

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-fifth Session
May 1, 2009**

The Senate Committee on Commerce and Labor was called to order by Chair Maggie Carlton at 2:10 p.m. on Friday, May 1, 2009, 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 Maggie Carlton, Chair
Senator Michael A. Schneider, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Dean A. Rhoads
Senator Warren B. Hardy II

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Carpenter, Assembly District No. 33
Assemblywoman Kathy McClain, Assembly District No. 15
Assemblyman James Ohrenschall, Assembly District No. 12
Assemblywoman Melissa Woodbury, Assembly District No. 23

STAFF MEMBERS PRESENT:

Kelly S. Gregory, Committee Policy Analyst
Daniel Peinado, Committee Counsel
Suzanne Efford, Committee Secretary

OTHERS PRESENT:

Ronald B. Leaf, Ph.D., Codirector, Autism Partnership
Ralph Toddre, Commissioner, Nevada Commission on Autism Spectrum Disorders; Chairman, Nevada Autism Task Force
Jack Kim, Nevada Association of Health Plans
Bobbie Osborn
Robert Jarman
Nicole Kalkowski
Lorri Unumb, Senior Legal Counsel, Autism Speaks
Korri Ward
Thomas G. Chase, Chief Executive Office, Nevada Health Centers, Inc.
Carolyn Cramer, General Counsel, State Board of Pharmacy
Bjorn Selinder, Elko County; Churchill County; Eureka County
Jan M. Crandy, Commissioner, Nevada Commission on Autism Spectrum Disorders; Chair, Strategic Plan Accountability Committee
Megan Crandy
Michele Tombari
Alden Grant
Gary Lenkeit, Ph.D., Board of Psychological Examiners
Elizabeth Neighbors, Ph.D., Board of Psychological Examiners
Jan Marson
Helen Foley, Nevadans for Affordable Healthcare
Tray Abney, Reno/Sparks Chamber of Commerce; North Las Vegas Chamber of Commerce
Erin McMullen, Las Vegas Chamber of Commerce; Nevada Self-Insurers Association
Daniel Markels, National Federation of Independent Businesses
James Kaup, Secured Fibres
Ray Bacon, Nevada Manufacturers Association
Larry S. Harrison, Communications Chair, National Association of Health Underwriters
Nancyann Leeder, Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry
Bob Ostrovsky, Employers Insurance Group; Nevada Resort Association
Randy Waterman, Public Agency Compensation Trust
Wendy Simons
Rosemary Womack, Nevada Senior Corps Association
Bob Crowell, Las Vegas Institute for Advanced Dental Studies

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Philip Richards
Jeanette Belz, Nevada Dental Association
Kathleen Kelly, Executive Director, Board of Dental Examiners of Nevada
Gail J. Anderson, Administrator, Real Estate Division, Department of Business
and Industry

CHAIR CARLTON:
We will open this hearing with Assembly Bill (A.B.) 162.

ASSEMBLY BILL 162 (1st Reprint): Requires certain policies of health insurance and health care plans to provide coverage for screening for and treatment of autism. (BDR 57-44)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
The genesis of A.B.162 comes from my appointment to the Nevada Autism Task Force where I served with Senator Hardy. It was really an education. I learned a lot about the disease and a lot about the families struggling to get care for their children.

RONALD B. LEAF, PH.D. (Codirector, Autism Partnership):
I was an undergraduate therapist at the University of California, Los Angeles (UCLA) autism project. Eventually, I received my Ph.D. and became a faculty member at UCLA. Today I treat children, train professionals and provide support to parents across the world. The UCLA Young Autism Project was funded by the National Institute of Mental Health (NIMH). The NIMH wanted to determine the effectiveness of treatment of autism under best practice conditions.

In the 1970s, young children as well as adolescents and adults were sentenced to a life of institutionalization. The prognosis was bleak at best. Could more be done? Were there any treatments that could make a substantial difference? Fortunately, the children we treated did not read the research. Just as importantly, their parents were committed to the possible outcomes for their children and were unwilling to accept anything less. We all simply believed that children of all ages were incredibly capable and could make amazing progress.

With intensive treatment based on applied behavior analysis (ABA), children learned how to talk and play, developed critical social skills so they could develop meaningful and lifelong friendships. Children emerge from autism. Seventeen out of the nineteen children we treated no longer presented with the

symptoms or behaviors of autism spectrum disorders (ASD). This is not because of luck, maturation or because we employed a variety of intervention strategies. It was because the children received intensive and comprehensive intervention based upon ABA.

Applied behavior analysis is a psychological approach based upon the premise that children, adolescents and adults can learn complex skills and achieve a high quality of life. When asked what is ABA, I typically respond it is simply outstanding therapy. Excellent coaches, teachers and therapists use the principles of ABA without even knowing it sometimes. Components of ABA include having high expectations. Expectations are a self-fulfilling prophesy. If you believe children with autism have a limited capacity, most likely their progress will be limited because you will not provide the type of treatment and support that are necessary.

Applied behavior analysis includes providing good, powerful motivation for children to want to learn. Good ABA is highly systematic but natural to make learning fun. Good therapists break complex skills into teachable parts. Fifty years of research has repeatedly shown ABA to be extremely effective in the treatment of autism. But it is not a miracle cure, it is a marathon. It is not as simple as providing children intervention. It requires the proper intensity and the proper dosage. It is essential that interventionists have proper expertise that can only come from ongoing training and supervision.

We must recognize there are many variations within ABA, ranging from very rigid and dogmatic approaches to those that are very unsystematic and lackadaisical. Of course, this is all not possible without the proper funding. It is simply a tragedy that a child and their family's lives can be compromised because they cannot afford this life-altering treatment.

I am passionate about autism and ABA. I have seen children's, parents' and families' lives changed because of effective treatment. I have seen parents go from grieving and desperation to becoming elated with their child's future. I have watched children learning to communicate their needs and feelings and being able to say to their mommy and daddy, "I love you."

Watching children playing soccer and Little League, graduating from high school and college and hanging out with friends and getting married has been an incredible experience that I have been able to witness through my years.

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Children must receive this life-changing treatment so their dreams and their parents' dreams can become a reality.

RALPH TODDRE (Commissioner, Nevada Commission on Autism Spectrum Disorders; Chairman, Nevada Autism Task Force):
I have submitted written testimony in support of A.B. 162 ([Exhibit C](#)).

JACK KIM (Nevada Association of Health Plans):
I have a series of proposed amendments for this bill which I have provided to the Committee ([Exhibit D](#)). The amendments are technical amendments that everyone has agreed on.

This bill mandates coverage of ASD in the large-group market, the small-group market, for health maintenance organizations (HMO) and for managed care. There is a provision for individual coverage, which is optional. We mandate that coverage be offered to individuals. If they want the coverage, it will be provided, but they can also decline coverage. The reason we did it that way was because it may be an expensive mandate. There are groups that are not included in this bill, such as self-funded plans, Medicaid and the State and local governments. Medicaid and the State and local governments are not included due to the economic crisis.

CHAIR CARLTON:

Mr. Kim, in a number of instances I have noticed that when we have done these mandates, we get one group included and then they inspire other groups to offer the services. Have you found that to be true?

MR. KIM:

We have always tried to include everyone for public-policy reasons. On the self-funded side, the Employment Retirement Income Security Act (ERISA) plans and the Taft-Hartley trusts, there is public pressure to get them to cover these types of benefits to the same extent that they are covered by everyone else. This has been a sore spot for a number of people.

SENATOR HARDY:

I understand the argument regarding the State and local government and Medicaid. I absolutely do not understand the exclusion of ERISA and self-funded Taft-Hartley trusts.

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MR. KIM:

It is a federal law. They cannot be included.

CHAIR CARLTON:

It would have to be changed at the federal level.

SENATOR HARDY:

Are there any other mandated insurance benefits that we have at the State level that ERISA and the self-funded Taft-Hartley plans have picked up over time voluntarily?

MR. KIM:

I cannot answer that, but I think they have picked up a number of them over the years. Anecdotally, I hear that they try to mimic as much as possible, but it is up to the plan itself.

CHAIR CARLTON:

Senator Hardy, I will get a list put together for you.

SENATOR HARDY:

I would like to hear from them on their intent on this coverage.

CHAIR CARLTON:

We can ask them, in the future when we bring this up again, to put something on the record for you.

MR. KIM:

Coverage requirements have been an issue. In the original bill, coverage was extremely broad. It had no limits or caps. It also had issues with provider licensing which have been corrected.

Autism spectrum disorder is a medical condition and we are treating it as a medical condition. The current exclusions and co-pays that apply to any other medical condition would still apply to autism treatment. There is a cap of \$36,000 per year for ABA therapy, which is included in the bill. The coverage requirements are up to age 18, except if an individual is still in high school, then it is to age 21. There must be a treatment plan prescribed by a physician or licensed psychologist. The insured can ask for a copy of the treatment plan.

We made some technical changes to what is considered ABA treatment to ensure that licensed providers are providing the treatment. Currently, there are providers who are not licensed by anyone in the State. We had discussions with the Nevada State Psychological Association (NSPA) and the Board of Psychological Examiners to make sure that people who are providing treatment are licensed by the Psychology Board. We worked with the NSPA on a number of technical changes to this bill, which is incorporated in the amendments provided. They are happy with the changes.

The effective date of the bill is January 1, 2011. That is a little further out than typical mandates. We have been asked to develop the infrastructure on the treatment of autism. Since the providers are not licensed, they need to get licensed by the Psychology Board. We have a provision that states they will start getting licensed by January 1, 2010. The Psychology Board is going to have to write regulations regarding licensure. This date will also give the economy time to recover and there will be less of a financial impact.

SENATOR RHOADS:

What is the fiscal note on this bill?

MR. KIM:

There is no fiscal note because the State and local governments are not included.

CHAIR CARLTON:

The only concern I have is in the licensing provision. I am looking at the time frames. They seem to be really extended out. If this bill is passed, the Psychology Board will know as soon as it is passed that they will have to start drafting regulations. They will be licensing people. A whole year after the start of licensing, they can begin providing treatment. I am concerned that taking any extra time to provide treatment to a child means that every day they lose; they are being set back further than just that day. I need to be made more comfortable with the extension of time on this. We could do this a little bit earlier.

MR. KIM:

We have to develop a number of policies and procedures, including licensing, and work with providers before all of this happens. These providers who will end up in our networks will need to be instructed on how to bill. We do not

have diagnostic codes for them to submit. We have to develop infrastructure for the licensing and an infrastructure within the health plans to provide this service and make sure it runs smoothly. The last thing we want is to craft a bill like this and not have it work right on day one. It just makes sense to wait until 2011.

The autism people we talked to had some concerns about the extended time too, but they understand the structural aspect of it. We have to get the policies approved and we cannot start doing that until sometime in 2010. We have an entire process that we, as an industry, have to go through. We have to develop the infrastructure to provide this additional treatment.

CHAIR CARLTON:

Thank you for putting that on the record. It addresses the concerns that I heard and the concerns that I had. This is a much more complicated system than it looks from the surface.

What about the licensing aspect?

MR. KIM:

One thing that is not included in the bill is the fees for licensure. The autism people have been working with the Psychology Board to determine the amount of the fees. There are parts of the bill that would indicate they can start developing regulations as soon as this is passed. It is my understanding that the Psychology Board will have to work with the autism groups in order to develop regulations and make sure that licensing is appropriate. The only outstanding piece is licensing fees.

CHAIR CARLTON:

Assemblyman Ohrenschall, does this bill currently have a two-thirds majority vote notation?

ASSEMBLYMAN OHRENSCHALL:

I do not believe it does.

CHAIR CARLTON:

Do you realize that with the addition of a fee it will probably gain a two-thirds majority vote notation?

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ASSEMBLYMAN OHRENSCHALL:
I do realize that.

BOBBIE OSBORN:
I have submitted written testimony in support of A.B. 162 ([Exhibit E](#)).

ROBERT JARMAN:
I support A.B. 162 and have submitted written testimony for the record ([Exhibit F](#)).

NICOLE KALKOWSKI:
I am speaking today on behalf of my son Ryan and I have submitted written testimony in support of A.B. 162 ([Exhibit G](#)).

LORRI UNUMB (Senior Legal Counsel, Autism Speaks):
I have submitted written testimony in support of A.B. 162 ([Exhibit H](#)) and a binder ([Exhibit I](#), original is on file in the Research Library) containing graphs and other information on autism.

We are aware, in the autism community, that only a fraction of the children will receive treatment as a result of A.B. 162 becoming law. Self-insured plans have followed suit in other states and have offered the autism benefit. Just because you are only reaching a portion of the children needing treatment is no reason not to pass this bill.

KORRI WARD:
I have a 15-year-old son who was diagnosed with autism and I have submitted written testimony supporting A.B. 162 ([Exhibit J](#)).

CHAIR CARLTON:
I will suspend the hearing on A.B. 162 and open the hearing on A.B. 370.

[ASSEMBLY BILL 370 \(1st Reprint\)](#): Makes various changes to provisions governing pharmacies. (BDR 54-1014)

ASSEMBLYMAN JOHN C. CARPENTER (Assembly District No. 33):
I am presenting A.B. 370 which will enable the State Board of Pharmacy to promulgate regulations for the establishment of telepharmacies. Telepharmacies are located in a number of states. The basic premise of the telepharmacy is a

pharmacist can be at his main location with a pharmacy technician located at a satellite pharmacy. Through video technology, the pharmacist can give instructions, answer questions and otherwise conduct consultations with the customer in regard to the proper usage of the specific prescription.

The bill requires the satellite pharmacy to be at least 50 miles from the main pharmacy and caps the population of the satellite community at 2,000. There is a proposed "friendly" amendment to this bill which will be presented by Thomas G. Chase ([Exhibit K](#)).

THOMAS G. CHASE (Chief Executive Office, Nevada Health Centers, Inc.):
We are contemplating a telemedicine initiative in the Crescent Valley area. This would mean upgrading equipment to be able to provide telemedicine.

A telemedicine transaction in a community that does not have a pharmacy is equally compelling. We are looking to A.B. 370 as a possible method for us to find a way to provide prescriptive services that we would typically provide if the physician and dispensing technician were together. They are not together in a telemedicine situation. We are looking to this bill as to whether it would offer a resolution and it does with the types of amendments that we have offered, [Exhibit K](#). We would allow a physician to operate with a dispensing technician in a telemedicine transaction the same way they do in a transaction where the patient is right next to them.

CAROLYN CRAMER (General Counsel, State Board of Pharmacy):
The State Board of Pharmacy is here to support this as a "friendly" amendment, [Exhibit K](#). We have had a long-standing relationship with rural health services. At the last Pharmacy Board meeting, we were contemplating putting together a regulation to allow for this. The opportunity came forward through Assemblyman Carpenter's bill to put this in statute and make it more formal.

This is an amendment to give the Committee an idea of how we would envision this working. This would be analogous to the satellite pharmacy that was proposed which was to have the pharmacy technician at one location with the pharmacist at another in the pharmacy. The pharmacy technician would be acting as the hands, eyes and ears of the pharmacist. We are asking to amend this to allow for the dispensing practitioner to use the dispensing technician in the same manner.

Right now, the Pharmacy Board's regulation has the dispensing practitioner and the dispensing technician working together physically at the same site. We are asking to allow the use of technology to bridge the span between sites.

CHAIR CARLTON:

Would you please put the safeguards that are involved in this on the record? We want people to understand that there are checks and balances.

MS. CRAMER:

There is regulation-making authority with this. There will be training that will have to be done. There will have to be assurances that the drug supply is secure. There will not be diverted supply. We are concerned about how the locks will be operated. Will they be operated from the remote site so the practitioner will be the one who is physically responsible for opening it, not the technician? That is one of the things we are reviewing. The language has been kept open-ended because we do not really know what our rural neighbors need. What is feasible for each site will have to be dealt with by regulations.

CHAIR CARLTON:

As long as we know that it is being considered and reviewed, it gives the public a general sense of safety.

ASSEMBLYMAN CARPENTER:

This bill will help quite a few rural communities.

BJORN SELINDER (Elko County; Churchill County; Eureka County):

We support A.B. 370, including the proposed amendment. There are still some very remote places in Nevada. Thanks to the advent of improved technology, the people living in these places will now have improved access to medical care and pharmaceuticals.

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SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS AS
AMENDED A.B. 370.

SENATOR RHOADS SECONDED THE MOTION.

DANIEL PEINADO (Committee Counsel):
Staff has not had the opportunity to see the amendment. We did not receive a
copy.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:
We will resume the hearing on A.B. 162.

JAN M. CRANDY (Commissioner, Nevada Commission on Autism Spectrum
Disorders; Chair, Strategic Plan Accountability Committee):
I have submitted written testimony in support of A.B. 162 ([Exhibit L](#)) and a
binder of information, [Exhibit I](#).

MEGAN CRANDY:
I am providing written testimony in support of A.B. 162 ([Exhibit M](#)).

MICHELE TOMBARI:
I too support A.B. 162 and am submitting written testimony to that effect
([Exhibit N](#)).

ALDEN GRANT:
My written testimony has been submitted in support of A.B. 162 ([Exhibit O](#)).

GARY LENKEIT, PH.D. (Board of Psychological Examiners):
I am here to state our support for A.B. 162 and have submitted written
testimony to that effect ([Exhibit P](#)) and a proposed amendment ([Exhibit Q](#)).

ELIZABETH NEIGHBORS, PH.D. (Board of Psychological Examiners):
I would just reiterate what Dr. Lenkeit has said and underscore our support for
the bill with these minimal modifications.

CHAIR CARLTON:

We understand those amendments are being worked on. We will take care of that in work session.

JAN MARSON:

I generally support this bill, but I have a few concerns. I have submitted a literature review discussing evidence-based treatment ([Exhibit R](#), original is on file in the Research Library), which is also on a compact disc ([Exhibit S](#)). There are other methodologies that have been helpful and successful with children with autism. I am afraid that with this narrow focus on ABA, we are excluding other promising interventions. If children with autism could have some of the intensity of working with sensory integration and relationship-based therapies, they would do quite well.

Forty-seven percent of the children in the research with ABA have done very well. I am concerned about the other 53 percent. I would suggest amending this bill to be a little more inclusive.

The other concern I have is dictating the methodology. Methodology needs to be considered by the professionals. I have submitted the practice guidelines from the American Occupational Therapy Association (AOTA), [Exhibit R](#), which has the 2009 review of all of the evidence. The AOTA has said about evidence-based practice:

Using research evidence together with clinical knowledge and reasoning to make decisions about interventions that are effective for a specific client. An evidence-based perspective is based on the assumption that scientific evidence of the effectiveness of the intervention can be judged to be more or less strong and valid according to the hierarchy of research designs and assessment of quality research.

My other concern is about the licensing and supervision of behavior aides. We have been very successful using behavior aides but it requires a lot of supervision. If we have a commitment that insurance is going to reimburse for these people, maybe we should look at expanding to some of the other approaches that are very contemporary.

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CHAIR CARLTON:

Is it your testimony that you support the bill, but it does not go quite far enough and you still have some concerns to be addressed?

MS. MARSON:
Correct.

CHAIR CARLTON:

Do you realize that this is the first step towards anything like this?

MS. MARSON:

Right, that is why I came today. I have been supporting this from the beginning. I wanted to speak up now. There is so much going on right now with research. This bill needs to be broader and maybe Nevada can start with a proper foundation and really do something exciting. By getting these children early, we can change the trajectory of this disorder.

CHAIR CARLTON:

Did you testify in the Assembly Committee on Commerce and Labor?

MS. MARSON:
No, I did not.

HELEN FOLEY (Nevadans for Affordable Healthcare):

We support efforts to assist autistic children. We are very concerned about the equity of this legislation. We look with great interest at Ryan's Law in South Carolina which did include the state health plan and did not include the small employers.

We are concerned that, in Nevada, we have left out the Medicaid children, all state employees' children, all local government employees' children, all school district employees' children, all public employees' children, all union groups' children and all self-insured employer groups' children.

Those businesses that have between 2 and 50 employees in their organization will be financially impacted by this bill. I am afraid that people who fall in the 2 to 50 range are people whose employers are barely hanging onto their health insurance. Something like this might cause an employer to be unable to afford health insurance at all. That is our concern for small businesses.

TRAY ABNEY (Reno/Sparks Chamber of Commerce; North Las Vegas Chamber of Commerce):

Both the Reno/Sparks and North Las Vegas Chambers of Commerce have consistently opposed new insurance mandates because they threaten to drive up the costs of providing health-care coverage to employees. We are concerned that this bill does not include the majority of children with autism in Nevada and only small businesses will be forced to pick up the tab. This bill is discriminatory. If autism coverage is mandated, then all children in Nevada should be covered and all should pay. If government entities cannot afford this coverage, then why would we think that small businesses can?

ERIN MCMULLEN (Las Vegas Chamber of Commerce):

I am testifying on behalf of Veronica Meter who had to step away. The Las Vegas Chamber of Commerce understands and is mindful of the heartfelt challenges that parents of autistic children face every day. We do have concerns, in general, with health-care mandates, as they increase the costs of health insurance, making it even more difficult for employers to provide health care to their employees and their families.

As we understand it, this bill places the financial burden solely on employers. Some experts have indicated that this package could lead to a 5-percent increase in premiums which could result in less coverage and less benefits.

DANIEL MARKELS (National Federation of Independent Businesses):

Autism is a disease that needs to be treated, but this bill is not the way to accomplish this. The members of the National Federation of Independent Businesses (NFIB) have rated health-care affordability and accessibility as their number one problem and priority for the past 10 to 20 years. Benefit mandates, such as the ones proposed in A.B. 162, are a major factor that increases health-care costs. Increased costs can lead to more uninsured people. The NFIB supports consumer-driven health care because the flexibility allows consumers to tailor a plan that best fits their needs.

This bill will also bring in previously uninsured people into the insured market by making coverage more affordable. Small businesses are at the heart of the 47 million Americans that the United States Census Bureau estimates are without health care. Nearly 63 percent of all uninsured workers are either self-employed or working in private-sector firms with fewer than 100 employees.

The Kaiser Family Foundation found that, while 99 percent of large corporations provide health care to their employees, less than half of small businesses could afford to do so. Those small businesses that do provide insurance pay up to 18 percent more in health insurance premiums than the larger firms do for the same benefits.

While not the biggest players, states contribute to the problem of the medically uninsured and therefore can help with the solution. As the Council for Affordable Health Insurance put it in its report, "State Health Insurance Index 2006: A 50-State Comparison of the Nation's Health Insurance Market," "Surveys of the uninsured consistently show that the cost of health insurance is the primary reason for their being uninsured." The general public and the media are largely unaware that state legislatures have a significant impact on the cost of health insurance in the small group and individual health insurance markets. Because regulations vary from state to state, the cost of health insurance premiums can differ widely from state to state depending on where one lives. These regulations are referred to as legal requirements or mandates put on health insurers by states to cover certain procedures. Mandates are a major contributor to the increased cost of health care, and with each increase comes a new wave of the medically uninsured. Nevada has 52 such mandates which are more than 3 times the number of mandates in Idaho which has 15. Minnesota is the highest mandate state with 62.

The root cause of America's medically uninsured is the small business owner's inability to afford health care. Although well intentioned, A.B. 162 only exacerbates that problem by contributing to the increase of medical insurance. This bill is patently unfair to the small employer.

JAMES KAUP (Secured Fibres):

As a small business owner, I oppose this bill because of the funding factors which will fall on small businesses. I have a company with 32 employees. I currently pay for the health care of my employees. I do not pay 100 percent anymore. When it comes to insurance renewal time, we are going to have to look at this carefully to determine if we can afford to continue to provide this coverage. Less than 30 percent of the businesses will be required to support this coverage while the rest can pass on it. For this reason I am here to oppose this bill.

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RAY BACON (Nevada Manufacturers Association):

Earlier today you received some written input from us ([Exhibit T](#)), but I did not do a great job of crafting it because it is unclear. We are not saying that we believe there should not be medical coverage. What we are saying is that the biggest expense item is the ABA piece. We have information from one of the insurers in this State that their actuarial study just recently completed for Oklahoma estimates that premiums would go up 19 percent.

CHAIR CARLTON:

Do I have that information?

MR. BACON:

You do not have that piece because I did not have permission to pass it on.

CHAIR CARLTON:

You are putting it in testimony.

MR. BACON:

I can put it in testimony, but I cannot tell you who did the study.

CHAIR CARLTON:

Mr. Bacon, I do not think that is very fair to put something in testimony but not allow us to double-check the facts.

MR. BACON:

I will share it with you privately, but I do not have permission to give it out.

CHAIR CARLTON:

If you do not have permission, you do not have permission. That concerns me, Mr. Bacon. When we have things in testimony we are able to see them.

MR. BACON:

I sent back to get permission, but I did not get it back. I may have it tomorrow, but I do not have it today.

CHAIR CARLTON:

Then we should wait to put that on the record until you have permission to do it. Go ahead and proceed. You understand our predicament.

MR. BACON:

Clearly, there is a dispute on how much the cost is going to be. The issue that we brought forth on this in the Assembly is that this is partially an education issue. We understand the criteria with the Americans with Disabilities Act and how that makes it difficult to get there.

This is an opportunity to take a look at a charter school that would accept only medically designated autistic children. They would create programs that are run by a combination of nonprofits, parents and medical staff to do a broader program. This operation would be coming back to the Legislature for funding because it is not going to be funded with the Individuals with Disabilities Education Act (IDEA) money alone. It is going to be an expensive operation. This would provide coverage for all of the children, which is a huge step in the right direction.

This Body does not have the authority to touch the ERISA employers. If you make at least the ABA portion of the bill an education issue in conjunction with a medical issue, you would have the potential to get to the vast majority of children. This bill does not do that.

I ask that you look at this approach as a way to expand and take the most expensive piece, the ABA portion, away from the small employers and spread it across the entire taxpayer base.

I understand that the diagnosis, the medicine and the treatment program are still medical issues which could be covered by insurance. We do not oppose that, because that is not the expensive piece. The ABA is the expensive piece. There is a place for a properly run, change the rules education program which is what charter schools were created to do. There are charter schools around the Country that have focused on special needs, special education children. These schools are very successful but there are not very many that have focused on autism.

This was intended to be helpful, not an impediment. Because of the way this bill is structured, we are excluding a lot of children who need help. In most cases, we do not do an adequate job in our schools. This is a way to get away from the concept of institutionalizing. We need to get these children the focused help they need. These children need high quality, good programs for a limited period

with follow up beyond that. These children could be in the charter schools for 2 to 3 years to get focused and headed in the right direction.

I believe this has merit and is worth discussing. The start date of 2011 is not unreasonable. It will take that long to get charter schools created and functional.

CHAIR CARLTON:

Would your proposal start the charter school option at the ages of one or two with a preschool component? I would hate to lose a child because, under your proposal, they would not start until the age of five. That is a missed opportunity.

MR. BACON:

Under IDEA, the age goes down to four.

CHAIR CARLTON:

What about ages one to three?

MR. BACON:

That is the question and I do not have a good answer for that. From my understanding, typically these children are not diagnosed until age one or one and a half at the earliest. There is an early age issue that needs to be addressed. The difference between having a child never afforded the opportunity and being able to start getting those services at four years of age is a quantum leap in the right direction.

LARRY S. HARRISON (Communications Chair, National Association of Health Underwriters):

The National Association of Health Underwriters considers A.B. 162 a very good idea if we can agree that this is a public health problem which needs a public health solution. In Nevada this year I have seen, in my office as an insurance broker, a number of employers who are dropping their health insurance. Individuals have to let their health insurance lapse because of rate increases and the cost of health insurance. Health insurance is expensive because health care is expensive. Health care is expensive because there are a lot of redundancies and we do not have a lot of transparency with that.

This bill gives the small employer an unlevel playing field. The children of state employees, school district employees, federal employees, union employees, large self-funded employers and Medicaid recipients would not be covered under this bill. This is a problem. Small employers are having a hard time keeping their doors open.

With every mandate, we end up with more people uninsured and uninsurable. Nevada is right up there with the highest mandates among all of the states in the Country. The bill might be amended to read we "may" cover benefits as opposed to we "shall" cover benefits, which drives costs up.

We are excluding the large employers and putting the burden on the employers with 2 to 100 employees. These small employers are the backbone of America. These are the people who need to get a break. We need a fair playing field for all employers, for all citizens and for all children who are stricken with autism.

CHAIR CARLTON:

Assemblyman Ohrenschall has submitted an actuarial cost estimate report on A.B. 162 ([Exhibit U](#), original is on file in the Research Library) which was prepared by the actuarial firm of Oliver Wyman.

I also have some written testimony on A.B. 162 from individuals who, because of time constraints, were not able to testify in the hearing today ([Exhibit V](#)).

Seeing no further testimony, we will close the hearing on A.B. 162 and open the hearing on A. B. 24.

ASSEMBLY BILL 24 (1st Reprint): Revises provisions governing claims for compensation under industrial insurance. (BDR 53-423)

NANCYANN LEEDER (Nevada Attorney for Injured Workers, Office of the Nevada Attorney for Injured Workers, Department of Business and Industry):

This is the bill from the Office of the Nevada Attorney for Injured Workers. It arose because the attorneys of the Office determined that a change in the law would be appropriate.

In section 2, page 3, there is a change to the *Nevada Revised Statutes* (NRS) 616C.065 which would require an insurer who was ordered to make a

new determination on some issue by the appeals officer or a court to make that determination within 30 days. Thirty days is considered a reasonable time.

Our proposed changes to NRS 616C.090 in section 3, page 5, line 25 of the bill, say that the injured worker can request a change of physician within 90 days and that the change does not need the approval of the insurer. The insurer would have to keep track of this for purposes of knowing who is authorized. The proposed changes on page 6, section 3, subsection 4, state that after 90 days a change of physician may still be requested regardless of whether the physician had been chosen by the injured worker, the insurer or the third-party administrator. After 90 days, the insurer must approve or disapprove that requested change. If the request is denied, a reason must be given to the injured employee.

In section 4, page 7, line 15, there is a change to NRS 616C.230. This deals with the rules of evidence as applied to alcohol and drug testing and provision of evidence. That is because within the evidentiary code, which is chapter 50 of NRS, there are three different types of people who may be required to testify when the issue is alcohol or drug use. The current law only addresses one of those statutes. This change would address all three statutes. What it says is that regardless of which type of expert it is, each of the statutes deals with a different type of expert. Those statutes are NRS 50.310, NRS 50.315 and NRS 50.320. Each one of these deals with a different type of expert. Any one of those experts could provide evidence by means of affidavit as opposed to being there in person.

At page 8, section 5, there is a proposed change to NRS 616C.232. This is to restrict temporary total disability (TTD) denial only, resulting from a termination for misconduct. The reason for that is because it is the only benefit that is directly affected by misconduct. When there is a termination for misconduct, the employer would not return the person to work, and if the person is not working, then the person would qualify for TTD. That means that because a person is terminated for misconduct, that has no relevancy to the provision of medical treatment based upon an injury on the job, therefore the person would continue to get medical treatment even though they were not getting TTD.

Section 5.5, page 9, is a proposed change to NRS 616C.235. This change would require, in a claim closure letter, a statement to the injured worker that he is being considered for permanent partial disability (PPD) because his

physician thinks he may have a possibility of permanent impairment, or that he is not being considered for PPD because the physician does not believe there is any permanent impairment.

Section 9, page 11, is repealing NRS 616C.430. This statute is void because it deals with the reduction of workers' compensation, a State benefit, based upon receipt of or eligibility for a federal benefit of social security disability. It is void because the federal government said that if states wish to allow this type of an offset, they must pass a statute within a six-month period of time. Nevada did not pass the statute within the six-month period, therefore the federal government does not allow Nevada to offset workers' compensation by social security, but instead the federal government offsets social security by payment of workers' compensation. Repealing this statute, which is void and not enforceable, saves people from having to go through litigation proving that it is void and not enforceable. This bill is a subject of compromise and has been agreed to by labor, trial lawyers and insurers.

CHAIR CARLTON:

On page 5, you were talking about being able to change physicians in the first 90 days without the approval of the insurer. I am assuming that is for a physician as long as they are in network. Is that correct?

MS. LEEDER:
Yes it is.

CHAIR CARLTON:

After 90 days, it would be with approval. Would the physician still have to be within network or can it be out of network?

MS. LEEDER:
It would still be in network.

BOB OSTROVSKY (Employers Insurance Group; Nevada Resort Association):
We support all of the changes in A.B. 24. They are good and appropriate. I would like to advise the Committee that, in one section of this bill, there were further discussions going on in the Assembly relative to NRS 616C.232 dealing with TTD and misconduct. The discussions in the Assembly on A.B. 178 may be in conflict with this bill. If they are, it will be because the rules will be even further liberalized. I do not believe there is an issue and you could process this

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bill without any concerns. If a conflict amendment comes out, it would be easy to fix.

ASSEMBLY BILL 178: Makes various changes to provisions relating to industrial insurance. (BDR 53-221)

RANDY WATERMAN (Public Agency Compensation Trust):

I am here to lend our support to A.B. 24. I have submitted a minor technical correction to section 3, subsection 4, line 12 ([Exhibit W](#)), which inserts a couple of words to make it consistent with wording later on in the same paragraph. After the word "granted" it is suggested that the words "or denied" be inserted. That makes it less subject to interpretation.

CHAIR CARLTON:

Was that information shared with Ms. Leeder?

MR. WATERMAN:

I sent her a copy of the proposed amendment and talked with her extensively this morning. I also spoke with Assemblyman Conklin and he has no problems with it either.

MS. LEEDER:

It would say "approval of the insurer which must be granted" and then we are adding "or denied." Further down in the paragraph it speaks of what happens if there is a denial. It does not change the essence of the paragraph.

CHAIR CARLTON:

We will have the Legal Division review it.

ERIN McMULLEN (Nevada Self-Insurers Association):

We support the bill as amended.

CHAIR CARLTON:

If our staff is good with the proposed amendment, and we understand the intent of it and what the language should be, we do not have to bring it back to Committee as a "mock-up."

DANIEL PEINADO (Committee Counsel):

It looks fine.

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SENATOR RHOADS MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 24.

SENATOR COPENING SECONDED THE MOTION.

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

* * * * *

CHAIR CARLTON:
We will open the hearing on A.B. 176.

[ASSEMBLY BILL 176 \(1st Reprint\)](#): Revises provisions relating to administrators
of facilities for long-term care. (BDR 54-173)

ASSEMBLYWOMAN KATHY MCCLAIN (Assembly District No. 15):
Assembly Bill 176 was a request from the Nevada State Board of Examiners for
Administrators of Facilities for Long-Term Care, Department of Health and
Human Services.

WENDY SIMONS:
This bill is not controversial. Amendments were made in the Assembly.
Everyone seems very content with it. This is a housekeeping bill.

Sections 1 and 2 of the bill change the name of the Board to "Board of
Examiners for Long-Term Care Administrators" (BELTCA).

Section 3 increases the fines from \$5,000 to \$10,000 for each violation. This is
needed for the Board to be able to hold providers accountable and to be able to
have subpoena powers to bring people to the table at a higher accountability
level.

I have submitted written testimony ([Exhibit X](#)), which I am not going to read to
you, but just request that it be entered into the record.

CHAIR CARLTON:
Is the \$10,000 fine per incident or a total aggregated maximum?

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MS. SIMONS:
It is per incident.

ROSEMARY WOMACK (Nevada Senior Corps Association):
I support A.B. 176. The BELTCA, as a licensing division for long-term care administrators, needs to have a stronger position in dealing with administrator licensing. The goal is always to give seniors good care and keep them safe.

CHAIR CARLTON:
Committee, there are no proposed amendments.

SENATOR COPENING MOVED TO DO PASS A.B. 176.

SENATOR SCHNEIDER SECONDED THE MOTION.

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

CHAIR CARLTON:
We will move on to A.B. 314. Are you aware of the proposed amendment to this bill?

ASSEMBLY BILL 314 (1st Reprint): Makes various changes to provisions governing the practice of dentistry. (BDR 54-878)

ASSEMBLYWOMAN MELISSA WOODBURY (Assembly District No. 23):
Yes, I am aware of the amendment. Assembly Bill 314 will allow a person who has received a degree in dentistry from an accredited program to receive a limited license to supervise certain courses of continuing education involving live patients.

Prior to this Legislative Session, I had an opportunity to visit the Las Vegas Institute for Advanced Dental Studies, also known as LVI Global. I was very impressed with the state-of-the-art technology and facilities and was pleased to learn that nearly 9,000 dental professionals from around the world further their education at LVI Global each year.

Additionally, I found that the dental professionals, patients, families and industry partners contribute approximately \$7.4 million in non-gaming dollars to our economy each year.

CHAIR CARLTON:

Was there any opposition to this bill?

ASSEMBLYWOMAN WOODBURY:

We did work out an amendment from what was initially proposed. It was a very minor change.

BOB CROWELL (Las Vegas Institute for Advanced Dental Studies):

This bill allows a provider of post-graduate, continuing dental education to provide live-patient, dental education training. As originally drafted, this bill would allow a dentist to come in from another state and bring their own patient from that state into Las Vegas to participate in dental education under the supervision of staff at LVI Global.

The issue arose as to whether or not that dentist coming in for continuing education had to have a license or a limited license from the Board of Dental Examiners of Nevada. Since LVI Global is neither a dental school nor a dental practice, it falls in a gray area of the dental practice laws. LVI Global has been operating its business since 1994 under a consent stipulation with the Dental Board until a resolution can be reached either by statute or regulation.

This bill provides that the dentist who will supervise the treatment will be licensed and not the dentist who is coming in to provide the treatment. The dentist who is coming in must still bring his own patient, the treatment must be provided under a course of continuing education that is accredited by the Dental Board, it must be done in the facility, the patient must consent to the treatment and the supervising dentist must have a limited license from the Dental Board.

Section 1 of the bill provides for the licensing of the supervising dentist. The dentist may receive a limited license for one year if he is a graduate of a dental school or college accredited by the Commission on Dental Accreditation of the American Dental Association or its successor. The continuing education must take place at a facility registered with the Dental Board and only for the purpose of teaching an accredited course. The Dental Board will charge a fee of \$100 for the license which can be renewed annually.

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It also provides for the revocation of the limited license of the supervising dentist, if the supervising dentist loses his license to practice dentistry or is placed on probation.

Section 2, subsection 2, paragraph (f), provides that a dentist who comes in to participate in the continuing education course and provides live patient studies, in the registered facility only, does not have to be licensed in Nevada as long as he is operating under the supervision of a dentist who is licensed under section 1 of the bill.

CHAIR CARLTON:
Did the Dental Board want to put anything on the record?

MR. CROWELL:
I am authorized by the Dental Board to state they support this bill as drafted.

PHILIP RICHARDS:
I have submitted written testimony on A.B. 314 and a proposed amendment to the bill ([Exhibit Y](#)).

When I read through this bill, I did not see the provision we had given to Senator Lee. I do not know if it was added to this bill or if it is a matter for consideration by this Committee.

CHAIR CARLTON:
What happened is Assemblywoman Woodbury brought her bill from the Assembly. It was passed out of the Assembly and is now being presented to the Senate. Any additions, deletions or corrections to the bill will be done in this Committee. We will take this under discussion and we will decide whether to amend the bill and how to process it.

The exam was taken, there was a certification as a specialist, and because that certification happened after the five-year bell tolled, the Dental Board wanted the applicant to go back and retake the general dentistry exam even though they had passed a specialist certification. Do I understand that correctly?

MR. RICHARDS:
Basically, yes. If this would have happened within five years, we would not have known that this was a problem.

CHAIR CARLTON:

Did the Dental Board review the language in your proposed amendment?

MR. RICHARDS:

I did not personally do that. I have been working with Dr. Robert Talley who is president of the Nevada Dental Association (NDA). He is very much in support of the amendment. It is my understanding that he has presented the amendment to the Dental Board.

CHAIR CARLTON:

We will probably not process A.B. 314 today. To address your issue, there may be some better language that would include the most current certification that the dentist has gotten.

JEANETTE BELZ (Nevada Dental Association):

Yes, the amendment was reviewed and approved by the NDA.

KATHLEEN KELLY (Executive Director, Board of Dental Examiners of Nevada):

There was some discussion, but I have not seen the written language for this amendment. I was aware of some other discussion of language to close what appears to be a gap in the specialty statute provisions ([Exhibit Z](#)). Nevada had a credentialing provision that has been sunsetted. Provision for acceptance of the Western Regional Examining Board (WREB) was provided in law. It does have a five-year expiration to that provision under NRS 631.240.

For specialty licensing, there is a diplomat status or Dental Board certification requirement. There can be individuals who fall in this area who have not yet obtained their Dental Board certification and would not be eligible for the specialty license under that requirement. However, there was some language being discussed about closing that gap.

We have two specialty license statutes. One is NRS 631.250 for those who are already licensed, who go back to school and obtain their specialty. The other is NRS 631.255, a specialty credentialing statute that requires Dental Board certification. What it does not catch are the individuals in between, who may have completed dental school and taken a clinical exam, but did not apply for licensure by WREB, because it is only the WREB that the five-year expiration applies to. I would like to see the language of the amendment if that is permissible.

CHAIR CARLTON:

We will make sure that you get a copy of the language. I know where the gentleman is trying to go but there may be better language to address this issue. It makes sense that if someone has received this higher level of education and certification not to make them go back and take an exam they missed.

MR. RICHARDS:

In the endodontics association, when you graduate, you are not permitted to complete all of your board exams and become board certified. You complete your first exam out of four and you become board eligible. You are not permitted to address a board certification until you have completed three years of practice in the specialty of endodontics. That might be a piece of information that is important. I do not know if that is the way it is in other specialties.

A limited number of endodontists in Nevada are not board certified. There are 4 practicing board-certified endodontists out of 37 total in the State.

CHAIR CARLTON:

We will take that under advisement and we will work on this and make sure that Assemblywoman Woodbury is comfortable with the changes before we process the bill. Ms. Kelly would you please help us determine what language is needed to address these issues.

MS. KELLY:

There is an appropriate way to correct this in the two specialty statutes.

CHAIR CARLTON:

We will close the hearing on A.B. 314 and open the hearing on A.B. 71.

[ASSEMBLY BILL 71 \(1st Reprint\)](#): Authorizes the Real Estate Division of the Department of Business and Industry to keep confidential certain records and information obtained in regulating the sale of subdivided land. (BDR 10-431)

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

Assembly Bill 71 was requested by the Real Estate Division to place in chapter 119 of NRS, the same confidentiality language as the Division already has in other chapters of law under the Division's jurisdiction.

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Chapter 119 of NRS concerns the sale of subdivided land. The Real Estate Division issues a property report for the sale of subdivided land which is a disclosure document to make sure that the public has information about the property to make an informed decision. In addition to legal description, area of land, public utilities, availability of water, agricultural activity and mineral rights, the developer must also submit, as part of the application for review, proprietary business and financial information.

Assembly Bill 71 codifies that the Division may keep confidential, criminal background, financial records and proprietary business information of a licensee or an applicant for a license.

In Amendment No. 474 to A.B. 71, section 2 is only deleted from the amendment; it is not being rescinded from chapter 119 of NRS.

CHAIR CARLTON:
Would you please repeat that last section?

MS. ANDERSON:
Section 2 will not be in the amendment but NRS 119.265 does remain in the existing law. That is not being repealed from the law; this is just an editing mark in the amendment. It is removed from the bill but remains in the law.

CHAIR CARLTON:
With that, Committee, what is your pleasure?

SENATOR COPENING MOVED TO DO PASS A.B. 71.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARLTON:

Having no further testimony, this meeting of the Senate Committee on Commerce and Labor is adjourned at 5:01 p.m.

RESPECTFULLY SUBMITTED:

Suzanne Efford,
Committee Secretary

APPROVED BY:

Senator Maggie Carlton, Chair

DATE: _____