MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-sixth Session
March 29, 2011

The Senate Committee on Health and Human Services was called to order by Chair Allison Copening at 3:37 p.m. on Tuesday, March 29, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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
Shauna Kirk, Committee Secretary

OTHERS PRESENT:

Chuck Callaway, Sergeant, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Ryan Kraft, Detective, Las Vegas Metropolitan Police Department
Elizabeth Conboy, Chief, Investigation Division, Department of Public Safety
Timothy Kuzanek, Captain, Northern Nevada Counter-Terrorism Center, Washoe County Sheriff's Office
Bill Ames, Sergeant, Special Operations Division, Washoe County Sheriff's Office
Kristen Erickson, Washoe County District Attorney's Office; Nevada District Attorneys' Association

Tierra D. Jones, Clark County Public Defender's Office
Frank Bindley
Rebecca Gasca, American Civil Liberties Union of Nevada
S. Rowan Wilson
Bill Bradley, Nevada Justice Association
Graham Galloway, Nevada Justice Association
Jan Gilbert, Progressive Leadership Alliance of Nevada
Barry Gold, Director, Government Affairs, AARP Nevada
James L. Wadhams, Jones Vargas; Nevada Hospital Association
Patrick T. Sanderson, Nevada Alliance for Retired Americans
Marla McDade Williams, B.A., M.P.A., Deputy Administrator, Health Division, Department of Health and Human Services
Bill Welch, Nevada Hospital Association
Renny Ashleman, Nevada Health Care Association
Emily Headley, Administrator, Sierra Place, Senior Living
Wendy Knorr, Administrator, Atria Summit Ridge
Karen Perry, Administrator, The Lodge
Bruce Arkell, Nevada Senior Corps Association
Alex Ortiz, Clark County Social Services; University Medical Center

CHAIR COPENING:
We will open the meeting with Senate Bill (S.B.) 256.

SENATE BILL 256: Revises provisions relating to controlled substances. (BDR 40-419)

SENATOR JOSEPH (JOE) P. HARDY (Clark County Senatorial District No. 12):
Senate Bill 256 addresses marijuana grow houses. A survey from the *Family Practice News* dated October 2010, states that 8.7 percent of Americans 12 years of age and older use illicit drugs. In 2009, there was an increase of 0.7 percent from 2008. This rise was driven by the increase in marijuana use. You have been provided a conceptual amendment (Exhibit C). Due to the hearings we have had regarding marijuana look-alikes, I am deleting section 2 from the bill.

On page 2, section 1, subsection 2, paragraph (a), line 10, we are suggesting that possession of 1 to 75 marijuana plants be a Category E felony. The amendment proposes striking lines 11 and 12 and changing line 13 from

paragraph (c) to (b), and on line 15 change paragraph (d) to (c). You can find this information in my other conceptual amendment, Exhibit D.

CHUCK CALLAWAY, SERGEANT (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):
The poor economy and the high number of home foreclosures in this State have led to significant increases in marijuana growing operations. Last year, our agency knew of 119 grow houses. We recovered over 100 firearms at these grow houses. These grow houses have become safety hazards due to the criminal element that frequents them, as well as the hydroponic chemicals used that can develop a toxic mold. Our agency spends over $100,000 a year in cleanup costs. We had a number of homicides last year that were directly related to growing marijuana.

RYAN KRAFT, DETECTIVE (Las Vegas Metropolitan Police Department):
I have written testimony I will read (Exhibit E).

CHAIR COPENING:
I had a similar bill last Session. I introduced the bill for the police department because there was a consistent trend. I can see the trend has continued upward.

SENATOR HARDY:
The Nevada State Law Enforcement Officers' Association fully support the changes on pages 6 and 7 of the bill. They also believe that Nevada should be in compliance with federal law regarding marijuana and controlled substances. They state, "We specifically seek to deny use of controlled substances to convicted persons in general and especially all sex offenders and violent criminals." We are trying to make sure we do not put them in a position where they are using the medical marijuana excuse to take advantage of either the resident they are caregiving for or that they are using this as an excuse to enhance their ability to commit other crimes.

CHAIR COPENING:
Does section 3 of the bill prohibit a person who has had a felony from receiving a medical marijuana card even if they have the need for it?

SENATOR HARDY:
Correct.

SERGEANT CALLAWAY:
When we originally submitted the language for the bill draft request (BDR), we had listed a Category E felony which would result in probation. In the drafting, it came out as a gross misdemeanor. When we had this bill last Session, a lot of the opponents of the bill said laws were already in place to cover it. However, cultivation was taken out of *Nevada Revised Statutes* (NRS) several years ago when changes were made to methamphetamine laws. The laws that address trafficking and possession of a controlled substance do not address cultivation.

SENATOR KIECKHEFER:
Are Category E felonies punishable by probation?

SERGEANT CALLAWAY:
Category E felonies carry a mandatory probation.

SENATOR KIECKHEFER:
The way the amendment is listed, up to 75 plants would be listed as a Category E felony.

SERGEANT CALLAWAY:
Correct.

SENATOR KIECKHEFER:
There is a big difference between someone growing a plant and someone growing 75 plants. There is reference of someone selling small amounts of marijuana on The Strip in Las Vegas being punished significantly more punitively than someone growing it. Getting probation for growing 75 plants does not solve that problem.

SERGEANT CALLAWAY:
I agree. The reason for changing that to the Category E felony was to provide a quick amendment to get the gross misdemeanor out. We would not be opposed to tightening that up further.

CHAIR COPENING:
Why have you removed the gross misdemeanor?

SERGEANT CALLAWAY:
We felt a gross misdemeanor was not an appropriate charge for 1 to 25 plants. One plant can yield over a pound of marijuana. Making 25 pounds of marijuana the level for a gross misdemeanor was not the appropriate charge.

CHAIR COPENING:
When I sponsored a similar bill, there was testimony regarding a college student growing a plant and how harsh it would be for that person to have a record of a felony. I think you will have that same problem here.

SERGEANT CALLAWAY:
Officers in the field have discretion. It would not be our intention to charge a student at a college growing one plant with cultivation. They could be charged with straight possession of a controlled substance, if charged at all. The student might even receive a misdemeanor citation. The purpose of this particular cultivation amendment would be to give the detectives an extra tool to specifically target people growing in these illegal grow house operations.

SENATOR HARDY:
One of the challenges we have in the bill is on line 8, page 2, where it states "shall be punished." Using the word "shall" may take away the discretion of the arresting officer.

SENATOR KIECKHEFER:
I assume the reason this is in our Committee and not in the Senate Committee on Judiciary is because of the medical marijuana registry. Are people who are applying through the medical marijuana registry doing so through a caregiver who is acting in bad faith?

SENATOR HARDY:
I do not know the answer to that question.

SERGEANT CALLAWAY:
Detective Kraft will have the answer to that question.

DETECTIVE KRAFT:
We have come across people with a prior criminal history involving violence who do have medical marijuana cards. Under the current system, people who are not authorized to receive a medical marijuana card are people who are

convicted of knowingly selling a controlled substance. Other than that, any rapist, robber or murderer can obtain a card.

SENATOR KIECKHEFER:
Is there a necessity to put in place a provision that says there is a doctor somewhere in the state who signed off on this for a person? Is there a provision for a doctor who signed off on it inappropriately?

DETECTIVE KRAFT:
The doctors are protected. A person has to submit an application to the State, and the State will conduct a background check. The only thing that could prevent that person from obtaining a card is knowingly or intentionally selling a controlled substance.

CHAIR COPENING:
How did you arrive at citing for the conviction of a crime using violence and the sexual offense? Of all the different crimes, why these crimes?

DETECTIVE KRAFT:
I was not a part of suggesting that in the bill draft request.

SERGEANT CALLAWAY:
The original language we submitted dealt specifically with the cultivation section of the bill. The other sections of the bill were added at Senator Hardy's request.

SENATOR HARDY:
That was the statement that I read from the Nevada State Law Enforcement Officers' Association. They deal with people on parole and probation.

ELIZABETH CONBOY (Chief, Investigation Division, Department of Public Safety):
The Investigation Division (ID), Department of Public Safety, is currently involved in supervising and participating with 8 narcotic task forces in 15 counties across the State. For these grow house operations to be successful, they require a significant amount of resources to establish and bring the plants to cultivation. Over the past 3 years, the ID has been involved in the eradication of over 19,000 marijuana plants. Over 18,000 of them were in rural parts of the State. In 2009, the number was 4,065 plants, and in 2008 there were 2,679. There are significant costs when responding to crimes. In the rural

areas, it takes air support to locate the grow houses and remove the plants. We are in support of this bill and its amendments.

CHAIR COPENING:
Do you support growing one to seven plants as a gross misdemeanor?

MS. CONBOY:
No. The ID would support a Category E felony for the cultivation of marijuana.

CHAIR COPENING:
Are you in support of the Nevada State Law Enforcement Officers' Association provision about a conviction for a crime with the use of violence? How do you feel about that section for the denial of the medical marijuana card?

MS. CONBOY:
I would rather not comment on that.

TIMOTHY KUZANEK, CAPTAIN (Northern Nevada Counter-Terrorism Center, Washoe County Sheriff's Office):
I am here to offer my support of this bill and to introduce Sergeant Bill Ames from our office.

BILL AMES, SERGEANT (Special Operations Division, Washoe County Sheriff's Office):
I would like to echo what the Sergeant from Las Vegas Metropolitan Police Department stated.

CHAIR COPENING:
Have you ever encountered a grow house where there was just one to seven plants, or is it always more than that?

SERGEANT AMES:
I have only encountered one house that had fewer than seven plants. It was a person who held a medical marijuana card who was being used as a front for sales.

CHAIR COPENING:
We may need a definition of a grow house.

KRISTEN ERICKSON (Washoe County District Attorney's Office; Nevada District Attorneys' Association):
The Washoe County District Attorney's Office and the Nevada District Attorneys' Association are in support of this bill.

TIERRA D. JONES (Clark County Public Defender's Office):
We are opposed to this bill for two reasons. The people who are currently being charged with operating grow houses are being prosecuted under the statutes we already have in place. We have a possession of a controlled substance statute that states it is a Category E felony under NRS 453.336. That does include over one ounce of marijuana. Anything under an ounce is considered a misdemeanor. Once people have over one ounce, they can be charged with a felony possession of a controlled substance. There is a charge of possession of a controlled substance with intent to sell option which is a Category D felony under NRS 453.337. With the intent to sell not having a set legal definition under the NRS, it is basically any quantity that indicates an amount greater than enough for personal use, whether or not the individual was intending to sell it. It becomes a question for a jury to decide. There was testimony that each plant can yield between one and five pounds of marijuana. Under the current statute, if you have 50 plants that yield 2 pounds, it is considered trafficking which would mean mandatory prison time. Under the new statute, it would only be a Category E felony which would make that person eligible for mandatory probation. The statute we currently have does address these issues, and people currently being charged with cultivating marijuana are being prosecuted. We also oppose this bill based on the fact that we believe the intent of the drafters of the bill was to go after the mass cultivators. Leaving the law the way it is will do that. If the law were changed under this bill, the college student who has one plant would be prosecuted for a Category E felony.

CHAIR COPENING:
If we address your concerns about the one plant in an amendment, would you be more comfortable with the bill?

MS. JONES:
If you are referring to the one plant being a gross misdemeanor offense, yes.

CHAIR COPENING:
The intent of the bill is to discourage these grow houses from coming into our community. Do you see the validity in creating a law that would try to discourage these grow-house operators from relocating in our communities?

MS. JONES:
I do see the validity in it. However, the penalty is harsher the way it stands now. My clients are not that sophisticated. They have no idea what the law is regarding how many plants they can have.

FRANK BINDLEY:
I have severe cerebral palsy. I have tried all of the medications out there. They make me very sick. I started using marijuana in 2003. I can smoke a joint and be good for two weeks. People who are severely sick and in pain are not looking to sell marijuana. They need to have the ability to get what they need to function on a daily basis. You do not understand what this does for me and other patients. This is going to be a problem you will be faced with on a daily basis, no matter how the law is written.

CHAIR COPENING:
Are there separate laws that protect medical marijuana patients?

DETECTIVE KRAFT:
Current law allows for caregiver status. Patients are allowed to assign a single caregiver to grow marijuana for them. They are issued a card as well.

REBECCA GASCA (American Civil Liberties Union of Nevada):
The issues are a result of what is going on at the federal level and within the states in regard to marijuana. States around the nation have moved not only to decriminalize, but to legalize, marijuana. Reasonable people can disagree, but the American Civil Liberties Union of Nevada takes a strong stance insofar as we believe, within the State, individuals as medical patients have a constitutional right as this was approved by approximately 65 percent of the voters several years ago. In 2001, there were statutes passed to effectuate that constitutional amendment. We believe the State has been derelict in its duties to provide reasonable care to patients. Perhaps the increase in the trend of grow houses is because patients do not have adequate access to their medicine. Although a caregiver is allowed to provide plants to a patient, a patient does not have the legal obligation to pay that caregiver. If they cannot find a caregiver

who will provide that service free of charge, and patients cannot grow the plants themselves, they are forced to the black market. Our concerns are in denying individuals their medical products based on a former conviction. Medicine is not a perk. To deny patients the right to their medicine for crimes that are not related to this controlled substance issue raises constitutional issues. I encourage the Committee to take this bill as an opportunity to move forward with positive amendments that will help address this trend of grow houses. We are in a grow-your-own State.

There are some issues with the way the medical marijuana application is being processed within the Department of Health and Human Services (DHHS). These patients should not have to wait four months, six months and sometimes past death. There is opportunity for the State to address adequately some of the substance abuse problems that could be related to the issue of medical marijuana while providing more constitutional-compassionate care and dealing with the access issue and the privacy related issues.

S. ROWAN WILSON:
I am a legal Nevada marijuana medical patient. I am here primarily as a patient advocate against this bill. The federal government this past week recognized with oncologists the medical benefits of marijuana. The State has not constitutionally provided a way for patients to receive their medication. Patients are not criminals. It is a plant. This violates all of the existing Health Insurance Portability and Accountability Act laws. It should be left between the patient and the physician. Legalize, tax and regulate this as you have other prescription drugs. I would like to refer you to Assemblyman Ed Goedhart's Assembly Bill 438.

ASSEMBLY BILL 438: Revises provisions governing the medical use of marijuana. (BDR 40-1066)

CHAIR COPENING:
We will close the hearing on S.B. 256 and open the hearing on S.B. 300.

SENATE BILL 300: Revises provisions governing certain billing and related practices of certain larger hospitals. (BDR 40-797)

SENATOR SHEILA LESLIE (Washoe County Senatorial District No. 1):
I brought this bill forward as a continuation of the work I did with then-Assembly Speaker Barbara Buckley in 2007. Section 1 revises the definition of a major hospital downward based on the number of beds. Currently, the definition is at 200 beds. There is at least one major hospital with 190 beds. I am suggesting that we lower the definition to 150 or more beds. Section 2 deals with letting people know about billed charges and giving notice to people who do not have health insurance. Section 3 requires hospitals to bill a person's health insurance before putting a lien on a potential settlement. If someone is in a car accident, hospitals put a lien on a settlement rather than bill an injured person's insurance.

The reasons hospitals do that are insufficient funding for Medicaid and people not having health insurance. The hospitals have to make up that funding from somewhere else. Someone with health insurance who is in a car accident should not have a lien put on a settlement without the discounted rate on health insurance.

BILL BRADLEY (Nevada Justice Association):
I urge your support of S.B. 300. I have provided the Committee with an exhibit to support my testimony (Exhibit F). A person who is in an accident and taken to a local hospital will sign several documents. One of those documents assigns rights for the hospital to obtain those benefits. The hospital treats and releases the person. In this hypothetical case, ten years before, this injured person was fortunate enough to have obtained health insurance through an employer, has always paid the premium and has never made a claim. Even though the person has given the hospital the right to bill the health insurance, the hospital does not bill the insurance to be paid. They do not notify the health insurer of an outstanding bill. They file a hospital lien at the county recorder's office. The hospital, through its investigation, discovers the driver that injured the client is AAA Insurance insured. The hospital sends a letter along with a copy of the lien to AAA Insurance stating they have provided hospital services in this case.

Different plans have different time frames. If that bill is not submitted within that regulated period, the health insurer does not have to pay the bill. Contrary to the best interest of the consumer, the rights of that consumer to have the health insurance pay the bill have been waived. The hospital then waits until the conclusion of the settlement. The person who hit the injured person may only have a $15,000 policy, and the injured person may have incurred $85,000 in

medical costs. Had the hospital sent the bill to the health insurer, the health insurer would have paid that bill pursuant to the terms of the contract. After waiting a few years for the litigation to resolve, the hospital would allow us to take our fee and expect the remaining settlement be sent to them. It is usually at this point the injured person finds that the hospital did not bill the health insurance. The hospital's only solution is that the injured person gets nothing. We believe the hospitals should bill the insurance. The injured person gets the benefit of the settlement and the negotiated rate is paid. In the end, we still have to deal with the health insurer. That health insurer is still entitled to be paid back. When the case is concluded, we will then work with the health insurer to resolve it reasonably.

In 2007, we asked this to be changed and the health insurer be billed. We thought it had been accomplished, but after Speaker Buckley's bill was passed, the hospitals took a slightly different tack. Speaker Buckley's bill said providers shall not undertake any collection efforts until the insurance has been billed. The hospitals have decided that filing a lien at the county recorder's office in the injured person's name is not undertaking a collection effort. We disagree with that, and that is what we have tried to resolve in section 3 of the bill.

The other issue is the person who has no insurance. A law was passed a long time ago in Nevada that said anyone who does not have health insurance will receive a 30 percent discount off their hospital bill. The original law only gave uninsured persons 30 days from discharge from a hospital to contact and complete everything the hospital requires to enable them to acquire the 30 percent discount. The hospitals have come up with a unique interpretation of uninsured. If a person has no health insurance, we would all define that person as uninsured. The hospitals are considering the person insured because the person who caused the accident had insurance. We take great exception with that. He is truly uninsured until, and if, we are able to prove the case of liability against the other driver. We feel that rather than making a person who is recovering from a devastating injury figure out the hoops to jump through within the 30 days of the time of discharge, have the hospital send a person a bill. In the first copy of the bill, explain the patient's rights and the time frame to enumerate the things necessary to show the patient is truly uninsured. We ask in section 2 of the bill it be made clear that someone who might have a claim against a liability policy is not an insured person under this portion of the bill. Section 3 states the hospital must bill the insurance and cannot assert a recovery against the proceeds of any settlement. That makes it clear the intent

and public policy of Nevada is that if someone has health insurance, the hospital must bill the health insurer. This only applies to hospitals. Physicians outside the hospitals are billing the health insurance.

CHAIR COPENING:
Would this pertain to someone who is dealing with an out-of-network situation?

MR. BRADLEY:
It does. That is a problem the hospitals have pointed out to us.

SENATOR KIECKHEFER:
Have you ever challenged the hospital's interpretation of recovery and the lien to get it as a settled matter of law?

MR. BRADLEY:
In the example that I have talked about, the proceeds that were available under the insurance policy did not justify the cost of that litigation.

SENATOR BROWER:
Are you saying if someone shows their insurance card upon arriving at the hospital, the hospital will not bill the insurance?

MR. BRADLEY:
Even if the hospital and the health insurer are owned by the same health system, they will not bill the health insurer.

SENATOR BROWER:
Why would the hospitals say they do not bill them to be paid?

MR. BRADLEY:
The reason is profit. If they bill the health insurer, their hospital bill will be discounted pursuant to the terms they bargained for when they made the contract with the insurance group. Rather than bill them and take a discounted rate on their bill, they wait for the settlement to get dollar-for-dollar reimbursement.

SENATOR BROWER:
I can have a lien with my name on it being recorded in the recorder's office that anybody searching the files can see, and I do not know it is happening. Does the statute give them permission?

MR. BRADLEY:
The statute gives them permission to file a lien under certain circumstances.

SENATOR BROWER:
It has been my thought that the purpose of recording a lien is to enable an entity to recover an unpaid account. Are you saying the hospitals have interpreted the recording of a lien as not an attempt to collect a debt?

MR. BRADLEY:
Yes.

GRAHAM GALLOWAY (Nevada Justice Association):
I would like to echo Mr. Bradley's comments. It has always been my thought the definition of a collection effort is a lien being recorded with the county recorder's office. The notice that is given is grossly insufficient. This bill clarifies that. I am currently representing two boys. One is seven years of age, and the other is four years of age. Both have $12,000 in medical bills from the hospital. The hospital refuses to bill the health insurance under which they are covered. Last year, I represented a teenager who had his skull fractured in a car accident. He had over $128,000 in medical expenses, and $84,000 was with the local hospital. Everybody but the hospital billed Medicaid. The nonhospital bills totaled $43,000 and the Medicaid bills $10,000. The hospital refused to bill Medicaid for the $84,000 bill. Medicaid would have paid 25 percent. Instead, they filed a lien and gave us a 25 percent discount. That cost my client a 50 percent reduction. The proponents of this will focus on the Medicare and Medicaid, because realistically, they are being underpaid by those entities. However, that should not be placed on the backs of innocent victims like my teenage client.

JAN GILBERT (Progressive Leadership Alliance of Nevada):
This bill is the right thing to do. I would be horrified if I had a lien against me, and I have had health insurance my whole life.

BARRY GOLD (Director, Government Affairs, AARP Nevada):
The AARP, on behalf of its 304,000 members, is in support of this bill. Governments should adopt policies that require or encourage nonprofit and for-profit hospitals to charge uninsured people discounted prices comparable to those with insured persons and to prevent both types of hospitals from engaging in the owner's debt collection practices that we have been hearing about. Hospitals should make information about their charges available so patients can anticipate the costs.

JAMES L. WADHAMS (Jones Vargas; Nevada Hospital Association):
I am here on behalf of the Nevada Hospital Association. The State and federal law applying to Medicare and Medicaid are not the same as the law that might apply to private insurance. The obligation or expectation that hospitals must pursue one or the other first is a little different than is laid out in the bill. The second element has to do with private insurance. We recognize the importance of the issue of billing the insurance when we are in-network and have a contractual relationship. The notification of billings procedures have been amended over a number of years. Those are found in NRS 449.730. They are required to be delivered to patients upon admission and additionally to be posted in public areas. The point this bill is raising is the information regarding discounts should be provided at the time of discharge. The implication in prior testimony was that there is no disclosure of these discounts. They are in fact required by current State law to be delivered upon admission and publicly posted.

PATRICK T. SANDERSON (Nevada Alliance for Retired Americans):
I am in support of this bill. If after two years without coming to a court settlement, do these cases go into the indigent care fund, or do the hospitals write it off in their taxes? Maybe there should be some audits of hospitals. If there were ever to be a lien against me, it would show up in a credit report.

CHAIR COPENING:
We will close the hearing on S.B. 300 and open the meeting on S.B. 379.

SENATE BILL 379: Revises provisions governing the inspection by the Health Division of the Department of Health and Human Services of certain facilities and offices regulated by the Health Division. (BDR 40-1012)

SENATOR BEN KIECKHEFER (Washoe County Senatorial District No. 4):
For most of 2009 and 2010, I worked with the DHHS. I served as the public information officer in the director's office. One of my duties was to work with the Health Division (HD), DHHS, on various issues as they arose. Over those two years, issues over infection control as related to the hepatitis outbreak we had were prominent. We had issues related to unlicensed ambulatory surgery centers and various other problems that arose related to the Bureau of Health Care Quality and Compliance (Bureau), HD, DHHS. One item discussed was the effort by the State to incentivize good behavior with the stick rather than a carrot. I tried to identify a mechanism in which we can incentivize good behavior with health-care facilities. Senate Bill 379 is an effort to do that.

Sections 2 and 3 are the meat of the bill. It extends the periodicity by which rescheduled inspections by the Bureau will be conducted if at the regularly scheduled inspection no violations are found that would result in a fine being issued by the Bureau. If no violations are found, the facility will have their next regularly scheduled inspection extended out by 50 percent. If the facility is on annual inspections, it would be extend to a year and a half. It does not in any way prohibit a complaint investigation to which the Bureau would not ordinarily respond. It does not override federal regulations. For example, nursing homes are required to be inspected annually. That will stay in place under this legislation. If there is a federal requirement for licensure, it stays in place.

The second component is a 25 percent reduction in the fee the Bureau charges for the annual inspection. Those licensing fees were just significantly increased, so this is another incentive.

MARLA MCDADE WILLIAMS, B.A., M.P.A. (Deputy Administrator, Health Division, Department of Health and Human Services):
There are two ways to regulate facilities. One is through a deterrent method which is the punitive method we currently have. The other is through a cooperative system. This bill moves us into that arena. We have concluded that doing this would then give us a hybrid mechanism to regulate facilities. We would apply the 25 percent reduction over the established base fee for a facility. If a facility passed its inspection this year, at next year's renewal the 25 percent fee reduction would be applied to its renewal fee. If its periodicity was waived for the following year, the fee reduction would stay on its following renewal up until the point it had another inspection. It would not be a 25 percent reduction on the first 25 percent reduction. It would apply just to

the base. Some facilities have a yearly inspection. We are currently on an 18-month periodicity for the majority of our facilities. The ones that have a year requirement are ambulatory surgery centers and the physician-based offices. Based on the bill being one and a half times the periodicity, they would not get their inspection the following year. It would be extended one and a half times before we would come in. If there is a complaint, we would not waive the inspection fee. As the bill is written, it would be a substantiated complaint or an unsubstantiated complaint. We would still have to go out and investigate. The benefit goes away if there was a complaint registered against the facility. We currently have approximately 322 facilities that would have qualified for the 25 percent reduction as well as for the waiver of their next periodic inspection. We license approximately 1,100 facilities a year. There is a reduction in our revenue. We anticipate it to be about $235,000. If we are not inspecting, we will not need the staff to do that work.

SENATOR HARDY:
Would this save the agency money?

MS. MCDADE WILLIAMS:
It would save somebody money, because the work is not needed.

SENATOR HARDY:
Would 322 inspections you would not have to do allow your agency to have fewer people working, and therefore save you money, or will you have to have the same number of people working?

MS. MCDADE WILLIAMS:
We would not have those same people working.

SENATOR HARDY:
Would that require you to lay off people?

MS. MCDADE WILLIAMS:
We tend to have a vacancy rate. As we monitor this and understand it, we could plan for our staffing needs.

SENATOR HARDY:
Would that be approximately three to five people no longer working in that office?

MS. MCDADE WILLIAMS:
Yes, approximately three people. In the past year, we have gone forward with regulations to allow us to charge for all of our substantiated complaint investigations. There is a volume of work for which we are trying to plan differently.

SENATOR HARDY:
If I make a motion to do pass, can you live with that?

MS. MCDADE WILLIAMS:
Yes.

SENATOR LESLIE:
I like the concept. What NRS subjects are in section 2, subsection 2, paragraphs (b) and (c)?

SENATOR KIECKHEFER:
First is NRS 449.230. It is about entry and inspection of a building or premise. The pertinent provisions are in subsections 3 and 4 which give the state health officer the authority to inspect residential facilities annually for groups for health and sanitation standards. Subsection 4 indicates a member or employee of the HD can enter and inspect any building or premises of a facility that is unlicensed. *Nevada Revised Statute* 449.235 relates to inspection of a medical facility for the dependent by the HD that allows them to enter without notice as often as necessary to ensure compliance with applicable regulations and standards.

SENATOR LESLIE:
On page 3, section 2, subsection 4, paragraph (b), it states " ... any violations for which the Health Division could impose an administrative sanction ... ." Will one of you talk about why you chose that as the cutoff point?

MS. MCDADE WILLIAMS:
We have a scale called the severity and scope scale. When we go into a facility, we assess the seriousness of any violation. We put that information into a scale system. The highest one is the scope and severity of four and three. That would be a very serious violation. The lowest would be the scope and severity of two and two. Under that two and two situation, we would not currently fine a facility. When we get to the threes, we would fine a facility. If a facility has no

scope and severity rating, it would qualify. On the bottom of page 2, line 32, it reads that if it passes and there are no sanctions against the facility, it would qualify. If a facility were rated at the two and two level, right now, that would be considered an administrative sanction and the facility would not meet the criteria for this bill. Paragraph (b), subsection 4, section 2 of the bill specifically accounts for homes for individual residential care that we do not have the authority to sanction at all. If this bill passes, this will be worked out in a conflict amendment.

SENATOR LESLIE:
I do not want to box you in so tightly that if a facility has 20 violations that you would not write a sanction for, it still would not get inspected when maybe they should.

MS. MCDADE WILLIAMS:
If we were to write a scope and severity for two and two, they would not qualify to waive the inspection.

SENATOR LESLIE:
What would be the longest time that a facility might not get inspected?

MS. MCDADE WILLIAMS:
At one and one-half times 18 months, it would be 3 years.

SENATOR LESLIE:
Three years makes me a little uncomfortable.

Ms. McDADE WILLIAMS:
As soon as a complaint comes in, that is waived, and they are back on schedule.

SENATOR LESLIE:
Can you keep track of all of this without a problem?

MS MCDADE WILLIAMS:
We have a database that tracks all of the inspections we do. It is a matter of pulling out that information. Skilled nursing facilities are governed by federal law, and we inspect them every year. Although they would not be able to waive

the periodicity under this bill, they would still be eligible for the 25 percent discount of their fees.

SENATOR WIENER:
How many of the 322 that would have qualified in their last inspection would have qualified in their previous inspection? Can we see if they are ongoing good players?

MS. MCDADE WILLIAMS:
We would have to look at that. We have not assessed that piece.

SENATOR WIENER:
Can you get us that information?

MS. MCDADE WILLIAMS:
Yes.

CHAIR COPENING:
Is the facility always investigated any time there is a complaint, or do you determine whether or not a complaint is valid?

MS. MCDADE WILLIAMS:
We do not do an onsite investigation for all complaints. We are developing a system where some are done by an administrative review. We are trying to connect the complainant back with the facility and have them resolve their issues. We put that complaint in the system and expect the facility to resolve it. If it comes back to us, we open a second complaint and do an onsite investigation. Every complaint that comes in is registered in our database.

CHAIR COPENING:
Did I understand correctly that with every complaint, that clock starts at zero again going forward?

MS. MCDADE WILLIAMS:
If a complaint comes in and the facility was eligible for a waiver, the facility would be back on the original schedule they had before the waiver.

CHAIR COPENING:
I have concerns about that because of frivolous complaints that may come in. I cannot imagine there is one facility that does not get a complaint.

MS. MCDADE WILLIAMS:
I would leave it up to the Committee whether or not you want to write in language to address those specific issues.

There are complaints that are substantiated without deficiency on the part of the facility. We have to take that into context with all of the other complaints that are coming through. A very small percentage of complaints have no credibility.

SENATOR HARDY:
Would there be anything that would preclude a facility from saying we have been complaint-free and using it as a marketing tool? That could be a further incentive.

MS. MCDADE WILLIAMS:
I agree.

BILL WELCH (Nevada Hospital Association):
The Nevada Hospital Association is in support of S.B. 379.

RENNY ASHLEMAN (Nevada Health Care Association):
The Nevada Health Care Association is also in support of this bill.

EMILY HEADLEY (Administrator, Sierra Place Senior Living):
I am here in support of this bill. There are more of us than not who want to do a good job.

WENDY KNORR (Administrator, Atria Summit Ridge):
This is a great step forward, and we are also in support of this bill.

KAREN PERRY (Administrator, The Lodge):
The Lodge is in support of S.B. 379. I would like the language in the bill to recognize that if an administrator leaves the property, it reverts back to the annual inspection.

MR. GOLD:
The AARP opposes proposals to lengthen the periodic inspections. We have all heard the stories about terrible problems in facilities. Cutting back on oversight is going the wrong way. The quality of care can change overnight in a facility due to a variety of reasons. This is an accident waiting to happen. Federal and state government should conduct regular and consistent oversight to ensure consumers quality of care and quality of life. If you look at facilities where problems have occurred, you may find the previous inspection may have been good. It is not always an indicator we can count on. Three years is a long time. Do restaurants get an extension between their inspections just because they did well on the last one? Cutting the fee may be an incentive, but it could create a further burden on the DHHS. On behalf of our 304,000 members across the State, AARP Nevada strongly opposes S.B. 379.

SENATOR WIENER:
Will this be carved out because the regulations are frozen? If this were passed, would this be a carve-out for health purposes, or would we have to wait until January 2012?

MS. MCDADE WILLIAMS:
The legislation itself will tell us what we need to do. We would need to follow any regulatory changes, and we would have to go through the process to adopt them. As the bill is written, the law supersedes any regulations already in place. The bill does not say that we have to change the fees that are charged to a facility. It says they get a 25 percent discount.

SENATOR WIENER:
Are you not seeing any regulatory need for this legislation?

MS. MCDADE WILLIAMS:
None that are specifically driven from this. There are some regulations we could clean up.

SENATOR WIENER:
Can the effective date be met?

MS. MCDADE WILLIAMS:
Yes.

SENATOR WIENER:
Mr. Gold's concern about a facility that would go for an extended period of time would be all of our concerns. How long after a complaint is registered by a resident or family member is an inspection done?

MS. MCDADE WILLIAMS:
The maximum time would be 45 days, depending on the complaint. If it is a serious complaint, the minimum time would be two days. There are a lot of other entities involved in this system.

SENATOR WIENER:
Would a new administrator reset the clock?

MS. MCDADE WILLIAMS:
I would defer to the sponsor of the bill.

CHAIR COPENING:
Do you know of a situation where there were no complaints associated with a facility, and then a situation was discovered where syringes are being reused?

MS. MCDADE WILLIAMS:
Prior to 2008, ambulatory surgery centers were on six-year inspection schedules. However, the driver of that schedule was the Centers for Medicare and Medicaid Services (CMS) and what it funded the Bureau to do. Ambulatory surgery centers under that CMS system were a very low priority. There were facilities that did not even have the six-year inspection. When we looked at our data, we had facilities that had not been inspected for 10 to 12 years by the State agency. Even a three-year periodicity right now is sooner than the past periodicity that was in place.

MR. GOLD:
I understand how the complaint process would reset the clock. If the complaint came one day after the next routinely scheduled inspection, is that too long? It sounds like a good alternative. If the complaint that would reset the clock and put them back on the normal schedule happened three months after the regular date, then we have already missed it.

BRUCE ARKELL (Nevada Senior Corps Association):
We are working with the personal-care industry on one of the committees. One problem is there are no incentives to do things correctly. The personal-care industry was only recently regulated by the State. We find a lot of overlap and duplication. We have people who are inspected by three different agencies on the same complaint within six weeks of each other. This is the only proposal that offers an incentive, and I think that is extremely important.

ALEX ORTIZ (Clark County Social Services; University Medical Center):
I wear two hats. One is on behalf of Clark County Social Services, and one on behalf of the University Medical Center (UMC). The University Medical Center would be in support of the fee reduction. We have an ambulatory center. Clark County Social Services, however, has concerns regarding the length of the inspections and extending them. They may pose a risk to the public. We concur with some of what Mr. Gold has said on that.

CHAIR COPENING:
We will close the hearing on S.B. 379.

MS. LYONS:
The following bills will be heard at a later date:

S.B. 10, S.B. 113, S.B. 43, S.B. 115, S.B. 138, S.B. 172, S.B. 203, S.B. 210, S.B. 224, S.B. 228, S.B. 209, S.B. 245, S.B. 264, S.B. 338, S.B.339 and S.B. 340.

SENATE BILL 10: Requires approval for the establishment of certain services by a health facility in larger counties. (BDR 40-344)

SENATE BILL 113: Revises provisions relating to the care of certain children during disasters. (BDR 38-198)

SENATE BILL 43: Makes various changes relating to electronic health records. (BDR 40-443)

SENATE BILL 115: Establishes provisions governing payment for the provision of certain services and care to patients and reports relating to those services and care. (BDR 40-192)

SENATE BILL 138: Revises provisions relating to emergency medical services provided in certain counties. (BDR 40-642)

SENATE BILL 172: Establishes the Statewide Program for Public Education and the Prevention of Sudden Infant Death Syndrome. (BDR 40-826)

SENATE BILL 203: Revises provisions relating to the classification and dispensing of certain precursors to methamphetamine. (BDR 40-648)

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

SENATE BILL 224: Requires certain substances known as fake cocaine to be included on the list of schedule I controlled substances. (BDR 40-990)

SENATE BILL 228: Requires certain substances known as synthetic marijuana to be included on the list of schedule I controlled substances. (BDR 40-698)

SENATE BILL 209: Revises provisions relating to reports of sentinel events and related information reported by certain medical facilities. (BDR 40-193)

SENATE BILL 245: Creates the Statewide Alert System for the Safe Return of Missing Older Persons. (BDR 38-710)

SENATE BILL 264: Revises provisions concerning the regulation of certain medical facilities. (BDR 40-15)

SENATE BILL 338: Revises provisions relating to reports of certain medical and related facilities. (BDR 40-261)

SENATE BILL 339: Establishes provisions relating to the safety of patients in certain medical facilities. (BDR 40-662)

SENATE BILL 340: Revises provisions relating to programs to increase public awareness of health care information. (BDR 40-663)

CHAIR COPENING:
With no further business to come before this Committee, we will adjourn the Senate Committee on Health and Human Services at 6:08 p.m.

RESPECTFULLY SUBMITTED:

_____
Shauna Kirk,
Committee Secretary

APPROVED BY:

_____
Senator Allison Copening, Chair

DATE:_____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A	Agenda	Agenda
	B	Attendance Roster	Attendance Roster
S.B. 256	C	Senator Hardy	Conceptual Amendment
S.B. 256	D	Senator Hardy	Conceptual Amendment
S.B. 256	E	Detective Ryan Kraft	Written Testimony
S.B. 300	F	Bill Bradley	Supporting documents