need to clarify that.

Senator Wiener:
That would be fine because they are not of age to make decisions. And maybe that doctor has only seen him for three years. I will certainly work with counsel on that.

Rosalind Tuana:
I just want clarification if that would be 7 years from the 25.

Senator Wiener:
No. It would be 18 years plus the 7 years to take you to 25.

Rosalind Tuana:
If that could be corrected.

Chairwoman Smith:
We have that understanding, and we can work on the amendment.

Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance, Health Division, Department of Health and Human Services:
Many times, individuals lose their health care records or are unable to locate their medical history. The provisions of this bill would ensure that an individual would be informed that his health care records may be destroyed, permitting him time to obtain a copy before destruction. In the event of a public health or other health crisis, it is important that health care records be available, both to determine which individuals may be impacted and for epidemiological investigation and analysis. The current version of the bill removes the fiscal impact that was originally noted by the Health Division in an unsolicited fiscal note. It adds cost for the State Board of Health to do the necessary regulations. However, as the Division has progressed through the session, we have identified opportunities to bundle rule making activities to develop rules more cost effectively and efficiently. The Health Division believes the adoption

of regulations necessary for S.B. 17 (R2) could be accomplished in that manner and no additional funds would be required.

Chairwoman Smith:
We will close the hearing on S.B. 17 (R2). I think we are waiting for Senator Cegavske. [Committee in recess.]

I will call the meeting back, and we will open the hearing on Senate Bill 131 (1st Reprint), which revises provisions governing mental health consortiums that provide mental health services to children with emotional disturbance.

Senate Bill 131 (1st Reprint): Revises provisions governing mental health consortiums that provide mental health services to children with emotional disturbance. (BDR 39-660)

Senator Barbara Cegavske, Clark County Senatorial District No. 8:
I am here today to introduce S.B. 131 (R1) for your consideration. Senate Bill 131 (1st Reprint) proposes procedural changes to the provisions that govern the mental health consortium for the purpose of encouraging low-range planning and coordination in providing mental health services to children who are emotionally disturbed.

In 2001, as a result of the interim report of the Legislative Commission's Subcommittee on the Study of the Integration of State and Local Child Welfare Systems in Nevada, we established children's mental health consortiums in Clark County, Washoe County, and the rural counties. Under existing law, the consortiums were required to prepare annual plans for the provision of mental health services for children in their respective jurisdictions. These plans were to be comprehensive and include such information as the following: an assessment of the need for these particular mental health services, including the number of children on waiting lists; a description of the type of services to be provided to children and how family members may be involved in their treatment; criteria for eligibility for services; and methods to manage the service, allocate funds, and obtain additional funds.

Senate Bill 131 (1st Reprint) adds to each consortium a representative of an agency which provides services for treatment and prevention of substance abuse. It also proposes to authorize the consortium to prepare long-term strategic plans that would be valid for ten years. In addition to the information they are currently expected to report, the consortiums would be expected to include goals and strategies in their strategic plans. Under S.B. 131 (R1), every two years the consortiums would submit to the Director of the Department of

Health and Human Services, and the Commission on Mental Health and Developmental Services, a list of priorities for services needed to implement their strategic plans and any provisions to their plans. In odd-numbered years, the consortiums would be required to provide status reports on their strategic plans.

The other revision proposed in S.B. 131 (R1) relates to the biennial budget. The current reporting requirements do not align with our budget cycle, so under existing law the consortiums are required to submit their plans by July 15. By that time, the Director has already created a proposed Department budget. Senate Bill 131 (1st Reprint) would require each consortium to submit its list of priorities by January 31 in even-numbered years. Under existing law, the Director does not have to report back to the consortium what he has included in his budget request, so S.B. 131 (R1) requires him to inform them by September 30 what he has or has not included and the reasons for excluding particular items.

Finally, S.B. 131 (R1) provides that each mental health consortium would be authorized to request a bill draft in each biennial legislative session.

Assemblywoman Leslie:
I really like this bill. It says in the digest that section 2 also removes the authority of the Department to reject the plan. Where is that, because I did not see it? Why would you do that?

Chairwoman Smith:
That may be one that did not change. Assemblywoman Pierce emailed me about the digest being wrong, and I wonder if that was it.

Senator Cegavske:
It does say it in the digest, so I do not know if staff can help with that. Maybe Mike Willden knows.

Michael Willden, Director, Department of Health and Human Services:
I do not see a rejection, but on page 3, section 2, subsection 1, lines 17 through 19, it just says that the plan submitted is "valid" for ten years. It does not talk about a discussion period or a rejection if a plan is submitted. I think it is along the lines of what we did with the Strategic Plan for People with Disabilities and the Strategic Plan for Senior Services. Plans were created, and the intent here is that they are long-term strategic plans. Then each budgetary cycle, we chip away at that plan and make progress toward the goals established in the plan.

Senator Cegavske:
Are you looking at lines 9 and 10 on the amendment? That is where it says that the Department can reject the plan. Is that the one you are talking about?

Assemblywoman Leslie:
I am looking at the first reprint, in the digest, where it says, "Section 2 also removes the authority of the Department to reject the plan."

Senator Cegavske:
I was looking on the legislative counsel's digest where it says it on lines 9 and 10.

Assemblywoman Leslie:
We are being told it is on page 4, on line 34, but that is existing language.

Assemblywoman Parnell:
Since everyone is looking at those two lines where it says "shall be valid for 10 years," I would assume there is an amending ability if for some reason you want to veer off that course, or you find something that is better. I hate to see anything that is too restrictive to where you cannot make revisions to the plan during that 10-year period.

Senator Cegavske:
I would refer it to Legal, but from what I understand, we wanted it at least 10 years because the plans before were short and not long-lasting. We were looking for something that could be long range; that is why they put in 10 years. But I would hope that we would be able to adjust it if necessary. Mike Willden says it is.

Michael Willden:
On page 5, lines 25 and 26, you can see that in the odd-numbered years they report progress and any revisions to the plan.

Assemblywoman Leslie:
I do see it now. It is kind of strange. I agree. It is a plan and does not mean that you have to do anything. What I really like about this bill is adding the substance abuse treatment person. That makes a lot of sense to me. And I like the report back. What I have heard from the consortiums is that they do not feel they have a strong enough relationship back and forth, and they want a little more independence, so I like giving them a bill draft. I really like the bill.

Chairwoman Smith:
I was thinking while sitting in Ways and Means what good advocates these groups have become, and the greater connection we have, the more they will do. I was thinking about the seniors and how active they are, and how much attention they pay to all of this. I did wonder why we are taking out the prefiling in section 5, on page 6, line 34. I want to make sure we are consistent with other organizations and groups.

Michael Willden:
I do not have an answer to that. It must be bill drafting.

Chairwoman Smith:
I would like to inquire about that because I want to be sure we are consistent from group to group. If that is all right with the Senator, we will look at it to see if there is a reasonable answer as to why we took the prefiling out.

Senator Cegavske:
I have to tell you that the groups who worked on this language worked very well together, and it was an effort by all. I cannot remember what the reason was for removing that, but maybe staff will know.

Chairwoman Smith:
I am a fan of prefiling.

Senator Cegavske:
The only thing I can think of is that it might have had something to do with working with the Director.

Assemblyman Hardy:
How often does the consortium meet? Is that part of the issue? Is there a task to meet so often? It is under the public open meeting law, so they would have a schedule of some kind and have to get it to the Legislature in a timely manner. I am comfortable with the bill and the intent.

Michael Willden:
I cannot tell you exactly how often they meet, but they meet frequently. For those of you who do not know, there are three mental health consortiums, north, south, and rural. They meet throughout the year looking at children's mental health issues. The current process is that, right around July 1 of each year, they submit their annual report to the Director. They report on their activities for the previous year and recommendations going forward. They always have very good recommendations. For the every-other-year of those reports, we look at the legislative and bill drafting process. When a bill changes,

the July 1 deadline is way too late in the budget building process. By July 1, we have only about 45 days left, and we are putting the agency-requested budget to bed, so we need their every-other-year report earlier in the process. Under this bill, it is a January 31 deadline.

I know that does not directly answer how many times they meet, but they meet many times throughout the year. I think we are on the eighth year since this law was passed. I have received eight reports from three consortiums. The reports are very well thought out, and they change from year to year. They may focus on a school issue, a Medicaid issue, or general behavioral issues, so they are very good reports. The things that I like about this bill are the timing of when the reports are due and the essential strategic planning process.

The Department is in full support of this legislation. We have worked together, and have been frustrated at times. Sometimes we got caught in the idea that, once we submitted the agency request, it is confidential. This allows for a feedback process, and I think this is good legislation.

Chairwoman Smith:
I will close the hearing on S.B. 131 (R1), and we will recess while we wait for Senator Horsford to come up.

We will bring the meeting back. Senator Horsford is detained. Since Assemblywoman Leslie chaired the interim Legislative Committee on Health Care, she is going to present both Senate Bill 4 (1st Reprint) and Senate Bill 70 (1st Reprint) for us.

I will open the hearing on Senate Bill 4 (1st Reprint).

Senate Bill 4 (1st Reprint): Requires the establishment of a system for the electronic submission of applications for Medicaid and the Children's Health Insurance Program. (BDR 38-210)

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27:
As you mentioned, this bill, S.B. 4 (R1), did come out of the Legislative Committee on Health Care, so I am very familiar with it. It requires the Department of Health and Human Services to establish and maintain a system that allows applicants to submit applications electronically. It is the eApplication system. This would be primarily for Medicaid and the children's health insurance program, Nevada Check Up. We closed the budget with a special technology investment request (TIR) that would allow for this. There was a slight gap in funding, but I believe this bill went to Senate Finance and that is not an issue. The fiscal note should not be a problem.

The electronic system makes it much easier for applicants because they just have to put in their documents once, and then the agency can determine what programs they are most qualified for. If they are not qualified for any of the programs, they find out very early on. The TIR is actually in the Welfare budget, I believe. This would also be for Welfare, although the bill is specifically for Medicaid and Nevada Check Up. It is a really good bill. We are finding that, in these tough economic times, people are applying for Nevada Check Up, but more often because of the parents' low income, they are eligible for the Child Health Assurance Program (CHAP) program through Medicaid. That is another reason why we have electronic applications. It directs people to the right program in the quickest possible fashion.

You will notice in the reprint that they changed it in the Senate. In the reprint, it specifically says that no one is required to submit the application electronically. If they have no access to a computer, or they are not able to use a computer, they can still do it by hand. The Department is working with family resource centers throughout the state, so that their staff would be able to assist someone who came in for other services and might also qualify for these programs. This morning in the budget, we uncapped Nevada Check Up. You might remember the Governor's budget came over to us with a cap on the Nevada Check Up program. The subcommittee did agree to take the cap off, so that program is remaining open for anyone who is eligible for it.

Chairwoman Smith:
When you are doing these online submissions, there are fewer problems. As you are going through the process, the system lets you know if there is something you missed or that does not qualify you for benefits. I really like that. Our staff is bogged down with contacting people and getting more information or having documents go back and forth. That was one of the things that was really exciting for me about this program.

Assemblywoman Mastroluca:
Will doing it electronically speed up the process to allow someone to receive services sooner?

Romaine Gilliland, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services:
Yes, it will. When a person fills out the information on an electronic application—it is a self-guided application—it indicates what information is required to be filled out, which program is best suited for them, and what type of documentation they will need. Once the application is forwarded to the Division of Welfare and Supportive Services, it will also populate the internal

operating system, for example, NOMADS, which stands for Nevada Operations of Multi-Automated Data Systems. That will clearly accelerate the process.

Assemblyman Hambrick:
I realize that this is not a money committee, but I have noticed that there is a well over $1 million fiscal impact. Has that disappeared, and what made it go away?

Romaine Gilliland:
The funding for this has been included in Budget Accounts 3228 and 1325 under Decision Units E277 and E589. It is actually part of a far more comprehensive program that will improve the efficiency of the overall processing of applications within the Division of Welfare and Supportive Services.

Assemblyman Hambrick:
So, it is in the Executive Budget, in the Governor's recommendation?

Romaine Gilliland:
Yes, that is correct. It is in the Governor's recommendation and has been included in the budget.

Assemblyman Stewart:
In the long run, will this save money by making things, including record storage, more efficient?

Romaine Gilliland:
Yes, it will. Regarding the overall application, it is an eApplication, as well as document imaging and workflow processing. When it is completely implemented, which is projected to take approximately 18 months, we are estimating a 20 percent improvement in efficiency within the Division with an estimated savings of approximately $15 million per year.

Chairwoman Smith:
We have heard a lot about this on this Committee and the Budget Committees, and I think it is a really exciting idea. We will see things that will help us to be more efficient and save money as well, while moving forward.

Romaine Gilliland:
We appreciate your comments and your support of the program.

Lawrence Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada:
We support this bill but for a slightly different reason. Many of the applicants who qualify for these programs get lost in the system the first time they try to enroll. If the system needs more information, finding them and getting back to them is difficult. They go into a gray zone, and many of them only reappear when they come for other services. I think this is a step in the right direction, and it should simplify the system and help people to get through it.

Chairwoman Smith:
I will close the hearing on S.B. 4 (R1).

We will open the hearing on Senate Bill 70 (1st Reprint).

Senate Bill 70 (1st Reprint): Requires certain offices of physicians and related facilities to obtain a permit under certain circumstances and requires annual inspections of surgical centers for ambulatory patients. (BDR 40-169)

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27:
Senate Bill 70 (1st Reprint) might look familiar to you because it is very similar to a bill processed by this Committee, Assembly Bill 123, which came out of the Legislative Committee on Health Care's interim work on the hepatitis C crisis. My understanding is that there are a couple of differences in this bill. Senate Bill 70 (1st Reprint) does not require national accreditation. There is one change; A.B. 123 made an exception for pain medication. They do the same thing on this bill on page 3, section 8, but it is for oral pain medication only. Maybe Larry Matheis can answer any specific questions that you may have since he sat through the hearings on the Senate side.

Lawrence Matheis, Executive Director, Nevada State Medical Association, Reno, Nevada:
We have discussed this in earlier hearings. I think you are going to have an end-of-session conference where you are going to have to clarify where you are going with four different issues. These have to do with licensed or certified ambulatory surgery centers. There are about 50 of them in the state, and those were the centers in which the hepatitis C outbreak occurred. That led to a review of the others, and we found that about a quarter of them had infection control problems. Here are some questions to be considered: How do you better regulate the ambulatory surgery centers? Between these two bills—and Assembly Bill 125, which is a slight variation—do you allow national certification of ambulatory surgery centers? If so, does that relieve the state from a full annual inspection of each one of them? If it does, should there

still be annual inspections focused on infection control? If there are other problems, they can always go for the other problems. Should the national certification be an alternative pathway for oversight, or do you require full annual inspections by the state?

I think you should come down with a mix of the three bills, so you can make decisions. The approach that I have been recommending is that, whatever we do, we make sure it is doable. We make sure we really do have evidence that the interventions were worthwhile because they actually made things better. We should not try to do too much in a short term and then wind up getting stymied by the immensity of those first few steps. You may want the national accreditation as an option for ambulatory surgery centers and think you want annual inspections, but in terms of a working model, I am not sure the Health Division could gear up to do full annual inspections of all of those centers, all of the hospitals, and all of the nursing homes. Then you will be evaluating this in two years, through the interim by the Legislative Committee on Health Care: how is it going, have you adopted regulations, et cetera? That is on the ambulatory surgery center side, which is the easier of the two issues.

The other issue is what about unlicensed health care centers where a health professional is providing services like those done in a hospital or ambulatory surgery center? What about when it is in an unlicensed office practice? That has been the tougher issue. There are a lot of physician practices out there. The reason that both A.B. 123 and S.B. 70 (R1) started is that, over the last four years, we have required reporting by all physicians of whether they do procedures in their offices that require them to use levels of sedation. It is an imperfect way to get at the issue of whether their injection practices and infection control are safe. We are going from where we only licensed the professional to licensing or certifying some aspects of the office practice, too. There is some national accreditation or certification available, but it has been used in a far more limited way than in ambulatory surgery centers. The national accrediting bodies, while they do occasionally look at large physician office practices, have not geared up to do the extensive things that we are talking about. You have to make sure that, within an 18-month period, the national accrediting groups can actually show progress. I think that can be done. That is not in S.B. 70 (R1), but it is in A.B. 123.

There are three main levels of sedation: conscious sedation, which is the mildest form and is used for discomfort and anxiety, especially for children; a medium sedation; and graduating up to deep sedation, which can be general anesthesia. We have been reporting on all three levels, so we should keep that reporting system to know what is going on. When we require reporting to the licensing boards, and you require regulatory oversight by the Health Division, everyone's notes will be comparable and everyone will be in the loop. That is invaluable.

The question is how to set up appropriate regulations that explain what the teams are going to be looking for. It is different from an ambulatory surgery center or an outpatient hospital center, so developing the regulations is going to take time. The states that have done this did not do it because they had an injection safety problem. They did it because they had problems with outcomes of surgeries. They were looking for something else, and their regulations largely focused on that aspect, not on infection control issues. We want to make sure that issue is looked at, but we want to ensure that we look first at the injection practices and infection control. The issue of how many offices are going to have to be regulated, how many visits by the Health Division are going to have to be made, will depend on how quickly we try to deal with the conscious level of sedation, because that is going to be the largest group. We recommend that you have a delayed inclusion on that level. Both bills try to deal with some exceptions that are in those categories of conscious sedation; S.B. 70 (R1) has one set and A.B. 123 has another. Both of those together are coming close to it, but there is still going to be an implementation problem in trying to get all of those in the first round of regulating.

We support both bills and the intent of both bills. Most of what is in both bills are in play; you just need to reconcile them. I think those are the four issues that I have been able to detect. It should be easier to come to an agreement on the ambulatory surgery centers and complete agreement about doing the oversight of the physician office practices. It is just a question of how much we can do in this next interim to show real progress and success, and then build on that.

Chairwoman Smith:
I want to talk about the idea of licensing versus inspections. We heard in testimony that the clinics that had the problems with the hepatitis C issue were licensed. Even after one inspection, additional problems were found. Is that correct? It is really the inspection issue that becomes important.

Lawrence Matheis:
They were all licensed; some were nationally accredited. The need to have the visible presence of the regulators at some point is, as much as anything, the well-tested sentinel effect. If you expect that someone may come in, you are going to act differently than if you expect them never to come in. In the case of the ambulatory surgery centers, the feds did not put any pressure on any state to be in more frequently than once every six years. Some of the ambulatory surgery centers had gone a decade or more without having anyone come in. That cannot work. The question is whether you can do a full inspection every year in every facility. You do want someone in there to look at what is going on. That is the balancing act that you are facing: what is realistic in this first step? We need to take realistic steps. There is no assurance on any of this; you want some redundancy, with multiple levels of scrutinizing. Even then a problem might be missed, but there is less of a likelihood.

Chairwoman Smith:
I feel so strongly that we are accountable to the public on this issue. We have had a terrible experience, and I think the public is depending on us to put in as many safeguards as we can. No system will be perfect. We cannot fix all of the problems—or prevent problems from happening—but on our watch, it is important that we be very aggressive in our actions.

Lawrence Matheis:
I think we share exactly the same desires. The health care system cannot be effective if the public cannot trust it. Right now, I do not think there is mistrust, but I think there is doubt. Putting into place the proper oversight, whatever we decide that is, will take tweaking and revisiting in two years. But doing something now that we know is doable, and getting full cooperation, is very important. I think we can do it.

Chairwoman Smith:
I think differently now about having something done, and after going through this whole process during the next couple of years, I want to be more comfortable.

Paul Schubert, Health Facilities Surveyor IV, Bureau of Health Care Quality and Compliance, Health Division, Department of Health and Human Services:
I am testifying on behalf of Marla McDade Williams. The Health Division recognizes that this bill is intended to address the public concern for infections obtained in certain physicians' offices and ambulatory surgery centers. The bill would require the Bureau of Health Care Quality and Compliance to generate regulations for certain physicians' offices and to begin inspecting the same.

This would be a new function for the Bureau of Health Care Quality and Compliance and will require additional staff to assume this responsibility. Based on data from the Board of Medical Examiners and the Board of Osteopathic Physicians, we have estimated 235 physicians' offices would require inspections and permits. In addition, this bill would require 53 annual inspections of currently licensed ambulatory surgery centers. Three additional full-time surveyor staff, and associated equipment, would be required to accomplish this workload. Two of these staff would be needed in the first year and the third in the second year. Please note that a fiscal note for our Division is $884,806.

Assemblywoman Leslie:
Those are fees, not General Fund.

Paul Schubert:
Yes. We are a fee-based agency.

Assemblywoman Leslie:
When we closed your budget, as I recall, it increased inspectors so the inspections could be done every 18 months at the ambulatory surgery centers, not the doctors' offices. Senate Bill 70 (1st Reprint) is also every 12 months; is that right?

Paul Schubert:
Yes. You are correct. We set 18 months as the schedule for all of the facilities; however, this bill would change ambulatory surgery centers and physicians' offices to one year.

Chairwoman Smith:
I think we heard also that the start-up costs, while we are waiting for the fees, would be paid out of reserves, so there is no General Fund money to get these programs going.

We will close the hearing on S.B. 70 (R1).

Assemblywoman Parnell:
Do you want to act on Senate Bill 4 (1st Reprint)? It seemed like everyone was pleased with it.

Chairwoman Smith:
Thank you. I think it was straightforward so, if that is a motion, I will accept it.

> ASSEMBLYWOMAN PARNELL MOVED TO DO PASS SENATE BILL 4 (1st REPRINT).
>
> ASSEMBLYWOMAN LESLIE SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN DENIS AND HARDY WERE ABSENT FOR THE VOTE.)

This meeting is adjourned [at 3:26 p.m.].

RESPECTFULLY SUBMITTED:

Chris Kanowitz
Recording Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Transcribing Secretary

APPROVED BY:

Assemblywoman Debbie Smith, Chair

DATE:

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: May 11, 2009 **Time of Meeting: 1:30 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 7 (R1)	C	Barbara Howe	Written testimony
S.B. 7 (R1)	D	Christopher Roller	Written testimony
S.B. 17 (R2)	E	Senator Valerie Wiener	Proposed amendment