

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

**Seventy-Seventh Session  
May 6, 2013**

The Committee on Health and Human Services was called to order by Chair Marilyn Dondero Loop at 1:38 p.m. on Monday, May 6, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [nelis.leg.state.nv.us/77th2013](http://nelis.leg.state.nv.us/77th2013). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Marilyn Dondero Loop, Chair  
Assemblywoman Ellen B. Spiegel, Vice Chair  
Assemblywoman Teresa Benitez-Thompson  
Assemblyman Andy Eisen  
Assemblywoman Michele Fiore  
Assemblyman John Hambrick  
Assemblyman Pat Hickey  
Assemblyman Andrew Martin  
Assemblyman James Oscarson  
Assemblyman Michael Sprinkle  
Assemblyman Tyrone Thompson

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Wesley Duncan (excused)  
Assemblyman Joseph M. Hogan (excused)  
Assemblywoman Peggy Pierce (excused)



**GUEST LEGISLATORS PRESENT:**

Senator Greg Brower, Washoe County Senatorial District No. 15  
Senator Barbara K. Cegavske, Clark County Senatorial District No. 8

**STAFF MEMBERS PRESENT:**

Kirsten Bugenig, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Janel Davis, Committee Secretary  
Macy Young, Committee Assistant

**OTHERS PRESENT:**

Lesley Pittman, representing Reno Diagnostic Centers  
Denise Selleck Davis, representing Nevada Osteopathic  
Medical Association  
Michael Hackett, representing Nevada State Medical Association  
Marla McDade Williams, Deputy Administrator, Health Division,  
Department of Health and Human Services  
Mike McMahon, Administrator, Division of Welfare and  
Supportive Services, Department of Health and Human Services  
Tracy Brown, Special Assistant to the Executive Director,  
Opportunity Village  
LaVonne Brooks, President and CEO, Health Sciences Institute,  
Washoe Ability Resource Center  
Brian Patchett, representing Easter Seals Nevada

**Chair Dondero Loop:**

[Roll was called. Rules and protocol were explained.] I will open the hearing on Senate Bill 112 (1st Reprint). I would like to welcome Senator Brower.

**Senate Bill 112 (1st Reprint): Requires the Legislative Committee on Health Care to consider the manner in which certain provisions relating to licensing of certain offices of physicians and facilities that provide health care have been carried out. (BDR S-441)**

**Senator Greg Brower, Washoe County Senatorial District No. 15:**

The language of this bill is briefer than the digest. I will briefly explain the bill then introduce Lesley Pittman, whom I have been working with on this bill. She can explain in more detail what we are after. Essentially, the bill, in the form that passed through the Senate, would require the Legislative Committee on Health Care to study the issue of conscious sedation and the regulation thereof.

Conscious sedation and the regulation thereof was the subject of Assembly Bill No. 123 of the 75th Session. Based upon some unintended consequences of that legislation, we think it is worth the interim committee's further consideration and study. That is what this bill would simply do.

**Lesley Pittman, representing Reno Diagnostic Centers:**

I would like to provide a little background on how Senate Bill 112 (1st Reprint) came to be. It concerns many of your predecessors. Assembly Bill No. 123 of the 75th Session was passed out of the Nevada Legislature to respond to a number of issues raised by injection practices at two Las Vegas clinical centers. The law set in place new licensure and permitting requirements for licensed ambulatory surgery centers and previously unlicensed outpatient settings. The law directed the Nevada State Health Division to develop a framework for permitting of outpatient settings. New facilities and offices that are required to participate in this process are those that use one of three levels of sedation, which are: general anesthesia, deep sedation, and conscious sedation.

The legislation also required all of the affected outpatient medical facilities to maintain current accreditation of a nationally recognized accrediting organization approved by the State Board of Health.

In the fall of 2009, the Health Division promulgated regulations to meet the requirements of A.B. No. 123 of the 75th Session. As a result, a new permitting category process was established along with survey and inspection requirements. Fees were levied on facilities to pay for the administrative costs of new regulations. We applaud the Legislature for its quick action and putting in place measures to ensure public safety and to reestablish public confidence and the safety of our health care delivery system in our state.

I think we all recognize that what happened with the two endoscopy centers in southern Nevada was a result of a very few bad actors in our health care industry, and they should be punished for their actions. I hope you agree, however, that the vast majority of health care professionals in our state are just that: professionals who work very hard every day to provide safe, quality and accessible delivery of health care services to members of our communities. We are here today because of the unintended consequences associated with the passage of A.B. No. 123 of the 75th Session and its overly broad reach. It is important to note that, if you review the testimony and deliberations that occurred on A.B. No. 123 of the 75th Session, there was much discussion about using the three levels of sedation as a benchmark to determine which type of facility would be captured in these regulations and fees. Specifically, the concern is expressed that, by using this benchmark, we would inadvertently capture facilities where the procedures and level of sedation provided would not

necessarily risk patient safety, but in the end, the result would reduce patient access and increase costs for those patients seeking conscious sedation strictly to alleviate their anxiety and stress.

In 2009, during the Assembly Committee on Health and Human Services hearing on A.B. No. 123 of the 75th Session, then-Assemblywoman Mastroluca stated: "My fear is that we might make this cost prohibitive for a physician to perform a procedure that could be done relatively simply and quickly in his office rather than taking up space in our overcrowded hospitals." If we have physicians who are performing those procedures, for example a biopsy, who are saying they will not do them anymore because it is too costly for their accreditation and licensing, that would force patients to go to outpatient surgery centers, which would become overcrowded. She was trying to find a balance.

Some of these concerns have materialized. At Reno Diagnostic Centers, we provide only the lowest level of conscious sedation for our patients. That is mostly to alleviate their anxiety and stress prior to a magnetic resonance imaging (MRI) procedure. Since A.B. No. 123 of the 75th Session passed and subsequent regulations were implemented, we have stopped providing conscious sedation at one of our two facilities in the Reno area. This was a financial decision that we made reluctantly as we recognized the impact it would have on our patient community. The permitting and accreditation fees and costs amounted to \$90,000 in the first year alone, and every year thereafter, it amounted to approximately \$10,000. Most of those costs are associated with the staff time that is put in place to establish the policies and procedures, and software that is required to monitor how often our staff washes their hands; but mostly, it surrounds the accreditation process rather than the inspection process.

Today, we offer only conscious sedation at our Eureka facility. When a patient of ours urgently needs an MRI or other procedure requiring conscious sedation, we either try to accommodate these patients or, if we are unable to, are forced to refer them to an area hospital for further required diagnostic imaging services. As you might imagine, this is more costly and provides a greater risk to the patient as some may actually have no other choice than to undergo general anesthesia.

We very much appreciate your time and consideration and request your support for S.B. 112 (R1). We thank the sponsor, Senator Brower, for bringing this bill forward. As amended, we believe it will provide for a thorough and thoughtful discussion among health care providers of the impacts of A.B. No. 123 of the 75th Session and allow the Legislature, during the interim, to determine if revisions of the law are necessary for 2015.

**Chair Dondero Loop:**

Are there any questions from the Committee? [There was no response.] I would like a little more information. In laymen's terms, could you give me the definition of conscious sedation?

**Lesley Pittman:**

Dr. Eisen, would you like to answer that?

**Assemblyman Eisen:**

It would be my pleasure. It is actually defined in statute under *Nevada Revised Statutes* (NRS) 449.436. The definition of conscious sedation, deep sedation, and general anesthesia are in three sections of the NRS. Conscious sedation is a minimally depressed level of consciousness. It can be done with pharmacologic or nonpharmacologic means; it is usually with pharmacologic means. What distinguishes it from deep sedation is that the patient can independently and continuously maintain their airway and respond to stimulation. If you think of general anesthesia, with which most people are familiar, the patient is completely unconscious and the patient typically does not have the ability to maintain their own airway, although that is not one of the criteria, but they are completely unconscious. Deep sedation is sort of on the borderline. They may risk not being able to maintain their airway, which is why it is so important they be monitored more closely. Conscious sedation is that they can still respond to stimuli and maintain their own airway. Simply put, conscious sedation is "taking the edge off." I suppose you could say that the lights are on, but nobody is home.

**Chair Dondero Loop:**

Thank you. Are there any additional questions from the Committee?

**Assemblyman Hickey:**

In laymen's terms, could you please explain if there is any concern that an anesthesiologist is not involved? We have a lot of discussions about the scope of practice. When it comes to the thought of being put under, or only partially put under, should there be any concern about how it is done and who is doing it?

**Lesley Pittman:**

I represent the Nevada State Society of Anesthesiologists. We talked in great detail about this legislation before it was put forward, and there was no concern on their part that there was any infringement on scope of practice.

**Chair Dondero Loop:**

Are there additional questions? [There were none.] Is there anyone in support of S.B. 112 (R1)?

**Denise Selleck Davis, representing Nevada Osteopathic Medical Association:**

We do not have anything to add other than echoing Ms. Pittman's comments. We ask that this bill be amended as provided.

**Chair Dondero Loop:**

Are you talking about the first reprint of this bill? You do not have an additional amendment, correct?

**Denise Selleck Davis:**

No, I do not.

**Chair Dondero Loop:**

You are talking about the first reprint of this bill where the amendment came from the Senate?

**Denise Selleck Davis:**

Yes.

**Chair Dondero Loop:**

Thank you. I just wanted to clarify and make sure there was not something else out there.

**Michael Hackett, representing Nevada State Medical Association:**

We would like to go on record in support of this bill as it has been amended.

**Chair Dondero Loop:**

Are there questions from the Committee? [There were none.] Is there anyone in opposition to S.B. 112 (R1)? [There was no one.] Is there anyone in the neutral position? [There was no one.] Senator, any closing remarks?

**Senator Brower:**

I think the confusion earlier stems from the fact that this bill was significantly amended on the Senate side. The original version of the bill sought to fix some of the unintended consequences that were testified to earlier. After a lot of discussion with the various stakeholders, the bill was amended to simply appoint them to the interim committee for further study, and that is exactly what we are hoping that this Committee will agree to. The version of the bill you have is the amended version and the version we support.

**Chair Dondero Loop:**

Thank you. Are there any questions?

**Assemblywoman Spiegel:**

I apologize for not asking this sooner. I am remembering the hearing back in 2009 and some of the issues that were brought up. I remember there was a concern expressed that there would be a number of physicians who would not be able to afford the permitting and the fees associated with this. I am wondering if there was any discussion about the study and looking at any decreases in providers administering conscious sedation as a result of it. Is that something that is contemplated to be part of the study; or is it really just looking at the inspections and how it is working?

**Senator Brower:**

That is exactly part of what we are hoping to accomplish by way of the study to look at that very issue.

**Assemblywoman Benitez-Thompson:**

I would like to go back to the original problem that Assembly Bill No. 123 of the 75th Session was trying to address because I think we have this delicate balance between an overreaching scope and a scope that is appropriate. You are proposing to do it by a study. In the meantime, what type of safeguards do we have in place that this bill was trying to address in order to prevent the original situation with the hepatitis C crisis that happened? It was about inspection process and accreditation. Without this bill and the deletion of the sections, what type of protections does the public have in terms of knowing that they are going to a facility that has been regularly inspected and is accredited to do what this bill mandated, and if we repealed it, would unmandate?

**Lesley Pittman:**

The deleted segments of S.B. 112 (R1) were not existing law. We were hoping to exempt diagnostic imaging facilities from the rules and the regulations passed as a result of A.B. No. 123 of the 75th Session. The inspection and accreditation requirements still exist today and will continue to exist, but we would like a conversation during the interim about what the implications have been on those new inspection and accreditation requirements on patient access, cost to providers, and those sorts of things. At the end of the day, if we can find a better benchmark than conscious sedation, that would be great. We would at least need to have a discussion about whether the safety processes are still in place, but maybe there is a better way to go about it.

**Assemblywoman Benitez-Thompson:**

For clarification, your concern is not for all three levels of sedation that you referenced; it is only for conscious sedation?

**Lesley Pittman:**

Yes.

**Assemblyman Thompson:**

On the first page of the amendment, line 9 talks about the Health Division and the Department of Health and Human Services (DHHS). Am I looking at the right one?

**Senator Brower:**

The amendment itself, not the bill?

**Assemblyman Thompson:**

Right. Is the DHHS well-equipped, capacity-wise, to make these annual inspections? If there is a finding that they are not in compliance, is there automatically a citation or is there corrective action in place? And do they have a period of time to make that correction?

**Senator Brower:**

I would have to defer that question to DHHS.

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

When the initial legislation was enacted, I believe we proposed a fiscal note. We hire staff and we are fee funded for all of our regulatory activities. We have sufficient staff to do the required work. If there are findings, it falls under our existing administrative sanction process. They would have an opportunity to correct depending on how serious the findings were. If they do not correct, it is a progressive disciplinary process.

**Chair Dondero Loop:**

I will close the hearing on S.B. 112 (R1). I will now open the hearing on Senate Bill 381 (1st Reprint). Please go ahead, Senator Brower.

**Senate Bill 381 (1st Reprint): Makes various changes to prevent recipients of certain public assistance from using benefits in certain businesses. (BDR 38-459)**



**Senator Greg Brower, Washoe County Senatorial District No. 15:**

Senate Bill 381 (1st Reprint) has to do with the federal Temporary Assistance to Needy Families (TANF) program. It is a federal welfare program administered by the various states and, specifically, our state Department of Health and Human Services (DHHS), in conjunction with the federal DHHS. The recipients of TANF receive cash assistance, which, in many states including Nevada, can be accessed at automated teller machines (ATMs) using an electronic benefit transfer (EBT) card. Until about a year ago, there were no federal requirements for states to restrict EBT usage at certain locations. In response, several states imposed their own restrictions by way of statute and some by executive order in an effort to address this issue. In February 2012, Congress passed the Welfare Integrity and Data Improvement Act which now requires all states to maintain policies to prevent TANF assistance from being used in certain types of retail establishments including liquor stores, casinos, and adult entertainment businesses. Because of that federal law, states are now required to enact such policies and to report to the federal DHHS on the steps they have taken to address and implement these policies by February 22, 2014. In light of that new federal requirement, I have introduced S.B. 381 (R1).

What the states that have already beaten us to the punch have done varies. Some have simply followed the federal requirements. That is, they have restricted EBT use at casinos, liquor stores, and adult entertainment establishments. Other states have gone beyond that to include tattoo parlors and other types of retail businesses. Senate Bill 381 (R1) simply complies with the federal law focusing on casinos, liquor stores, and adult entertainment establishments. The idea behind this makes sense; it is commonsense recognition that federal welfare benefits should not be used for things that are not essential to the welfare of the recipients. The federal government has decided that leaving it up to the states to regulate in this area, without actually requiring restrictions, was not working.

In fact, the U.S. Government Accountability Office (GAO) report that was done recently on this issue summarized its findings as follows:

The purpose of TANF is to help needy families achieve self-sufficiency. Providing TANF benefits by means of electronic benefit cards gives TANF recipients an alternate to cash, and allows states to use existing infrastructures. However, any misuse of TANF funds not only deprives low-income families of needed assistance, but also diminishes public trust in both the integrity of the program and the federal government.

I want to thank Committee Counsel, Risa Lang, who fortunately staffs the Senate Committee as well. We were able to work through some of the more complicated aspects of the bill and of the federal law and come up with this amended version, which, I think, puts us into compliance with the federal law and makes sense in terms of public policy for the state.

**Assemblyman Sprinkle:**

I thought EBT cards could only be used with specific machines that accepted EBT cards, not just a regular ATM. If that is not the case, how do you track it anyway if they pull cash out and go to a liquor store to spend the money?

**Senator Brower:**

That is a good question and is one of the challenges both in the federal and state departments. I think we have someone here in Mr. Willden's place. We have also been working closely with state DHHS on exactly how we can best comply with the federal law.

**Mike McMahon, Administrator, Division of Welfare and Supportive Services,  
Department of Health and Human Services:**

There are a couple of different cards that we use in the state. The more familiar card is the Supplemental Nutrition Assistance Program (SNAP) card. That is the one that you are more likely to see in a grocery store where people are paying for their food purchases. Those are restricted; you cannot purchase paper products, you can only purchase food items. The EBT cards through TANF are just like a regular debit card and can be used as a debit card for transactions. This bill prohibits the use of those cards in certain locations.

What other states have done is to require the financial industry to make modifications in the machines and change the coding strips that are used on the cards so they can be very restrictive as far as what purchases can be made and the locations where a person can use those cards.

**Assemblyman Sprinkle:**

The second type of card can be used at any type of ATM or any facility that accepts a regular debit card; other states are now changing that. Is that something Nevada may want to look at in the future?

**Mike McMahon:**

Yes. The issue with ATMs is that they are not anchored to a wall of a building; they are very mobile. For example, if you go to the Reno Air Races, you usually find a bank of ATMs that are available. How you control it becomes quite complicated as far as who bears the responsibility. Within the language of this bill, it puts the onus on educating recipients as far as where they can actually

use these cards and how to effectively use them to provide for their basic needs.

**Senator Brower:**

The *Nevada Revised Statutes* (NRS) already provide for a plan for beneficiaries that are worked out between the beneficiary and the state department. Specifically, this bill would require each such plan to include these restrictions. The beneficiary knows, and essentially agrees, that as part of their plan and agreement to receive benefits, they are restricted from using these benefits in certain places. The bill is not the end of the game in this area; DHHS is currently working on regulations to fully implement these federal restrictions. The bill basically sets out the broad outline to bring us into compliance with federal law. The DHHS will be working on regulations that set forth the details.

**Assemblyman Sprinkle:**

I am not suggesting it with this bill, but I am wondering if, in the future, we might look at putting more of the responsibility on the facilities and some way to track whether it is a standard debit card versus an EBT card. There could be penalties associated with them accepting that. It is just a thought for the future.

**Senator Brower:**

It is a great thought, Mr. Sprinkle, and it is in the bill in basic form, subject to details being worked on in regulation. Section 1, subsection 4, of the bill states that "A person shall not knowingly accept a public assistance electronic benefit transfer card for use in any place or manner listed in subsection 3." Assuming that gets at the issue you just raised, that is required by the federal law and it is a part of the bill.

**Assemblyman Eisen:**

Do we have a sense of how big of a problem this actually is? There is already federal law in place in *United States Code*, Title 42, Chapter 7, Section 608, and our statutes currently refer to it. That section of federal law already uses the exact same terminology in regard to liquor stores, casinos, and adult entertainment establishments. That reference is already embedded in the statutes. I am not clear what we are accomplishing by adding this language. It seems like it is redundant when it has to comply with these points in federal law, and then we are going to include those points again explicitly in the next paragraph. I am trying to figure why we are so concerned about this. I presume that we have some way of tracking where these EBT cards are being used. Do we know if they are being used in this manner? If so, what are we doing about it?

**Senator Brower:**

There are auditing efforts by the federal government and various states aimed at getting at this problem and understanding exactly how broad the scope of the problem might be. It is difficult to tell. I will tell you that my review of the evidence suggests that it is not a huge problem, but I would offer this in response: even a small problem, assuming we are not spending more money to combat the problem than we are saving, is worth trying to combat. The federal law now requires that each state adopt these restrictions. It is one of those things that we encounter from time to time where Congress has told the states, "You have to do it, or you risk losing up to 5 percent of your TANF block grants." That is a compelling reason to do it. I would respectfully submit that we need to get in compliance with the federal law.

**Assemblyman Eisen:**

I am not in any way suggesting that we would not need to be in compliance with the federal law. In my reading of NRS 422A.535, it already makes specific reference to this exact language in federal law. I am trying to figure out what we are adding to the expectations of the Division by adding this language explicitly versus having it in there by reference as it currently is. I am not arguing the principle of being compliant with federal law. I am trying to find out what it is about our current statute that is not already compliant.

**Senator Brower:**

My understanding is that absent the requirement that these three types of retail establishments be listed as restricted locations, if you will, we are not in full compliance with federal law.

**Chair Dondero Loop:**

I am going to follow up on that. I am confused as well. It seems to me that if you go into an establishment and get a receipt, it will say you have bought liquor. When you go into an establishment, your words, not mine: ". . . in which performers disrobe or perform in an unclothed state for entertainment." It is pretty obvious when you get a receipt from that establishment because it does not say that I just bought bananas and apples. I am confused why the receipt, or what goes into the system federally, would not already have this as a red flag.

**Senator Brower:**

I do not know why it would have a red flag. The federal law simply requires each state to develop policies that restrict the use of TANF benefits in certain types of retail establishments. Absent this bill, we have no such restriction in the law.

**Mike McMahon:**

To address Dr. Eisen's question, we get regular monthly reports back from the vendor we utilize for overseeing the TANF cards. It does indicate whether a person has used an ATM or debit transaction. The most common scenario that I could offer is Gold Ranch Casino on the California border. They sell gas. One of the approved purposes of the use of TANF funds is to promote a person's self-sufficiency, and if that means to have gas to go back and forth to a job training program or work, that is an acceptable expenditure. When that comes through and the person swipes their card for the purchase of the gas, all we get is an indication from the vendor that a transaction has occurred using a debit card. It does not break it down to anything more specific than that. Under the regulations that Senator Brower is referring to, we have not seen the final version of the regulations.

The only comment I wanted to add is that the language in this bill most closely mirrors what we anticipate the final regulation being from the federal government. I think this is going to be a phased-in type of thing, where the federal government looks at this nationally and learns as they go forward as far as whether they need to ratchet the regulations tighter or more loosely. I do not think this is an end; it is part of a process.

**Assemblywoman Benitez-Thompson:**

I always get nervous about bills like this because the thought is that fraud is especially popular among our TANF and food stamp population and is really rampant. We have had study after study which talks about the fact that such a thought or assumption does not end up panning out. We do have a way to look at how TANF EBT card funds are being spent.

I want to refer everyone to the article that came out on March 7, 2012, from the *Nevada News Bureau*. Miki Allard, social services program specialist with the Division of Welfare said: "Nevada taxpayers should take comfort in knowing that the vast majority of withdrawals through the TANF programs appear to conform to the purpose of the program." She goes on to say that: "My analysis is that taxpayers should feel that the body of evidence shows that our benefits are being paid exactly, and used exactly for what they are being paid for." In this review of those TANF benefits and the EBT card use, you see that there was concern because there were a lot of transactions that occurred in Guam. It was a military family. We have military families who qualify for TANF and are using their benefits outside of the country—even the biggest of the red herring did not pan out. I am cautious about the type of policy implication that it makes about our low-income population, that we can paint them with a brush that makes them look like bad actors, but when we study the transactions, they are not proving to be true.

**Senator Brower:**

I would simply agree with Mrs. Benitez-Thompson. We should be cautious. That is why this bill is tailored very narrowly to simply comply with the new federal requirements. It does not go beyond those requirements as some states have tried to do and have done. This simply brings us in compliance with the congressional act. Since we, as a Legislature, are not meeting again until after the 2014 deadline for federal compliance, this bill is being introduced at this time.

**Assemblyman Martin:**

I am curious what you meant by going beyond the congressional requirements. I am already uneasy about the accounting nightmare that is being created and the monitoring technology needed. Who is going to monitor this? Who is going to enforce it? What are the penalties, and where does this ultimately leave us in terms of monitoring what these people who are on assistance get? Do we stop them from buying red meat because it is bad for their health? If you can comment on some of those things, that will help me feel more comfortable with this.

**Senator Brower:**

I would agree with you that there is a point at which we are probably going too far. That is why this bill simply brings us into compliance with the new federal requirements. As many of you know, there already is a huge federal and large state bureaucracy devoted to administering and auditing these programs. This bill simply sets forth specific restrictions that have to be in the beneficiary's plan as set forth by Congress. I do not think that this bill is the type of bill that might go too far along the lines that you have suggested.

**Assemblyman Hickey:**

Mr. McMahon, I think Senator Brower indicated that there is a possibility that we might be vulnerable to losing certain TANF monies should we not put this in statute and not comply. Would you elaborate on that from your understanding? Is that, in fact, the case?

**Mike McMahon:**

The Middle Class Relief and Job Creation Act of 2012 requires all states to have provisions and policies and procedures in place to be able to support the federal language that requires the locations of ATMs be restricted, or at least monitored. That is the extent of the compliance factor. As far as the penalties, we have yet to see the final regulations from the federal government. There may be some sort of penalty or sanction involved, but we have not seen that in writing.

**Assemblywoman Spiegel:**

In section 1, subsection 3, paragraph (a), it talks about a gaming establishment. Most of our supermarkets are on slot routes and have restricted gaming licenses. I am wondering if the fact that they have restricted gaming licenses and some slot machines would make them ineligible to be locations where people could buy food using their EBT cards.

**Senator Brower:**

That is something, with Risa Lang's help, we fine-tuned on the Senate side. The restriction deals with gaming purposes only. This means only actual gaming, not purchase of any otherwise acceptable goods or services from an establishment that happens to have gaming.

To address Mr. Hickey's point, and I am looking again at a recent GAO report on this issue, the report says:

The Act calls for HHS to determine whether states have implemented and maintained policies and practices to prevent such transactions, within two years of the Act's enactment. If HHS determines that a state has not implemented and maintained these policies and practices, or if a state has not reported to HHS on its policies and practices, HHS may reduce the state's family assistance grant by an amount equal to 5 percent of the state's grant amount for the federal fiscal year following the 2-year period.

As Mr. McMahon has said, the federal regulations are not complete, nor are the state regulations, but it seems clear that we risk the loss of funding if we do not meet the deadline.

**Assemblyman Eisen:**

I am still having a hard time with this particular point, and understanding what it is about our current statute that is perceived to be noncompliant with federal law. As I look further down in the bill, the definitions of casino and liquor store are simply references to the federal law that already exist. We already have the reference to that entire section in our statutes. What are we missing in the current law that needs this additional language?

**Senator Brower:**

My understanding is that the current state law simply does not include the restrictions that the federal law now requires. This language was drafted with that requirement in mind.

**Chair Dondero Loop:**

Do you need an additional answer, Dr. Eisen?

**Assemblyman Eisen:**

I will follow up with Legal. Thank you.

**Chair Dondero Loop:**

Mr. McMahon, do you have an answer to that? I think the frustration is we cannot quite get an answer to that question.

**Mike McMahon:**

I would like to be able to go back and take a look at the existing regulations versus the proposed language to follow those through to give you an exact answer.

**Chair Dondero Loop:**

Thank you. Mr. Thompson, did you have a question?

**Assemblyman Thompson:**

Mr. McMahon, you are saying that if we are not in compliance within a certain time, then there will be a significant loss of dollars. Can you tell us how much we currently get for EBT card money for the state? Do you know approximately what the loss would be if we were not in compliance? Are we allowed to put in a waiver? What if our community does not feel this is something that is detrimental to our clientele? A lot of the time the federal government will listen to us.

**Mike McMahon:**

First of all, the TANF program is approximately \$44 million. As far as waivers, because this is a rather new set of requirements from the federal government, I have not seen any language related to a waiver, but a state can request a waiver to any particular federal regulation. Did you have another question?

**Assemblyman Thompson:**

Based on the \$44 million, how much would we face to lose if we were not in compliance?

**Mike McMahon:**

Based upon the language from the Middle Class Relief and Job Creation Act, the Senator is correct. There is a 5 percent penalty for a state that fails to report within the designated time frame the terms of what its policies, practices, and procedures are. Five percent of the \$44 million would be an overall ballpark figure in terms of what we could potentially lose. Again, we have not seen the



final set of regulations and do not really know what the final requirements for each state are going to be until those regulations have been published.

**Assemblywoman Benitez-Thompson:**

When we say that the federal legislation is going to look to states to put something into policy, does that necessarily mean statute? As I remember, there is a lot of policy within TANF and manuals that guide the policy. Could you be more specific as to what level the federal government is seeking a policy.

**Senator Brower:**

My understanding is that most states that are ahead of us have implemented actual statutes governing these restrictions. From discussions with Michael Willden, the best way for our state to go forward and ensure compliance with federal law is this approach that we have come up with.

**Chair Dondero Loop:**

I want it to be clear that policy from the staff is different from the state or federal law. Is that what I am hearing? In other words, can staff put a manual together? It may include federal or state law, but can they add other things that are policy-driven?

**Mike McMahon:**

I do not fully understand the question. In terms of what our responsibility would be in response to the federal law, we are having internal conversations now about what those changes may look like. Those will come through in terms of our practice and procedure manuals. Potentially, within the personal responsibility plans, there will be specific sections carved out and possibly some new language to remind people what their responsibilities are with the use of the cards and the prohibited areas where they cannot make purchases. Those are the types of things we are looking at. We are really waiting for the final set of regulations so that we can get a better handle in terms of what the federal government wants to see in our policies.

**Chair Dondero Loop:**

Are there any additional questions? [There were none.] We will ask anyone else in support to come forward. [There was no one.] Is there anyone in opposition? [There was no one.] Is there anyone in the neutral position? [There was no one.] Senator Brower, closing remarks?

**Senator Brower:**

These are all very good questions. I would encourage all to talk with your legal counsel and Director Michael Willden whom I have worked closely with on this. I think it is a policy decision that makes sense. Many states have already done it; all will have to do it by 2014. I think this is the bill, as drafted, that is most closely in line with the federal requirements without going too far. I would urge your careful consideration.

**Chair Dondero Loop:**

Thank you. I will close the hearing on S.B. 381 (R1). I will open the hearing on Senate Bill 276 (1st Reprint). Welcome, Senator Cegavske.

**Senate Bill 276 (1st Reprint): Directs the Legislative Committee on Health Care to conduct an interim study of the delivery of supported living services and jobs and day training services to recipients of Medicaid. (BDR S-891)**

**Senator Barbara K. Cegavske, Clark County Senatorial District No. 8:**

Senate Bill 276 (1st Reprint) and the federal Patient Protection and Affordable Care Act provide incentives for states to offer home and community-based services as an alternative to nursing homes for Medicaid recipients in need of long-term care. Current law requires the Department of Health and Human Services to establish and administer a program to provide such services, including supporting living services to Medicaid recipients with physical disabilities. Frequently, questions arise related to the quality and quantity of services delivered to eligible recipients.

Senate Bill 276 (1st Reprint) is an opportunity to gather important information so that discussions and decisions related to supporting living services in jobs and day training can be accurately based on facts gathered and analyzed through this type of study. The purpose of this measure is directing the Legislative Committee on Health Care to form a subcommittee to conduct an interim study of the delivery of supporting living services, jobs, and day training to recipients of Medicaid. First, the study will evaluate the needs of Medicaid recipients; second, availability of services; and third, reimbursement rates in Nevada as well as other states for comparison.

Based on this evaluation, the subcommittee shall develop recommendations to improve service delivery and address the adequacy of the reimbursement rates for the providers. Additionally, this bill also requires the Division of Health Care Financing and Policy of the Department of Health and Human Services to provide all information necessary to conduct the study and to assist in the study. My primary concern is the quality of care provided to each patient. At the same time, this health care cost consumes a growing amount of state and

national budgets, and analyzing our system of care to make them as efficient and effective as possible is important for their continued viability.

I hope that you will see the benefit of this type of analysis and will support S.B. 276 (R1). I have Tracy Brown from the Opportunity Village in Las Vegas wishing to testify, as well as two folks in Carson City. I also need to say that I am on the Board of Opportunity Village.

**Chair Dondero Loop:**

We will start with Tracy Brown.

**Tracy Brown, Special Assistant to the Executive Director, Opportunity Village:**

As many of you are aware, Ed Guthrie, Executive Director, rarely misses the opportunity to offer testimony in support of a Senate bill or Assembly bill. He is traveling today. We have provided his formal testimony ([Exhibit C](#)) and I am here to represent Opportunity Village. As I have discussed with my distinguished colleagues, I am here to offer support of S.B. 276 (R1) on behalf of the 1,695 families that we serve at Opportunity Village. I will defer to Ms. Brooks and Mr. Patchett as they will offer more testimony.

**LaVonne Brooks, President and CEO, Health Sciences Institute, Washoe Ability Resource Center:**

I am looking at 2009 testimony and I found that we did, in fact, perform a rate study analysis. It was because of Assembly Bill No. 513 of the 71st Session. It showed that we were approximately 37 percent underfunded in the delivery of supported living arrangements and job services in the state of Nevada at that time. Not much has changed since then. We managed to increase those rates at the time by 7.1 percent. This chart ([Exhibit D](#)) shows what has happened as a result of the economy to the services we provide. The High Sierra Industry-Washoe Ability Resource Center (HSI-WARC) used to be one of the largest providers; it was the second largest in the state next to Opportunity Village. On the chart ([Exhibit D](#)), you will notice a decline in services.

One of the ways we bolstered the difference between the reimbursement rate and the cost of service, which is about \$16,000 per person served, was that we got back about \$8,500. We had enterprises. The second page on the chart ([Exhibit D](#)) shows you what has happened to one of our enterprises as a result of the economy. In large part, this represents our assembly service that we offer to International Game Technology (IGT). As IGT has declined in the sale of slot machines, so did our revenue decline by way of the assembly that we do for them.

These are examples of how we have never been independent of the state reimbursement rate. Opportunity Village has a similar model. We have a foundation that scholarships recipients into day services so that we can continue to serve them. We used to do that as well; we no longer have the work to scholarship people into our day services. I offer this as an example, and I offer that, however the construct of this study, you will take into consideration the data that was provided from Assembly Bill No. 513 of the 71st Session.

**Chair Dondero Loop:**

Would you please tell me what HSI-WARC stands for?

**LaVonne Brooks:**

It stands for High Sierra Industries-Washoe Ability Resource Center. It used to be Washoe Association of Retarded Citizens. It is our state's oldest provider of services and was established in the 1950s.

**Chair Dondero Loop:**

Before we go to questions, Mr. Patchett, please go ahead.

**Brian Patchett, representing Easter Seals Nevada:**

I am grateful to be here and I appreciate the testimony that has been given. I think it starts to paint a picture of the reason why we need to have this rate study to look at jobs and day training and also to look at the supportive living services and those rates. As my colleagues have pointed out, there was a study that was done several years ago, and that was before we had some of the changes in our economy, the increase in minimum wage, and some of the other things that have occurred within our state. I also represent the State of Nevada Association of Providers, or SNAP as we call it, which is a group of providers throughout Nevada.

As we look at that and realize the impact it has had, it means not being able to pay our staff more when there are lower rates. Also, I think the difficulty in raising money to be able to continue to provide services at the quality we want to provide them is always something we get concerned about. Finally, the concern is that this service is able to provide for as many people as possible throughout the state of Nevada, whether it is jobs or day treatment or supported living.

We had a study ten years ago. We had some increases, but we did not really follow what that study suggested. There has been a lot of debate and discussion about that throughout the last several years. As we look at this study, it is important that we make sure it is truly an independent study and

truly something that we can all agree on and say, "Yes, this is accurate information." Secondly, we need to look at how we can best implement that over the next several years.

**Assemblyman Sprinkle:**

If this is in regard to the changes that are coming, were we not looking at doing a study over the next two years? Is that going to be too late in looking at the fee schedule? Am I misunderstanding?

**Brian Patchett:**

There are changes that are coming. I do not know if we fully understand what those changes are going to be, but we know that the impact that has already happened to us in providing the services has been significant. We have been at the same rate for quite some time. That rate already has an impact. We would love to be able to see that rate change sooner than later, but for fairness, we need to make sure that we have accurate information. I think that there are many people on either side of this issue who would like to be sure what those rates should be. That is really why we looked at getting the study done in the hope that, once that is done, we can move quickly into implementation.

**LaVonne Brooks:**

To Assemblyman Sprinkle, are you referring to the health reform? [Assemblyman Sprinkle nodded in agreement.] At this point in time, we have certainly been tracking that. The health- and community-based waivers, under which many of the people whom we serve are part of that population, are not even being considered in that yet. It was looking like it might be 2015 before we actually had something that deals with that piece of health care reform.

Clearly people are already receiving that side of health care. This is a very different service sector that has to do with job and day services and community support for people to live independently in their own home or apartment, for example. It is very complicated. I have been doing this almost 13 years, and I am learning every day. I constantly ask myself, "How come I did not know that? I have been doing this job for so long." It is a very complicated funding stream that comes together to create the work that we do. On the state side, looking at the potential with aging, I think it will actually help that.

**Senator Cegavske:**

With the study, the three areas that we need evaluated are the needs of the Medicaid recipients, the availability of the services, and the reimbursement rates in Nevada, and then compare them to other states. That is what we are looking at and those are the three issues that we are hoping to resolve in this study.

**Chair Dondero Loop:**

Additional questions? [There were none.] We will go to those in support of S.B. 276 (R1). [There were none.] Is there anyone in opposition? Is there anyone in the neutral position? [There was no response.] Senator, closing remarks?

**Senator Cegavske:**

I appreciate your indulgence and allowing us to have this hearing today. We would appreciate your support in this legislation.

**Chair Dondero Loop:**

Thank you. Is there anyone wishing to make public comment? [There was no one.] This meeting is adjourned [at 2:45 p.m.].

RESPECTFULLY SUBMITTED:

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Janel Davis  
Committee Secretary

APPROVED BY:

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Assemblywoman Marilyn Dondero Loop, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Health and Human Services

**Date:** May 6, 2013

**Time of Meeting:** 1:38 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 276 (R1)	C	Edward Guthrie, Opportunity Village	Written Testimony
S.B. 276 (R1)	D	LaVonne Brooks, HSI-WARC	Charts