

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

**Seventy-Sixth Session
April 6, 2011**

The Committee on Health and Human Services was called to order by Chair April Mastroluca at 1:05 p.m. on Wednesday, April 6, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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:

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District
No. 1

STAFF MEMBERS PRESENT:

Kirsten Coulombe, Committee Policy Analyst
Risa Lang, Committee Counsel
Linda Whimple, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Ernie E. Adler, representing Rite of Passage, Inc.
Amber Howell, Deputy Administrator, Bureau of Services for Child Care,
Division of Child and Family Services, Department of Health and
Human Services
Marla McDade Williams, Deputy Administrator, Health Division,
Department of Health and Human Services
Renny Ashleman, representing Nevada Health Care Association
Barry Gold, Director, Government Relations, AARP Nevada
Ed Guthrie, Executive Director, Opportunity Village
Wendy Simons, Chief, Bureau of Health Care Quality and Compliance,
Health Division, Department of Health and Human Services

Chair Mastroluca:

[Roll was called.] Today is all about group homes. Welcome, Mrs. Kirkpatrick; please join us. We are going to start with Assembly Bill 532, which revises provisions governing certain facilities for juveniles.

Assembly Bill 532: Revises provisions governing certain facilities for juveniles.
(BDR 38-672)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:

Today is all about group homes, and the bills I am presenting are from the Legislative Commission's Committee to Study Group Homes that met during the 2009-2010 Interim. I have provided the Committee with the interim study report so you have it available ([Exhibit C](#)).

We had a lot of discussion during the interim. I am not sure that many of you would know, but we have had issues with group homes every year since the late 1990s, and different legislators have tried to make adjustments and

amendments. In 2007, there was a court case against my bill, Assembly Bill No. 463 of the 74th Session, which put the state and local government into a tailspin on how we address some of these issues.

During the last session, I asked the Speaker if we could have some discussion and work through the issues that everyone faced, and that is how we came about with a group home study. I was the Chair of the Committee. We had many hours of testimony. We started in the late afternoon. For residents who lived near group homes, this was the easiest time for them to be able to come out. We had local government, we had the group that sued us and successfully won there as well. Assembly Bill 532 is the first bill I am here to talk to you about, and it is regarding juvenile facilities.

Assembly Bill 532 requires an agency which licenses or supervises the operation of a facility for juveniles to monitor and inspect the facility to determine whether the facility is being operated in accordance with the laws of this state. If the facility is not being run according to state law, the agency may take remedial action to bring the facility into compliance, including training or retraining of the employees.

Let me tell you where this comes from. We have many juvenile homes within our neighborhoods and we want those kids to have a normal lifestyle; however, we found that supervision was a big issue at times. We heard testimony from many residents who said that they did not know who to contact and that the kids were running amok. Our goal as the state and local government agency is to ensure that these children are getting a very safe place to live, and that we are doing everything we can to care for them.

Additionally, A.B. 532 requires each agency that licenses or supervises the operation of a facility to submit an annual report to the Legislative Commission. This report must include a description of how the agency carries out monitoring and inspecting the facilities. It must include the details of the action that was taken. This was in response to the residents who were getting nowhere on getting answers and trying to help make sure that these kids had a safe place to live. This will allow the legislators to come back and determine if we need to make changes within our state law to ensure that these kids get proper stuff. We heard testimony that some kids were going without meals at 11 o'clock on a school night. They were running the streets. We heard that no one was home during those hours. I understand that we live in a 24-hour state, but at the same time, if we are going to put these children in a facility, we want them to have a good life, we need to make sure that they have supervision. So with the report, I believe that we can address any of the issues coming forward in the future.

Finally, A.B. 532 requires the Division of Child and Family Services to adopt necessary regulations to implement this bill. This is really about doing what is best for kids. I could give you tons of examples that we heard, at least within my own district. There were some kids who were in a group home facility where they were going to school crying because they were not receiving any food. They were coming to school in dirty clothes, while the state was paying these folks to take care of our children, and that is not a policy decision I am willing to accept, because we want to help these kids have the very best for their future.

With that, Madam Chair, I do not know of any opposition or support; however, I will disclose that I am 1,092 emails behind, so if someone sent me something I probably have not seen it. I am ready to take any questions.

Chair Mastroluca:

The definitions that are being put into A.B. 532, "facility for juveniles," stating that it is a home for more than six unrelated juveniles, are these standard definitions that exist elsewhere in statute, or are these new definitions?

Assemblywoman Kirkpatrick:

I would refer to your legal counsel. I think we were just trying to clarify what was currently in statute, but maybe Ms. Lang could help me out on this one.

Risa Lang, Committee Counsel:

I think the "six unrelated" language comes from the definitions for child care facilities. They have listed here the different types of facilities that are intended to be included for these purposes. Some of the other definitions also come from other places; "juvenile" includes someone under 18 on this particular list, and that is consistent with some other places, and sometimes it will also go a little bit longer until they graduate from high school, so it just depends on who is intended to be included here.

Assemblywoman Kirkpatrick:

The Committee's intent was for the kids who are under 18 years of age, because those are the ones who are still in school and those are the ones who need the most care.

Assemblyman Goicoechea:

Do you want to capture the Girl Scouts or the 4-H camps? I am not sure that they are exempted in this, or maybe you do not intend for them to be. As it is written, I would almost think they would have to comply.

Assemblywoman Kirkpatrick:

The intent was to include those services that were licensed by either the state or local government. What we heard—at least from Clark County—is that they have a child welfare division, so it was those folks who were receiving payment from the state to take care of them. The language is probably better broad, because I will tell you, on behalf of the Committee, we were very gun-shy about putting any legislation forward with the wrong intent. If the language needs to be tightened, I can get with Mr. Scott McKenna; he was our legal advisor for the Committee. It was always intended for the kids who were under the child welfare system.

Assemblyman Goicoechea:

I am comfortable with that, as long as we establish it in the record that it is only for those entities that are in fact compensated from the state or child welfare division.

Assemblyman Hammond:

Along those same lines, we have heard some bills lately dealing with children in the child welfare system who might be over the age of 18 but still have not finished school, so we might want to put that in there as well.

Chair Mastroluca:

Mr. Hammond, I think that is addressed on page 3, line 26, which says “A person of any age who is subject to the jurisdiction of the juvenile court.” I believe that as Mrs. Kirkpatrick stated, these are for children who are actually within the child welfare system, and they would be under the jurisdiction of the juvenile court.

Ms. Pierce just pointed out that it does say “and,” so we may need to clarify that.

Assemblywoman Kirkpatrick:

That is easy enough to do. I think that we probably did not take into consideration the kids who may be 18 years old but still in school, and that is probably why I refer back to the school. My own daughter was 18 years old with seven months of school left. I am happy to amend it to say “or” if that pleases the Committee.

Assemblywoman Benitez-Thompson:

I was looking for clarification under section 2, subsection 1(a), where it talks about “monitor and inspect the facility . . . in accordance with the laws of this State.” For the scope of these inspections, are you looking at everything from square footage compliance, if there is a sufficient amount of food in the

cabinets, or if everyone is up to date on their fingerprints? I want to get a really good idea of what you want to make sure to inspect.

Assemblywoman Kirkpatrick:

The discussion of the Committee was that the health and safety of the children who were within these homes was our No. 1 priority. What we heard from the neighbors, though, was that they wanted to be able to call. They were frustrated. They would call the police and the police could not do anything, and then they would call welfare services and they could not necessarily do anything. Let me just say, as the representative of the Committee, our primary concern was the health and safety of the children. So residents were just as concerned that the kids were not getting the proper tools that the state was paying for them to have.

Assemblywoman Benitez-Thompson:

Would you have any preferences about whether or not these inspections should be scheduled or a surprise? My thought is, if we really want to know if folks are doing something, then unscheduled visits might produce more accurate results so that you can walk in and actually see sufficient food in the cupboards, and see how many beds are in a room. I do not know if you have a thought about that.

Assemblywoman Kirkpatrick:

I am here on behalf of the Committee, so I will give you both sides. For myself, I think they should be very much like the way the health district walks into a restaurant. They walk in at any given time and see what is really going on. As far as the Committee, we did not discuss that in detail, and I can tell you we really struggled, knowing some of the counties handle the child welfare system, and the state really just lays out the law. We really struggled on finding something that we could do to start addressing some of the issues that we had heard of and seen within our communities.

Assemblyman Livermore:

My question goes to page 3, line 11, "'Facility for juveniles' means a home, center, camp or other facility that houses more than six unrelated juveniles overnight in a setting away from their families" Would that be individual rooms? I hope it is not six in a large group setting. I hope there is some privacy and separation of age brackets.

Assemblywoman Kirkpatrick:

From our understanding through the Committee, there are already provisions within statute—as Mrs. Benitez-Thompson alluded to—about square footage, how many bathrooms, and those type of things. So we just wanted to make

sure that we captured where these kids were actually living so we had the ability to include them within the monitoring and the reports.

Chair Mastroluca:

Mr. Livermore, I think that when Ms. Simons comes up later on, she might be able to address that.

Assemblyman Livermore:

I just want to point out a reference on page 4, line 5, where it talks about adopted regulations. I just hope that regulations separate, at least within some line of definition. Maybe 12 and 13 years old may be good enough, and 16 and 17 years old may be too old for our 12-year-olds.

Chair Mastroluca:

Mr. Livermore, that is existing law right now. We will ask Ms. Simons when she comes up.

Assemblyman Hambrick:

On any inspection reports, I am trying to avoid duplication in this matter. I am also the Chairman of the State of Nevada Juvenile Justice Commission, and under federal requirements for the funding that we get, all of the state and county facilities have to be inspected and we have to provide reports. Would those inspections and reports satisfy the requirements of this bill to avoid duplication? If it is required, fine, but I think the specialist assigned to do all the state and county camps, could do a single report which would meet the requirements of the federal system and of our system also—just to avoid the duplication.

Assemblywoman Kirkpatrick:

I am not sure what is in that report, but let me point out that the most important issue we have seen and heard is that there is no follow-up to make sure that the situation has been rectified. I will give you an example within my own district. Neighbors were calling because it was a girls' home and the girls were literally out having sex on the driveway. I know that sounds terrible, but that is the truth. The neighbors were making phone calls to try and get the situation addressed. They were calling the next day because there was no supervision at home. They were calling the third day. I actually had a constituent who documented every single incident that happened at this one home for over a year. I am happy to provide that log for you. I am not here to blame anybody, but there was never, ever, any recourse to ensure that those girls were living a safe and healthy life. There was concern that they were not going to school.

We ask our neighbors to take these kids in and to help ensure that they have a safe life, but the neighbors said they were not sure any remediation was taken. I am not sure what your report does—and I am not one for duplication—but we can address if they were retrained, or did we reevaluate the situation? Sometimes the people who are taking these kids home, 99.9 percent of the time they are doing it because they love these children and they want them to do better. They are not out to create a business; I get that. If they need more training or they have to have additional supervision, those are things that I believe are our responsibility to ensure that they get. Not to belabor your question, but I just want to make sure that we somehow determine that some of these problems are being addressed and that going forward, maybe on the same level we do not have strict enough training or procedures in place. That was the genesis for the Committee.

Assemblyman Hambrick:

I was primarily referring to lock-down facilities. When we see camps or facilities for detention of children, I mean, these are secure, lock-down facilities. We will do this off-line. I do not want to belabor the point.

Assemblywoman Benitez-Thompson:

My question is about page 2, lines 35 and 36. I understand that 99 percent of these facilities and group homes do an amazing job and they work with kids with such highly specialized needs, and I believe that they do a lot to improve these kids' lives. But for those bad actors out there who I think this legislation is trying to get at, is the intent really just to keep training and keep training and keep training, or at some point is there some discussion about the discretion of actually pulling or suspending a license? I do not see that, and I do not know if that was purposeful or not.

Assemblywoman Kirkpatrick:

It is a very fine line that you have to walk these days on different discussions. As far as the Committee, we were trying to address the many residents who came before us. I can tell you that the residents just did not want them in their neighborhood, period. We told them that was unacceptable. These kids needed to be in neighborhoods, and they needed to be part of the community. There was a lot of debate with the folks who lived next door to them. They honestly hated me at the end because they did not think we went far enough.

At the end of the day, while we have to balance concerns, our job is to make sure that these kids are getting proper care and we are giving them the tools to be successful for the future. I will tell you this is a starting point. We really need to figure out what the bigger problems are out of the whole situation. I think that is why the report is so important. I am not really answering your

question. We need to start somewhere, and currently we have not started anywhere. So this is a starting point.

I want to go back to Mr. Hambrick. If you look farther down on page 3, line 21, jail is not included as a "facility for juveniles," so I think it is really just about the kids who are within these private homes within our community. We want to make sure that those are ones that are reporting back.

Assemblyman Goicoechea:

Page 2, line 27 says ". . . on an ongoing basis." Maybe you would agree to tighten up "ongoing," especially with this budget crisis. It could mean that you are going to get there in two years. That is ongoing. I think it is becoming almost a cottage industry anymore, for some people to take these juveniles in. You are right; we need to have a better handle on it.

Assemblywoman Kirkpatrick:

I do not have a problem. The reason this is in here is so that if we did not get the reports back—because sometimes we do not get our reports back—that it just does not sunset, and we get nothing in the long term. I am happy to sunset it at least three years out, just to make sure that we initially get something. Hopefully future legislators will address this issue.

Assemblyman Goicoechea:

I was looking more to tightening it up, because I look at "ongoing basis." It means that they will come in and inspect and monitor, but I would like to see that down to every quarter or something like that. Tighten it up a little bit so that we do not have a situation where the agency does not get out there for a couple of years and finds issues going on.

Assemblywoman Kirkpatrick:

I am happy to do that. I thought you were going the other way. I am happy to go tighter.

Chair Mastroluca:

Are there additional questions for the sponsor of the bill? [There was no response.]

Ernie E. Adler, representing Rite of Passage, Inc.:

I am representing Rite of Passage schools in support of Assembly Bill 532. Right of Passage has been in Nevada for the past 25 years as a private nonprofit corporation. It currently operates in six states and has 15 different programs. It runs a number of group homes. It has a 200-bed facility in Yerington, Nevada. When we look at this bill, Nevada is the only state that

Rite of Passage operates in that does not currently have this legislation. All of the other states passed similar legislation many years ago. It is necessary to have these types of inspections so that you can maintain the quality of care for juveniles who are placed in these types of facilities.

This is the monthly inspection report for one facility in Nevada for Rite of Passage schools. [Mr. Adler held up a folder.] This is what is delivered to their board each month. Having to produce something for the state would really be no additional work for Rite of Passage schools. In fact, we would invite the state to make those types of inspections. We would even agree to pay an inspection fee to help fund that program. It is difficult for the Rite of Passage program to comment to other states that we do not have routine inspections in Nevada, because essentially you are trying to sell a program and the quality of the program. If you do not have documentation from your home state that your facilities are being regularly inspected in your home state, it is not an advantage to us as a facility that operates in multiple states throughout the United States.

We would strongly urge that you pass this type of legislation. It is not much of a burden. Rite of Passage schools have a computer log on each student, so if you were a juvenile court judge or something and wanted information on how Johnny was doing today, and if you had the password, you could log into the counselor's website and get an hour-by-hour breakdown on what his behavior was that day, what he did in school, what extracurricular activities he participated in, whether he was getting vocational training, whether he was visiting with his parents, what type of psychological counseling he was getting, and so forth. It is not difficult for a good quality program to deliver that type of information to the state if the state is monitoring the program properly.

Assemblywoman Pierce:

How often are these facilities inspected in other states?

Ernie E. Adler:

It is usually about twice a year. A lot of them have quarterly inspections. If there is any kind of an allegation or incident, the state or county authorities are generally there within 24 hours.

Chair Mastroluca:

Thank you very much. Is there anyone else that would like to testify in support of Assembly Bill 532, either in Carson City or Las Vegas? [There was no response.] Is there anyone in opposition of A.B. 532? [There was no response.] Is there anyone neutral on A.B. 532?

Amber Howell, Deputy Administrator, Bureau of Services for Child Care, Division of Child and Family Services, Department of Health and Human Services:

I just wanted to provide the Committee with a little bit of clarification. I was one of the thousand emails I believe Assemblywoman Kirkpatrick has not been able to get to. I wanted to explain how it works within the division right now.

We have the juvenile justice system, child welfare, children's mental health, and child care licensing. Any juveniles who are in a child care institution—those institutions are inspected twice per year. Any time there are violations that appear to need corrective action, the facilities are placed on a corrective action plan and allowed a period of time to comply, unless the infraction is so severe that it requires an immediate suspension and revocation of the license. That is already being done.

We also have foster homes. All of our children who are in the custody of child welfare are placed in licensed foster homes that are inspected annually, and any complaints that occur are investigated as well. I just wanted to provide some clarification, because our interpretation of the bill—we are reading it to be something that we are already doing, but we are also concerned that this is another inspection that we have to do on top of the licensing inspections that are already happening. I wanted to provide the Committee with how the practice is currently working within the division, that these are already licensed, and we already inspect them. We would welcome any clarification so we know how to implement, where these children are, and in whose homes they are in. I am happy to answer any questions, but just wanted to get on the record that we are a little bit unsure of who these children are and what homes and who is responsible for them.

Chair Mastroluca:

Is there anyone else who would like to testify on Assembly Bill 532? [There was no response.] We will close the hearing on A.B. 532.

We will open the hearing on Assembly Bill 533, which provides certain financial protections for residents of group homes.

Assembly Bill 533: Provides certain financial protections for residents of group homes and similar facilities. (BDR 40-673)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:

This is the second of five bills, four of which were referred to your Committee, that were recommendations from the Legislative Commission's Committee to Study Group Homes.

Assembly Bill 533 provides various financial and legal protections for residents of group homes and similar facilities. Specifically, the bill does two things. It prohibits an owner or administrator of a medical facility, facility for the dependent, or home for individual residential care from receiving money or property devised by the will of a current or former resident of the facility or home from receiving proceeds from a life insurance policy. An exception is provided if the owner or administrator is the spouse, legal guardian, or the next of kin.

This bill also prohibits a person who resides or is about to reside in a hospital, assisted living facility, or facility for skilled nursing with naming such a facility or an owner, operator, or employee as his or her agent in a power of attorney for any purpose. Again, an exception is provided if he is a relative or the spouse. This was brought up on different occasions. Senator Shirley Breeden also had a family member who was in a situation like this. I believe there is some opposition. I believe I received some emails that were concerned that it was going to take away the ability to provide grants to travel out of state and different things.

Let me tell you what the Committee's concerns were. What we heard during testimony from the Public Administrators, from the Public Guardian, and from residents who had put their parents in one of these homes, that in some homes, they were being required to sign over power of attorney just to live in those facilities. We thought that was really a conflict of interest. If the senior citizen is moving—let us say a senior citizen who may be sixty years old, may be in good health, and just wants to live in one of these assisted living facilities for safety or health reasons—he was being forced to sign over all of his assets. In our purview within the discussion, how do those people get back out? They have just signed over everything to these homes to live there. What if things do not work out? Is the resident in a situation where he is stuck and cannot leave? There are lots of opportunities for things that we do not want to see happen. We felt this is very much separating those who run the homes and those who live in the homes. They should be able to retain all of their assets. I can tell you that if they do not have next of kin, there are plenty of charities they can donate to. They can leave their assets in another form. You should not have to sign over all of your stuff in order to live in a home to protect your health and safety. This was the crux of the discussion. It went on and on. There are many different sides to it. If we are going to help all of these people have a safe and healthy lifestyle with a little bit of assistance, then we should not keep putting all these challenges in their way to do exactly that. I am happy to take any questions.

Assemblyman Sherwood:

I have a very similar issue to this from a constituent—I do not know if these dovetail or not. They have an adult handicapped daughter, who is on supplemental income, and they write, “. . . the state Mental Health and Developmental Services is telling us that we have to sign over her check to the group home provider effective February 15th of this year instead of our joint account that we have set up since she was 18.” This is not exactly the same thing that you have talked about, but the question would be that if there is a way to pay for the home, why would they mandate that they become It is a very slippery slope even for what they are requesting here.

I know what you are talking about is very narrow in scope, but as we look into this, would you be amendable to opening the scope up a little bit more just to make sure they cannot take financial stuff—just avoid conflict of interest.

Assemblywoman Kirkpatrick:

I believe this is broad enough for any financial, but I can work with Legal off-line. We found that some of these folks were paying \$5,000 per month to live in these homes. Their next door neighbor may have been paying \$2,000, but when they were signing over all of their assets, the \$5,000 person had a million dollars of assets, but the \$2,000 person was signing over \$50,000 worth of assets. Financially I think it needs to be separated to be in the best interest of the person who is getting the assistance. I am happy to look at that. I think that life insurance benefits, financial—whether it is checks or power of attorney—that we really need to keep them separate.

Assemblywoman Benitez-Thompson:

I can see how this would be useful—at least in my professional life as a social worker—because I think so often you can have elderly folks who want to sign over their possessions to someone who is caring for them because there is a relationship there. The person might have been in this home for two to five years, so it can be awkward when you get those dual relationships of someone who is a provider who also becomes a friend. You are left in a quagmire of a gray area, and I think this helps define that gray area that no, it really should not be done.

Assemblyman Goicoechea:

I think it all becomes a matter of who is paying the bill. All of those assets, checks, and income, I believe, are required to be assigned at that point if they are truly a ward of the state. I am not clear as to how this dovetails. If you are paying the bill, then clearly you should not be coerced into signing over your assets. I do believe that at the point you become a ward of the state, you have to surrender all those. I am not sure on that.

Assemblywoman Kirkpatrick:

I believe you are correct, but what we are talking about are the folks who may be moving into some of these facilities that are stuck. I think even in Mr. Sherwood's example—if I heard him correctly—this is someone who is not necessarily a ward of the state, but someone who is just using the assistance of the state to benefit, and they are asking you to sign all of this over. It is really our job as a state to ensure that they get the proper care, and that the proper safety is done. There are a lot of registered facilities out there that are requiring this information currently. I do not want to point fingers at anybody, but the owner could stand to benefit by having these people in based on their assets.

Assemblyman Goicoechea:

I do not know if you are receiving any benefits from the state, are you technically then called a ward of the state? I do not know how far that goes.

Assemblywoman Kirkpatrick:

I would hope not, but perhaps we can clarify that with Ms. Simons or Ms. McDade Williams.

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

I am not sure how to answer that question specifically. I would say that if Medicaid were the payor, there would be some other implications involved with this issue. That is about as much as I can offer on that point.

Assemblywoman Benitez-Thompson:

Ms. McDade, just for a point of clarification, if the person is a Medicaid recipient, he is not likely to have all of these assets listed here, correct?

Marla McDade Williams:

I am not the Medicaid administrator, so I would have to defer to Mr. Charles Duarte for all of the nuances of those pieces.

Assemblywoman Kirkpatrick:

I am happy to follow up with him to get that information for the Committee.

Chair Mastroluca:

Are there additional questions for Mrs. Kirkpatrick? [There was no response.]

Renny Ashleman, representing Nevada Health Care Association:

This is a good bill; we support it. In section 1, I wonder if there might be some reason to think about a cooling-off period for a former resident. I know when I was representing University Medical Center of Southern Nevada (UMC), we

used to get bequests from former patients. As this reads now, a person who had left the hospital—they are not all old and infirm and have trouble making decisions, this was a fellow with a very big estate and he was a well-known contractor in Nevada, and left UMC with a substantial sum of money—would not be able to do this. I think they make bequests to Catholic Healthcare West and others fairly frequently. You might want to think about some modification in that area. Frankly, I do not know of a case where anyone left a nursing home any money, but it is an issue where you are sort of interfering with the rights of someone who is in their right mind, who is not overburdened, and who wants to do something charitable for what could, in fact, be a very good cause. That might be something you would like to think about. I apologize to Assemblywoman Kirkpatrick for not taking it up with her earlier. I would be happy to answer any questions.

Assemblywoman Benitez-Thompson:

The way I read section 1 is that the facility itself would still be able to benefit. Someone could give to the hospital, but just not name the administrator or owner of the hospital. That is the way I am reading it, and I do not know if the bill sponsor wants to clarify her intent.

Risa Lang, Committee Counsel:

It does appear that she is correct. It says, “. . . an owner or administrator of one of those facilities would not be entitled to receive . . .”

Chair Mastroluca:

But the facility itself could?

Risa Lang:

It does not seem to prohibit that under its current form.

Renny Ashleman:

If you look at section 1, subsection 2, it says, “Except as otherwise provided in subsection 3, any money, property, proceeds or interest therein that is described in subsection 1 passes in accordance with law as if the owner or administrator of the medical facility, facility for the dependent or home for individual residential care had predeceased. . . .” I do not know whether it would only be the facility for the dependent or home for individual residential care, but that was the area that had me concerned, and it may be that that does not apply to hospitals and nursing homes. It does look as if there are some implications for some of the facilities.

Risa Lang:

I think there are two. It does say ". . . an owner or administrator of a medical facility, facility for the dependent or home for individual residential care . . . ," so I think they are talking about the owner or administrator would be deemed to have predeceased the decedent.

Chair Mastroluca:

Ms. Lang, could you say that in English?

Risa Lang:

It is saying in subsection 2 that any of those people are prohibited from receiving money if for some reason the document would give them money. It is just presuming that they had predeceased, so that it would just follow the next in line in the passage of the item in their will.

Assemblyman Livermore:

Most hospitals have a very aggressive foundation. Foundations are 501(c)(3) stand-alone departments or agencies, but their fiduciary responsibility is to receive and arrange for receiving bequests or other means of financial support to meet their charitable goal of some project or some operation of a care facility. I do not see any separation in there that would disallow them from receiving that money.

Renny Ashleman:

Rereading it, I think Ms. Lang is right and I was mistaken in my interpretation of subsection 2.

Chair Mastroluca:

Are there any additional questions for Mr. Ashleman? [There were none.]

Barry Gold, Director, Government Relations, AARP Nevada:

AARP supports strong legal protections against, and effective protective services addressing all forms of exploitation and abuse of incapacitated and vulnerable adults. [He continued to read from prepared text ([Exhibit D](#)).] Seniors should have freedom from exploitation and abuse. From what we just heard, having someone sign away all of their assets, regardless of the amount, before they can move in somewhere, sounds like exploitation and abuse.

Elder abuse can be physical, financial, or psychological and may take place in a home or an institutional setting. Incapacitated elders are also at risk of abuse, neglect, and exploitation by guardians, agents under durable powers of attorney, and other fiduciaries with the authority to make these decisions.

Some studies have shown that about 23 percent of substantiated abuse of elders is financial exploitation.

We have all heard the stories of unscrupulous owners or operators of facilities for seniors taking advantage of the people they are supposed to be caring for—stealing their money, isolating them from family, and even abusing them physically. Financial exploitation can be easy to get away with when the care providers are in a position of trust and power over the residents. It could be easy to do. Family does not often visit or they may even be out of town. The perpetrator at first just “helps” with someone’s finances, then swoops in and offers to become their legal power of attorney, or even the beneficiary of their will, or maybe just right up front they make them sign. The trusting residents may have some confusion and can quickly be talked into decisions that are not in their best interests. This has to be stopped.

Assembly Bill 533 will help protect residents from this type of heinous exploitation. This will stop those seeking to swindle or just plain steal from those they claim to be caring for. Most of the operators or owners of these facilities would never do this. They truly care for their residents. The very few bad actors that do engage in this criminal behavior give the industry a very bad black eye. The industry should really support this bill as a way to assure all Nevada families they are trustworthy. On behalf of our 305,000 members across the state, AARP Nevada strongly supports A.B. 533 and urges this Committee to pass it.

Chair Mastroluca:

Are there questions for Mr. Gold? [There were none.] Thank you very much.

Is there anyone else that would like to testify in support of A.B. 533? [There was no response.] Is there anyone in opposition of A.B. 533, either in Las Vegas or Carson City? [There was no response.] Is there anyone neutral on A.B. 533?

Ed Guthrie, Executive Director, Opportunity Village:

[Mr. Guthrie submitted prepared testimony ([Exhibit E](#)).] Opportunity Village is a community training center that serves people with intellectual and other disabilities in Las Vegas, Nevada. In the past 12 months, ending in December 2010, we provided services to almost 3,000 people with intellectual disabilities. We do not currently provide group home services for individuals with intellectual disabilities, but hundreds of the folks that we do serve live in group homes. So we are very much interested in bills that have to do with group homes.

We support the intent of A.B. 533 that provides certain financial protections for residents of group homes. Most, if not all, of the residents of group homes are vulnerable individuals and we share in the concern that unscrupulous staff or owners might take advantage of the people in their care; however, we are worried about the same situation that Mr. Ashleman brought up. The owner of a group home could be a 501(c)(3) organization.

This past summer we had the chance to visit a number of wonderful residential care providers throughout the country, one of which was Misericordia in Chicago. Misericordia operates a number of group homes and apartments for individuals with intellectual disabilities that are located in an old Catholic orphanage. I believe it is operated by the Sisters of Mercy. The Sisters of Mercy encourage the families to set up trusts for the care of the individual once the family is no longer able to provide for that care. They encourage those trusts to be signed over to Misericordia once the individual dies, so that Misericordia would then be able to provide services to individuals who do not have the assets to set up that kind of a trust. We want to make sure that if a Misericordia or an Opportunity Village or the dioceses of Las Vegas or anyone like that were to set up a number of group homes, that the individuals who live in the homes would have the ability to leave a bequest to the 501(c)(3) charity to provide similar service for individuals who do not have those types of assets. That is our only concern. Thank you.

Assemblyman Sherwood:

Along the same lines, as the aging population does not have enough assets to retire, et cetera, are you aware of a situation where you would say "Okay, we will provide care. You do not have the \$5,000 or \$2,500 per month. In lieu of that, we will purchase an insurance policy on you with us as the beneficiary to cover the cost. You do not have to pay now." If we passed a bill like this, your concern would be that there is no leeway for people to do side deals, they know what they are getting into . . . It seems like it is pretty much a black or white thing. How would you propose getting around that?

Ed Guthrie:

I do not really have an answer for that. I am not aware of those types of situations in the facilities that I visited. The insurance policy there would have probably been on the parents to set up the trust for the individual who is living in the facility, not necessarily on the individual living in the facility. So I cannot answer that question.

I believe you can check with the Division of Mental Health and Developmental Services about your question earlier regarding individuals signing over their supplemental security income checks. I think they are the people that license

the operations of those types of homes. Jane Gruner is the person in charge of Sierra Regional Center, and she should be able to answer that question for you.

Chair Mastroluca:

Are there additional questions for Mr. Guthrie? [There was no response.]

Is there anyone else wishing to testify on Assembly Bill 533? [There was no response.] We will close the hearing on A.B. 533.

We will move on to Assembly Bill 534, which increases penalties for operating certain group homes without a license.

Assembly Bill 534: Increases penalties for operating certain group homes without a license. (BDR 40-671)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:

This is yet another group home bill out of the five bill drafts. Assembly Bill 534 makes changes regarding the unlicensed operation of residential facilities for groups or homes for individual residential care. Specifically, the bill does four main things. It transfers the authority to impose civil penalties for operating an unlicensed facility from the Office of the Attorney General to the Health Division. The bill increases the civil penalties for operating an unlicensed facility to \$10,000 for the first offense, \$25,000 for the second, and \$50,000 for the third offense. If a person is found to be operating an unlicensed facility, the bill increases the period of time within which a violator may not apply for a license to operate such a facility to six months for the first offense, one year for the second offense, and permanently for the third offense. The bill also clarifies that the offense of operating a residential facility for groups or a home for individual residential care without a license is not excused by a licensure of another facility or home.

Additionally, the bill contains provisions for the Health Division to provide reasonable notice to the operator of the facility before seeking sanctions. This bill also provides an appeal process. Finally, the bill provides that all civil penalties collected for operating an unlicensed home for individual residential care can be placed in a separate account in the State General Fund to be used for the protection of the health, safety, well-being, and the property of the patients.

Madam Chair, I would like to go into a little bit of personal discussion on this. We had very lively debates on this particular bill in the Legislative Commission's Committee to Study Group Homes. One of the frustrations for a legislator is to have residents from your district calling and not being able to solve their

problem. I think we all take our job very personally and we try to solve their problem. Unlicensed group homes are a huge problem within the state. I can tell you there will be testimony from the state that says it is a very expensive process to go through, and very time consuming. I just want to give you a personal example that happened within my district. Everyone has heard this story a million times, but it is the story that keeps me bringing group home bills until I get it right.

We have facilities out there that do a great job. They are there for the best interest of the people who live in those homes, they care for those people like they are their own parents. But then we have the ones who are there to make a buck—and that is just the truth of it. I had a particular group home within my district—it became an unlicensed group home. We kept trying to go after the particular incidences where the safety of the people within that home was not being served to the full extent. This address is familiar, and I have been fighting this issue with six years for this one particular group home. I really got involved in it—it became my priority to ensure the safety of the residents, when the neighbors called me and said “Mrs. Kirkpatrick, we are really sorry to tell you, but the lady at the group home you have been dealing with was beaten to death by someone.” As terrible as that sounds, it is very much a reality. A person was referred to a group home, the group home was not licensed, and we brought tons of people out there, but that is after the fact. That was someone’s mother who lost her life trying to live within a facility that was supposed to care for her. I know that is an extreme case, but it is the truth to what happens. I think that when we have group homes they should be licensed, because the health and safety of the folks that live in those homes is the No. 1 priority. We work very hard at the state level to set policies in place to ensure this. In this same group home, they were moving residents every time someone would come out to question them to see if they were a group home or not. They had a couple of other facilities and they would just put the residents on a bus and send them somewhere else until all of the cars with the exempt plates left. That is a very true thing.

I do not find any excuse for being an unlicensed group home and taking dollars from the state, or taking dollars from a private resident for providing a service that they have agreed to. The \$2,000 is a little egregious, but let me tell you, if you are going to be in the business, you had better be able to take the risk. It takes a lot of work for them to go out and investigate. Many hours go into determining if one group home is licensed or not licensed. They make several trips out there. It is very expensive, and we have to provide a tool for the state in order for them to be able to keep going after those unlicensed facilities. We want to help the state have the proper tools in place.

Everyone is trying to solve the issue. I am not trying to get at the good guys, because I think that we can have more money in our pots to give out to the good guys if we get rid of the unlicensed guys that are out there. I apologize for putting a little bit of personal spin on it, but I take the constituents in my district very personally. They are like my second family and this is one case where it went too far. I am committed to making sure that it never happens again.

Chair Mastroluca:

Thank you, Mrs. Kirkpatrick. I would say that anyone who knows you knows how seriously you take your job and how important your constituents are to you. I completely understand.

I was wondering about changing the civil penalty from being recovered by the Office of the Attorney General in the name of the Health Division. You said that you would be setting up an account within the Health Division? Would you talk about that a little bit more?

Assemblywoman Kirkpatrick:

The bill provides that all civil penalties collected for operating an unlicensed home for individual residential care can be placed into a separate account in the State General Fund to be used for the protection of the health, safety, well-being and property of patients, including residents of facilities found deficient by the Health Division. I think I had the Attorney General on my mind and misspoke, so I apologize for that. It says that it is going to be separated into a separate account for the State General Fund.

Chair Mastroluca:

Does that account have a purpose in relation to group homes?

Assemblywoman Kirkpatrick:

For the intent of the Committee and myself, we put those funds back in so that we can continue to go after the unlicensed group homes. I am sure you will hear how expensive it is to go through that process. You really do have to make sure that you are going after the right people. The law is very complicated on which homes the state licenses and which the local governments do not license. I know Ms. McDade has been working with me to try and help define some of that, so we are very clear before we go after these groups. I would not blame the state if it was not a top priority, because it is so expensive and consumes so much staff time, but we want to give them the ability to have those dollars in there to continue to investigate those unlicensed facilities.

Chair Mastroluca:

Do you know if there is currently a reporting mechanism in place? For example, if someone lives in a group home and they feel that maybe it is not licensed or something is wrong, or is that a Ms. McDade question?

Assemblywoman Kirkpatrick:

That is probably a Ms. McDade question, but I will tell you that there is a process and we did discuss it. I do not think we need to legislate it because I think that we all want the same thing—local government and the state. Traditionally, local government hears first on a particular home that may be licensed or unlicensed, so we have been working, at least in southern Nevada, to have direct access to someone within the state agency so that we could clarify whether they should be licensed or not licensed. That was one of the things in the court settlement. We cannot track or keep data on any of these particular homes—that was a decision the courts made. So communicating between the state and local government, I think, is the best practice for the reporting of those homes.

Assemblyman Hammond:

When it comes to creating these separate accounts in the State General Fund, like in section 2, subsection 3 of the bill, is it not true that there is already an account set up? I read the same thing in section 1, subsection 4, so it looks like there is already an accounting system there as well, so it is nothing new. This is mostly so I understand it, because it might come up in other bills later on, but it looks like it is the same thing. Is that correct?

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

Yes. There is already an existing separate account. It has a budget account number and the funds in that account have been used for quality outcome initiatives for providers, and the sanctions and fines go into that account.

Assemblyman Hammond:

I appreciate you clarifying that. It gives me peace of mind also to know that I understand it now. Thank you.

Assemblywoman Benitez-Thompson:

I like the new fines. I like that I see these fines getting progressively heavier from first offense to second offense to third offense. In section 1, though, it talks about any time that an offense is committed, it is going to stay a misdemeanor, and I am wondering if you had any discussion about changing that. I know you had some really difficult conversations. I think 99 percent of the folks who do this do it amazingly well, and they have the best hearts for

signing up for this profession. But for those bad actors, I am wondering if that was discussed at all.

Assemblywoman Kirkpatrick:

That was not specifically discussed because we figured that if we could get at their pocketbook, then they would be licensed correctly. It is very specific now. It is \$10,000 regardless. There is no flexibility in that. The second offense was because some people would move them back and forth from home to home, so we wanted to be sure and capture those. There was no discussion on the misdemeanor, because I think the ultimate goal was to put these folks out of business if they were not going to take the time to get licensed. I do not know that throwing them in jail is going to help, but I do know that if I take my daughter's \$20, she has a problem and she is my best friend until she gets it back.

Assemblywoman Benitez-Thompson:

Just know that I would be cool with it, if it ever came up in conversation.

[Assemblywoman Pierce assumed the Chair.]

Assemblyman Livermore:

I have a question that is along the same lines. In some places, if you do not wash your boat before you put it in the lake, it becomes a class C felony. When does this become a felony?

Assemblywoman Kirkpatrick:

I do not have the answer for you. These are all Committee bills, so it was a collective discussion amongst many. I have tried to be very "in the middle" on this because I have some personal issues with it. I have done my share of work on group homes and I have caused a lot of legal headaches over them, so I thought I would work in the balance of the rest of the Committee this time. I am not speaking on behalf of the Committee, but I would like to see the fines first and see if it does make a difference. I think that future legislators can absolutely consider bills to make it a little bit harder, but as far as the Committee, it was never even really part of the discussion as much as the funds were.

[Assemblywoman Mastroluca reassumed the Chair.]

Assemblywoman Pierce:

This is a general question about the group homes. You know how they have something on the wall, a plaque that says it has been inspected by the state. Does it have that?

Wendy Simons:

All facilities that are licensed by the Bureau of Health Care Quality and Compliance have a license that is required to be prominently posted, saying what kind of licensure they are holding.

Assemblywoman Kirkpatrick:

May I follow up on that, because this is a discussion I had with Councilman Barlow in Las Vegas. It is not necessarily in the front window as you would expect. When you walk into a restaurant, you usually see their health sticker. Councilman Barlow had asked that at least on the local level that they post it in the very front window near the door so it was visible to people walking up to that home, whether or not it was licensed. At the state level it is required to be posted within the facility. If you ever walked into one, most of them tend to be near the kitchen. I know that on the local level, they are trying to get them to post them in the front window.

Assemblyman Hambrick:

I take it that this is a cooperative effort between the cities, counties, and the state, looking at these unlicensed businesses. Will the cities and the counties also reap the benefit of some of the penalties, or is that pretty much coming back into the State General Fund? Or, I believe, they could have their own penalties for not having a business license within a municipality.

Assemblywoman Kirkpatrick:

We did have that discussion about giving local governments the money, because they get the original nuisance calls; however, at the end I stuck with the state because I believe that the state has to go out and do all the additional follow-up, and I believe it is best within their purview. I can tell you that local governments want to work with the state on this issue because they receive just as many calls and they spend a lot of time with code enforcement at these facilities. The more that we can work together, everyone benefits, and this goes to working together for the best interest of the folks that are in there. The community benefits. Local government is not out there all the time, and the state is actually now in a position to acknowledge that everyone is getting the proper care they should.

Assemblyman Hambrick:

If the city or county finds one of these unlicensed facilities, do they then have the authority to shut these people down for running an unlicensed facility, or do they have to notify the state to come and take care of it?

Wendy Simons:

I cannot speak for what the cities and counties do. I can only speak for what the bureau does.

Assemblywoman Smith:

I share a lot of the same concerns. I think one of the things we see is there are certain places in our cities and counties where these types of homes congregate and so some of our districts are more plagued with problematic situations than others. I am glad to see if we could move forward to do something about this. I was thinking about the fee question from Mr. Hambrick, and one of the things I had assumed was that you could not allow the local government to keep part of this. I know there is always a constitutional or legal challenge to allow the same body that assesses the fine to keep the money, because it is considered an incentive for them to award the fines. I think that may be the case here?

Assemblywoman Kirkpatrick:

That was part of the discussion, and I was not willing to try my chance in court.

Chair Mastroluca:

Are there any further questions? [There was no response.]

Barry Gold, Director, Government Relations, AARP Nevada:

AARP public policy says, "States should enact licensing requirements for all Long Term Support Services providers, including assisted living residences, board and care homes, adult foster homes, continuing care retirement communities, hospitals, adult day services, and any agency providing home health or personal care services." [He continued to read from prepared text ([Exhibit F](#)).]

Ed Guthrie, Executive Director, Opportunity Village:

[Mr. Guthrie submitted prepared testimony ([Exhibit G](#)).] People who live in group homes, whether they are seniors, youth, or individuals with disabilities are often some of the most vulnerable people in our communities. We need to ensure that the facilities where they live meet certain minimum standards. The state and municipalities license group homes to assure that the homes meet these minimum standards. Assembly Bill 534 will ensure that providers face stiff consequences if they try to operate homes that are not certified and do not meet minimum standards. Opportunity Village strongly supports A.B. 534.

I also wanted to let you know that I have spoken with providers in northern Nevada, High Sierra Industries, and others. I have spoken with providers in southern Nevada, Easter Seals Southern Nevada, et cetera, and every provider that I have talked to strongly supports this bill as well.

Chair Mastroluca:

Is there anyone else who would like to testify in support of Assembly Bill 534? [There was no response.] Is there anyone who would like to testify in opposition to A.B. 534? [There was no response.] Is there anyone who would like to testify as neutral on A.B. 534?

Wendy Simons:

Once again, it is my extreme pleasure to be before this Committee and offer information regarding A.B. 534. As you have already heard, this bill affects homes that take care of frail elders, and those could be homes of two or fewer, which are called homes for individual residential care, and homes for three or more, which are called our residential facilities for groups, or adult group care facilities. It is our anticipation that this bill may deter operators of these homes from repeatedly operating unlicensed homes.

As an example, just in this first quarter, our bureau had a complaint of an owner of a licensed home who was operating additional unlicensed homes. That is an important fact to hear. She was operating one licensed home, but had several other unlicensed homes. This owner has repeatedly operated unlicensed homes in spite of citations and fines issued in 2004, 2006, and 2010. In fact, the courts have not imposed the maximum penalties that are available to us. These repeat offenders say they are going through the licensure process, but they do not follow through. We investigated 55 complaints of this nature and substantiated 17 in 2010. This bill is a complement to Assembly Bill 50 that we brought before you earlier in the session, and it will allow us to finally capture and hopefully manage and better control our unlicensed providers that are providing care and services to our seniors and frail elders.

I do have to call to your attention to the fact that there is a minimal fiscal impact that we put on the bill in our analysis. The other budget impact you might note in your documents is that there is a potential for us to collect between \$170,000 to \$850,000 in these fines and penalties for repeat offenders, and hopefully deter these bad practices in the future. I remain available for any questions. That concludes my formal presentation.

Chair Mastroluca:

Do you have any kind of ballpark figure of how many unlicensed group homes you deal with in a year's time?

Wendy Simons:

Yes. The ballpark figure that we can substantiate is 17 out of 55 complaints, which were brought forward to us in 2010. I would suspect that there are

many others that we have not heard about, but we can substantiate that we had 17 in 2010.

Assemblyman Sherwood:

Thank you for the job you are doing. You are the A-Team, there is no question about that, and someone has to be the quarterback. It is great that it is you.

The pendulum always seems to swing one way or the other. The social model of care with the two beds or fewer is something that as the population ages and demography drives everything, we are going to need more of, not less. So obviously we want to know who the people are that provide care, but we want to have as many licensed as possible. Do you have policies in place to say "If you want to be a good actor, you want to be licensed, we do not make you jump through so many hoops and it is not so expensive, so you can do that." I hear horror stories in other industries, from my constituents, where they say if they had known how hard it was to open this store, they would not have done it. Are you comfortable that the process is not so onerous that we will lose these 50 beds in a social model where a person wants to go into a facility that feels like a home?

Wendy Simons:

Thank you for your compliments. I really appreciate them. The agency works very hard, and I am honored to be the quarterback. I like that.

In response to your question, before becoming Chief of the Bureau of Health Care Quality and Compliance, I did technical support for facilities trying to go through licensure. I was in the industry myself. To that end, I would offer to you that the application and licensure process for anyone wanting to operate a home for two or fewer is not as tedious or onerous as one might think. We have the basic application process. We held the fees for that particular provider group at the previous level—they were part of the fee increase structure we went through in the past—and we have work sessions for all of these people who are interested, either at the front end before they apply for a license, or at the back end when their application is being processed. We walk them through how to be successful in compliance. In addition, there are only 2 1/4 pages of regulations for the homes for individual residential care. It is very easy to remain in compliance and therefore what I would consider very business friendly. I have also started a home for individual residential care advisory council, which serves as a peer support for new providers coming into the industry. It also partners with our bureau to ensure that we are not encumbering these businesses with excessive regulations that would set them up for not wanting to participate in a compliance factor, but also not wanting to participate at all and stay underground. I want to set them up for success.

Assemblywoman Smith:

I want to clarify and tread a little bit on the fiscal side, because it was brought up. Your listed revenue is obviously much greater than the expense, but I thought I heard you say that the money does not go to the division for the division to use, so the fiscal note will be a little confusing for us.

Wendy Simons:

You are absolutely correct. Any collected sanctions or fines go into a separate account that cannot be used for the operation of our bureau. However, we are already administering the costs of managing the individuals who are not licensed. The fiscal note that we put on this bill was what I consider very minimal and certainly not a great strain on our agency.

Assemblywoman Smith:

So it might be helpful in the future to make this look a little bit different, so that it is very clear. Maybe a footnote or something. It should show it as a positive in the end.

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

The account that is not in *The Executive Budget* is one that we are not able to use for operating expenses, but when Ms. Simons testified earlier she talked about A.B. 50. That is the bill that would provide the authority for us to charge for the actual work we are investing in unlicensed facilities. We would charge that back to the facilities. So there would be that fee plus a fine. The fee that we would charge for doing the work would stay in our operating account, and would then offset that \$1,500. In the future we will try to make that distinction in the fiscal notes, but they really are two separate funds used for two separate purposes.

Assemblywoman Smith:

I think that is helpful and it might be helpful if you clarified that in writing on this particular bill, because it may save it from the Assembly Committee on Ways and Means.

Assemblywoman Benitez-Thompson:

In 2010, you found 17 unlicensed facilities but you also mentioned other bad actors who in previous years were unlicensed and had multiple fines over multiple years. Are those folks who are known as habitual offenders, or is it a new group each year? I am just trying to get a handle on the scope of the problem. Do you think this fine will finally shut them down?

Wendy Simons:

The pattern I have observed is that we have people who have an operation that is licensed, and they use that as the entrée to opening several unlicensed facilities. When we go in and do our inspections and substantiate complaints, the only penalty is to pay a fine or even avoid paying a fine—very small, comparatively speaking. There has not been enough clout for that process. I think it is about 50-50 in a direct answer to your question.

Assemblywoman Pierce:

The fund at the end of section 2, “. . . into a separate account in the State General Fund to be used for the protection of the health, safety, well-being . . .” cannot be used for operating. So what exactly would it be used for?

Wendy Simons:

That particular account is used for quality improvement initiatives in the industries that are affected by the actual sanctions. For example, if we see patterns of noncompliance in a provider group, then we have issued some subgrants out of that account to do training programs for that provider group for compliance. We did a training program with the adult group care facilities called “Report Cards Are Coming – Surviving Your Survey.” We also provided training on medication management and mismanagement. It is an initiative for education of those groups to see if we can change patterns and bad behaviors and increase best practices. It goes directly back to quality outcomes for the recipients who live in those facilities.

Chair Mastroluca:

Is there anyone else who would like to speak on Assembly Bill 534? [There was no response.] We will close A.B. 534. We will open Assembly Bill 535, which revises provisions governing the referral of persons to residential facilities for groups.

Assembly Bill 535: Revises provisions governing the referral of persons to residential facilities for groups. (BDR 40-674)

Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1:

I come here today with Assembly Bill 535, which is the last of the four bills that we sent you from the Legislative Commission’s Committee to Study Group Homes. Assembly Bill 535 prohibits a licensed medical facility and its employees from referring a person to a residential facility for groups that is not licensed. This bill also prohibits such a facility and its employees from referring a person to a residential facility for groups that the medical facility or employee knows or reasonably should know is not appropriate for the condition of a person being referred. A medical facility or its employee who violates either of

these provisions is liable to the State Board of Health for a civil penalty of not more than \$10,000 for the first offense, and not less than \$10,000 or more than \$20,000 for the second or subsequent offense.

Assembly Bill 535 also requires the State Board of Health to establish and maintain a system to track these violations and direct support to educate the public regarding the requirements and prohibitions set forth in this bill. Finally, in relation to the businesses that are licensed to provide referrals to the residential facilities for groups, A.B. 535 prohibits such a business from referring a person to a residential facility for groups if the business or its employee knows or should have known that the facility, or its services, are not appropriate.

What we found during the interim study on group homes is that there were agencies that were referring many of our elders, and even some juveniles to unlicensed group homes, and they were using state dollars to send them. They would give them something such as a voucher so that they could go to a facility for \$135 per week. But they were unlicensed, so there was no process in place to ensure the safety of the people who were going to these homes were even going to be guaranteed the services that they were promised from the referral, as well as the services that they should have received.

There were some referral agency people at the hearings. They encouraged us to go much further than what we did. They talked about licensing, training, and certifications; however, the Committee suggested that we start with this and see if this helped the process. I go back to the one group home that I had within my district. The daughter who put her mother in that facility was under the impression it was a licensed home because she was referred by an agency. So this will help us be more transparent. This bill will ensure that when we refer people to homes within our state that the homes are licensed and they meet the criteria of a quality home.

This is my last bill in this fabulous Committee, and I will entertain any questions.

Chair Mastroluca:

I am wondering about the part of the bill that refers to civil penalties for the licensed medical facility or an employee who violates the provisions. Have you given any thought to the fact that the person who is doing the referrals to a group home is often a social worker? Have you considered attaching a penalty on their license if it was a repeated offense? I am just wondering if you are fining the medical facility for something that the employee did, the employee could lose their job, but the penalty is really on the facility itself.

Assemblywoman Kirkpatrick:

I am open to suggestions. I will take it back to the Committee to Study Group Homes and Ms. Breeden. We needed a starting place on every one of these bills, so we are happy to take that recommendation back. I will get with Ms. Breeden and I can let the Committee know tomorrow.

Assemblyman Goicoechea:

That section of the bill does give me some angst. For trying to match up discharge planners, for example, facilities that are affordable for a patient, and if she misses a little bit, it is \$10,000 for her or the facility. It concerns me. I agree with you wholeheartedly when we are talking about discharging someone to a facility that is not licensed. Clearly discharge planners should know or make an effort to find out. But it is a fine line when you are a discharge planner trying to make something fit a budget so we do not conflict with the first bill where you end up losing all your assets just because you cannot afford to be there. So they are looking to get it as affordable as they can. If they miss that and determine that it was not appropriate for the condition of the patient, they could be fined. I am a little bit concerned about that section of the bill.

Assemblywoman Kirkpatrick:

I think from our perspective from the Committee, we wanted to send a firm message to the industries that you have to be on your game when you are referring people, because this is a liability for the state. This is someone's family member who may be going to an unlicensed facility, so we wanted to put the onus back on the owner. As far as the discharge planner, I am happy to revisit this bill with Ms. Breeden and whatever the Committee may suggest. I think that however we can make the point to the industry is important. What we have seen is that many referral agencies pop up like a McDonald's on the corner, they were coming from out of state, and they were making tons of money in the short term. It was almost like a cash process, a broker. I think we should start somewhere to address this issue and send the industry a message. If this is way too much, which is way less than what the referral folks wanted, I am happy to work on behalf of the Committee to address it.

Assemblyman Goicoechea:

It is really hard to define reasonable. If we could get some tougher language and clarify it a bit—I think it is pretty hard to be “reasonably known.” You are taking your best shot at it, but it did not turn out well. If there is clearly an intent to defraud or where there is some financial gain to it, then I can see where they definitely should be fined. I am concerned about the word “reasonably.”

Assemblywoman Kirkpatrick:

I will point out that where this really is a problem is with the halfway homes or the alcohol awareness homes. A lot of the time local government gives people vouchers to help them get into a place. My hope would be that you would not have to legislate that they would have to carry a manual and update it to see who is licensed and who is not. I am willing to go back and address that.

Assemblyman Goicoechea:

As far as the licensure is concerned, I do not have a problem with that at all. It is just trying to define how that employee would know that it is a fit or not and they are taking their best shot at it.

Chair Mastroluca:

I understand where Mr. Goicoechea is going, and it may be appropriate to have something that reflects that financial gain by the individual is not acceptable or allowed.

Assemblyman Hambrick:

I like the bill and it is a strong penalty, but I am wondering if at some point, either for the medical facility or for the employee, if the employee is also a licensed professional of some type, certified practitioner of some type, if their licensure is at stake, they also may take greater care. If they may lose their license, whether it is a doctor, nurse, or nurse practitioner, to throw that into the mix, that may give someone some pause.

Assemblywoman Kirkpatrick:

I will tell you that there was some heated discussion on that particular issue, because it did come up. Those who were licensed wanted to make sure no one else could ever get licensed, and those who were not licensed thought that it was unfair that they could not participate in the process at the same time. So for the Committee, we decided to take the easy road—to at least start with the process. I am happy to go back and work with Ms. Breeden and Chair Mastroluca to see how we could start this process. I think the industry has been paying attention and they get that Nevada is now serious about how we do business when it comes to these types of things, and they are going to be working very closely to not make any mistakes.

Chair Mastroluca:

In section 1, subsection 3(a), where it reads, "Establish and maintain a system to track violations" Does that currently exist or would it be something new that would be created?

Assemblywoman Kirkpatrick:

We did not hear in Committee that it existed, but maybe Ms. Simons could come up and address that.

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

We have extensive tracking systems for different kinds of violations. If we receive a complaint from a hospital for an inappropriate discharge, that is just a matter of our doing business. We go in and investigate whether that was an inappropriate discharge to an unlicensed facility. We also have four referral agencies in our licensure database, and all of those are inspected every 18 months for their compliance with the regulations. So we do have tracking mechanisms in place.

Chair Mastroluca:

Before you leave, my next question is just a few lines down on page 3, lines 3 and 4 where it says, "Educate the public regarding the requirements and prohibitions set forth in this section" Is that something that currently exists, or is it something that would have to be created?

Wendy Simons:

We use our website extensively. That would be our method of educating the public through bulletins and notices. That would be the first point of entry for public notice, which is already existing.

Assemblywoman Pierce:

The referral enforcement is by the State Board of Health, so you would not have anything to do with this part of it, correct?

Wendy Simons:

We work directly as an agent of the State Board of Health, and we are under their direction. They tell us what regulations to craft, so it would fall on us.

Chair Mastroluca:

Are there any additional questions? [There was no response.]

Barry Gold, Director, Government Relations, AARP Nevada:

Knowingly referring a person to an unlicensed facility or to a facility that is not appropriate for the condition of the person being referred is a type of abuse or exploitation. [He continued to read from prepared text ([Exhibit H](#)).]

We have heard a little bit about this today, and that is what may be happening. Referral agencies and people who make referrals sometimes get a fee from each

placement. So let us say that they refer someone to April's Group Home, and they get a fee for that. It turns out that April's Group Home really does not take care of female stroke victims. Well, this person was a female heart patient and she has dementia, so two months later she really has to go to Peggy's Group Home. The referral placement agency then gets another fee for that. So that may be what is happening, and this bill will really address it and keep it from happening.

On behalf of our 305,000 members across the state, AARP Nevada supports A.B. 535 to protect those needing residential group care from this type of exploitation.

Chair Mastroluca:

Is there anyone who wants to speak in support, against, or neutral on Assembly Bill 535? [There was no response.]

Mrs. Kirkpatrick, you have the final word on all of these bills, and it has been a pleasure to have you in our Committee this afternoon.

Assemblywoman Kirkpatrick:

It has been a pleasure to be here. Assembly Bill 532 was the bill on residential juvenile facilities. We did not particularly hear from the state. We heard from local government on their child welfare programs, both north and south. We heard from local entities who were getting the calls and placing the children. Training was something that they believed the local side could do.

Assembly Bill 533 was the bill that talked about the financial pieces. I am not sure how to clarify Mr. Guthrie's concern, but I will get with him. I really believe that in the best interest of our folks that we put in these homes, their safety and health care should not be jeopardized by how much of their assets they turn over.

Assembly Bill 534 was the bill with the penalties for unlicensed facilities. I prefer to leave it with the stiff penalties at first, hoping we get rid of them, and then next session maybe we could bring a bill to send them to jail after we take their money, but if we send them to jail first we will not get their money.

I want to tell the Committee on behalf of the Legislative Commission's Committee to Study Group Homes that we appreciate you taking the time to hear these bills. These are important issues for consumers and for our most vulnerable folks. I personally appreciate the opportunity and the Committee also appreciates the opportunity. Thank you.

Chair Mastroluca:

We appreciate all of your hard work on this issue. It is definitely a large issue, and you have tackled quite a bit.

I will close the hearing on Assembly Bill 535, and open it up for public comment. Is there anyone who would like to participate in public comment? [There was no response.] We have two bills up on Friday and a work session.

The meeting is adjourned [at 3:00 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: April 6, 2011

Time of Meeting: 1:05 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 532	C	Assemblywoman Marilyn Kirkpatrick	Bulletin No. 11-8, Group Homes
A.B. 533	D	Barry Gold	Testimony
A.B. 533	E	Ed Guthrie	Testimony
A.B. 534	F	Barry Gold	Testimony
A.B. 534	G	Ed Guthrie	Testimony
A.B. 535	H	Barry Gold	Testimony