

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

**Seventy-Sixth Session
February 16, 2011**

The Committee on Health and Human Services was called to order by Chair April Mastroluca at 1:34 p.m. on Wednesday, February 16, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/76th2011/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 April Mastroluca, Chair
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Elliot T. Anderson
Assemblywoman Teresa Benitez-Thompson
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblywoman Lucy Flores
Assemblyman Jason Frierson
Assemblyman Pete Goicoechea
Assemblyman John Hambrick
Assemblyman Scott Hammond
Assemblyman Pete Livermore
Assemblyman Mark Sherwood
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22

STAFF MEMBERS PRESENT:

Paul V. Townsend, Legislative Auditor
Lee Pierson, Deputy Legislative Auditor
Allison Combs, Committee Policy Analyst
Kirsten Coulombe, Committee Policy Analyst
Risa Lang, Committee Legal Counsel
Linda Whimple, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Marla McDade Williams, Deputy Administrator, Health Division,
Department of Health and Human Services
Mary E. Wherry, R.N., M.S., Manager, Public Health and Clinical Services,
Health Division, Department of Health and Human Services
Joseph L. Pollock, R.E.H.S., Program Manager, Environmental Health
Services, Public Health and Clinical Services, Health Division,
Department of Health and Human Services
Jeff Fontaine, Executive Director, Nevada Association of Counties
Bill M. Welch, President/CEO, Nevada Hospital Association
Wendy Simons, Chief, Bureau of Health Care Quality and Compliance,
Health Division, Department of Health and Human Services
Sylvia Healy, Private Citizen, Las Vegas
John P. Healy, Private Citizen, Las Vegas
Renny Ashleman, representing Nevada Health Care Association
Larry Fry, Secretary, Northern Nevada Chapter, Coalition of Assisted
Residential Environments
Diana Roberts, Executive Director, The Arbors Memory Care
Emily Headley, R.D., Executive Director, Sierra Place Senior Living
Mireya Hartman, Administrator, Whispering Willows
Maureen Gresh, L.P.N., R.F.A., Assistant Administrator, The Arbors
Memory Care
Daniel Mathis, Chief Executive Officer, Nevada Health Care Association
Nancy Hunter, Administrator, Conestoga House, LLC
Allan Ward, Franchise Owner, Home Instead Senior Care

Tibi Ellis, representing Nevada Senior Advocates
Jacqui LaVoie, Owner/Administrator, La Casa de LaVoie, LLC

Chair Mastroluca:

[Roll was called.] All of the members of the Committee will be using their laptops a little bit more than they have in the past. We have a new system called the Nevada Electronic Legislative Information System (NELIS) and all of the documents and exhibits are available online. It is also available to the public. If you are listening in, you can access those documents. Please do not think Committee members are not paying attention if they are looking at their screens. They are following along, reading the bills on their computers.

We will go to Mr. Townsend for a report on the Health and Human Services audit.

Paul V. Townsend, Legislative Auditor:

Thank you for the opportunity to present our Audit Report on the Department of Health and Human Services, Health Division Inspection Programs. This audit was completed fairly early in the interim between Legislative sessions and it was issued in November 2009. It focused on the main inspection activities performed by the Division in the areas of health facilities, food establishments, school kitchens, and facilities using radioactive materials and X-ray machines. Because it was released a while ago it has gone through our audit follow-up process. At this time I am happy to say that all recommendations are fully implemented and we do recognize the efforts of the Health Division in doing so. There were 20 recommendations in the report and they focused on improving the inspection programs, and this included developing procedures and reports that would make it easier and more efficient to track those facilities that have not been inspected as they should. I would like to turn it over to Lee Pierson, who was the auditor in charge of this assignment and he can give you a presentation on the report.

Lee Pierson, Deputy Legislative Auditor:

I will begin my comments on page 7 of our Audit Report ([Exhibit C](#)). On page 7 we have some background information on the Health Division. Moving to page 8, the Division has three inspection programs: Licensure and Certification, Radiological Health, and Environmental Health Services.

Licensure and Certification licenses and inspects health care facilities including hospitals, nursing homes, drug and alcohol treatment facilities, and medical laboratories. Depending upon the type of facility, inspection frequency requirements range from one to six years. Additionally, Assembly Bill No. 123 of the 75th Session required additional inspections for some facilities.

The Radiological Health program licenses and inspects facilities using radioactive materials, certifies mammography machines, registers X-ray machines, and conducts inspections. Depending upon the type of radioactive material or machine, inspection frequency requirements range from one to five years.

Environmental Health Services permits and inspects food establishments and school kitchen facilities. Food establishments should be inspected annually and school kitchens twice each year.

The bottom of page 8 shows the number and type of inspections performed by the three inspection programs during (FY) 2008. Exhibit 1 on page 9 shows the staffing and expenditures by program during FY 2008. Page 10 lists the scope and objectives of our audit. In the last paragraph, our audit included a review of the Health Division's inspection processes and organizations subject to inspections as of November 2008. It also included FY 2008 performance measures and results. Our objectives were to determine if food establishments, school kitchens, health care, and other facilities were inspected and violations corrected in a timely manner, and to evaluate performance measures including the reliability of reported results.

Our findings and recommendations begin on page 11. We found weaknesses in the Division's inspection processes. Specifically, inspections were not performed timely and violations found during inspections were not corrected timely. These problems were caused by lack of controls, including systems to track inspections and violations, information to assist managers in supervising inspection activities, and written policies and procedures. As described near the bottom of page 11, Environmental Health Services did not inspect all food establishments annually as required by statute. We reviewed 100 permit files and found that 40 percent of required inspections were not performed timely during FY 2006 through FY 2008. Exhibit 2 on page 12 shows for the 100 files reviewed by fiscal year, the number of inspections required, the number not timely, and the percent not timely. Some food establishments were not inspected for several years. From our sample of 100 files we found 63 establishments were not inspected for at least one of the three fiscal years reviewed. Exhibit 3 shows the length of time between inspections for these 63 food establishments. We found that 24 of 63 food establishments had not been inspected for at least three years.

As you can see on page 13, school kitchens were not inspected twice each year as required. We selected a sample of 75 school kitchens and found that 32 percent of required inspections were not done timely during FY 2006 through FY 2008. Exhibit 4 shows the number of inspections required, number not timely, and percent not timely by fiscal year.

As described on page 14, we also found that Licensure and Certification did not inspect health care facilities timely. We reviewed 100 health care facility files and found that 56 percent of required inspections were not done timely. Exhibit 5 shows for the 100 files reviewed, the number and percentage not done timely for the most recent and immediate prior inspections. Our sample of 100 health care files also included 52 that were subject to annual inspections.

Exhibit 6 on page 15 shows that 53 of 100 inspections reviewed for these facilities were not done timely. On average, these 53 inspections were done 85 days or nearly three months late. Additionally, our sample included health care facilities subject to a 3-year inspection frequency. Exhibit 7 on page 16 shows that 37 of 59 inspections of facilities subject to a three-year inspection frequency were not done timely. These 37 inspections were on average done three years late. We also reviewed the timeliness for health care facility complaints and found that complaints were not always investigated and resolved timely. We found that 13 of 35 complaint files reviewed from FY 2008 were not investigated timely.

Exhibit 8 on page 17 shows a total of 35 complaints reviewed by type of complaint with "immediate jeopardy" being the most serious. This exhibit also shows that all "immediate jeopardy" complaints were investigated timely, however, "non-immediate jeopardy" complaints were not always investigated timely.

As reported on the top of page 18, we also found that after completing the complaint investigation, Licensure and Certification did not always provide facilities with a letter showing the results of the investigation timely. Licensure and Certification refers to this letter as a Statement of Deficiencies (SOD). Division policy requires that an SOD be sent to the facility within ten working days after the investigation. Exhibit 9 shows for the 39 complaints reviewed, the SOD was not sent timely for 26 of those complaints. On average it took 28 days to send the SOD after the complaint investigation was completed.

The top of page 19 addresses X-ray machine inspections. Although our testing revealed that Radiological Health inspected radioactive material users and mammography equipment, X-ray machines were not always inspected timely. We selected 50 X-ray machines for review and found 32 were not done timely. These included 18 machines where the initial inspections were not done timely and 14 where required periodic inspections were not timely.

Exhibit 10 shows the number and percentage of inspections not timely and the range in the number of months or years inspections were late. On page 20, you can see that violations were not corrected timely. We found the Division did

not always follow up timely to ensure violations found during food establishment and health care facility inspections were corrected. In some cases files lacked documentation indicating violations were corrected before the next inspection. In other cases, staff could not provide documentation showing violations were corrected. In addition, in some cases the same violations were found on subsequent inspections. The last paragraph of page 20 states that from our sample of 100 food establishment files reviewed for inspection timeliness, we identified 31 inspections with critical violations; 25 of the 31 lacked documentation showing that staff followed up to ensure violations were corrected. Exhibit 11 on page 21 shows the average number of days and the range in days between these 25 inspections. The exhibit shows that 13 inspection files lacked documentation indicating that violations had been corrected and 12 indicated that violations had not been corrected timely.

On page 22, violations found during health care facility inspections were not always corrected timely. From our sample of 100 health care facilities discussed previously, we found 25 with violations; 20 of 25 lacked documentation indicating that violations found during inspections were corrected timely. Exhibit 12 shows the number of days it took to correct violations including the average number of days it took Licensure and Certification to provide the facility with an SOD and for the facility to provide a plan of corrective action to resolve the violations. The exhibit shows that for ten inspections, files lacked documentation indicating that action had been taken to correct violations. In ten other cases, the action taken to correct violations was not timely.

On page 23 we report that we found three primary factors that contributed to inspection weaknesses. First, inspection programs lacked adequate policies and procedures to guide staff and help ensure inspections were done timely and violations corrected. Additionally, policies and procedures did not always include a written priority to ensure that facilities with the greatest risk to public health were inspected first.

A second factor, described on page 25 was the lack of management information. Inspection programs in most cases did not generate periodic reports including information on the number of inspections completed, number completed timely, or if violations were corrected. As a result, managers lacked sufficient information to effectively monitor inspection activities.

A third contributing factor to untimely inspections was staffing issues, as described at the bottom of page 26. Environmental Health was unable to fill all inspector positions due to budget cuts. Radiological Health management reported they had difficulty attracting qualified applicants and some positions

remained vacant until early 2009. Additionally, the Division requested and the 2009 Legislature approved 12 new positions to increase the number of health care facility inspections performed.

Beginning on page 27 and continuing on pages 28 and 29, we have recommendations to address improving the inspection process. On page 29 we report that performance measures can be improved, specifically the actual results for several measures in the 2009-2011 *Executive Budget* were not reliable because the Division could not provide documentation supporting reported numbers. Additionally, the numbers in the *Executive Budget* were different than those later provided to us.

Moving to page 32, you will see our recommendation for the Division to take some additional steps to improve performance measures. We found most performance measures tracked the number of inspections done rather than the percentage of required inspections completed. Additionally, Division performance measures did not track whether violations found during inspections were corrected timely. Page 33 has four recommendations on performance measures. Definitions of selected health care facilities begin on page 38. The agency's response begins on page 40 and the Division accepted all 20 recommendations. Madam Chair, that concludes my presentation.

Chair Mastroluca:

Thank you very much. Have you received the action plan for correction action?

Paul Townsend:

It has been a fairly elaborate follow-up process wherein 60 days after the Audit Report is presented, they are required to do a corrective action plan, which they did. Six months after that the Department of Administration, through its Division of Internal Audits, actually goes out and reviews the status of the recommendations and they prepare a written report to us which we then take to the Audit Subcommittee of the Legislative Commission. All that process has taken place and that is how we are able to determine sufficient action has been taken on the 20 recommendations.

Assemblywoman Flores:

I am actually a little disturbed by this. What is going on with the untimeliness of everything? I know there are some recommendations in order to address all of this, and I would imagine there are already some policies or regulations in place that say you have to do these at the required time. What would be different about the recommendations that you are proposing in terms of addressing these deficiencies? What is the difference between the recommendations and what is currently being done?

Paul Townsend:

At the time of the audit, some of the policies and procedures were outdated and they had inadequate information systems to properly track what was going on. In some cases, as a result of the recommendations, they implemented a database containing all of the facilities, so they can produce a report that will tell them when an inspection is due and if it has not been completed. Whereas at the time of our audit, those reports were not as accurate and in some cases facilities went 13 years without being inspected. Our hope would be that those reports would help to improve on that.

Assemblyman Brooks:

What is the average cost of an inspection?

Lee Pierson:

I think that would be a question for the Division. It is going to vary depending upon whether it is through the establishment or they are inspecting a hospital or they are going in to do a dental office X-ray machine, so it could vary quite a bit.

Assemblyman Brooks:

How would we be able to get that information, because I think that would be particularly important.

Chair Mastroluca:

Mr. Brooks, I am going to ask Ms. McDade Williams to come up and we will talk about that part.

Assemblyman Hambrick:

I realize when you go in for an audit, you have your audit plan already set. As we go forward with the budget reductions from the last session and apparently the looming personnel reductions coming forward, how will you balance what is in the statutes compared to what the agencies you are going to audit and how they react? At some point there is going to be a mismatch. I am sure you are fully aware of that. Do you have any type of a plan to look at it and realize that some of the agencies that you are about to inspect are going to have statutory requirements that through no fault of their own they cannot meet?

Paul Townsend:

As we go into an audit we do a preliminary survey and custom fit our audit outlines for what we will be looking at. We do a risk assessment to determine the most important areas to look at. I believe in areas of public health or where there are firm statutory requirements, we will still examine those areas and

report to the Legislature on what is happening there. There could be effective budget cuts that you would need to be made aware of.

Assemblyman Livermore:

What inspection material does an inspector use? Is it high technology or is it still pencil and paper? What are they using?

Lee Pierson:

During our audit, the Environmental Health inspectors were still using pencil and paper but towards the end of our audit they purchased a small laptop computer which allowed them to go out and record findings and print out a report for the facility they were inspecting. I know that in going out with the Radiological Health people that they actually did have laptops at that time. Environmental Health and Radiological Health were in the early stages of improving their databases and their abilities. They have since had some time to do that.

Assemblyman Livermore:

I used to be in the food service business and health inspectors used to show up for an inspection and they sat down with me for a plan of correction. That plan of correction was noted on the document that was produced on a computer and a printer and they had to sign it and it had some return dates. I do not see anything in the audit to make sure that the agencies are upgrading to those kinds of capabilities.

Lee Pierson:

I did go out on some inspections and they actually did sit down with the manager and go through and gave them a copy of the report at that time. What we found in some cases where there were significant problems we did not see that there was a follow up done to address that and in some cases we saw why pursuant to statute all food establishments should be inspected at least once annually and we saw some of those were not being done.

Assemblywoman Benitez-Thompson:

Is there a plan to go back to look at how the Division follows up on the recommendations? Now that we have a baseline established on how these investigations are going, would you have a scheduled time to go back and see if indeed the recommendations are in place and are working?

Paul Townsend:

The audit follow-up process does incorporate the Division of Internal Audits from the Executive Branch, and they prepare the report and actually do some testing on it. We do rely on it until the next time we do an audit. Our average range on audits is probably four to eight years, but I anticipate doing the

Health Division inspections again in 2013, so that would probably be the next time we looked at it. We did notice that there is a fairly comprehensive review by the Division of Internal Audits and we can always request reports from the Health Division at any time. I am sure they are happy to provide them as well as review their procedures.

Chair Mastroluca:

Thank you very much for your report, gentlemen. We appreciate the time.

If no one else has any questions for the auditors, I am going to ask Ms. McDade Williams to come up and talk about the Health Division and their role in this.

Marla McDade Williams, Deputy Administrator, Health Division, Department of Health and Human Services:

Do you want me to respond to select questions?

Chair Mastroluca:

I have a question and then we will have Assemblyman Brooks repeat his question.

We just went through the discussion regarding raising the inspection fees. Would you talk about what impact that will have going forward on these types of inspections? Will it improve quality?

Marla McDade Williams:

As you know, the fees were last increased in 2003. There was a relationship between the fees and the work done in facilities. What was found in 2008 was that there was a priority of work driven by the Centers for Medicare & Medicaid Services (CMS), primarily for medical facilities that focused on skilled nursing facilities and group homes that we license and regulate. So although we were collecting the fees, there was not a correlation in terms of actually going out and doing inspections because of the priority of the CMS at the time. Since then we have recognized that fact and have started going into the facilities. The first thing we did was ensure that complaint investigations were done in a timely fashion. So there is a triage for complaint investigations, as they noted, "immediate jeopardy" complaints were always a priority. Then as you go down the line, some complaint investigations prior to 2008 were made a lower priority and might have been looked at the following year. We have lined all of that out. We are on an 18-month periodicity now based on the final budget approved by the Legislature in 2009 for the agency. We have taken that as a clear mandate that we will get into all facilities every 18 months and we are doing that to the best of our ability.

The fees were designed to help us pay for additional staff, but not all of the facilities realized the fee increase when we went through the revisions, and we ran into some problems with getting those fees implemented. Right now we have some vacancies that need to be filled and we will be figuring out how we can continue to do the work we are required to do given some of the challenges that we are facing. We are back in sync and hiring people again. The bottom line is that we are getting into facilities and the work is making a difference. There are a lot of other things that are making a difference in terms of the quality of care provided in facilities. I believe we talk about some of those in a paper that we are producing for the Health Facilities section. Environmental Health Services is completely on target with doing all of their work and the database with the electronic system of inspection that they talk about is really assisting in those efforts. Radiation Control is relatively fully staffed and doing the work that it is supposed to be doing.

Chair Mastroluca:

Assemblyman Brooks, will you please repeat your question?

Assemblyman Brooks:

How much does it cost to do an inspection at these different facilities? What is the approximate cost?

Marla McDade Williams:

The fees that we charge are based on the number of hours it takes to do an inspection. We have three different areas. Is there any particular area you are interested in? I have the health facility fees with me . . .

Assemblyman Brooks:

Start with that one.

Marla McDade Williams:

The renewal fee for a nursing home is \$1,126. With this particular facility type, because it is one of those priorities for the CMS, we get funding from them to inspect a nursing home every year. The fee that you see includes a 15 percent match that the State of Nevada is required to give to CMS for accepting the money that we get from CMS, and it also includes the costs of complaint investigations if the fees from CMS do not cover that workload. So a lot of times it is not going to cover some of the lower level complaints in those facility types. That is why that facility type has that particular rate. Hospitals in the state are going to pay an annual renewal fee of \$7,303 at \$55 per bed. A group home in the state is going to pay \$1,193 at \$35 per bed. All of the different fees are based on the time and effort it takes to inspect a particular industry for health facilities.

Chair Mastroluca:

If any members would like to have information on the other facilities, would they be able to contact you and get that information?

Marla McDade Williams:

Yes, we would be happy to provide it.

Assemblyman Hammond:

I would like to know how much the other facilities are charged for the fees. As a school teacher, I was wondering about the schools and the cafeterias themselves. Is it a flat fee that you get from the school districts or is it based on schools?

Marla McDade Williams:

I am going to have Mary Wherry and Joe Pollock, who handle that section, address the issue.

Mary E. Wherry, R.N., M.S., Manager, Public Health and Clinical Services, Health Division, Department of Health and Human Services:

We try to anticipate what kinds of questions people may have for us over time, so we put together a spreadsheet that reflects what the fees would be if we were to become 100 percent fee-funded. Right now we are funded from the General Fund and fees. We can share that spreadsheet if you want. We have many different types of establishments. We have food establishments, septic, bottled water, and label reviews. We oversee a number of environmental inspections and we have priced them out per type of inspection that we do. If that is something you are interested in, we can certainly provide that to you. Specific to the schools, I think Joe could give you a better sense of how much time it takes to do a school inspection because there are two components to that.

Joseph L. Pollock, R.E.H.S., Program Manager, Environmental Health Services, Public Health and Clinical Services, Health Division, Department of Health and Human Services:

We do not charge fees to inspect the nonkitchen facilities. We do charge the schools that serve food a standard food establishment permit of \$200. We are mandated to do two inspections per year, one per semester, on the facility itself and on the kitchen. I am happy to say that for FY 2010 we were 100 percent compliant with that mandate and we are on track to keep it that way.

Assemblywoman Benitez-Thompson:

I spend quite a bit of time in skilled nursing homes and there are some facilities that I really enjoy and there are some facilities that I always wonder about the

level of oversight. Right now the plan would be—once you are in compliance with your own procedures and policies—you are inspecting the skilled nursing facilities and group homes and such every 18 months. Is that right?

Marla McDade Williams:

We are in skilled nursing facilities every year. We are mandated to inspect them on average every 12 months. There is a statutory mandate to inspect group homes every 12 months. We also inspect the ambulatory surgery centers as well as the new permanent facilities—the office-based facilities where they administer anesthesia—every year. Everyone else is on the 18-month schedule.

Assemblywoman Benitez-Thompson:

So those inspections are happening? You are in compliance with those inspections?

Marla McDade Williams:

Yes.

Chair Mastroluca:

Are there more questions?

Assemblyman Carrillo:

Is there a difference between an inspection and an investigation?

Marla McDade Williams:

Generally we say an inspection is something that we do on a routine basis. When we get a complaint we are generally classifying that as an investigation. We are trying to determine whether or not there is merit to the complaint, so we call that an investigation.

Assemblyman Carrillo:

I know that on another bill we had heard—and it may not be related to this whatsoever, I guess they are wanting to recoup the losses on an investigation—but yet you gave us a chart, for instance, a facility is charged \$1,193 per investigation plus \$35 a bed. Are they two different things?

Marla McDade Williams:

I believe they are two different things. What I quoted today is the annual fee that facilities pay for us to go in and do their inspection. We recently enacted regulations that allow us to bill any facility that has a substantiated complaint. So if they have a substantiated complaint, we are going to bill them a per-hour fee for our investigation. Prior to that regulation, our fees were based on the total number of hours to go into a facility. That included unsubstantiated

complaint investigations as well as substantiated complaint investigations. You could have one facility where we may have spent 500 hours and another facility where we may only be spending 40 hours. Everyone was paying for that 500 hours spent in that facility. So now that we are going to back out those substantiated complaints and bill for them, the industries will realize lower renewal fees. They are two different things.

Assemblywoman Pierce:

This is not really a question; it is an opportunity for me to say my favorite thing, which is that if Nevada had the size in government today that it had in 1978, we would have to hire 44,000 government workers. I just want to point out that every single year for 30 years we have made government smaller and smaller and smaller and I am guilty of this, true. Every single biennium I come up with wonderful ideas about giving you more stuff to do. I appreciate how much you do manage to hit the mark on this. You said something about moving towards making this fee-based and to me that is something we as a Legislature need to discuss because I think that is a whole other way of looking at it.

Chair Mastroluca:

Thank you very much for your time. I appreciate it. Thank you for the great questions, Committee. I appreciate you being engaged.

We are going to open the hearing on Assembly Bill 36.

Assembly Bill 36: Makes various changes concerning the Fund for Hospital Care to Indigent Persons. (BDR 38-282)

Jeff Fontaine, Executive Director, Nevada Association of Counties:

On behalf of the Nevada Association of Counties (NACO), thank you for the opportunity to present A.B. 36 to your Committee this afternoon. Assembly Bill 36 makes changes to the Board of Trustees for the Fund for Hospital Care to Indigent Persons. We have also offered an amendment (Exhibit D) which I believe you have and I will explain in just a minute. The Fund, which is also known as the Indigent Accident Fund or Supplemental Fund—I am sure you have heard about it—but I want to spend a minute to give you a little bit of history about the Fund.

Pursuant to *Nevada Revised Statutes* (NRS) 428.010, counties are the safety net for the medically indigent. Over 20 years ago, the counties asked for the authority to levy a property tax of 1.5 cents per \$100 of assessed value for the account, which is called the Indigent Accident Account, and then another 1 cent of property tax for what is called Supplemental Account for Medical Assistance to Indigent Persons. The total 2.5 cents of property tax is levied in

all 17 counties. It flows into the Fund, and on an annual basis the revenue into that Fund averages somewhere between \$20 million and \$25 million. So the Fund is really kind of an insurance policy. It protects counties against catastrophic claims related to the medical treatment of indigent persons and it is also important to help hospitals as well. It is the payor of last resort and prior to the funding in place, there were all kinds of problems and apparently lawsuits between hospitals and counties to try to figure out how to pay for the treatment of the medically indigent. Now with the Fund in place, once those claims are paid from the funded counties, the counties are determined to have met their statutory obligations.

Nevada Association of Counties has a contract with the state and we have had a contract since the inception of the Fund to process the claims and we staff the Board of Trustees, which administers the Fund. We are currently required to have five county commissioners on that board and pursuant to the current statute, NACO submits a list of ten nominees to the Governor who then selects five members to that board. The Fund has been swept for the past three years to help balance the state's budget, but we have been asked to continue to process claims so that in the event that there are funds in excess of what has been swept, we can pay those claims, and that was the case the last couple of years. There was a little bit of money left for us to pay some claims.

In addition, the statute requires counties to pay the first \$3,000 for the hospital care for indigent persons who are injured in motor vehicle accidents. So this \$3,000 is essentially a deductible per claim that counties pay. That money also goes into the Fund once the claim is approved. What A.B. 36 would do is to require that the \$3,000 deductible per claim, paid by the counties, to go into a special account within the Fund.

In our original bill our intent was to use a portion of those funds to help pay for our costs to administer the program. We would go to NACO for those administrative costs and then the remainder to the hospitals. Our amendment simply deletes the provision that allocates the funds to NACO and the reason we are doing that is because the Governor has included those administrative costs in his recommended budget. With this amendment the money would then be allocated directly to hospitals on a pro rata basis.

The second part of the bill proposes to change the makeup of the board and how it is appointed. It essentially reduces the number of nominees that NACO must send to the Governor for appointment and also allows one of the board members to be a county social services director and we feel that the current process in submitting ten names of county commissioners for one-year appointments is pretty cumbersome and we would like to be able to get those

board members appointed and seated on the board as quickly as possible. We are asking for some changes there. The other change we would like to see is to add, at the discretion of the Governor, a social services director to the board for the Fund and we feel that is good policy. Social services directors at the county level are very knowledgeable about the program and how these things work. I am advised that Washoe County has asked for us to consider an amendment that would allow a social services director or his or her designee. We do that as a friendly amendment and are amiable to such. That is the conclusion of my testimony and I would be happy to answer any questions.

Chair Mastroluca:

How often does this board meet?

Jeff Fontaine:

The board would typically meet at least two times a year; however, in the past couple of years they have met less frequently—I think we have only met once a year to actually process claims—and the reason for that is because the Fund has been swept and we do not really know if there is any funding available in the Fund until the end of the year. However, there may be special occasions for other purposes, for example, we did amend the regulations this past year so there were some meetings to talk about that. Typically, to process claims, it would be once or twice a year.

Chair Mastroluca:

Are the meetings face to face? Are travel costs included in the administration fee?

Jeff Fontaine:

In the past we have typically held one of the meetings in conjunction with our NACO annual conference and then another meeting at a separate time. Most of the meetings are held via conference call. It depends on where the actual board members are from. If they are local they may actually appear at the meeting place, or they will call in.

Assemblyman Anderson:

I like your change to add the social services director to the board. I think that is good policy. I think they take their jobs seriously and are really dedicated. I know that in Clark County, Ms. McClain does amazing work especially with what she has been dealt. I like that change and think it is a good concept.

Chair Mastroluca:

We will miss Ms. McClain since she has just retired or is just about to retire. She has done some amazing work in Clark County.

Assemblyman Goicoechea:

As I look at the text of the bill, you still have the ability to employ people and pay insurance out of the Fund, but the bottom line is if the Fund has been swept, where are we at?

Jeff Fontaine:

Over the last two years there were some funds available to pay claims. I do not have the exact figures in front of me, but at least in the Indigent Accident Fund account we were able to pay maybe 15 to 17 cents on the dollar for claims, so that is important. Even if it is a few million dollars it is certainly helpful to the hospitals. The other portion is to continue to process claims because of the liability issues. Again, the counties are still required by statute to pay the \$3,000 deductible and all the liability issues. We wanted to make sure that we were following through on that process. The third piece of this is to continue documentation of those costs to hospitals and to counties.

Assemblyman Goicoechea:

As I look at the text of the bill, clearly it will establish a separate account with this new language, correct?

Jeff Fontaine:

It would establish a separate account and quite frankly our intent in doing so is to try to protect those funds from being swept. But the Legislature, all of you, may decide that that is something that you want to sweep in the end anyway. At least we are trying to establish a separate account to show that these funds are actually county dollars as opposed to the tax dollars that are flowing into the fund.

Assemblyman Livermore:

When you talk about administrative costs, will that be a standard cost applied to all claims or will it be dependent upon how many claims you review in a given time? How will you separate and define that?

Jeff Fontaine:

It is a great question. I know that it is something that we have been asked to provide information about at the Interim Finance Committee. The administration of the program is not simply processing claims. That is standard procedure. The bulk of the time, quite frankly, and my time personally, is dealing with questions about the program and sorting out issues. We had one case where we paid a claim many years ago, the individual was declared indigent, subsequently settled—it was a hit and run driver that injured this person—they found the driver of the vehicle that injured this person. There were lawsuits, they finally got to a point where they were going to settle, they had to call us

up and figure out what the state is willing to get involved with in terms of the settlement, dealing with attorneys, hospitals, and the county. That took up tens of hours of my time personally. I think that there is a certain set amount that we need to actually process the claims but it really goes beyond just that.

Chair Mastroluca:

As the bill is written now, the Governor would decide whether or not the board would include a director of a social service agency and he could also choose not to include that person. Is there a reason why the board should not always include a director of a social service agency?

Jeff Fontaine:

I think it probably should include a social services agency director in my opinion, or his or her designee.

Chair Mastroluca:

Maybe when you get around to writing that amendment you can add that piece.

Assemblyman Sherwood:

Just as you were talking about lawsuits against this Fund, it would seem to me that this is being treated like a regular insurance company and so an attorney could file a claim against this Fund that is for indigents and then we waste money on a lawsuit? Is there any way that we could make it so the money goes towards indigents and not to what you just described?

Jeff Fontaine:

I misspoke. What I intended to say was the lawsuits were really between the parties that we paid claims to but we still had an interest in the outcome of those lawsuits. I am not aware of any lawsuits or actions taken against the Fund itself. It is just that we had a vested interest in the outcome of this lawsuit.

Chair Mastroluca:

Are there any other questions of Mr. Fontaine? [There was no response.]

Is there anyone in Carson City that would like to speak in support of A.B. 36?

Bill M. Welch, President/CEO, Nevada Hospital Association:

I would like to speak in support of Assembly Bill 36. We think it is important that the NACO organization can simplify the process of appointing their boards. I know that over the last several years there have been several times there have been vacancies and since they have only met twice a year when the time comes up for those meetings to be held, if there are vacancies and they do not have

sufficient representation to be able to hold the meeting, we could be waiting a long period of time.

The other thing that is very important that this board is in place is because as Mr. Fontaine pointed out, it is important for us to keep track of what is happening with these individuals who these funds were created to support. These are individuals who have catastrophic medical conditions, whether it is a result of an accident or an illness, and these funds were generated for the purpose of paying for those claims. Our concern has been if we did not continue to track these claims, at some point down into the future we could forget the original purpose of this Fund. So we still think it is very important that these claims still be processed and that there continues to be a record of the individuals who should have been served by these funds.

We appreciate their friendly amendment. While it is not much, the funds should be generating generally between \$20 million and \$25 million. It has been swept since 2008 as a result of special session action at that time. Whether it is \$250,000 or \$200,000 it is nice to say that some recognition of those claims is still being considered in the bill. We support the bill and would appreciate your support of it. I will be happy to answer questions.

Assemblyman Sherwood:

I would be remiss if I did not ask the administration of the Fund about how the board members are remunerated?

Bill Welch:

I think that would be a question that Mr. Fontaine should answer. That \$60,000 or whatever the amount would be that they would be offset for their costs. I believe it is mostly for the administrative cost within their organization. It is not just the filing of a simple claim. We do not give NACO a bill and then they look at it and see that it is processed. There are many steps that the hospitals have to go through before a claim ever becomes eligible to be considered by this Fund. Nevada Association of Counties' responsibility is to ensure that the bill is an accurate bill and that all of the steps have been followed by the hospital before that claim is ever submitted. We have to look for all kinds of other payment sources, other support for these individuals, before we can ever bring these claims, and we have to be able to demonstrate that has happened. They have to validate that. I do not believe that any of the administrative costs go to compensate the board members or any of the costs associated with that. I think this is strictly administrative cost for their oversight of ensuring they have an appropriate claim to be considered.

Chair Mastroluca:

Mr. Fontaine is vigorously shaking his head no.

Are there any other questions for Mr. Welch? [There was no response.] Is there anyone else who would like to speak in support of A.B. 36? [There was no response.]

I believe the people we have in Las Vegas are here for Assembly Bill 123. I do not see anyone in Las Vegas. Is there anyone who would like to speak in opposition of A.B. 36 in Carson City or Las Vegas? [There was no response.] We will close the hearing on A.B. 36.

We will first hear from Assemblyman Stewart who is going to introduce Assembly Bill 123 and then we will move on to testimony in Las Vegas.

Assembly Bill 123: Makes various changes relating to certain facilities that provide health and related care. (BDR 40-159)

Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22:

I am here to present Assembly Bill 123 on behalf of the Nevada Legislature's Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs. As you can see, I represent all three of those categories. Definitely a senior citizen, I am a veteran, and I have more and more special needs. This bill was put together by the Chair of our Committee, Kathy McClain, who is a very passionate advocate on behalf of senior citizens, veterans, and adults with special needs. I am very much pleased to present this on her behalf.

The bill has four components to it. The first one deals with itemizing the financial statements that are given to individuals who are in care facilities. In the past they have been given a bill that was not itemized. One of the concerns we had, and Chair McClain had, was to itemize the bill so that the people would know exactly what they were paying for. That is one of the very important components of this.

The second very important component is that when an inspection occurs at the facility, to provide a detailed list of the deficiencies that were noted, to the patient in the facility or if the patient was not capable of understanding those deficiencies, to present the findings to the children or whomever might be next in line to receive that. Chair McClain thought that those two components were very, very important.

The last two aspects are a little bit controversial, I understand. The first increased the inspections from one time per year to four times per year. I have

had conversations in the past two days after I found out I was presenting this bill with Ms. McDade Williams and Mrs. Simons, and of course this would present a significant burden on them with a reduced number of staff and reduced financial assets to conduct those inspections. I was told that it would take quadrupling their inspection fees which would be a burden on both the inspectors and on the facilities. So it is a struggle between providing the proper care and making sure that the facilities that care for these individuals are doing it properly and then having the funds to conduct those inspections.

In a conversation I had just a few minutes ago with Chair McClain, she was willing to drop or reduce the number of inspections. She felt that if the deficiencies were noted to the patient and to the relatives of the patient, that perhaps that would bring about additional inspections or additional attention to the deficiencies. I am very grateful for this because I know I am an advocate of not putting additional burdens on the facilities, but I also want to make sure that the patients have the care that they need. We are willing to be flexible on the inspections to reduce it or if need be keep it back to the one if serious deficiencies are found in a follow-up inspection where something like that would take place. That is my testimony.

Chair Mastroluca:

Thank you, Mr. Stewart, for taking the time to present this.

Assemblywoman Smith:

In section 2, I am really interested in this idea of the itemized billing. It is something I have been working on in the interim, specifically with residential homes or group homes. This talks about the person who received the care receiving the itemized bill and breaking down all the charges. Would the intention be for this to also be if the state, through Medicaid, is the payee? I think we need to do a better job of making sure that we actually have an itemized bill for every bill we pay. So is it intended to be only for private pay or is it intended to also be for the state, if the state is paying the bill? I would like it to be.

Assemblyman Stewart:

We had not considered that, but I think it is an excellent suggestion.

Assemblywoman Smith:

We actually had some issues with this and I know particularly in Washoe County there have been some corrections made and an examination of how we pay those bills. If you would entertain that, I would like to work on making sure that is the intent. Any time a bill is paid, there should be an itemized bill to go with it.

Assemblyman Stewart:

We would be happy to work with you.

Wendy Simons, Chief, Bureau of Health Care Quality and Compliance, Health Division, Department of Health and Human Services:

As has been identified, Assembly Bill 123 will require inspections of selected facilities four times each year. That is a component that Assemblyman Stewart brought up. It will require the fees for these inspections to be calculated to produce the revenue estimated to cover the costs. Second, the bill requires the Division to notify a person receiving care in the respective facility of deficiencies identified during an inspection. We are not 100 percent clear as to whether that would be all residents or patients in a facility or just the people cited through the inspection process as being found to have been affected by deficient practices.

Section 3 is the primary one that I will call your attention to, as Assemblyman Stewart very clearly identified the other components. There are approximately 538 facilities impacted by this measure. Intermediate care facilities, facilities for skilled nursing, and residential facilities for groups—also known as group homes—are inspected annually, whereas homes for individual residential care are on the 18-month periodicity inspection cycle. Based on these numbers, approximately 489 inspections are conducted on an annual basis for these facility types alone, excluding follow-up visits, complaint investigations, and other miscellaneous inspections.

The bill also requires that these inspections must determine whether the facility or home is in compliance with all applicable laws and standards, which is a significant undertaking, as was identified in the presentation by Assemblyman Stewart, and is a different method than what we currently use to inspect the facilities. In addition, section 3 does not account for the facilities that are really very good performers, nor does it allow flexibility in how inspections are conducted to best ensure the safety of individuals in these facilities.

By requiring inspections four times a year, this measure would result in an additional 1,467 inspections, not including additional follow-up inspections that may result. It would increase yearly inspection hours from 6,728 currently to 26,913 hours, which is an increase of over 20,185 hours per year. These increases would require increased fees to cover staff, equipment, office supplies, and other resources in order to carry out the activities of the inspection. The Health Division submitted a fiscal note which estimates the cost of fees will be over \$7 million over the biennium. It does not impact the

General Fund, but will result in fee increases as is noted in section 4, subsection 5, of the bill.

This concludes my formal presentation, and I remain available to the Committee for questions. I would like to end by saying that we had a wonderful conversation yesterday, and we are committed to working with Assemblyman Stewart and any other parties that are interested in any kind of adjustments to this proposal.

Chair Mastroluca:

The \$7.4 million is over the biennium, correct?

Wendy Simons:

That is correct.

Assemblyman Anderson:

Would it be possible to get an estimate of what the additional expenses to your Bureau would be if we upped it to two inspections instead of one?

Wendy Simons:

Yes, it would be possible. I would have to go back and work with Fiscal to do some calculations. I think you could safely approximate it by way of history. I would call your attention to the fact that our current fee structure is based on actual time and effort workload, so the current fees that we have for annual inspections or every 18-month inspections, if those went to twice a year, just by way of quick calculations, you could double those costs. Of course, we would have to staff it, too.

Assemblywoman Pierce:

Assemblyman Stewart, looking at this as a baby boomer with elderly parents, the first part of section 2 does not make it possible for a child of an elderly parent, who is not legally responsible for the bills and is not a legal guardian, to get an itemized statement of the charges. But on section 9, subsection 3, paragraph (c), it says, "Any other natural person designated to receive such notice by the person receiving care" So on this part, the elderly parent could actually have their child get the deficiency notice, even if he was not responsible for the bills or was not a legal guardian or anything like that? Is that how it has to be? Is there not a way for someone who is not a guardian and not legally responsible to get an itemized bill? I know from experience that an elderly person might have children there but not responsible for the bills and not officially a guardian—but certainly the person who is mostly interacting with the facility—and it would be nice if he could be included in getting the itemized bills. I wanted to see if there was some thinking about that.

Assemblyman Stewart:

I think that is an excellent suggestion. I am sure we can work out some wording to put that in. Thank you.

Assemblyman Livermore:

My comments and concerns are about the word "itemized." In a typical care facility, you have customary daily charges. I would hate to see that customary daily charge for room fee to be broken into several components of itemizing—how many bath towels you use, how many times your sheets were changed, or things like that. Generally speaking, an institution has good coders, and when you code medical services, there is a bar code like the patient has on his arm, and when you go in, that is to make sure that every component that was given to the patient is accounted and billed for. I am concerned about that word "itemized." I am also concerned that whatever we do here is going to increase the cost of care in these facilities. I am very sympathetic about a patient having the right to know what their fees and charges are. I want to put that on the record and hopefully maybe you will consider that.

Assemblyman Brooks:

I understand there may potentially be some reductions to Medicaid. Is there a proposed reduction in the amount of money people get for nursing care facilities?

Wendy Simons:

I am sorry, I cannot speak to what Medicaid is doing as far as their fee reimbursement. That is outside of my area of understanding at the moment.

Chair Mastroluca:

The answer to your question is yes.

Assemblyman Brooks:

Yes? Would you happen to know how much?

Assemblywoman Smith:

Yes. In the recommended budget there is a Medicare reimbursement reduction for nursing homes.

Assemblyman Brooks:

Do we know approximately how much? At this time we do not know?

Assemblywoman Smith:

No.

Assemblyman Brooks:

Okay. I would like to get with you later to ask that we work together on a recommendation on this. My recommendation is that we do not increase the number of times we do an inspection at these facilities. I just do not think we have the resources. There is going to be a \$7 million fiscal note on this if we have to do this over two years, and I think it will cause a strain on the state. I would like to work with you on that, if we can get together afterwards. I would like to know if that is something that is acceptable to you.

Assemblyman Stewart:

That is very acceptable to me. We are on the same page.

Chair Mastroluca:

I would encourage you, Mr. Brooks, to talk to them and we can talk about a possible amendment or change to the bill in the work session.

I wanted to get off the financial portion of this since this is a policy committee, and talk about the deficiencies piece. I am curious as to whether there would be a level of deficiency that would be reported versus what would not. For example, I believe sometimes a deficiency could be something as simple as not filling out paperwork correctly. Is that something that would be necessary to take the time and expense to report to a family member or would there be things that were considered more serious?

Assemblyman Stewart:

It was our intent to put in the report those things that were detrimental to the patient, so the paperwork then would not be necessary. I think maybe you could answer that, Ms. Simons, that maybe if they could just give them a copy of the deficiencies which would include everything, whichever would be more efficacious for them, but especially to include the deficiencies that would be detrimental to the patients.

Wendy Simons:

With regard to the deficiency piece, there are two responses that I will give you. First of all, all statements of deficiencies are posted on our website for public access so we can certainly direct family members to the findings as posted. If it is the legislative intent, we have a methodology called "scope and severity" when we do the inspections. If an inspection or a subject area that is defined as a deficiency rises to a certain level of scope and severity, certainly with regard to health and well being, that could be a marker for the actual notification, but I think we have to be very careful about how it is stipulated in the bill.

Assemblywoman Benitez-Thompson:

I think the intent of the bill is trying to gauge the level of oversight and being cognizant of that level of oversight in these facilities. Could you give me a better idea of what types of inspections happen there? In some facilities, I feel like it is constantly "Quick, the state is here, stand up straight, button your jacket." In other facilities, it feels like there is not that much attention. Are you in fact the only person who goes in once a year to do any type of oversight? Are there other agencies and bodies that are in the facility as well?

Wendy Simons:

There are several entities that go in. One other entity is the Aging and Disability Services Division Ombudsman program which I believe currently—I hope I am not misspeaking—has a commitment to go into skilled nursing facilities at least four times a year. Coming from the private sector, I am very aware of how an operation recognizes periodicity in their survey process. We are committed to randomizing the frequency of the survey and being less predictable in our annual and/or 18-month surveys and even working towards some additional ways of doing our inspection and visibility process within our facilities.

Assemblywoman Benitez-Thompson:

Does Medicaid go in and then do their own audits of charts and billing?

Wendy Simons:

I neglected to include Medicaid. Yes, they do. They go in and do their own audits. I cannot speak to exactly how they do them. I have seen them in the residential and assisted living facilities.

Assemblyman Carrillo:

The question I have is in regards to the deficiency and how it is reported. I know you said it is on the website, but dependent on how severe it is. Does it go to some kind of federal reporting system where it would be graded or the facility would be graded?

Wendy Simons:

In the skilled nursing facilities, yes. It may go to the CMS and then to a level of more federal oversight. We do have a grading system within group care facilities which generates a follow-up inspection if they receive a "C" or a "D" to ensure that they improve their performance to an "A" or a "B" level. That was a grading system implemented in 2009. It has been very effective in that provider group. The only place that we are going to have the federal oversight is in the medical facilities, which would be the skilled nursing facilities, the intermediate care facilities, the group homes, and homes for individual residential care.

Assemblywoman Smith:

While you are making a list of things that we could do to improve this bill, I would like to find out if we could also add in section 2 something about the accounts that the individuals have in these homes, because they have personal accounts that are managed by someone and I am not sure that we do a good job of accounting for those. If we are going to be looking at these issues, I would like to look at that one, too.

Chair Mastroluca:

Thank you. That is an excellent point. I appreciate it. We will now hear testimony from Las Vegas.

Sylvia Healy, Private Citizen, Las Vegas:

Thank you for the opportunity to testify today. We have been working for five and a half years to make Las Vegas a more senior friendly place to live and die, and we can do that if we all work together to make positive changes to protect our senior citizens from abuse and neglect. It was recently reported in the newspaper that we have a crisis taking place and they have done the research for us, they have done the investigations, so now I am sure that our legislators would want to make serious and immediate changes to prevent this from ever taking place again because we just cringe thinking about all of the innocent victims that fall prey to abuse. The research has been done, so we do not really need any more extensive studies that are going to cost the taxpayers money.

What we need to do is take action and make the changes for this 2011 Legislative Session that are long overdue. It is a moral obligation to take care of our seniors so they have a dignified end of life. It is not a money issue. It is a moral issue and we are just past due at making these changes. What we would like to see is for the inspectors to seriously look at the cleanliness of the nursing homes when they go in. We have so many complaints about the smell being unbearable. We need to check out the cleanliness. We need to check out the patients and find out how many bedsores were on their charts and why they have bedsores. We have heard from many nurses that bedsores can be eliminated if only they would have mandated staffing and make the nursing home owners employ enough nurses and employees to take care of the numbers of patients that they have, because now they are overworked. Any nurse you talk to will tell you the same thing. A lot of them have told us they could not stay at a nursing home. They have to go back in the hospitals because they expect too much out of them and they have too much stress, so therefore the patients are stressed out and many times—it is terrible to say—they do not get the right medication, they do not get any medication, they get too much medication, and it is just because the staff are so rushed.

Choose ten patients at random and talk to a few of them that have serious issues and find out what the families and the patients are really experiencing. That is the best way to find out when you go. The inspectors know which ones are good, which ones are mediocre, and which ones are really bad. The bad ones need to be inspected more frequently and there needs to be more oversight and more follow through, and if they have a violation they need to be fined. If the fines are larger, that could eliminate the third and fourth inspection because they are going to think twice before they make a second violation. They need to be fined more and they need to be talked to about their attitude.

Activities in a nursing home—the people that are in wheelchairs a lot of times are not involved in the daily activities and I think the inspector should definitely talk to the administrator and find out if they are involving everyone. The feeding—so often they drop the tray at the patient's bed and they are unable to feed themselves. So we need to look into that, too. If the patients are not getting an adequate amount of nutrition, their life is going to be horrible and we need to talk to these administrators when we go in.

Chair Mastroluca:

I recognize that some of the comments that you are making are in regard to staffing and there is a bill draft request that will be coming out, hopefully in the next week or two, regarding staffing. So if you could hold those comments regarding staffing, specifically for that bill, and if we could continue to have a conversation about this bill and the items that are actually within this legislation, that would be helpful.

Sylvia Healy:

I just think it is wonderful. Anything that we can do to improve seniors' lifestyle in these facilities will help. I am happy that we are addressing these problems and I want everyone to support all the senior bills and we ask the Committee to help make changes to improve seniors' lives.

Chair Mastroluca:

Thank you for your work and commitment to the senior community because it is very important and we need people like you who will stand up and speak for those who cannot speak. Are there any questions for Ms. Healy?

Assemblyman Hammond:

Are the inspections that are going on right now, are they surprise inspections or are they scheduled inspections?

Sylvia Healy:

They are scheduled inspections and they know when they are coming. Hopefully we can change that and surprise them every now and then and walk in under normal conditions.

Marla McDade Williams:

By state law, our inspections are unannounced unless it is a first-time applicant where we do announce the inspections.

Assemblyman Brooks:

Ms. Healy, I do hear your concerns and I wanted to make sure that you understood that. From my understanding, the bad ones, the ones that have a failed inspection, do get reinspected, so I agree with you. The bad facilities that are not doing the right thing for our seniors do need to be reinspected and they do need to get it right. My reference earlier was just in regard to all of them. I was wondering if we also had other facilities that were not in bad standing getting inspected, and I did not think it was necessary. I agree with you on the facilities that are not up to standard.

Chair Mastroluca:

I believe that every facility is inspected regularly every 12 months, and depending on the facility, some every 18 months. Regardless of whether or not they had deficiencies the year before, they will be reinspected on a regular basis.

John P. Healy, Private Citizen, Las Vegas:

Everyone keeps talking about the bottom line for the nursing homes. I would like to see cameras down there in every room in the nursing home. We put them on the streets for automobiles. We could at least put them in nursing homes for seniors to see that they are getting taken care of and to be paid by the nursing home, not the state or the cities or the counties. That is about all I have to say. Thank you for giving me a chance to speak.

Chair Mastroluca:

Are there any questions for Mr. Healy? [There was no response.] We appreciate you coming down and speaking to us and giving us part of your afternoon.

Is there anyone in Carson City who would like to speak in support of A.B. 123? [There was no response.] I have people in Carson City signed in to speak against A.B. 123.

Renny Ashleman, representing Nevada Health Care Association:

In light of the dialogue we had previously, I will try to shorten my remarks a little bit. There was a question about patient accounts as part of the information about itemization of charges and so on. Those accounts are audited. The state does audit those accounts. From the standpoint of the Nevada Health Care Association, other than maybe a slight concern about the wording on section 2 and exactly what we are itemizing as was suggested by Assemblyman Livermore, we do not have any problem with that. For the Committee's information, Medicaid has a flat charge, so it is not a matter of itemization to the state. Certain other things get flat charges as well. Medicare is one of them as well as some of the insurance companies. There are some incidental charges and they go directly to the patient from time and time and those would certainly require itemization. I do not know of anyone that is not doing it but we do not have a problem with this provision.

As noted by the sponsors, section 3 is a more controversial one. It is not probably going to be worth the money in the time expended to have more than one annual examination for those that are not really in trouble. There are people who come through very well on their examinations. There are more than one kind. The annual one is really a survey process. It is certainly elaborate. There is a sizeable checklist and it can sometimes take several days and several people to be involved. There are also other inspections that take place that are triggered by complaints and those may be specific to the complaint. Often in the industry's experience when someone is in there on a specific complaint, they expand and they look at other things while they are there. But there are two different kinds of things and I would be very happy to take the Assemblyman up on his suggestion that we work with him and work with the Division and talk about whether we could strengthen the inspections and the follow through on the troubled facilities. Concentrating on them is going to be where spending our time and money will be useful as opposed to reexamining people who really do not have problems.

The remainder of the bill calls for the industry to pay these costs. There are obviously going to be additional costs. I raised the issue in an email that we are apparently going to have a fiscal note. It probably also calls for a two-thirds vote if we are going to be increasing fees—perhaps not by this Committee—but it would have to take place at some point it seems to me in handling this as a matter of housekeeping if we go into these enhanced inspections.

As for the reporting and notice of deficiencies, we post the results of the inspections in the facilities. They are publicly available there and as noted they are also publicly available online. There might be more that could be done to notify folks that we have been recently inspected, that the results are available

on the bulletin board or the results are available online and here is how you access them. Sometimes these reports are fairly voluminous. It might be more cost effective and efficient to notify people where they could get them electronically. I think we do want to talk about—as noted by the proponents—what kind of a deficiency triggers notice. There are deficiencies that are not patient-care related. Some deficiencies are related to a particular patient. It seems to me that it is particularly important that that patient and/or their families as representatives get notified. Ordinarily they would know about it because of the nature of the process, but if there is something to be done to strengthen that, I would be happy to work with you, Assemblyman, on that.

I am happy to respond to any questions. I do need to leave so I would be happy to take any questions now and any Committee members that wanted to contact me later have my contact information and I would be happy to meet with them.

Assemblywoman Smith:

I wanted to clarify that on the billing and auditing provisions I was referring to, I was not referring to the skilled nursing facilities but the group and residential homes.

Renny Ashleman:

Thank you.

Chair Mastroluca:

Are there any questions for Mr. Ashleman? [There was no response.]

Larry Fry, representing Coalition of Assisted Residential Environments:

I certainly appreciate, and everyone does in our industry, the concerns from Kathy McClain and Mr. Stewart about improving and staying on top of the quality of elder care that we provide. That is very, very important. However, at the same time, I do have to say that this bill takes an approach that is very heavy handed. It is ignorant of existing mechanisms in the *Nevada Administrative Code* (NAC) that already deal with some of these issues, and I think that the Committee needs to be informed about those facts before proceeding in terms of discerning future direction for this bill.

I would like to discuss, in section 3, the proposal to inspect facilities four times per year. Since the Bureau of Health Care and Quality Compliance (HCQC) is a fee-funded agency, the facilities got hit directly with those increased costs. As stated in the bill, that is going to become a big financial burden for the care providers. Particularly taking into consideration the fact that two-thirds of the licensed facilities in Nevada are small group care homes of 10 beds or less, and this cost will hit those small group home operators particularly hard. As

you can see from my written submission ([Exhibit E](#)), we currently operate under regulations, specifically NAC 449.27706 that use a grading system of "A," "B," "C," or "D" based on our facility survey scores. Any facility that receives a grade of "C" or less automatically has to apply for a resurvey. We feel that a large thrust of what the bill is trying to improve is already handled adequately in the existing regulations. We do not see the need for four times the number of previous surveys. When we are looking at those survey scores, you might be interested in knowing that the "A" and "B" graded facilities comprise almost 80 percent of the existing licensed facilities. The facilities that are the lower performing ones with a grade of "C" or "D" comprise about 22 percent of the licensed facilities. We feel that this bill unfairly targets all the facilities with the additional survey requirement when we really need to be focusing on the 20 percent that are the lower scoring facilities. So I would draw your attention to those facts.

In terms of the notice to residents related to a deficiency. In addition to the survey grades, which are there for all to see including family members, the deficiencies are very clearly outlined on the Bureau's website. The deficiency itself is outlined for each facility under the survey area as well as the corresponding regulation that that deficiency is in violation of. So it is very easy for the lay person and the family members to understand exactly what is going on. An initial thought that I have is that when a new resident is being admitted to a facility, we may want to include in their admission papers the fact that those survey scores are available online and that when a survey happens those family members have immediate access and we promote this to be able to take advantage of the information that is already public. That could be a solution.

I will wrap up by saying that we are a fee-funded agency. Many of our residents, and I believe there are about 4,200 of them in about 335 facilities throughout Nevada, receive Supplemental Security Income (SSI) or welfare funds. In other words, the group care home operator gets not even \$1,000 a month for the care needs of these residents. This bill places an undue financial burden, especially on those facility operators that are trying to care for Nevada's neediest seniors, and I do not think that is right. We should not be doing that.

I would like to turn over some other aspects of the bill in response to this bill to some of our facility operators in northern Nevada. I have two of them up here with me and a couple of others who would like to make some comments. I will take any questions.

Chair Mastroluca:

Thank you. Mr. Fry has turned in his testimony to our secretary and it will be entered into the record along with any additional comments that he has made.

Assemblyman Hambrick:

Mr. Fry, I have appreciated your comments that 80 percent of your facilities do an above average job by far. I would hope that you would sit down with the author of the bill and perhaps offer a public and private partnership to make sure that at some point you police your own group and then those that perhaps get a lower than average grade would suffer the consequences with the inspections. This is a policy committee so I do not want to go into anything else, but as a policy it would be nice if you could potentially work with the state and again build up and recommend sanctions for those that fall far below your own standards. Let you police yourselves. It is the best to get the government out of your business. We need to have assurances and the state needs to have assurances that it is being done properly, and I am sure they will be more than happy to welcome your input and participation.

Larry Fry:

I agree wholeheartedly with your comments. In a number of areas we have been partnering with the various regulatory bodies to improve the quality of care that we give to our seniors. One of those that was mandated by the State Board of Health a few years ago is called the Assisted Living Advisory Council (ALAC) and we meet with them on a regular basis on issues like those you were alluding to. The second area that we feel very strongly about is in education and training. You can never get too much education. We worked through ALAC on recent improvements and more stringent medication training, because that is a big area of concern. We host training workshops every year and we apply to the Board of Examiners for Long Term Care Administrators (BELTCA) for their Continuing Education Units every year. So we are actively involved in the ways that we can to improve the quality of care and education and training for our administrators. Thank you for your comments.

Assemblyman Sherwood:

I have a question for Mr. Fry or the other members of the panel. The number of facilities or the number of beds—if that is how you measure—versus the projected need as we live longer, as baby boomers get older—is there a crisis of access and beds? Forget about your strain for money. Right now, are there enough beds for long-term care for seniors in the state?

Chair Mastroluca:

Due to the late hour, Mr. Sherwood, I am sorry, but that is not relevant to this conversation right now. I appreciate the question and you are more than welcome to follow up, but we are starting to lose members because we have other committees going on and I would like to get through the rest of these witnesses. If you would please refrain from that question.

Assemblyman Sherwood:

For the purpose of the work session, I will take it off-line. We would be remiss if there is not enough supply and demand. We have to take that into account. This may be a work session question, but it is incredibly relevant, and if we do not see that, then we are setting ourselves up to come back here in two years and say, "Well, why did we not ask the question?" I will take it off-line with Mr. Fry.

Chair Mastroluca:

Thank you. I know there are quite a few people signed in here to speak. Please do not repeat anything that has been stated already, and if you have any written testimony, you are more than welcome to leave it with the secretaries. I am not saying this to rush you; I am saying this because I do not want you to be sitting here and the number of Committee members keep dwindling and feel that we are not paying attention. We do have members that have to get to other committee meetings. Please proceed.

Diana Roberts, Executive Director, The Arbors Memory Care:

My name is Diana Roberts. I am the administrator of The Arbors Memory Care. I am also the President of the Coalition of Assisted Residential Environments (CARE) and an ALAC member. I am very involved in the community. I would first like to address a couple of issues with the surveys. I have been an "A" facility ever since I have been in the business and there are procedures in place to take care of the surveys for the "C" and "D" facilities. It does cost them money, so I think that the system we have in place is very adequate at this time.

I would like to address the gentleman in Las Vegas on his issue about the camera. It is a very strict violation of the Health Insurance Portability and Accountability Act. The other thing that I would mention to his comment is the activities. When people choose not to go to an activity, you cannot make them go and participate if they do not want to.

As far as the training, I am also a mentor for the administrator and training program. For administrators that go through and are in trouble with the state as a "D" facility, they also get reported to BELTCA—which is their licensing agency—so they have been reprimanded also. That is all I have to comment on, other than what Larry has said.

Chair Mastroluca:

Are there any questions for Ms. Roberts? [There was no response.]

Emily Headley, R.D., Executive Director, Sierra Place Senior Living:

I am the Administrator of Sierra Place Senior Living. It is a residential facility for groups and would be considered a larger one. I am also an "A" facility. Likely the people who are here are representative of those types and I agree with everything else that has been said. I wanted to add a couple of other things for perspective. Before I was at Sierra Place Senior Living, I had 26 years at the corporate level in oversight of these types of properties in the private sector. That was over a total of ten states, both on the East Coast, the Midwest, and here in the West. For perspective, I could say to you that never have I been so closely scrutinized as I have been in Nevada. You are already doing a really good job of scrutinizing properties. I cannot say it for all 50 states; I have not had that experience, except for at least ten states and their regulations and rules. It is a heavily scrutinized industry here and the most consumer-friendly industry in any state that I have worked in relating to this industry. I would also like to emphasize what Mr. Fry said at the very beginning about us as an industry desiring to improve the public's perception of this industry. I happen to run a residential facility for groups which can also be called assisted living or senior living, and I am sure that the nursing homes would join me in that statement.

Just to throw out a statistic that continues to startle me after almost 30 years in this industry, is that the penetration rate nationally for people moving into assisted living is 5 percent. In other words, for all the people who are age- and income-qualified in the United States, two move in—only 5 percent move in. If just 1 percent more were to move into our properties, every one of us would be full. I am sure that no one in this state is full right now. We are all struggling with occupancy. So the perception of this industry still needs help, and we all want to work together. I do agree that all of the three major items in this does not necessarily help us. It makes it more difficult for us because it costs more money and really is penalizing all of the good players on behalf of just a few bad apples.

Chair Mastroluca:

Are there any questions for Ms. Headley? [There was no response.] Thank you very much. I really appreciate your perspective from other states. That is very important. Thank you for the compliment. It definitely goes to our Health Division. They do work very hard.

Mireya Hartman, Administrator, Whispering Willows:

I represent the smaller facilities, the residential group care homes, who provide assistance to our residents in activities of daily living. We are an "A" facility and have been since they started doing it, and I feel we would not be able to support the extra cost. Most of the adult care homes in Nevada are small—

10 beds or less—and the four times per year requirement will place a burden on the majority of us and we cannot afford it. Thank you.

Chair Mastroluca:

Are there any questions for Ms. Hartman? [There was no response.]

Maureen Gresh, L.P.N., R.F.A., Assistant Administrator, The Arbors Memory Care:

I am the licensed Residential Facility Administrator and the northern chair of the Assisted Living Advisory Council to the Bureau. I am currently the assistant administrator at The Arbors Memory Care. I am in full agreement with what Mr. Fry has stated. In regard to section 2, I would also like to bring your attention to the fact that we already have regulations in place for residential facilities for groups that prior to admission, each facility must disclose all costs and fees to potential clients and or responsible parties and they are also posted in our facilities, so they have access to them before coming in so they know right up front. In section 3, I would like to say that by lumping all facilities together by requiring four surveys per year would be a disservice to the facilities that consistently strive to give outstanding care. I would also like to say that in section 4 the cost of health care is already a challenge to many families and instituting new regulations that would increase these costs would not be in the consumer's best interest, and those costs would go to the consumer if the facility had to pay for additional inspections. They have to pass the costs along, at least some of them.

I would also like to say in regard to the language in section 9, subsection 3, ". . . provide notice of a deficiency . . . ," at present, the information is available 24 hours a day and I would like to see the money better spent by having an additional surveyor hired than having a person that is going to be a call person to call each family or thousands of families every time there is a deficiency. Thank you.

Chair Mastroluca:

Are there any questions for Ms. Gresh? [There was no response.]

Is there anyone else that would like to speak against A.B. 123?

Daniel Mathis, Chief Executive Officer, Nevada Health Care Association:

I support the comments made by Renny Ashleman so I will not repeat. There were two items that were overlooked. On the frequency of surveys, CMS does identify special focus facilities in each state requiring a more frequent visit from HCQC to provide more surveys. Nevada Health Care Association is working with Wendy Simons and Health Care Quality Compliance on educating both

regulators and providers on the top ten most frequently cited tags in the state, providing education so everyone has a better understanding to produce the frequency of the citations that achieve compliance. I offer myself for any questions off-line from the skilled nursing provider perspective.

Chair Mastroluca:

I would like to have a copy of the top ten list of violations that Mr. Mathis referred to. If there are any members of the Committee that would like it, we would be happy to share it.

Daniel Mathis:

I can provide it. Wendy Simons can also provide it. The state's quality improvement organization did a survey over the last three years and compiled a list and I would be happy to provide that to everyone.

Chair Mastroluca:

Are there any questions for Mr. Mathis? [There was no response.]

Nancy Hunter, Administrator, Conestoga House, LLC:

My name is Nancy Hunter. I am the owner and operator of a home for individual residential care here in Carson City. It is a very, very small 2-bed home. I will not repeat the things that were said already. I think that the required routine inspections of four per year are excessive. One of the things addressed earlier was who else observes these facilities. In addition to the official entities—the Health Division and the Aging and Disability Services—in my case both residents are wards, and they have guardians. If it is a public guardian, they also visit at least once a month and the practice of a private guardian is to visit weekly. There is a lot more oversight and of course the family also has a chance to see how we operate. There is a new board forming, an advisory council for this type of venue that is fashioned after the assisted living association that was already mentioned. It is just in the process of forming. This is also where we want to make our venue better known so that our issues can also be addressed.

The last thing I wanted to mention is that we have talked about the financial aspect, and in my notes that were submitted I pointed out that these inspections in particular would increase our minimum business expenses considerably. Another way to look at that is that if you do eliminate some of the smaller venues—and I believe mine is the smallest in this field—that also has the effect of eliminating choices that seniors have. If your family is not able to care for you for whatever reason, if the only choices you have are to go into a much larger institution, there are going to be a lot of unhappy people. Having the very small venue for the individuals who perhaps by nature are less social

and more interested in their privacy and quieter environment, is still important to keep. In our economic environment I do not think we need to be eliminating small businesses. We do have a role to play in general as well as in the senior industry. If you have any questions, I would be happy to answer them.

Assemblywoman Smith:

When you talk about being eliminated, are you talking about because of onerous regulations you could be forced out of business? Is that your thought?

Nancy Hunter:

Yes.

Assemblyman Anderson:

Do you think one additional inspection would be too much of a burden? I am just trying to look for some common ground. I would like to hear your thoughts on that.

Nancy Hunter:

I think it is already covered in the regulations that we have. To mandate x number of inspections over and above what they have now does not take into consideration that more inspections are made when needed. So it goes back to the comments that have already been made that if they are needed, there is a mechanism already in place to go back and resurvey and it does not punish the performing facilities for those who do not. Personally, I frame my surveys. I have received an "A" on all of them. Yes, that would be burdensome.

Chair Mastroluca:

Are there any questions for Ms. Hunter? [There was no response.]

Allan Ward, Franchise Owner, Home Instead Senior Care:

I am here representing Personal Care Agencies of Nevada. It is a statewide organization. I am coming for two reasons. I want to clarify whether or not we are identified. As of 2008 we are regulated by the same group although we are nonmedical in-home care providers. The way that this is stated, there are some areas when it talks about going into the home and whether or not our personal care agencies would be included in this bill. That is my first question.

Chair Mastroluca:

Since we are not the maker of the bill, we do not know either, but that is a good question.

Allan Ward:

Would they be going into private individual's homes and doing a survey or investigation of these private citizens?

Wendy Simons:

The personal care agencies are classified in the category of "facilities for the dependent," but I believe that the language expressed in this particular bill proposal is specific to skilled nursing facilities, homes for individual residential care, intermediate care facilities, and residential facilities for groups or group homes. I would suspect if the intent had been to also capture the personal care agencies, they would have been identified as an entity of this. But I understand Mr. Ward's concern because of the words "home care."

Allan Ward:

I just wanted to clarify that we are currently working through an advisory committee with the Bureau, with the Division of Aging, and with Medicaid to better regulate ourselves and clear up some of the language and some of the regulatory oversight we have for our group.

Chair Mastroluca:

Are there any questions for Mr. Ward? [There was no response.]

Tibi Ellis, representing Nevada Senior Advocates:

Thank you, Madam Chair, for the opportunity to speak to this body. My name is Tibi Ellis and I am a personal care agency owner. I am here representing personal care agencies and the Nevada Senior Advocates. To follow up on his question and Ms. Wendy Simons', please allow me to define personal care agencies for the new members of this Committee.

Nevada Revised Statutes 449.0021, which this bill intends to amend, states "a personal care agency is an agency that provides personal care services in the private homes of citizens." Furthermore, as Ms. Simons referred, NRS 449.0045 defines "facility for the dependent" which includes, among others, personal care agencies.

I would like to emphasize that we are the only provider type that is not a facility-based provider.

Assembly Bill 123 amends Chapter 449 of NRS by adding two additional sections. The bill appears to be directed to physical facility-based providers. Personal care agencies are defined under this Chapter, although we do not have a physical facility where services are provided. As explained earlier, we provide services in the private home of our clients.

There are a little over 100 personal care agencies in Nevada that provide services anywhere from 200 to 500 clients in their private homes. Services start at one hour per day and may increase depending on the level of dependency of the customer. These agencies are mandated by law to have a physical administrative office that is currently inspected by the HCQC, Aging and Disability, and even Medicaid for those who are Medicaid providers, once a year or more if any deficiencies are identified. Inspections involve the review of documentation related to client services that are not related to the facility itself.

We would like clarification on section 3, subsection 1 of A.B. 123. Is the intent of this bill to perform inspections four times per year at the private homes of citizens receiving services from personal care agencies?

The only time that this bill references "homes" is on page 2, section 3, subsection 2, line 33. Is it your intention to inspect the private homes of our clients as a facility type? In our opinion, this is not the intention of this bill. We are suggesting that either personal care agencies are specifically excluded from this bill or the word "home" be deleted.

Thank you for the opportunity to speak in front of this Committee. We look forward to the clarification. I am available for questions.

Chair Mastroluca:

I appreciate your concern, but I hope that you see that it was answered by the previous question. We do appreciate you sharing that with us and we will keep that in mind as we move forward.

Are there any questions for Ms. Ellis? [There was no response.]

Did you have something else to say?

Tibi Ellis:

Yes, Madam Chair. Ms. Simons addressed section 3, subsection 1, but not section 3, subsection 2, where "home" is basically defined but not attached to a facility type provider. That is my concern. There is a need for further clarification on section 3, subsection 2.

Assemblywoman Smith:

May we ask our legal counsel about the way the bill is drafted and what her opinion is on whether the personal care agencies are excluded?

Risa Lang, Committee Legal Counsel:

It is limited as was indicated to the specific facilities that are identified. I think that the reason the word "home" is used is because it refers to a home for individual residential care. So I think they were just shortening it in that particular paragraph by saying "facility or home."

Jacqui LaVoie, Owner/Administrator, La Casa de LaVoie, LLC:

I, like Nancy Hunter, am an owner of a home for individual residential care (HIRC), a small residential facility licensed for two. I am going to address something completely different because I feel like some of these bills and the origination of them may be private guardianship companies. I want to point out to everyone that as a caregiver of their wards, right now there appears to be a little bit of injustice in how guardianships are looked at through the residential care facilities—anyone that is taking care of their wards. I am submitting my record ([Exhibit F](#)) and I am not going to go through everything that everyone else has already said, but I feel like a lot of these bills that are trying to get passed do impose fees, and if they are passed they are going to come down to basically the wards paying more to have a nice place to live.

Guardianships might feel like they have a little bit more security in where they place their wards, but in the long term it is going to affect family guardianships too, because if my next door neighbor wants Dad to come and live with me, because of what has come down from HCQC regarding my fees, it is going to get passed on. I want to point out as well that most everyone in our home, the residents that I have had for 12 years in this business, have all had guardians. I have had a care manager that I found out recently through a private guardianship company has been reporting coming to my home for three hours a week and visiting my ward. She has been in my home a total of 20 minutes. She has charged \$125 per hour to my ward to do nothing. But yet I feel like her boss, the guardianship business in general, are the ones that are kind of saying we want more frequent oversight of the smaller homes. A friend of mine that I cared of for six years, if her rates and the billing of three hours per week in my home do not do the job for the guardianship company, then maybe they should go to the Health Division and say, "Here, I will pay you the extra money. I have concerns about one facility. Will you go do a couple of extra inspections a year?" I do not feel like it should be passed on. I am leaving my whole submission here. I am not going to go through it all for time, but I have serious concerns where guardianships are in this whole assisted living residential care facility and how they all interact.

Chair Mastroluca:

Thank you for sharing that. Are there any questions? [There was no response.]

Is there anyone who would like to speak on A.B. 123, either for or against? In Carson City or Las Vegas? [There was no response.]

We will close the hearing on A.B. 123. We are open for public comment. Is there anyone that would like to speak on public comment? [There was no response.]

The meeting was adjourned [at 3:50 p.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblywoman April Mastroluca, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: February 16, 2011

Time of Meeting: 1:34 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Lee Pierson	2009 Audit Report
A.B. 36	D	Jeff Fontaine	Proposed Amendment
A.B. 123	E	Larry Fry	Testimony
A.B. 123	F	Jacqui La Voie	Testimony