MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-sixth Session
March 3, 2011

The Senate Committee on Health and Human Services was called to order by Chair Allison Copening at 3:34 p.m. on Thursday, March 3, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Allison Copening, Chair
Senator Valerie Wiener, Vice Chair
Senator Sheila Leslie
Senator Ruben J. Kihuen
Senator Joseph (Joe) P. Hardy
Senator Ben Kieckhefer
Senator Greg Brower

STAFF MEMBERS PRESENT:

Marsheilah Lyons, Policy Analyst
Risa Lang, Counsel
Stephanie Robbins, Committee Assistant
Annette Ramirez, Committee Secretary

OTHERS PRESENT:

Joseph L. Pollock, Program Manager, Public Health Engineer, Environmental Health Section, Health Division, Department of Health and Human Services
Katherine Jacobi, President and CEO, Nevada Restaurant Association
Ray Bacon, Nevada Manufacturers Association
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Peter Krueger, Nevada Petroleum Marketers and Convenience Store Association
Lea Tauchen, Director, Government Affairs, Grocery and General Merchandise, Retail Association of Nevada

Tray Abney, Director of Government Relations, Reno Sparks Chamber of Commerce
Barry Gold, Director, Government Relations, American Association of Retired Persons Nevada
Connie McMullen, Chair, Senior Services Strategic Plan Accountability Committee
Joe Tyler, Executive Director, National Alliance on Mental Illness Nevada
Steve Freedman, National Alliance on Mental Illness Nevada
Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Amber Howell, Deputy Administrator, Family Programs, Division of Child and Family Services, Department of Health and Human Services

CHAIR COPENING:
We will open the meeting with Senate Bill (S.B.) 210.

SENATE BILL 210: Revises provisions governing the regulation of food establishments that manufacture or process food intended for human consumption. (BDR 40-564)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):
As past Chair of the Senate Committee on Health and Education, I asked for this bill about work we had done during the interim. I have asked for updates and more information because we had concern with a local manufacturer of a food additive in southern Nevada. There was a detection of a salmonella outbreak in the processing facility. Subsequent to that acknowledgment, there were 153 voluntary recalls of food products that had that additive. I have worked with the health districts and with the Health Division, Department of Health and Human Services, since then to determine if there is something we can do to create greater assurances of protections in the manufacture of food products.

My intention is to address the manufacturer. In the language of how we address food processing and manufacturing in the *Nevada Revised Statutes* (NRS), it is important to distinguish my intention. In the language of the bill, I want to address more specifically the manufacturing part. It is to address early-stage testing to create higher standards where the food products are manufactured. I have talked to counsel about this issue to address my intention. To explain the inspections involved, I would like to invite Mr. Pollock from the Health Division.

JOSEPH L. POLLOCK (Program Manager, Public Health Engineer, Environmental Health Section, Health Division, Department of Health and Human Services):
There are four health authorities in the State. The Health Division handles the 14 rural counties. There are also the Washoe County Health District, the Southern Nevada Health District and the Environmental Health Division, Carson City Health and Human Services. Within those jurisdictions, we regulate the food industry, including food establishments, restaurants, bars, food processors, bakeries, meat-processing plants and manufacturers. The U.S. Food and Drug Administration (FDA) has jurisdiction over the food manufacturers that ship out of state.

Food establishments, food processors and food manufacturers are inspected by visual observation. These include: facility cleanliness, maintenance, equipment, cleaning and sanitization procedures, employee health and hygiene, food handling and cooking procedures. Bacteriological testing is not part of a routine inspection and usually only occurs following a food-borne illness outbreak. Many food manufacturers already provide routine testing; however, we do not have the statutory authority to require this activity when they refuse. Senate Bill 210 grants statutory authority to the public health entities to require food manufacturers to establish a risk-based testing criterion to identify contamination of food products before they are distributed to the public. Mandatory testing would only be used if a facility inspection revealed a risk to public health, lack of management control over the food processes, or if a particular food was suspected as the cause of an illness outbreak. Voluntary testing is always preferred; however, S.B. 210 would protect public health by giving health authorities the ability to test even though the operator is reluctant.

SENATOR KIECKHEFER:
I do not see anything in the bill that states what you just said. I do not see where an inspection would be required upon identification of a public health risk. Is that something you think is in the legislation, or it is something you would do through regulation?

MR. POLLOCK:
That is something we could pursue through regulation. It is our interpretation of what would be required. If the food manufacturer already had internal testing procedures in place and we had no issues, then mandatory testing would not be something we would pursue. I do not see that specifically stated in the bill.

SENATOR HARDY:
Are you proposing a friendly amendment?

MR. POLLOCK:
I would be happy to do that. We can work with the language and make it more specific about when testing would be required.

SENATOR HARDY:
So would you be limiting it to food manufacturing?

SENATOR WIENER:
That is my intention, so I will offer that amendment.

SENATOR KIECKHEFER:
Do you have statutory authority to inspect?

MR. POLLOCK:
We have the authority to enter a facility and do inspections. The action we can take is limited to quarantining a suspect-food product. We are not allowed to require testing or, specify who would pay for that testing.

SENATOR KIECKHEFER:
When was the last time you were in one of those situations?

MR. POLLOCK:
That would be with Basic Food Flavors, Inc. That was not my jurisdiction. Through a FDA inspection, there was a large quantity of hydrolyzed-vegetable product that was quarantined. Eventually it was caught by testing by one of their customers. It was not tested by the manufacturers themselves

SENATOR KIECKHEFER:
Is this something that happens in response to a public health outbreak?

MR. POLLOCK:
That is correct. However, there are manufacturers that do test on their own. They catch it before it is distributed to the public. That was not the case with Basic Food Flavors, Inc.

SENATOR KIECKHEFER:
Would they just not test?

MR. POLLOCK:
They were reluctant to test. The FDA could give you a better concept of how they cooperated with the investigation. It was a two-month process to track and determine everything; however, the quarantine happened right away.

KATHERINE JACOBI (President and CEO, Nevada Restaurant Association):
We are aware of poor manufacturing and processing processes; especially those related to dairy and hydrolyzed-vegetable products in Nevada. The Nevada Restaurant Association supports the "FDA Food Code 2009: Annex 6," and we have encouraged practices it specifies for Hazard Analysis Critical Control Point, Modified Oxygen Packaging and Reduced Oxygen Packaging.

We are in favor of giving the four health authorities the legislative authority to request testing. We would like assurances that this authority not be used in a punitive or subjective manner. You have addressed some of that already. We would like criteria established and would like the testing to be limited to the suspected microorganisms. We would like to suggest that the operator be able to choose the testing facility or that you provide a list of approved testing facilities. We have concerns about how to determine when something becomes a food manufacturing process.

In conclusion, we support this measure that will help curtail these food-borne outbreaks; however, we want to be cautious that we do not create any undue burdens for our operators and restaurants.

CHAIR COPENING:
Are you planning to submit written amendments for this bill?

MS. JACOBI:
Yes, we will provide something for these suggestions.

SENATOR WIENER:
Does my testimony about honing in on manufacturers satisfy some of your concerns?

MS. JACOBI:
Yes, absolutely.

SENATOR WIENER:
So, have many of the things about which you were cautious been addressed?

MS. JACOBI:
Again, that goes back to the criteria being used for what is manufacturing.

SENATOR WIENER:
We will work on that.

RAY BACON (Nevada Manufacturers Association):
We had not seen this bill until a couple of days ago. We were aware of the Basic Food Flavors, Inc. situation. They used to be a member of ours, and they dropped out when they changed ownership.

There are many food processors in the State that do an outstanding job. For this bill, we would like to see a couple of things. We want to ensure there is a clear definition of what a food manufacturer is, which is currently not in statute. We also want some specific criteria as to when the food inspectors could call for an inspection. With the way the language reads now, they could come in and test everything.

Companies should not be included if they have an on-site lab and are routinely testing, unless there is a specific reason their testing has not worked. A perfect example is Hidden Valley Ranch Food Products in Stead, Nevada. They have a lab that would put many hospitals to shame. They are dealing with egg products, and their testing is extensive. It would not be realistic for them to add an external process when their own internal process is incredibly tight.

There is no mention in the bill of frequency. If you are going to do this annually or as a random inspection, that needs to be addressed. This is an enforcement mechanism that is probably needed and appropriate when there is a company with a problem. The only other thing we would add is to ensure the new food-safety law coming from the federal government is in place. However, the regulations have not been written, and we have no idea what is going to be in those. We do not want duplication or conflicting regulations between the federal government and the State. Can we have something written into this bill to say

we are not going to be in conflict with the federal government? We do not want to get into litigation.

SENATOR HARDY:
Do you have any experience where a plant is shut down until they prove the problem has been corrected? I do not see any language like that in this bill, and maybe we already have authority to do that.

MR. BACON:
We have had few problems in this State because we have very good procedures. They vary so much by commodity. We have many candy manufacturers in this State. Candy is fairly innocuous because in many cases it is a hard surface. Any products with an egg component, such as the salad dressing plant, have an incubation cycle before it leaves the factory. There are multiple samples taken from every batch, so consequently there is a strict process. With potato flakes, different issues are involved. In southern Nevada, vegetables are not cut up by any of the casinos. There are separate entities that have amazing machines to do this process. They are very careful on their criteria of the cleanliness of the machines because those are fresh vegetables.

The answer is I do not, and each one is different. That is one of those areas that will be problematic to put in a reasonable definition. I will work with anyone on that definition, but I do not have one.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau Federation):
We have the same concerns. We have farm bureau members who are agricultural producers involved in value-added types of processing. Our biggest concern with the bill is where there is duplication and understanding why there is a necessity for that duplication. Food safety is definitely a critical issue for which we need to be on alert. Our interest is trying to find and understand who is responsible for what.

PETER KRUEGER (Nevada Petroleum Marketers and Convenience Store Association):
We are fine with the bill after hearing Senator Wiener's explanation of her intent.

LEA TAUCHEN (Director, Government Affairs, Grocery and General Merchandise, Retail Association of Nevada):
We are opposed to S.B. 210 as written. We look forward to the language the bill sponsor has proposed. Our concern is also with the definition of "food establishment." For our grocers, it captures their service delicatessens, meat departments and bakeries. We would also like to see clarification in the definitions of "manufacturer" and "process."

TRAY ABNEY (Director of Government Relations, Reno Sparks Chamber of Commerce):
I had signed in as opposed to this bill; however, after Senator Wiener's explanation, we are looking forward to seeing the language when the bill is amended. This bill can help us to have a consistency with federal standards and statewide standards.

SENATOR WIENER:
I look forward to working with the parties who have a concern. We all want the same things for the standards and practices.

CHAIR COPENING:
We will close the hearing on S.B. 210 and open the hearing for public comment on any bills in work session.

BARRY GOLD (Director, Government Relations, American Association of Retired Persons Nevada):
I am here for public comment on S.B. 54. The American Association of Retired Persons (AARP) is a nonprofit, nonpartisan social welfare organization with a membership that helps people age 50 and over have independence, choice and control in ways that are beneficial and affordable to them and society as a whole. The AARP wants to assure reimbursement rates are appropriate and adequate to ensure that residents in nursing homes receive quality care. We will be monitoring to see how this develops and would be concerned about cuts that would jeopardize care.

SENATE BILL 54: Revises provisions governing the Fund to Increase the Quality of Nursing Care. (BDR 38-444)

CONNIE MCMULLEN (Chair, Senior Services Strategic Plan Accountability Committee):
I am very concerned about S.B. 54, particularly about the strikeout on page 2, lines 20 through 22. This is dealing with where revenues will be placed. Lack of mention of that is not really accountable. The process was set aside after two sessions of negotiations to make sure there was a guaranteed Medicaid placement in the nursing homes. It is a disincentive for the industry to take this low-income population, so they just look at healthier private payers.

JOE TYLER (President, National Alliance on Mental Illness Nevada):
One reason we have not had many health tragedies is prescription of the latest atypical medications. Accesses to state-of-the-art medications are fundamentally important to the quality of our mental health care. I was able to get the latest medications, but not before waiting 14 years for atypical medications to be available. If not for these medications, I would still be a zombie. Our latest state-of-the-art atypical medications are far more effective than the older barbaric ones. Our mental health patients in Nevada are not going to go away. I do not believe in one-size-fits-all. I do not think that Abilify, Aripiprazole, Zyprexa, Olanzapine, etc. are all therapeutically equivalent. I think they are all different medications, and they have different side effect profiles.

In many cases, we are a non-medication-compliant group of patients under ideal circumstances. Because when we get to feeling better, we do not think we need our medications. Complications of side effects of many medications keep us from trusting our doctors, even though they have all of the latest medications to prescribe. When we have a "fail-first medication," because it is the least expensive drug, then we are getting cheated out of our lives. Mental health tragedies have been averted as a result of Nevada prescribing the latest atypical medications.

STEVE FREEDMAN (National Alliance on Mental Illness Nevada):
I went on the earlier types of antipsychotic medications when I was 20 years old and in college. I was able to start functioning again on these medications. They did not give back the life I had or the life I wanted. For 20 years, I struggled to make every day a livable day for myself on those medications. When I was able get on better atypical medications, my quality of life improved at every stage with every medication change. I am on Seroquel, and I have a quality of life I would not have expected for myself. This decision should not be

completely an economic one; I think it also needs to be considered a compassionate one.

MR. TYLER:
I want to point out that due to the paternal nature of medication compliance, we often times forget to take our medications. This can be dangerous if we are suicidal. Sometimes we need hospitalization to find out if we tolerate a medication, and when we leave the hospital we leave with an injection. That is a medication type I forgot to mention.

CHARLES DUARTE (Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):
I would like to make sure the Committee understands these policies do not endanger life. There have been some comments made and suggestions that this could lead to untimely death of a recipient. These policies have been constructed and managed since 2005 in a manner that is safe and effective for all of our recipients. Leading causes of death in the United States are heart disease, stroke, cancer, Alzheimer's disease, nephritis and other similar conditions. Drugs we have managed on the Preferred Drug List (PDL) since 2005 to treat those very high-risk conditions have not endangered patient safety. I would like to remind the Committee there is a grandfather clause for someone who is on a medication. They can continue on the medication and do not have to have it fail first.

SENATOR WIENER:
You just remarked on the five-year history of managing through the PDL for some significant health challenges. Can the doctor get a waiver for a preferred drug if it would be a better choice than what is on the PDL? In your five-year history, what has been the track record of those requests for doctors to have privileged decision-making authority to choose the drugs patients take under their care.

MR. DUARTE:
In general, when these programs started, there was a higher rate of denials until physicians understood there was a PDL. Over time, physicians understand certain drugs are available and that they can use those. Normally, our compliance rates are in the high 90s. The denials have decreased over time because compliance has increased. There are FDA criteria established for when a medication is to be used and not to be used. If there is a clinical reason, a

physician can request a non-preferred medication. Patients discharged from the hospital on an atypical or typical antipsychotic medication can continue on that medication. If this is a new patient, we are asking they try the preferred product first. If they have a clinical history, we will approve the grandfathering.

SENATOR WIENER:
What is the procedure for a physician to put in the request?

DR. DUARTE:
By telephone, for the most part.

SENATOR WIENER:
What would the turnaround be for the waiver?

MR. DUARTE:
The maximum amount of time is 24 hours; normally it is approved right away. The call center is located in Virginia, but they are open during regular business hours Pacific standard time. We also have criteria for emergency fills. You can get up to a 72-hour, 3-day fill, as an emergency supply, until you can get prior authorization from the call center.

SENATOR WIENER:
Can it be real-time?

DR. DUARTE:
It is often real-time, but sometimes we require the physician to provide additional information.

CHAIR COPENING:
We will now close public comment and open our work session. Consulting the work session documents, we will begin with S.B. 54.

MARSHEILAH LYONS (Policy Analyst):
Beginning on page 1, Exhibit C, the first bill for your consideration is S.B. 54.

There were no amendments proposed to this measure; however, Mr. Duarte from the Division of Health Care Financing and Policy, Department of Human Resources, and representatives of the Nevada Health Care Association had made a recommendation that the measure be reported out of the Committee

without recommendation so that it may be rereferred to the Senate Committee on Finance.

SENATOR HARDY MOVED WITHOUT RECOMMENDATION TO REREFER S.B. 54 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR COPENING:
The next bill is Senate Bill (S.B.) 97.

SENATE BILL 97: Removes the prospective expiration of certain provisions governing the list of preferred prescription drugs to be used for the Medicaid program. (BDR S-940)

MS. LYONS:
We will move on to S.B. 97 on page 1, Exhibit D.

An amendment has been proposed by Lesley Dickson, M.D., on behalf of the Nevada Psychiatric Association. The proposed amendment is to extend the current sunset from June 30, 2011 to June 30, 2015. Page 2 of Exhibit D is a letter submitted by Jeanette Belz, Nevada Psychiatric Association.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 97.

SENATOR BROWER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

MS. LYONS:
The next bill is S.B. 111 and it is explained on page 1, Exhibit E, of the work session document.

SENATE BILL 111: Makes various changes concerning the placement of certain children who are in protective custody in certain counties. (BDR 38-697)

There is a proposed amendment from Senator Settelmeyer, Capital Senatorial District, to remove the new language and to add a provision stating that the department of the State in charge of NRS 432B.3905 will develop and implement a written plan to ensure the law and its exceptions are followed. There may need to be some clarification as far as "the department of the State." In certain instances, it would be the agency that is responsible for the placement of children in that county. Attached is additional information provided by Amber Howell, and today we received some additional information (Exhibit F), which should be in your folder, from Linda Cuddy, Coordinator, CASA of Douglas County.

SENATOR LESLIE:
I am reluctant to provide an exception. I appreciate the information we received from Douglas County, and the data is not as bad as I thought it was going to be. If Amber Howell is here, I would like to have her come up. I would like to hear any comments the Division of Child and Family Services has after reviewing this data.

AMBER HOWELL (Deputy Administrator, Family Programs, Division of Child and Family Services, Department of Health and Human Services):
Is it our data you want me to explain?

SENATOR LESLIE:
I understand your data; it is the other data I do not understand. I would like to hear what you think the data shows us and what the remedy would be if we do not pass this legislation.

MS. HOWELL:
When we did our analysis, we determined there were 39 total removals from 2006 until the end of 2010. Of the 39 removals, 8 of those were removed from Douglas County and placed in other counties. Three of those removals were subsequently placed with relatives. We always give preference to relatives, and that practice is consistent with federal requirements and statutory requirements. The other five removals were placed in family-foster homes.

The data shows we are actively searching for relatives first, family-foster homes second and finally, placement in Austin's House. This is very consistent with the movement nationally to place children six years of age and under with one primary caregiver. There were times in 2008 and 2009 when we placed solely in Douglas County. When we placed in a county other than Douglas County, it was in a county in close proximity to Douglas County. We had Lyon County placements and Carson City placements, and the furthest placements were in Washoe County.

CHAIR COPENING:
I want to make it understood that the language as originally proposed has been stricken. All that is being asked in this bill is that a written plan be put into place to ensure the law and its exceptions are followed. Would this be a difficult thing to put in place?

MS. HOWELL:
We had developed a protocol for all of the child welfare agencies to follow when this law was enacted in 2007. We would reissue the protocol and resubmit to the rural-region managers who are responsible for the four districts. We would implement training so it is understood. First locate relatives and find family foster homes, while trying to keep the children their communities. If there is no other option, then you can place them in Austin's House.

CHAIR COPENING:
Would you be acceptable with the amendment as written?

MS. HOWELL:
Yes.

SENATOR HARDY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 111.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

*****

CHAIR COPENING:
We will move on to our last bill, S.B. 167.

SENATE BILL 167: Revises provisions governing the release of certain reports of the abuse or neglect of children. (BDR 38-246)

MS. LYONS:
Refer to page 1 of the work session document for S.B. 167, Exhibit G.

An amendment was proposed by Kevin Schiller, Director, Washoe County Department of Social Services. The intent of the proposed change is to allow information from the child welfare agency to be provided with the petition so the court can have the information in making an emergency decision, which often occurs via an order from the court with a hearing being set at a later date. In an effort to insure the information from the child welfare agency can be provided to the party who intends to file the petition for guardianship and to insure the information is included in the petition. The suggested amended language is on page 2, line 29 "A person who files or intends to file a petition for the appointment of a guardian or successor guardian ... ." The special notes below are taken from the bulletin from the interim committee that looked at this issue. It seemed to be a good explanation of what the differences are between the two sections of statute referenced during testimony on this issue.

SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 167.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

*****

CHAIR COPENING:
There being no further business to come before the Senate Committee on Health and Human Services, the meeting is adjourned at 4:35 p.m.

RESPECTFULLY SUBMITTED:

Annette Ramirez,
Committee Secretary

APPROVED BY:

Senator Allison Copening, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 54	C	Senate Committee on Health and Human Services	Work Session Document
S.B. 97	D	Senate Committee on Health and Human Services	Work Session Document
S.B. 111	E	Senate Committee on Health and Human Services	Work Session Document
S.B. 111	F	Linda Cuddy	Statewide Reporting of Children Under the Age of 6 in Congregate Care
S.B. 167	G	Senate Committee on Health and Human Services	Work Session Document