

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

**Seventy-Sixth Session
March 25, 2011**

The Committee on Health and Human Services was called to order by Chair April Mastroluca at 12:12 p.m. on Friday, March 25, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, 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
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 Pete Livermore
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

Assemblywoman Peggy Pierce, Vice Chair (excused)
Assemblyman Scott Hammond (excused)
Assemblywoman Debbie Smith (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Crescent Hardy, Clark County Assembly District No. 20

STAFF MEMBERS PRESENT:

Kirsten Coulombe, Committee Policy Analyst
Risa Lang, Committee Counsel
Mitzi Nelson, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Romaine Gilliland, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services

Chair Mastroluca:

[Roll was called.] We have a hearing on Assembly Bill 286 on our agenda today, followed by a work session on Assembly Bill 280. Assemblyman Hardy will present A.B. 286.

Assembly Bill 286: Establishes the Advisory Committee on Medicaid Fraud.
(BDR S-693)

Assemblyman Crescent Hardy, Clark County Assembly District No. 20:

I am here to introduce A.B. 286, which establishes an advisory committee to conduct a study and report recommendations back to the Legislature on how to reduce the occurrence of Medicaid fraud in Nevada. [Assemblyman Hardy submitted prepared testimony ([Exhibit C](#)).] The committee would be composed of three appointees each from the Office of the Attorney General, the Division of Welfare and Supportive Services, and the Division of Health Care Financing and Policy, for a total of nine members. The members would serve on the committee with no additional compensation, aside from travel expenses. The purpose of the study would be to assess the effectiveness of current laws, regulations, policies, and penalties pertaining to Medicaid fraud. The committee would also review other state laws and develop strategies to increase the detection of fraud, recover lost revenue, increase public awareness, and encourage the reporting of Medicaid fraud. Additionally, the advisory committee would be tasked with providing recommendations for further legislation, amendments, and penalties aimed at reducing the incidence of Medicaid fraud and developing standards to measure the success of recommendations brought forth by the committee. The advisory committee's preliminary report must be submitted to the Interim Finance Committee before December 31, 2011. A final report must be submitted before June 30, 2012 to the Director of the Legislative Counsel Bureau for transmission to the

77th Session of the Nevada Legislature. On a final note, the bill is effective upon passage and approval. The provisions of the bill, including the advisory committee, sunset on June 1, 2012.

Chair Mastroluca:

Are there questions from the Committee?

Assemblywoman Benitez-Thompson:

When Temporary Assistance to Needy Families (TANF) was being put in place around 1996, there were many concerns regarding welfare fraud. There were a lot of studies on the incidence of fraud which ended up costing more than the actual fraud. Can you give me some kind of basis within the world of Medicaid regarding the perception of fraud versus the actual incidence of fraud? Have other states reported statistics on fraud?

Assemblyman Hardy:

As a businessperson, I have identified two separate major Medicaid fraud cases in the past two years. I do not have any statistics at this point, but this bill is aimed at alleviating and bringing awareness of the problem of Medicaid fraud perpetrated by people who are not entitled to receive it. I can share an example of the most recent case I observed in my own business.

Assemblywoman Benitez-Thompson:

I understand the reason for the bill, but I would like to have a better understanding of the scope of the problem and how large the issue is perceived to be. You have experienced two cases personally?

Assemblyman Hardy:

The advisory committee would ascertain the scope and recommend a better working mechanism than we currently have. I think Mr. Gilliland will testify that \$6 million has been lost in Medicaid fraud, with only \$2 million being recovered to date. That would help in the determination of what types of activities would benefit the state as we move forward.

Assemblyman Frierson:

You are probably aware that I used to work for the Office of the Attorney General (AG) and I know that they have a Medicaid Fraud Control Unit. When I reviewed this bill, my first question was, "What are we trying to accomplish here that we are not able to accomplish through the Medicaid Fraud Unit at the AG's Office?" What level of involvement in the development of this proposed legislation has the AG's Office had?

Assemblyman Hardy:

The AG's Office will have three members present on the advisory committee to work with the other divisions. I do not know the causes of the types of Medicaid fraud that are currently getting through the system, but it would seem unusual for a small business like mine to have it happen twice in a small span of time. I had an employee who was head chef at our golf course who took the second week off of one pay period and the first week off of another pay period and then turned it into the state, using it as a way to prove lower wages. He had apparently been using this as a basis to receive Medicaid for up to a year. When the employee attempted to obtain Medicaid coverage for his child, the state called us and asked if the employee was still currently being paid the same wages. The employee has never made that low an income and should never have been on Medicaid. Once I learned about this, I became concerned and wanted to make this issue a priority.

Assemblyman Frierson:

In that instance, was a complaint filed with the Medicaid Fraud Control Unit of the AG's Office? Was an investigation or prosecution conducted in that particular incident? I am aware of the limited resources of the AG's Office and it would not be the first time I have heard that they have not had the resources to provide to a case.

Assemblyman Hardy:

I do not know if a fraud case was filed at that point. I know our staff reported the case. I do not know where the case stands currently. I called the Office to see if they had any idea, but there was no answer. The case is so recent that it is probably still in the investigative process.

Assemblywoman Flores:

I think there absolutely is a problem with Medicaid fraud and that causes an increase in costs for everyone. I want to be clear that the bill addresses everyone and that we are not targeting employees or certain segments of people. While I have a very cursory understanding of this subject, I have read that doctors can also be involved in fraud. I want to be clear that this proposed advisory committee will look at the systemic fraud issue and not necessarily target a certain group. Can you also address how this would work with the federal government in terms of their fraud investigations? I know that they also do a lot of their own policing. How would this committee interact with all these different agencies?

Assemblyman Hardy:

We do not want to harm those who are truly in need. Collectively, the departments involved in the advisory committee will have a better idea of how

to get people on the outside involved in reporting Medicaid fraud. We discussed opportunities to offer rewards for people who discover and report fraud. We know that perhaps a larger percentage of fraud comes from the provider side than from individual fraud. We need to look at the problem first, without investing a lot of money. The advisory committee will be able to work together and report ideas to include in future legislation to help solve the problem.

Assemblyman Sherwood:

The Assembly Committee on Judiciary is considering a bill that gives the AG's Office more subpoena power to go after fraud from the provider end. Designees from the AG's Office comprise one-third of the advisory committee?

Assemblyman Hardy:

That is correct.

Assemblyman Sherwood:

So, you are not starting from scratch. The AG's Office is on board. I would like it to be on record that you are not working against the AG's Office.

Assemblyman Hardy:

That is correct. This bill is to try to stop the money going out before it is lost. The AG's Office is working on fraud that has already occurred. This bill looks within the department to identify avenues where potential fraud can be alleviated before it happens. I understand that there has been \$6 million lost and only \$2 million recovered. That is a lot of unrecovered money. Perhaps it will ultimately be recouped, but this bill is designed to stop the money from being lost in the first place.

Assemblyman Brooks:

That was exactly what I was going to add. The Judiciary Committee has given additional authority to the Attorney General. Have you worked with the AG's Office to ascertain how its new subpoena power would be able to help the advisory committee? Are they in agreement? Do they believe we need this additional committee in order to determine how to stop this type of fraud? What has your correspondence been with them?

Assemblyman Hardy:

There has been no correspondence with the AG's Office; we have been working with the two divisions from the Department of Health and Human Services (DHHS).

Assemblyman Brooks:

If we proceed with this legislation, at what point would the AG's Office be brought in to see what it may be missing and what it may need?

Assemblyman Hardy:

The AG's Office will designate three employees to serve on the advisory committee. I do not know what their intent will be once this bill is passed. I am leaving the discussion as to how the program will be developed up to each department.

Assemblyman Brooks:

I just want to make sure the bill is going to do what you want it to do. It is probably a good idea to get input from the AG's Office, as well.

Assemblyman Hardy:

I appreciate your input. I think the intent of this bill is to encourage the departments to work closely together on this issue. This will give the departments the opportunity to collectively share ideas. I do that with my employees, and it seems to be very successful. That is what I am trying to accomplish without spending a lot of money.

Chair Mastroluca:

For those of us that do not serve on the Judiciary Committee, the bill that has been referred to regarding the AG's Office is Assembly Bill 56.

Assemblyman Anderson:

What qualifications will the members need in order to serve on the advisory committee?

Assemblyman Hardy:

The department heads will be tasked to select the appropriate members.

Assemblyman Hambrick:

I have some experience with health care fraud in my past work with the Department of Veterans Affairs and other agencies. I think the Committee should try to keep in mind that this bill establishes a systemic, proactive advisory committee, not a reactive one. Traditionally, the AG's Office investigations are reactive and the bill before the Judiciary Committee is also reactive in nature rather than proactive. The fact that the AG's Office is included in this bill is an unusual step. The committee will look at systemic issues that may give the AG's Office low-hanging fruit, with advice and counsel of the other two groups involved. It is very difficult to anticipate what the outcome of a study group will be. I appreciate the sunset aspect of the bill.

If it is not going forward the way it should be, then it will sunset. It is very difficult to establish the goals of any proactive investigative activity. The experts from the three different departments will designate their best and brightest to look at the systemic problem. It is very difficult to second-guess before something happens. We need to let it go through and then, when it is all said and done, the AG's Office will determine if there is a potential reactive activity coming down the pipeline.

Chair Mastroluca:

This bill is not only focusing on the people who receive Medicaid but also the providers, is that correct? It is a two-party issue.

Assemblyman Hardy:

Absolutely. The bill is designed to look at all avenues from both divisions to ascertain cause and effect in order to prevent money that should not be going out from going out, and to make sure that those who deserve Medicaid benefits can get them.

Chair Mastroluca:

Have you done any research to compare the amount of money that Nevada loses and recoups versus other states?

Assemblyman Hardy:

No, I have not.

Chair Mastroluca:

How would this advisory committee differ from the existing efforts, such as those within Medicaid Services and the Welfare Division? How would this be different?

Assemblyman Hardy:

The only difference with this bill is that it is looking at preventative measures that might be taken to prevent Medicaid fraud from occurring. The advisory committee will be able to work with other entities and other states to see what has been done and what the successes have been. They can bring in federal entities to see if they would like to discuss cause and effect, and if these things can be stopped ahead of time.

Chair Mastroluca:

By stopping ahead of time, do you mean that you would envision this group putting together stiffer penalties or making it harder to access the funds? I do not quite understand the intent. I recognize there are a lot of issues about which we want to be proactive, but there are some issues that require you to

wait for the issue to occur. Otherwise, you might find yourself assuming that everyone is going to do something illegal and then punish those who would not necessarily do it. I understand where you are going, but I am not quite sure how you expect to get there.

Assemblyman Hardy:

Those are exactly the discussions I have had with Mr. Gilliland and Mr. Duarte. We do not want to harm those in need. We want to stimulate our minds to see if there are avenues we may take to prevent fraud. After a year, we may find that there is nothing to be done. But if we do not try, while nothing is wasted, nothing is gained. The departments involved in the advisory committee will look at the situation; they will assess their deficiencies. If there is something the Legislature needs to do in the 2013 Session to help the departments who deal with this issue meet their challenges, then we look at it at that point. This bill is not supposed to harm those in need. The intent is to keep those who are not entitled to receive benefits from stealing from the poor.

Chair Mastroluca:

I understand what you are trying to accomplish and I appreciate it. I have concerns, considering the fiscal crisis that we are dealing with, with spending any amount of money knowing that there is a possibility that the result of the study could be there is nothing to be done. I do have some concerns. Are there any other questions?

Assemblywoman Flores:

Although we are not a money committee, I was concerned about the fiscal note. I could not find a fiscal note in the system.

Chair Mastroluca:

The fiscal note has not been produced yet.

Assemblywoman Flores:

I see. The state has been discussing consolidation this entire session, as opposed to creating more agencies. We know the AG's Office and the federal government already have oversight on this issue. Will establishing this committee help streamline the process?

Assemblyman Hardy:

In my opinion, this bill does not create another agency. It is a group of individuals getting together during their day for a certain amount of time, perhaps once a month, to take the opportunity to see if there is something that can be done about this issue. It should not cost anything, except perhaps travel expenses. I do not know what the fiscal note will be.

Chair Mastroluca:

Thank you very much. Since you have been having conversations with Mr. Gilliland and Mr. Duarte, I will have them come forward now. I would like each of you to go over what you are currently doing in dealing with fraud within your individual systems.

Romaine Gilliland, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services:

I will go over what we do within the Division, but I first thought I would provide a slight overview of the three different organizations that are working on fraud prevention and control. The first organization is the Medicaid Fraud Control Unit within the Office of the Attorney General, which works under an interlocal agreement with the Division of Health Care Financing and Policy. Its focus is primarily provider fraud. The Division of Welfare and Supportive Services has an Investigations and Recovery Unit that focuses on recipient fraud.

In the Welfare Division, if we find a recipient case that should be considered for prosecution, we refer it to the local Office of the District Attorney. We provide this service for all public assistance programs: TANF, Supplemental Nutrition Assistance Program (SNAP), Medicaid, energy assistance, child care, and child support enforcement programs. We investigate what we refer to as "unintentional" program violations, where someone has done something that he really did not intend to do. We find those people to be very cooperative. We also investigate intentional program violations. In those cases, the people are not quite as cooperative. We also investigate collections overpayments or incorrect payments that might have been made to a recipient. When a person applies for public assistance, we clearly disclose to him that we reserve the right to conduct investigations. We remind him of his obligation to provide correct and accurate information, as well as any change of circumstance. We also indicate some of the potential disqualification and criminal prosecution elements.

In the last year, we have identified \$6 million of what we refer to as "fraud avoidance," and we have collected \$1.2 million. We have conducted 4,600 investigations, of which 52 percent resulted in what we refer to as "violation determinations." Of those, 995 were determined to be intentional violations. Our divisions work relatively independent of each other. My Division's focus is on individual recipient fraud. The Division of Health Care Financing and Policy focuses on provider fraud. This bill would provide an opportunity to work together collaboratively, along with the AG's Office, to explore ways to enhance each program while looking at both of these elements together. It would allow us to determine how we can prevent fraud from the provider and the recipient, as well as how to effectively prosecute cases.

We can also increase public awareness about the penalties that have been assessed against individuals, potential penalties that may be charged, and effective use of fraud reporting hotlines. Several opportunities exist and I think that working together collaboratively could enhance fraud control within Nevada.

Chair Mastroluca:

Are there any questions? [There were none.]

**Charles Duarte, Administrator, Division of Health Care Financing and Policy,
Department of Health and Human Services:**

My department oversees the Medicaid and Nevada Check Up programs. Mr. Gilliland summarized our respective roles in preventing and investigating fraud. As he indicated, my Division is responsible for the identification of fraud, waste, and abuse. We are charged with improving overall program integrity. Most of the issues with which we deal involve waste. They are not necessarily fraught with the intent to defraud the state or the federal government. In those instances where fraud is involved, we work through an interlocal agreement with the Medicaid Fraud Control Unit. We refer cases to them, as necessary. That unit then reviews the information that we have provided and determines whether or not a full investigation should be pursued for potential prosecution. We do work quite closely with the Medicaid Fraud Control Unit in the AG's Office. However, as has been previously stated, the AG's Office is a more reactive-type agency, as are we.

We look at data to determine outliers where there may be potential waste, abuse of medical payments, or potential fraud. We have really tried to step up our identification and investigation of potential fraud over the past four years. Since 2007, we have increased the number from 34 cases to 659 full comprehensive investigations, across all different provider types. The majority of the cases we see are clinical licensed professionals, physicians. We review those and either directly attempt to recoup losses or we refer the cases to the Medical Fraud Control Unit for investigation. We have a variety of electronic tools and staff resources available to us and we have increased our commitment to program integrity over the past four years, so much so that at any given time, 29 of my people are specifically focused on program integrity. They deal with proper enrollment of providers up front, so that we do not have potential problem providers or business owners coming into the program. They also deal with post-payment identification of problems, or improper claims. There are opportunities with this bill to move forward and take a broader, more global approach to fraud prevention. I think the opportunities are there and we welcome the opportunity to work together to do more.

Chair Mastroluca:

Are there any questions? Did the state recently purchase a system that will help deal with Medicaid and welfare fraud?

Charles Duarte:

We currently utilize data analysis tools to identify potential problem providers. We purchased a new contract through HP Enterprise Services to take over our existing systems to provide a licensed product for data mining. It is an analytical tool to make it much simpler to drill down into the data and look for potential outlier problem providers. Previously, we had to develop our own statistical algorithms to try to identify these providers. The new tools come with that capability already built-in. It will save time for my staff to do the analysis and move those kinds of cases to the AG's Office if necessary.

Chair Mastroluca:

Are there any questions?

Assemblyman Anderson:

Upon rereading the bill, I noticed section 1, subsection 4 says that any public employee assigned to the advisory committee is guaranteed leave from regular duties. Of course, I do not have a problem with this aspect; but, that section goes on to say that there will not be a loss of compensation. Will it be your intent that these members receive a per diem, as specified elsewhere in the bill, in addition to no loss of compensation?

Assemblyman Hardy:

Can you repeat the question?

Assemblyman Anderson:

The bill says public employees can take administrative leave from their regular duties with no loss of compensation. Will they receive a per diem as well, in addition to travel expenses?

Assemblyman Hardy:

Yes, they would receive a per diem.

Romaine Gilliland:

I believe we are attaching a zero-cost fiscal note for our division. I believe Mr. Duarte may be also doing the same for the Division of Health Care Financing and Policy. We will be using existing staff here and in Las Vegas and do not anticipate that travel will be required. Since we will be meeting through videoconferencing, we do not anticipate any additional cost.

Assemblyman Frierson:

Do you think the AG's Office will have a concern about resources? If they appoint existing employees to the advisory committee, will they be taking staff away from what they might ordinarily be doing? I think you have already received an indication from this Committee that it might be a good idea to bring the AG's Office into the process to make sure they have the resources to be able to appoint someone who can give up the time necessary to devote to the advisory committee.

Assemblyman Hardy:

You are correct. I did not discuss this in the beginning with the AG's Office. I was unaware at the time that they would be brought into the bill by the legal staff. I have not discussed it, but they deserve the right to have that time and discussion.

Chair Mastroluca:

Are there any other questions? [None were heard.] Is there anyone who would like to testify in support of A.B. 286? Is there anyone against? Neutral? [There was no response.] Are there any other statements from the Committee? Hearing none, I will close the hearing on A.B. 286 and we will move into the work session.

I will open the work session with Assembly Bill 280.

Assembly Bill 280: Requires the adoption of patient safety checklists at certain medical facilities. (BDR 40-517)

Kirsten Coulombe, Committee Policy Analyst:

Today, we have A.B. 280 on our work session agenda. As you may recall, we heard this bill, which deals with establishing patient safety checklists, last Wednesday. [Ms. Coulombe continued to read from work session document ([Exhibit D](#)).] There is no fiscal note currently assigned to this bill. During the hearing, we had several people who spoke in support and there did not appear to be anyone who had concerns. The sponsor does have a proposed conceptual amendment, and I believe we have individuals here to walk through the amendment.

Chair Mastroluca:

To clarify, we did not have anyone who opposed the bill during the hearing?

Kirsten Coulombe:

There did not appear to be anyone who had concerns regarding A.B. 280.

Chair Mastroluca:

Are there any other questions or comments from the Committee on A.B. 280?
[There were none.] I will accept a motion.

ASSEMBLYMAN GOICOECHEA MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 280.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE
MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMMOND, PIERCE,
AND SMITH WERE ABSENT FOR THE VOTE.)

Chair Mastroluca:

Are there any comments from the Committee? [There were none.] With that,
this meeting is adjourned [at 12:52 p.m.].

RESPECTFULLY SUBMITTED:

Mitzi Nelson
Committee Secretary

APPROVED BY:

Assemblywoman April Mastroluca, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: March 25, 2011

Time of Meeting: 12:12 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 286	C	Assemblyman Cresent Hardy	Testimony
A.B. 280	D	Kirsten Coulombe	Work Session Document