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

Seventy-Sixth Session
April 25, 2011

The Committee on Health and Human Services was called to order by Chair April Mastroluca at 2:34 p.m. on Monday, April 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
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:

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Harold Cook, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services
Elizabeth MacMenamin, representing Retail Association of Nevada

Chair Mastroluca:
[Roll was called.] We are going to work through Senate Bill 44 (1st Reprint) in hopes that we can get it done, or if not done, a nice chunk of it done before we need to move on to our next committee.

Senate Bill 44 (1st Reprint): Requires the Division of Mental Health and Developmental Services of the Department of Health and Human Services to adopt certain regulations. (BDR 39-448)

Harold Cook, Ph.D., Administrator, Division of Mental Health and Developmental Services, Department of Health and Human Services:
Senate Bill 44 (R1) requires the Division of Mental Health and Developmental Services (MHDS) to adopt regulations which define eligibility for services. Currently *Nevada Revised Statutes* (NRS) Chapter 433 contains a very broad definition of individuals who are eligible to receive services from Division programs. These definitions can be interpreted as including almost anyone who seeks services. Current practice and available resources, however, restrict services to individuals who have diagnoses consistent with serious and persistent mental illness. There is no basis in law, however, to restrict services in this manner. This bill allows the Division to develop regulations which define eligibility for services as well as develop referral procedures when the Division is unable to serve someone. Proposed regulations will define the clinical criteria for services based on the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*.

Regulations will also serve to define Division programs as the "safety net" for eligible individuals who have no means to access other behavioral health services. These regulations will not affect the current "dangerous to self or

others as a result of mental illness" criterion for an emergency commitment order, which is usually called a Legal 2000.

Most other states have established eligibility criteria either in law or regulation for adults receiving services. In 44 states, specific diagnoses are part of the eligibility criteria. Clear definitions in regulation will allow the Division to better control its caseload and defend appropriate decisions to authorize or deny services. Having these criteria in regulation would also provide a uniform statewide standard to which individual MHDS agencies must adhere. These criteria will also be easily accessible to Nevadans who have a stake in these issues.

Senate Bill 44 (R1) also revises the term "client" to "consumer." Consumer is the current and more acceptable term for someone who is a recipient of behavioral health services. This change simply brings the NRS into the twenty-first century.

I would be pleased to answer any questions the Committee may have.

Chair Mastroluca:
You answered one of my questions with your description, which was the change from "client" to "consumer."

Harold Cook:
It is just updating our language.

Chair Mastroluca:
You talked about how this would allow people to have access to diagnosis information.

Harold Cook:
When we develop the regulations, we would include in those regulations the diagnostic criteria that are necessary to be eligible for services. Those criteria would be accessible in regulation, so if people were interested in certain MHDS services, they could see whether or not they were eligible.

Assemblyman Livermore:
I am curious as to why you changed most of the words from "client" to "consumer." Why not "patient" or some other choice?

Harold Cook:
This is just updating the language that is consistent with the national conversation. Over the years we have updated our language periodically. In the

1960s we removed the terms “idiot” and “imbecile” from the NRS and changed from “client” to “patient.” Currently the broad term for someone receiving services is “consumer,” depending on his circumstances and who he sees. He might be considered a patient. If they are seeing a psychiatrist, psychiatrists often refer to them as patients. If they are seeing a social worker, the social worker will refer to them as clients. We decided that we wanted to be like the rest of the nation and use the more generic term, “consumer.”

Assemblyman Livermore:
I do not doubt what your findings were. I am confused about the identification of a consumer. A consumer is somebody who has a job and buys and acquires something through a process of a selection of services: color, cost, size, and whether it has two wheels or four wheels. It is a different process of choice. I am confused because, generally speaking, you do not have a lot of choice in these services.

Harold Cook:
The reason for the change is to at least bring about more choice in medical services for individuals. It is an attempt to make a change in how people access services so that they do have more choices. That is an ongoing effort by the Division.

Assemblywoman Benitez-Thompson:
Within section 1, the bill talks about the consumer needing to have a documented diagnosis. If they come to the MHDS, would you be able to diagnose, or would they have to come to you with the diagnosis first in order to be eligible?

Harold Cook:
We do the diagnosis. No one needs to come to us with an established diagnosis, although many people do.

Chair Mastroluca:
Are there additional questions from the Committee? [There were none.] Is there anyone else that would like to speak on S.B. 44 (R1) either in support, opposition, or neutral?

Assemblyman Livermore:
On page 37 of the bill, “Text of Repealed Sections,” you define client four times.

Chair Mastroluca:
Those are repealed sections.

Did you have any closing comments, Dr. Cook?

Harold Cook:
The only closing comment I have is that this bill allows the Division to do what every other medical care organization or every other health insurance organization does, and that is to define who is eligible for services and the nature of the services we provided. I think that it is fairly astonishing that it has taken the Division until 2011 to actually request this authorization.

Chair Mastroluca:
Thank you very much, Dr. Cook.

Seeing no other questions or comments, I will close the hearing on S.B. 44 (R1). We will now open the hearing on Senate Bill 114 (1st Reprint).

Senate Bill 114 (1st Reprint): Revises provisions relating to controlled substances. (BDR 40-190)

Senator Moises (Mo) Denis, Clark County Senatorial District No. 2:
The subject of the bill before you today, prescription drug abuse, is a very serious issue in this state. More people die from prescription narcotic abuse in Nevada than car accidents. Several sessions ago I received a telephone call from a mother whose daughter had died from an overdose due to prescription narcotic abuse. I started a process of working on some bills to help address some of the issues. One of those bills from the 2009 Legislative Session required an interim Legislative Committee on Health Care study with the State Board of Pharmacy, the state Board of Medical Examiners, and the State Board of Osteopathic Medicine to conduct a study of the abuse of prescription narcotic drugs in Nevada. In addition, the pharmacy folks and a few other medical-related folks were involved with that.

The bill that you see before you is the result of that process. You will hear from several organizations that were part of that study. If you are not familiar with the database that is referenced in the bill—the Prescription Monitoring Program database—we can provide information on that, as well.

If you will turn to the last page of the bill, you can see in the new language that S.B. 114 (R1) accomplishes two things. First, it allows for the Prescription Controlled Substance Abuse Prevention Task Force to share information with other prescription monitoring programs (PMP). Second, it

provides legal immunity for a pharmacist, pharmacy, or other dispensers that act with reasonable care when making a report to the state.

Why is it important? Approximately 34 states have PMPs. The implementation of the first recommendation would assist in promoting the interoperability of PMPs across state lines. In addition, the inclusion of the proposed language enhances the state's effort to continue to be eligible to receive grants from the federal government in the further development and continuation of Nevada's PMP.

The second provision relates to privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and potential legal ramifications for providing information to a database. Currently many states that have a PMP provide immunity to persons who have access to that information and share the information as a part of participating in the PMP. This recommendation adds Nevada to the states that provide such protection.

If you are not familiar with the database, I will give you a quick example. If a person is addicted to prescription narcotics, he will go into an emergency room on a weekend and say, "My back hurts and I need some pills." The doctor will give him eight or ten pills, maybe five or six. The person knows which hospitals are tied together, so he can actually go to three or four different hospital emergency rooms and end up with about 20 to 30 pills.

What the database has allowed the doctors to do is to go in and pull up the individual and see what kind of prescriptions have been given to that individual in the past. It would not give them the immediate ones from that day because it is not a live database yet, but it is within just a few days. You can look 12 months out if you want. You type in the patient's name and it sends back a list of all the prescriptions that individual has had over the 6 or 12 months. If he is getting more than what he needs, then the doctor can make a decision whether to give him pills or not. If he is abusing, you can tell by the pattern. This is just a tool that the doctors use when they go in to write the prescription.

The benefit to this particular bill is that sometimes people will go to other states, especially if they are on the border. They can cross over and get prescriptions. This will allow the sharing of information so that doctors on the other side of the border can check to see if someone is doctor shopping. It is a lengthy process to deal with this issue. There are a lot of different things that need to happen, and this is just a couple more steps in that process to try to help with prescription narcotic abuse. I believe Nevada is still No. 1 in the country in narcotic prescriptions. More people in Nevada are prescribed these narcotics than anyone else in the country. It is a big issue. We are seeing a big

issue now at the high school level. Teenagers can get access to them through their parents, or other pills that they might have in the house.

That concludes my presentation. Thank you for your consideration of this measure. Hopefully someone from the Board of Pharmacy is here to provide additional information, and others from the working group that participated in the interim are here. They may also be able to address specific questions.

Assemblyman Goicoechea:
Does this just pertain to narcotic prescriptions? Are you telling me that every prescription you are issued is going to bounce out on the screen?

Senator Denis:
No, it is just the controlled substances.

Assemblyman Goicoechea:
Okay. I was concerned. Otherwise you are going to run afoul of HIPAA requirements.

Senator Denis:
It is specifically controlled narcotics that are in the database.

Assemblyman Sherwood:
One of the things that I did not see in here—the flip side of the coin—is that I have constituents who have to get controlled substances every month. Right now, those folks have to jump through so many hoops. They have to go back to the doctor who has prescribed—it is obvious when you have a need or a child who has a need for these controlled substances. So to get your prescription filled, it is literally 3 1/2 hours or half a day going back to the doctor. If this were passed, would this enable the vast majority of folks who are using these substances to maybe get a prescription for 90 days? A larger prescription? It seems like we punish everyone because of the lowest common denominator, and if we are more effective because of this legislation, maybe we can loosen it up on the soccer moms who have to get a prescription filled for their kids who have attention deficit hyperactivity disorder or whatever.

Senator Denis:
This would be pain medication for people who got into a car accident and hurt their back, for example. They are getting very powerful pain medication. Perhaps some of the other folks that come forward can address that issue. I think that the doctors have the ability to prescribe how they wish, and there is a limit on that. One of the big issues in most cases is that it is very easy for people to get these pills. That is where part of the problem is. They are getting

so many pills, and they also doctor shop. They go to more than one doctor and get a similar prescription from another doctor, and they may end up having two or three hundred pills at one time. They usually get a month's worth at a time because they are taking multiple pills per day. This bill will not necessarily change that part of it. This will allow us to share information with the states next to us. It also has the other part, which is the immunity for the pharmacy folks that are participating, as far as the information that gets shared in the database.

Assemblyman Carrillo:
Obviously this is not going to be an issue where you are going to be able to resolve children getting into their parents' prescription drugs. I know there are different scenarios, but what we are trying to prevent right now is just strictly the people that are addicted to them. If they are going to solve it, they have made every effort to try different doctors to get around this, and I think this is the first step of many steps that need to be taken. It is not just the people who are addicted to them, but it is the children who have access to them, and that is the bigger problem. I believe this is a good step in that direction. I want to thank you for coming in and testifying today.

Senator Denis:
Thank you. It has been one step at a time. There is the other side of this. There are some doctors who are just writing prescriptions. In Florida they call them prescription mills or drug mills, where people can literally fly into Florida and get a bunch of pills without really dealing with the issue, which is pain. We have been looking at that issue. This does not specifically speak to that part of it, but there are those issues that we are looking at.

Assemblywoman Pierce:
That is something I had asked about during interim—the doctors who are writing out a lot of prescriptions. Is there another bill that deals with that or is it something in the future?

Senator Denis:
There was another bill that did not quite make the deadline. It dealt with the education piece to make sure that those who are prescribing have received some type of training in prescription narcotic abuse. It did not survive the deadline, but I am looking for other options at this time.

Chair Mastroluca:
Can you tell me which other surrounding states have similar programs that we would be able to partner with or cooperate with?

Senator Denis:
I do not have that list. We started our program in Nevada around 1997. The interesting thing is that we have been the pioneer on much of this, and as the years have gone on others have instituted a similar type of database. When they talk about this in many of the national conferences, our folks are the ones who are presenting and talking about the things that we do here in Nevada.

Chair Mastroluca:
Why do we need immunity, which is found on page 4, section 8?

Senator Denis:
I think Ms. MacMenamin will cover that.

Elizabeth MacMenamin, representing Retail Association of Nevada:
When this program was implemented in the late 1990s, we were the first to come forward. Nevada was No. 1 in this area. At that time we did not think through the entire process and the position it was putting the pharmacy and pharmacists in. What other states have done since then is to look at the fact that the state is requiring the pharmacy and pharmacists to provide this information, and they have started offering immunity to these companies. The state already has a very limited liability. They will be off scot-free should there be breaches or other problems. The doctor also has a limited liability through the medical malpractice award limits that were approved by 2004 initiative petition, Ballot Question No. 3. So this is a way to provide pharmacists and pharmacy employees, who also hold this information, an ability to have immunity.

Now this is not going to let off a pharmacist who might release this information for some unknown reason, or a pharmacy that knowingly would go forward and allow this information to be leaked. This is not going to give them immunity. It is going to give the players out there who are playing fairly within the rules an ability to be immune from some type of prosecution should a breach occur within the computer systems.

Senator Denis worked very hard with the entire group of us during the interim to try to come up with something to address the issue with his concerns for prescription drug abuse. It is a problem in our state. We all recognize that. We all want to come forward and do the right thing in Nevada.

I will try to answer the Chair's question about surrounding states. Right now all the western states have a PMP program. There are over 40 states with the PMP program. The National Association of Boards of Pharmacy is rolling out a national program so the pharmacies here would have access to the information

that Joe Cool from New York is in Nevada and trying to get a controlled substance. He is at his limit and we are not going to go forward, or he has a fraudulent prescription, or whatever the case may be. So the national program is eventually rolling out. That is why the language is in there from the Boards of Pharmacy. They want to be able to share, and right now they cannot share that information.

Chair Mastroluca:
Are there questions from the Committee? [There were none.] Thank you very much.

Senator Denis, is there anyone else that you had to testify?

Senator Denis:
No, that is it.

Chair Mastroluca:
Is there anyone else who would like to testify on S.B. 114 (R1), either in support, against, or neutral? [There was no response.] Do you have any last words, Senator?

Senator Denis:
As I mentioned in my earlier comments, this is not an easy issue. Several questions have been asked about different parts of this. The process to get to this point was trying to get people coming from different aspects to actually decide on something, because there were other things that needed to be done, but they could not come to an agreement on those issues. Hopefully we can do that in the future. It is one more piece that we are going to try to move forward, and hopefully we can come to a good solution as to what we can do with this particular problem that we have. The interesting thing is that those who abuse prescription narcotics are not people you find slumped over in some back alley. These are businesspeople, your next door neighbor—just common people. For whatever reason—whether they get in a car accident, or have some other issues where they have a lot of pain and they need to take pills—they get addicted to them. We need to continue to try to help them and at the same time help the doctors so that they will be able to help with the pain part of it and maybe not prescribe so much, but look at another solution.

Chair Mastroluca:
Thank you very much, Senator.

Are there any other comments from the Committee? [There were none.] With that, I will close the hearing on Senate Bill 114 (R1).

Is there anything else to come before the Committee? [There was no response.] Is there anyone here for public comment? [There was no response.]

Congratulations, Committee. After sitting on the floor for 2 1/2 hours, you knocked out two bills in less than 40 minutes. Good job on all of your hard work. Try to rest up before tomorrow's marathon day.

Meeting is adjourned [at 3:03 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 25, 2011 Time of Meeting: 2:34 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 44 (R1)	C	Harold Cook	Testimony