

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

**Seventy-Fifth Session
May 20, 2009**

The Committee on Health and Human Services was called to order by Chair Debbie Smith at 3:13 p.m. on Wednesday, May 20, 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](#)) and the Attendance Roster ([Exhibit B](#)), 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:

None

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Harold Cook, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services
Jane Gruner, Deputy Administrator, Developmental Services, Division of Mental Health and Developmental Services, Department of Health and Human Services
Ed Guthrie, Executive Director, Opportunity Village, Las Vegas, Nevada
Lisa Foster, Reno, Nevada, representing High Sierra Industries, Reno, Nevada; Fallon Industries, Fallon, Nevada; Trinity Services, Reno, Nevada

Chairwoman Smith:

[Roll was called. A quorum was present.] I am sorry that we are beginning so late today. We have one bill to hear today, and we are not going to do any kind of work session.

I would like to open the hearing on Senate Bill 78 (1st Reprint), which is sponsored on behalf of the Division of Mental Health and Developmental Services. I would like to welcome Dr. Cook to the table to present the bill.

Senate Bill 78 (1st Reprint): Authorizes the Division of Mental Health and Developmental Services of the Department of Health and Human Services to regulate the provision of certain services to persons with mental retardation and persons with related conditions. (BDR 39-338)

Harold Cook, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services:

Thank you for taking the time to hear this bill. We are here to present S.B. 78 (R1). Jobs and day training services vary in the type and intensity of supports to allow individual vocational choices. Supports may include day habilitation and prevocational and vocational training in supervised structured settings. These are facility-based, supervised work programs in the community job setting to support employment, including activities needed to sustain paid, competitive employment for follow-along services. Regional centers contract with private, nonprofit organizations that operate community-based training

centers, and many other qualified providers and individuals. Existing law provides for community-based training centers to obtain a Certificate of Qualifications yearly, which was established into law in 1969. Currently, the Division of Mental Health and Developmental Services has 16 nonprofit, community-based training providers, and 31 qualified for-profit providers. They provide services to almost 2,000 individuals statewide.

This bill will repeal various outdated provisions related to community-based training centers and would establish new provisions for the certification of providers of jobs and day training services, regardless of nonprofit status, with similar safeguards and requirements, as were enacted into law for residential providers in the 2005 Legislative Session. Additionally, it will update the language describing the law to include people-first language, and eliminate procedures that are no longer utilized. Certification for providers will include an initial application process, provisional certification, and a certification quality assurance review within a year, and then every one or two years thereafter, based on provider compliance with the quality assurance standards. New quality requirements in the home and community-based waiver have been added to ensure compliance with federal statutory assurances from the Centers for Medicare and Medicaid Services (CMS), which funds a large portion of these services through Nevada Medicaid. These include the fingerprinting of all employees, qualifications of providers, health and welfare assurance, financial accountability, and mandated general liability insurance. Medicaid will not enroll any person or entity convicted of a felony or misdemeanor under federal or state laws for any offense determined to be inconsistent with the best interests of the participants.

This bill eliminates the Division from charging a fee to certify persons or entities that provide jobs and day training services. It delineates nonprofit organizations, under section 501(c)3 of the Internal Revenue Code of the United States, from for-profit organizations. This will allow nonprofit organizations the ability to bid for government projects without complying with the competitive bidding process as governed by *Nevada Revised Statutes* (NRS) 334.025, and to allow for the provision governing the minimum wage pay to an employee per NRS 608.255.

In a nutshell, the bill does a lot of little things that clean up the NRS and make it more effective for the Division to provide the jobs and day training services.

Chairwoman Smith:

How do you do this without a fee?

Jane Gruner, Deputy Administrator, Developmental Services, Division of Mental Health and Developmental Services, Department of Health and Human Services:

We will use our current staff to do this procedure. We already do the oversight of these agencies.

Chairwoman Smith:

So the fingerprinting and the background check, how does that work? They already do that, this bill just centralizes it? Is that the issue?

Jane Gruner:

It just organizes it in a way where everyone is playing on the same playing field, basically.

Assemblyman Stewart:

Are these training centers like Opportunity Village?

Harold Cook:

Yes. We have a fair number of them around the state.

Assemblyman Stewart:

You said 16, correct?

Harold Cook:

We have 16 nonprofit, community-based training center providers and 31 for-profit providers within the state.

Assemblyman Stewart:

Some of the clients work at private businesses like supermarkets, so would Albertson's be exempt, or would they need to have a certificate?

Harold Cook:

When one of our participants works in a facility, or a store such as Albertson's, they are actually working for a program like Opportunity Village, so the program is exempt but the business they would be working in would not necessarily be exempt.

Assemblyman Stewart:

So they would have to get a certificate?

Jane Gruner:

Typically how that would work is the individual would be working for Opportunity Village. Opportunity Village would put one of their staff with that

individual to help them learn the job. Opportunity Village's staff would have to have the fingerprinting, but the location that the individual was doing the work in would not have to. So Albertson's would not have to have the certification, but Opportunity Village would.

Assemblyman Stewart:

I know personally an individual who works for a private group home and is licensed by the state. He has clients and some of them work at Albertson's. There is no Opportunity Village staff member supervising him; he works with the Albertson's people exclusively. How would that work?

Jane Gruner:

If there is not anyone working with the individual, then he is not being employed through us. He would not be using a day jobs and day training program.

Assemblyman Stewart:

So they would not need to have a certificate?

Jane Gruner:

Correct.

Assemblyman Stewart:

Is it difficult to get the certificate? Can you give us some idea of what the certificate includes?

Jane Gruner:

It is a quality component, and the staff go in and make sure there is a plan for the individual and that the staff at the location are implementing that plan.

Assemblyman Stewart:

Is it renewed every year?

Jane Gruner:

It depends on how well the organization is doing. If they are doing well, then it is every two years.

Chairwoman Smith:

Are there any questions? I do not see any. Mr. Guthrie, would you like to come to the table?

Ed Guthrie, Executive Director, Opportunity Village, Las Vegas, Nevada:

We are a community training center in Las Vegas. We provided vocational training, employment, and therapeutic day training services to about 1,200 people last year. As of March, we are serving about 20 percent more people than we did this time last year, so we are going to see some dramatic growth this year.

To answer some of the questions that were asked earlier with the fingerprinting, it is paid for by the provider. Opportunity Village fingerprints every one of our staff people who have any interaction with the people that we serve. We also fingerprint a fair number of the volunteers. Some people volunteer to work directly with the clients and we fingerprint them. If it is a one-day event, and there is a large group coming in to paint the employment training center, we do not fingerprint those folks...

Chairwoman Smith:

And those are always supervised anyway, correct? They are not with your clients on their own?

Ed Guthrie:

Correct. They would never be alone with any of the clients. We also have volunteers from local high schools who are supervised, and we have nursing students coming in who are supervised as well. We do not necessarily fingerprint all of those folks, but anyone who volunteers on a regular basis is fingerprinted at Opportunity Village's expense, not at the state's expense.

In terms of the individuals who work for someone other than us, for example, if they work for Opportunity Village at Nellis Air Force Base doing food service, then all of our staff there are fingerprinted. If they were to work at Albertson's, Albertson's would not be required to get a certificate, nor would they have to get their staff fingerprinted. But if we were to provide a job coach for Albertson's so we could train the individuals to work there, that individual would be fingerprinted, and any job coach would need to have the certificate that Dr. Cook has talked about. So the individual who provides the support services needs to have the certificate and the fingerprinting, not necessarily the employer themselves.

Chairwoman Smith:

When we have a lot in statute now regarding oversight, and things such as fingerprinting, how have we not done this piece of legislation before? What prompted this now?

Harold Cook:

A lot of this is bringing the language in NRS in line with current federal law. It is not that we are not doing it. The fingerprinting has been going on, and Developmental Services has been engaged in certifying providers, but what we are trying to do right now is bring Nevada law into accord with federal law, and provide us with a stronger basis for doing what we are already doing.

Chairwoman Smith:

Are you going to charge a fee to cover your costs to do this?

Harold Cook:

No ma'am, we are not going to charge a fee. When the bill was originally written...

Chairwoman Smith:

I must be looking at your original fiscal note.

Harold Cook:

Right. This fee was inserted into the bill, not at our request, but it was inserted, and we amended that out.

Chairwoman Smith:

So there is no fiscal note?

Harold Cook:

No fiscal note at all.

Assemblywoman Pierce:

Are these jobs covered by minimum wage?

Ed Guthrie:

It depends on the jobs. All the jobs that are provided out in the community by Opportunity Village are all subject to minimum wage, and we pay minimum wage for everybody on those jobs. For individuals who are in the employment and training center who have very severe disabilities, the Legislature decided that those individuals are not really employees of Opportunity Village because we do not have the hiring and firing capability for those individuals. The Division places those individuals in our employment and training center and they can remove the individual. We do not have the ability to recruit them or replace them. Those individuals are not covered by the minimum wage.

Assemblywoman Pierce:

How is the compensation set? Who makes that decision?

Ed Guthrie:

Opportunity Village, under federal law, hires a person who is a labor rates specialist. We do time studies that are governed by the Fair Labor Standards Act (FLSA), and we set up piece rates for those individuals. All of the piece rates for those individuals exceed the minimum wage in the State of Nevada, but if the individual cannot perform at the productivity that is necessary, they get paid a rate based on whatever they have produced.

Assemblywoman Mastroluca:

I am looking at section 8 of the bill. It refers to the fact that "The Division may bring an action in the name of the State of Nevada..." and then section 8, subsection 2, says that "It is sufficient in such an action to allege that the defendant did, on a certain date and in a certain place, provide jobs and day training services without a certificate." Does that mean if I accuse Mr. Guthrie of doing this without a certificate, that is enough to say that he did it without a certificate, and action can be taken?

Harold Cook:

No, that would not be our procedure. If you were to accuse Mr. Guthrie of operating without a certificate, there would be a due process procedure where we would look into the allegation and follow up on it as part of an evidence-based decision process. We certainly would not take precipitous action based on an unfounded allegation.

Assemblywoman Mastroluca:

What would the consequence be?

Harold Cook:

It would depend on the circumstance. Certainly one consequence would be that we could remove all of the individuals receiving services from that provider.

Assemblywoman Mastroluca:

Is that in policy somewhere, or is it just implied?

Harold Cook:

It is implied. As result of this bill, we will be rewriting all of our regulations and that would be part of the regulations that we would be proposing in the near future.

Chairwoman Smith:

There are regulations set in this legislation, correct?

Harold Cook:

Yes. Originally we had written into the bill that all of the current regulations would be voided upon passage of the bill. We took that out, but we will still be rewriting regulations in the near future.

Chairwoman Smith:

Is there anything any of you would like to add?

Ed Guthrie:

I failed to say that Opportunity Village supports the bill as amended.

Chairwoman Smith:

Is there anyone else who would like to testify in support of this bill?

**Lisa Foster, Reno, Nevada, representing High Sierra Industries, Reno, Nevada;
Fallon Industries, Fallon, Nevada; Trinity Services, Reno, Nevada:**

We just wanted to be on record in support of this bill as amended.

Chairwoman Smith:

Is there anyone else who would like to testify in support? Seeing none, is there anyone who would like to testify in opposition or give neutral testimony on this bill? [There was no response.] With that, I will close the hearing on S.B. 78 (R1). Is there any public comment at this time? Do Committee members have anything to add? [There was no response.] Then we will stand adjourned [at 3:33 p.m.].

RESPECTFULLY SUBMITTED:

Chris Kanowitz
Committee Secretary

APPROVED BY:

Assemblywoman Debbie Smith, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: May 20, 2009

Time of Meeting: 3:13 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster