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

Seventy-Seventh Session
April 3, 2013

The Committee on Health and Human Services was called to order by Chair Marilyn Dondero Loop at 1:06 p.m. on Wednesday, April 3, 2013, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn Dondero Loop, Chair
Assemblywoman Ellen B. Spiegel, Vice Chair
Assemblyman Wesley Duncan
Assemblyman Andy Eisen
Assemblywoman Michele Fiore
Assemblyman John Hambrick
Assemblyman Pat Hickey
Assemblyman Joseph M. Hogan
Assemblyman Andrew Martin
Assemblyman James Oscarson
Assemblywoman Peggy Pierce
Assemblyman Michael Sprinkle

COMMITTEE MEMBERS ABSENT:

Assemblywoman Teresa Benitez-Thompson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Kirsten Bugenig, Committee Policy Analyst
Risa Lang, Committee Counsel
Terry Horgan, Committee Secretary
Macy Young, Committee Assistant

OTHERS PRESENT:

Fernando Serrano, representing Nevada KIDS COUNT
Stephen P. A. Brown, Ph.D, Director & Professor of Economics, Center for Business & Economic Research, University of Nevada, Las Vegas; Executive Director, Nevada KIDS COUNT
Rennae Daneshvary, Director of Nevada KIDS COUNT, University of Nevada, Las Vegas
Louise Helton, Member, Executive Committee, Nevada KIDS COUNT, University of Nevada, Las Vegas
Michael J. Pomi, Executive Director, The Children's Cabinet, Washoe County; Member, Executive Committee, Nevada KIDS COUNT, University of Nevada, Las Vegas
Matt Sharp, representing the Nevada Justice Association
Michael Hackett, representing the Nevada State Medical Association
Barry Gold, Director, Government Relations, AARP Nevada
James L. Wadhams, representing the Nevada Hospital Association and Anthem Blue Cross & Blue Shield/Denver
Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates
Vanessa Spinazola, representing the American Civil Liberties Union of Nevada
Laurie Squartsoff, Administrator, Division of Health Care Finance and Policy, Department of Health and Human Services
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
John Jones Jr., representing the Nevada District Attorneys' Association
Brian Rutledge, Chief Deputy District Attorney, Office of the District Attorney, Clark County
Eric Spratley, representing Washoe County Sheriff's Office
Arthur (A.J.) Delap, representing Las Vegas Metropolitan Police Department

Chair Dondero Loop:
[Roll was taken. Committee rules and protocol were explained.] Before we begin our bill hearings, we will have a short presentation on the annual Nevada KIDS COUNT Data Book. This data book includes child well-being indicators on health, welfare, and the safety of our children in Nevada.

Fernando Serrano, representing Nevada KIDS COUNT:
KIDS COUNT is a project of The Annie E. Casey Foundation, which funds a number of projects to improve the quality of life for youth and families. In Nevada, The Annie E. Casey Foundation has also funded the Juvenile Detention Alternatives Initiative as well as a variety of child welfare projects. The purpose of KIDS COUNT is to track the well-being of children in our state. They track this well-being from a variety of disciplines, which is very helpful to us. The University of Nevada, Las Vegas (UNLV), Center for Business and Economic Research houses the Nevada KIDS COUNT project. Its relationship with KIDS COUNT began in 1996 when it became a data partner for the project. It became the publisher in 2000.

The KIDS COUNT Executive Committee works closely with staff to further the objectives of KIDS COUNT. As I have, many of our Executive Committee members have used the information as well as helped compile it. They include Louise Helton, Norma Moyle, Candice Young-Richey, and Mike Pomi. I would like to thank The Lincy Institute at UNLV for its financial contribution toward the printing and distribution of the Nevada KIDS COUNT Data Book.

Steven P.A. Brown, Ph.D., Director & Professor of Economics, Center for Business & Economics Research, University of Nevada, Las Vegas; Executive Director Nevada KIDS COUNT:
[Steven Brown provided a PowerPoint to accompany his presentation (Exhibit C).] KIDS COUNT tracks a number of indicators for the well-being of children in Nevada. In today's presentation, I am going to present a little bit about the demographics of children in Nevada and then an overview of the child well-being indicators. There is a lot of data in our book (Exhibit D), which I recommend to anyone who is interested in understanding the status of children in Nevada. We will be looking at health conditions and health care, economic well-being, child and youth safety, and education and achievement. Then we will be doing some comparisons between Nevada and some other states according to work done by The Annie E. Casey Foundation.

Looking at demographics, in Nevada we have a very wide range of children of all ethnicities. We have no ethnic majority. The largest group are white with 45 percent. The second-largest group are Hispanic at 38 percent.

If you look at infant mortality rates in Nevada, they declined pretty sharply during the 2005 to 2009 time period, but they have begun to creep back up. Infant mortality rates are measured in deaths during the first year of life per 1,000 live births. Among the eight counties for which reliable rates could be calculated, Churchill County had the highest rate at 8.4 infant deaths per 1,000 live births and Carson City had the lowest at 4.9.

When you look at Nevada average child death rates, you see that these rates were dropping sharply from 2005 through 2010 but they are creeping back up. These are measured in deaths per 100,000 children ages 1 to 14, and that rate was up slightly in the 2009-2011 window. The average rate for Clark County was 16.3 deaths per 100,000. Washoe County was also below the state average at 17. Carson City and the rural counties all had higher rates than the state average if you combine the rural counties.

If you look at the estimated percent of children in Nevada under age 18 living in poverty, what we see is not too much of a surprise. Since about 2007 we have been seeing steady increases. This is very reflective of the state of the Nevada economy. These data only go through 2011. Given the improvements in employment that we saw in 2012, I would expect that the number may come down slightly. Nonetheless, 22 percent of our children were living in poverty in 2011. The numbers range from 13.8 percent in Elko County to 30.1 percent in Nye County.

We look at Nevada average teen birthrates, and we can see that we are seeing favorable trends there in that the birthrates per 1,000 teenage girls have dropped from a high in the 2006-2008 period of 46.8, or 4.7 percent, down to approximately 4 percent, or 40 per 1,000. Humboldt County had the highest rate at 5.7 percent and Esmeralda County had none. We do not have reliable rates for some of the counties with smaller populations.

Average teen death rates are something that was on a favorable trend from the 2005-2008 time period, but we see that it is ticking back up in the 2009-2011 period. Clark County had a rate that was higher than the state average; Washoe County had a rate that was lower than the state average. We cannot calculate reliable rates for the other 15 counties because there is a limited population and limited number of deaths, so those numbers are not statistically significant.

When we look at violent teen deaths we see that the teen accident rate recently took a tick up but is still well below what our long-term trends are. We are seeing a continuation of favorable trends in the teen homicide rate. For the teen

suicide rate, we are seeing unfavorable trends and a continuation of those unfavorable trends.

Looking at Nevada high school dropout rates, we see that number is continuing to decline from 2003-2011, so we are seeing fewer children dropping out of school. The number is still high, though, at 4.1 percent. The numbers range from 1 percent in Elko County to 6.9 percent in Humboldt County.

Our major findings include an improvement in teen birthrates and high school dropout rates. Through our data we are continuing to see deterioration in poverty rates and in the teen suicide rate.

Here are a few comparisons of Nevada to the rest of the United States on some overall indicators of child well-being in four domains. In economic well-being, Nevada ranks 49th out of 50 states. We have seen increases in child poverty, in children whose parents lack secure employment, increases in children living in households with what is considered a high housing-cost burden—namely that it accounts for more than 30 percent of pretax income, and we have increasing rates of teens who are not in school and not working. These data look at the time period 2005 through 2010 and, given the state of the Nevada economy, some weakness here is not unexpected.

If you look at education, we are seeing some improvements, but we rank 50th among the U.S. states. We have seen improvements in children attending preschool. We have seen improvements in fourth graders' reading; we have seen improvements in eighth graders' proficiency in math; however, we have not seen any change in high school students graduating on time.

When we look at children's health, we rank 46th among the 50 states. We have seen some improvements in low-birth-weight babies; we have seen improvements in children without health insurance, and we have seen improvements in child and teen deaths—in other words, there are fewer of them. We have seen no change in teens who abuse alcohol or drugs.

The final measure is family and community. We rank 41st. We are seeing improvements in some areas and declines in other areas. The numbers of children in single-parent families increased from 2005. Children living in families where the head of household lacks a high school diploma are declining. Children living in high-poverty areas has increased from 2000 to 2010, and teen birthrates are declining.

Chair Dondero Loop:
How long have you been publishing this book?

Rennae Daneshvary, Director of Nevada KIDS COUNT, University of Nevada, Las Vegas:
Since 1996. Nevada was the last state to get a KIDS COUNT grant from The Annie E. Casey Foundation.

Assemblyman Hickey:
Regarding the lower teen birthrates, we have had a pretty extensive discussion during the last day or so about sex education in Nevada. Would you attribute that decrease to the success of our current sex education courses for teenagers?

Stephen Brown:
KIDS COUNT is an enumeration of the facts. Officially, we offer no opinions on the causes of what is driving the data; however, some members of the KIDS COUNT Executive Committee may be willing to offer their opinions.

Louise Helton, Member, Executive Committee, Nevada KIDS COUNT, University of Nevada, Las Vegas:
Over these 17 years, it has been very interesting to watch many of the indicators to see which indicators have ticked up and which have ticked down depending on some of the happenings in this building. You can see a direct correlation in many of the indicators even though the people who run the programs will not specify them. This indicator has been very interesting to follow over the course of this economic downturn. The birthrate overall has not been increasing; the teenage birthrate has followed. The research that I am aware of certainly indicates that, without proper sex education in the schools, teenage birthrates are raised.

Assemblyman Hambrick:
I want to discuss the suicides. Is there any correlation or data available on the reasons? These children go through some traumatic things. Is there any evidence linking economics, abuse, or any of the myriad of reasons? Have you been able to identify one, two, or three reasons?

Louise Helton:
One of the things that is fascinating about the teen suicide rate is that it has historically been bad in our state. If you go all the way back to our first data book or the precursor to this data book, as far back as I have seen, our children commit or attempt suicide at twice the national average, and that has been consistent. We also have the same thing with the adult death rate due to

suicide. It is also very high. Most people attribute that to Las Vegas being such a high stress city to live in. There are situations in which three shifts of people work, and many families have very little opportunity to spend quality time with their children by virtue of our major industries not being very friendly to that. A lot of people have made that connection in the past. Another thing we struggle with is the lack of mental health services and the lack of opportunities to reach children before they might attempt suicide.

Stephen Brown:
I would add one more dimension to Louise Helton's comments. Family stress rises during periods of economic stress. That family stress translates into suicides, so I think part of it is the economic stress. Certainly, we have seen very high economic stress in Nevada in the last five years.

Assemblyman Eisen:
I appreciate KIDS COUNT bringing this information forward. If you look at the slide concerning health [(Exhibit C) page 23], the second line mentions children without health insurance. I see our overall rank nationally for children's health is 46th, which is appallingly low, and we need to keep working to improve that. That second line indicates we have had a 15-percent decrease in the percentage of children within the state without health insurance. That is a great improvement; however, if we look at that compared with the national numbers, we were at twice the national average for children without health insurance. Now we are actually more than twice the national average for children without health insurance. Although things have gotten better in Nevada, they have not gotten better as quickly as they have in the rest of the country. Do you have those sorts of comparisons laid out? Where do we stand nationally? Where were we previously in our national rankings in these subcategories?

Stephen Brown:
For children without health insurance, we rank 50th and we were pretty close to that before this new way to rank states was developed by The Annie E. Casey Foundation.

Assemblyman Oscarson:
You mention teen death rates and that 115 were violent deaths—36 from accidents. Are you including motor vehicle accidents? Do you have it broken down or are these accidents in general?

Rennae Daneshvary:
It is accidents, motor vehicles included. I am not sure what all the categories are, but it is due to violent accidents. They are not broken down.

Assemblyman Sprinkle:
You have dedicated one slide to violent teen deaths [(Exhibit C) page 16]. When talking about difficult situations concerning relationships our teenagers might find themselves in, might it help if they had more education?

Louise Helton:
If you look at the historic perspective, the trend lines, our ranking nationally and how we have always ranked at the bottom, we have never addressed any of this directly or in a sustained way to make an impact on these indicators. We have not been able to move the needle into positive territory.

These accident and suicide rates are all part of this overall lifestyle or well-being situation where we just have not invested in a sustained way in any of these categories. This body has an opportunity at any time to make a decision not to be satisfied with this status. It is not okay for us to be 50th. We all want to live in a state where everyone wants to move because it is the best place to raise your children. The things we are doing, the policies we are currently pursuing, we are seeing the result. We need to make some dramatic changes.

Michael J. Pomi, Executive Director, The Children's Cabinet, Washoe County; Member, Executive Committee, Nevada KIDS COUNT, University of Nevada, Las Vegas:
Referring to teen suicide, at The Children's Cabinet we have a program called TeenScreen in which we go into middle and high schools and identify youth where their parents sign a release. As an example, we recently went to Clayton Middle School. In the advanced placement classroom, we found that a high percentage of kids who achieved As or better were under a tremendous amount of stress, anxiety, and depression because they were trying to maintain being A students and their home lives. They really had no one to talk to. We were surprised by that outcome; that the highest-achieving students needed the most help.

That is an example of what we are doing. We have implemented a program in Lyon County with great success. We do have avenues of programing available to be expanded with the proper amount of funding. It does not take a lot of money, but it does take funding to have case managers go in. You also have to have an infrastructure of psychologists, psychiatrists, and mental health placements. From that screening, we placed kids right into hospitals for mental health care because they were suicidal right at that moment.

That is what we do to address the data that was presented today. We look at homicide and suicide rates. We also work with gang members. The best thing we do as a community and as a state is that we have people who are

concerned and who develop relationships with our young people. That relationship is the conduit to change.

Assemblyman Martin:
Of particular concern are gay and lesbian, bisexual, and transgender youth who suffer from much higher rates than the average. I do not have the empirical data before me to know what the difference really is, but what special programs do you have in place to assist these young people?

Stephen Brown:
KIDS COUNT is simply an enumeration of data. KIDS COUNT has no programs other than collecting and disseminating data.

Assemblyman Martin:
Are you tracking the data related to this? Is it being reported to KIDS COUNT?

Rennae Daneshvary:
We do not track that data, but it is something we could do that we would release next year. Every other year we release a much larger book that contains four times as many indicators than what are in this book.

Michael Pomi:
We have programming available for that specific population at The Children's Cabinet and utilize our counseling services for them. If they are an isolated population, they are tough to reach out to because they have been isolated by society and our communities. The more information we can share with those kids the better. We encourage them to come in and receive the proper amount of mental health counseling. We are the only free family counseling in northern Nevada, so we have a fairly significant waiting list, but that is an avenue of success for those kids to be able to have a place to talk. There are support groups available to them.

Assemblyman Martin:
I would also encourage you to reach out to The Gay and Lesbian Community Center of Southern Nevada that has an extensive program in this. If you are tracking data and have ideas on how to guide people to corrective actions in terms of counseling, that would be great. These kids need help.

Chair Dondero Loop:
On your cause of teen death by region and by suicide rates, you list a group of ages. When you gather this data, do you break it down into certain age groups so you know what age group is actually most prone to having those issues?

Rennae Daneshvary:
It is always the 15- to 19-year-old age group.

Chair Dondero Loop:
I raise the issue because 15-year-olds and 19-year-olds are very different in their social and emotional needs. Fifteen-year-olds are just entering high school or have just finished their freshman year. Nineteen-year-olds could already be in college and well on their way, especially if they graduated at 17, so I see two very distinct populations of students there. One population is at the beginning of high school and the other is at the beginning of college.

Rennae Daneshvary:
I could get that data. The numbers would be very small for each of the two age groups, especially as we are looking at them by county.

Chair Dondero Loop:
If there were a really small number, that would be a very good problem. What I am getting at is, even if there were 75 total suicides, where are those suicides happening? Is it more in high school or more after high school when they are beginning college and feel those stresses? We need to help everyone, but who do we need to help? Do we need more prevention and systems in place for the high school kids? When 18- or 19-year-olds commit suicide, we would all agree that at some point between age 15 and that date, they were asking themselves that question anyway. With that being said, what are we doing for those young people?

Rennae Daneshvary:
We can do that next year.

Assemblyman Oscarson:
I heard you referencing the services you have in northern Nevada. Can you tell me more about what services are in the rural areas of southern Nevada?

Michael Pomi:
We have the Village of Hope with two case managers who are The Children's Cabinet employees at Whitney Elementary School in Clark County. We replicate the same processes we have in Washoe and Clark Counties of case management and we try to replicate services. In the rural counties, Lyon County for example, we do TeenScreen which I spoke about earlier. We are able to expand that to other jurisdictions if they are willing to open their doors. It is basically the school district opening the doors and having their counselors identify and work with families who they think are at risk or in need. Then we can walk in the door. The uniqueness of a private nonprofit is that we

are fairly fast and flexible. We can get there quickly. It can happen through the Urban League in Clark County or other examples within the rural areas. People are able to do the job; they just need to have the programs.

Assemblyman Oscarson:
Thank you for that, and I would like to follow up with you later concerning what could possibly be done in Lincoln and Nye Counties to implement some of your programs. They sound as though they are so helpful to these youth.

Michael Pomi:
I would be happy to share.

Chair Dondero Loop:
Are there any additional questions from the Committee? [There were none.] Thank you so much for your presentation. It is valuable information.

I am going to turn this the meeting over to my vice chair.

Vice Chair Spiegel:
I will now open the hearing on Assembly Bill 316.

Assembly Bill 316: Revises provisions governing medical records. (BDR 40-233)

Assemblywoman Marilyn Dondero Loop, Clark County Assembly District No. 5:
The impact technology has had on our day-to-day lives is undeniable and evident as we manage various electronic devices from morning until night. These devices keep us organized, efficient, and allow us to make decisions quicker than ever because we have information readily available at our fingertips. The downside to this quick access to information is that we also are more vulnerable to a potential breach of our information. This can be especially true when it comes to electronic health care records. As technology has improved, the health care industry has responded to the needs of consumers to have better access to one's own health records.

I will now turn this presentation over to my colleague, Assemblyman Sprinkle, who graciously has worked with me on this bill. He will provide you with some background information.

Assemblyman Michael Sprinkle, Washoe County Assembly District No. 30:
[Mr. Sprinkle read an overview of the bill from prepared text (Exhibit E).] When an organization here in the United States that falls under the Health Insurance Portability and Accountability Act (HIPAA) regulations outsources its information outside of the United States, that information and the people who that

information belongs to, are no longer protected under the HIPAA regulations. This is of concern. As technology moves more and more into data as opposed to paper or physical records, we are seeing this outsourcing more and more. Every one of us should be concerned, especially when looking at how our information is being used and the potential threat that it could be released to other people.

While there are broad federal and state laws that address information privacy, confidentiality, and the abuse of health care data, international borders do not bind the Internet, and American laws have limited influence in foreign countries. That is a very important statement and gets to the intent of this bill. One concern that has been brought to my attention, and that I discovered myself as I researched the history on this bill is, exactly where are we trying to go with this? In reference to the outsourcing of information, it is to try to convince American organizations and companies to do their outsourcing with other American organizations as opposed to sending it outside the borders of the United States. Those organizations outside the United States do not fall under HIPAA regulations; consequently, there is no recourse if any single individual were to have his information released to the public.

In section 1 of A.B. 316, a person who has been harmed by the sharing or disclosure of information contained in health care records in any manner not authorized by HIPAA, may bring an action to recover damages from the person or governmental entity who provides the health care records to the entity or person who shared or disclosed the information in any manner not authorized by HIPAA. In section 2, the bill becomes effective July 1, 2013.

In essence, a private course of action means the ability to sue when your information has been released against HIPAA regulations. Numerous organizations and agencies have told me they are concerned about that; however, it is one of the incentives we are looking at in trying to keep companies from outsourcing to agencies outside the United States. I want everyone to know that I am still in the process of working with those individuals and organizations you will hear after me who are probably in opposition to this bill. This is something we are still working on and will continue to work on before the work session.

Health care providers and clearinghouses subject to HIPAA ought to be held responsible for assuming the precarious nature and potential flaws of sending sensitive data outside the United States. Assembly Bill 316 holds accountable health care providers and domestic clearinghouses that have been entrusted with patients' confidential records and chose to outsource that information to a

foreign clearinghouse or person that subsequently breached the confidentiality of the medical records.

Vice Chair Spiegel:
When you presented the bill and went through the sections, does that reflect the bill as printed or the bill in the mock-up amendment on the Nevada Electronic Legislative Information System (NELIS) (Exhibit F)?

Assemblyman Sprinkle:
Yes, I did forget to point that out. We do have a mock-up amendment (Exhibit F). There has been a slight change of wording. The only real change in the mock-up amendment is when you look at section 2. It is referring to a specific statute that already exists in Nevada statutes. That reference did not exist in the original bill. That is the only change; however, there may be future changes.

Assemblyman Hickey:
Under this bill, someone can sue a person or government entity, but I think you are defining "person" as a health care organization. It is probably the case that they have no ability to necessarily control what a foreign clearinghouse might do. If this passes, they would be restricted from contracting with organizations outside the country to do that. A bill like this is usually trying to remedy a particular problem. Could you give an example of a problem this would be remedying?

Assemblyman Sprinkle:
There was an organization in California that outsourced some dictation to a company in the Middle East. The dictation was transcribed but there was some sort of contractual problem in regard to payment between the two entities. It resulted in the threat of the release of this information to the Internet. The information was being used as leverage against the California company. It eventually was resolved, but it brought about this bigger issue that there is no recourse for anyone within the United States if that information is breached by a company outside the United States.

While there is no direct private course of action contained in federal regulations, just last week a final decision was made in regard to HIPAA regulations. All entities in the chain of that information, from where the personal medical information first originates all the way through to the final entity that may have that information, are potentially liable if any one person or organization within that chain breaches the HIPAA regulations. This decision was finalized just last week and is contained within the Health Information Technology for Economic and Clinical Health Act (HITECH), which is a clarifying act associated with

HIPAA. We are working with that now to look at direct recourse that individuals could have within the state of Nevada.

Assemblyman Eisen:
What is the definition of a "person?" Who would potentially be the subject of a lawsuit? Would it be an individual within an organization? Does this apply to a private entity versus a governmental entity? That is not clear. In *Nevada Revised Statutes* (NRS) Chapter 439, I do not see a definition of person to distinguish them from a natural person. I just want to make sure we are clear on what the intent is and who would actually be held responsible.

My other question has to do with the goal you described. The HIPAA does not have private cause of action. The intent was to identify if there were entities whose practices were failures versus there being a failure of practice—an entity that was not doing their due diligence versus something accidental in terms of the potential for civil penalties. The opportunity for a private cause of action that is described in this bill is a very different standard, a very different threat. Should an entity covered under HIPAA share information with another entity covered under HIPAA, and that second entity has a breach of confidentiality and a release of information, under HIPAA with that final ruling you described, both entities could potentially face civil penalties. Theoretically, that would be a matter of whether or not that first entity's practices were inadequate.

The way the bill is currently written, the first entity that transmitted the information would be the subject of a lawsuit and not the second entity that actually let the information out. I want to clarify who is intended to be incentivized to do things right. Who are we trying to get at?

Assemblyman Sprinkle:
As I have been told in the drafting of this bill, the intent was the person or organization that the person belonged to. That is not clear and is probably something that needs to be clarified. Your second question gets back to what I initially addressed in my opening statements. The true intent of this bill is not to penalize. It is not disciplinary or strictly to allow somebody a course of action. The intent of this bill is to give incentive for companies to not outsource their information outside of the United States. When we were looking at how we were going to do that, this language evolved.

When one organization within the United States outsources to an organization outside the United States, there is absolutely no recourse for somebody with that organization outside the United States. The only recourse would be back on the entity that is in the United States that falls under the HIPAA regulations and is somebody a suit could be brought against. That was the initial intent of

that language. Since then, if you read it verbatim, it is pretty all encompassing and could include other organizations or entities that are also within the borders of the United States. It is one of those areas that will be looked at further with the different organizations you will hear from. I am willing and open to discuss with them what we need to do to get to the actual intent of this bill—which was not simply to provide private recourse.

Vice Chair Spiegel:
I would like to ask Risa Lang, our Committee Counsel, to weigh in with some additional information.

Risa Lang, Committee Counsel:
"Person," when it is used in NRS, is defined in our preliminary chapter as including both a natural person and any business or social organization and any other nongovernmental legal entity. Whenever we use that term throughout NRS, unless it has been defined to mean something else, it refers to both a natural person and a business entity.

Assemblyman Oscarson:
The true intent of this is to abide by the HIPAA law and provide confidentiality of patients' information. That is the true intent of your bill.

Assemblyman Sprinkle:
Always.

Assemblyman Oscarson:
I applaud your efforts to keep that work within the boundaries of the United States. That protects people, because it is very difficult to go outside the country and hold somebody responsible for things that happen when there is no actual way to get to them, or find out where they are in a lot of instances. From the health care or hospital perspective I come from, to incentivize people to utilize in-country resources for these kinds of services is a great thing. I applaud your efforts and appreciate them very much.

Assemblyman Sprinkle:
Thank you. As you stated, the true intent is what you talked about; however, there are some other consequences. One consequence will keep jobs and people employed within the United States as opposed to outsourcing this to other countries. If that is a side benefit from this effort, it is well worth it.

Vice Chair Spiegel:
Do we have any additional questions from the Committee? [There were none.] We will hear testimony in support of A.B. 316.

Matt Sharp, representing the Nevada Justice Association:
We are in support of the bill. I would like to explain section 2, particularly in light of some of the questions that were asked. Under the law, there are certain obligations we call nondelegable; they are very important. Probably the most obvious that comes to mind is an insurance company. You pay premiums for peace of mind and financial security. If that insurance company hires someone who is incompetent to handle your claim, you can still seek recourse against the insurance company. It is not a defense to say, "We delegated this responsibility to an administrator who did not know what the administrator was doing," because the insurance company's responsibility is nondelegable. The private health information of a patient is so important that you want to encourage that the violation of the HIPAA is basically a nondelegable task. That is the way I would look at it. Ultimately, the person who holds that information holds the trust of the patient, and they should be responsible if someone discloses that information.

Assemblyman Eisen:
Currently, is there a mechanism for recourse on the part of someone who provided the information—say to a transcription or billing agency—if that agency then fails to protect the data? Is there a recourse on the part of the person who provided the data to them if they have violated the terms of their agreement to maintain confidentiality?

Matt Sharp:
For the person who is given the information and then violates the privacy rights and discloses it, there would generally be a common law right of invasion of privacy claim. Let us say a hospital provides information to a third party and that third party discloses. The hospital says, "We did not do anything wrong." There may or may not be recourse depending on the nature of the hospital's contract with the entity they gave that information to, depending on the context. What this bill would do is say you, as the holder of the information, are no longer really holding that private information if you put in place the mechanism so that your patient's private information gets out to the public. You are going to be responsible. It would be a little bit of a change in the law. The policy decision here would essentially make that function nondelegable.

Michael Hackett, representing the Nevada State Medical Association:
We are in support of this bill. We feel there should be recourse in the event that a patient is harmed by a violation of HIPAA. The U.S. Department of Health and Human Services is the only entity entrusted with making a finding of a violation of HIPAA. That would have to occur before any private action is brought forward.

Assemblyman Hambrick:
With the free market being what it is, would it be possible for the vendors on this end to insist on a significant bond being posted if the overseas vendor violates our laws? Is there an alternative way to force overseas companies to live up to our laws by bonding or some other mechanism, and still allow free enterprise?

Michael Hackett:
That is probably more a business issue and not something within the purview of the Nevada State Medical Association in regard to this bill at this time.

Assemblyman Hickey:
Have you talked with any physicians who are members of the Association concerning the potential fiscal impact on them? For instance, if they are currently sending X-rays to someone overseas to review, and it might be more costly, is that something that has been discussed?

Michael Hackett:
We have not had that discussion on an individual basis. We have had it in broader contexts in terms of certain specialties that utilize what you just described on a more regular basis than others. We have not discussed to a degree where we really tried to assess what the financial impact would be one way or the other on something like that.

Assemblyman Eisen:
I have no concerns whatsoever about protecting the entity who sends information overseas, because that is well out of our control. If you make that choice, you take your chances. I want to clarify on the potential for liability. You said that the U.S. Department of Health and Human Services would have to first determine that a violation of HIPAA had occurred. If a violation occurs, who would potentially be liable as the bill is written—the individual who committed the violation or the individual who provided the information to the person who committed the violation?

Michael Hackett:
In essence, I think that was addressed by some of the questions you had earlier in terms of seeking clarification as to who was defined by the use of the word person and, ultimately, what the chain of events may be in terms of the road this goes down. I am not really sure exactly where the ultimate responsibility, or, in your words, liability, would reside once there has been a determination by the feds that there has been a violation of HIPAA laws. I apologize that I cannot give you any more specificity on that.

Assemblyman Oscarson:
I would think it would be of concern to your organization, because I suspect there are physicians who outsource that information outside this country, so the responsibility issue would be a great one on their part.

Something you opened the door for, Mr. Sprinkle, is telemedicine, which we will be hearing several bills on. If those things are happening in other areas outside this country, those are some other areas that there might be some potential for HIPAA violation and medical records being shared inappropriately.

Michael Hackett:
Regarding your first point, it is important to understand that physicians' first and foremost concern is always patient safety and providing the best care that they possibly can in keeping patients safe in that regard. If there are situations of certain specialties, of individual physicians, who are not doing things in accordance with providing the best in patient safety, then that is not our concern. That is a risk they have chosen to take. Our concern as an organization is to ensure that the people who are part of our organization are providing the best possible care in keeping the patient as safe as possible.

Regarding your second issue concerning telemedicine: it would be premature for me to say anything in regard to where potential liability or risks or other issues associated with that may be at this time, until we see how legislation that is moving through this body this session ultimately plays out.

Vice Chair Spiegel:
To clarify for Mr. Oscarson, on page 2, lines 8 through 10 of the original bill it says that the person who gave the information to the people who released it is liable.

Barry Gold, Director, Government Relations, AARP Nevada:
[Mr. Gold read a letter in support of the bill (Exhibit G).]

Vice Chair Spiegel:
Are there any questions for Mr. Gold? Seeing none, I will move to those who are speaking in opposition to A.B. 316.

James L. Wadhams, representing the Nevada Hospital Association and Anthem Blue Cross & Blue Shield/Denver:
I have had at least four meetings with Mr. Sprinkle, and I compliment him for his interest in trying to discern a quickly changing landscape federally. I pledge in advance that we will continue to work with him as the issue develops.

We are opposed to the bill on its face. According to the Ninth Circuit Court of Appeals, the federal HIPAA law does not allow states to create private rights of action. However, a recently enacted bill, the HITECH Act, increased the fines and penalties for those dealing with personal and private health information up to $1.5 million per violation, plus the ability of the state's attorney general to seek civil damages. I think the difficulty to individuals in a private right of action is perhaps compensated for by the authority of the state attorney general to do otherwise. Again, we appreciate the interest and effort of Mr. Sprinkle to discuss this project, and we will continue to work with him as amendments are developed.

Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates:

We have five health centers in Nevada. I have not had a chance to talk with the bill's sponsors. We just had some questions we wanted clarified in the legislative history, and we certainly would like to work with the sponsors to get answers to those questions. [Ms. Cafferata presented a letter in opposition (Exhibit H).]

We take the HIPAA regulations very seriously. Our patient privacy and confidentiality is a cornerstone of our brand and our health care delivery. We take it so seriously that I have to go through HIPAA training on an annual basis, even though I never see patients or their records. We all need to be in compliance.

As I was listening to the presentation of the bill, at first I thought this would never apply to us because we process and keep all our patient records internally. But as you read the bill, it says anyone "who receives health care records as part of a transaction" from someone "who is subject to" HIPAA "shall not share or otherwise disclose" the information. There are several laws on the books about records retention. We need to keep patient records for a minimum of seven years. Sometimes our records go into storage with a private company. Our contract would delineate the HIPAA concerns; however, at a certain point when you go into a contract with another company, you lose a certain amount of control over what happens even if you have delineated something through a contract. We have questions about how the liability would be shared in a case like that.

This bill also does not delineate the level of harm anticipated that would allow a person to bring an action, so the question my health center managers asked is whether there is a distinction between someone who accidentally hands the wrong credit card receipt to a patient versus someone who took home a whole slew of health records and made copies and was stealing identities, or

something like that. We take this very seriously, but we also know that sometimes things happen. As Mr. Wadhams discussed, the focus at the federal level is on keeping health organizations in compliance, and less about the individual, one-time accident. Those are the questions we had and will work with the sponsor to get them resolved.

Vice Chair Spiegel:
Are there any questions for Ms. Cafferata? [There were none.] Is anyone else in opposition?

Vanessa Spinazola, representing the American Civil Liberties Union of Nevada:
We support the privacy intent of the bill, and I have talked about that with Assemblyman Sprinkle. We have one word we oppose based on unintended consequences. That word is "receives" on page 1, line 3. It has to do with the ability of the press and the media to speak on First Amendment concerns. The Supreme Court does a case-by-case analysis of First Amendment concerns in this privacy versus First Amendment context, but I can point you to two cases that are relevant here. The first one is *Florida Star v. B.J.F*, 491 U.S. 524 (1989). This had to do with a rape survivor. Someone at the sheriff's office accidently disclosed her full name, and a newspaper subsequently published her full name. They sued the newspaper; it went up to the Supreme Court of the United States, and the press protection was kept in place.

Another case is *Bartnicki v. Vopper*, 532 U.S. 514 (2001), which involves a case where an individual in violation of the Wiretap Act taped a conversation regarding a union official during someone else's union contract negotiations and gave a copy of that tape to the media. The media published that tape. This, again, went all the way up to the Supreme Court and, again, the press protection was kept. I point this out because the media received the information lawfully. They had not done anything wrong. Because this bill prohibits the person who receives the information from disclosing that information, it would apply to the media and to the press. Therefore, we oppose that section of it. We also wanted to point out that, in the context of First Amendment cases, the Supreme Court typically points to the ability of the holder of the information, the government agency, to put in regulations and punish individuals who disclose information. They are the ones who really have the power to put the most control over this, and that is where that power should lie, so we will continue to work with Assemblyman Sprinkle.

Vice Chair Spiegel:
Are there any questions for Ms. Spinazola? [There were none.] Does anyone else want to speak in opposition to A.B. 316? Seeing none, do we have anyone who wishes to speak neutrally?

Laurie Squartsoff, Administrator, Division of Health Care Finance and Policy, Department of Health and Human Services:
We are here in a neutral position, but also to address some concerns that the agency has regarding this bill. The bill provides a private right of action against HIPAA-covered entities and business associates such as Medicaid, health care providers, and insurers who provide health records to third parties. The Division is certainly concerned. After conversations with Assemblyman Sprinkle we have a better understanding of what the intention is with this bill. We understand the concerns about electronic transactions involving data offshore where HIPAA protections cannot be extended. The agreement form we have with Medicaid is called the Electronic Transaction Agreement for Service Centers. It requires that our fiscal agent, when setting up transactions with clearinghouses, prohibits those clearinghouses from conducting electronic transfers outside the geographic limits of the United States. We understand it is Assemblyman Sprinkle's intent to narrow the bill to impose a liability for offshoring of data, and we look forward to working with the Assemblyman to produce a workable bill.

Vice Chair Spiegel:
Are there any questions from the Committee? [There was no response.] Would you like to wrap up, Ms. Dondero Loop and Mr. Sprinkle?

Assemblywoman Dondero Loop:
I would like to thank the Committee for hearing this bill. Please note that this is especially important for the confidentiality of our records and the records of all future patients.

Assemblyman Sprinkle:
I also would like to thank Assemblywoman Dondero Loop for giving me the opportunity to work on this bill. I learned a lot about HIPAA. I am eager to work with the other parties, or with other members of this Committee, and answer any further questions.

Vice Chair Spiegel:
I will now close the hearing on A.B. 316.

[Assemblywoman Dondero Loop reassumed the chair.]

Chair Dondero Loop:
I will now open the hearing on Assembly Bill 56.

Assembly Bill 56: Increases the penalty for the first offense of unlawfully selling a controlled substance to a minor. (BDR 40-336)

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:
I am speaking on behalf of Attorney General Catherine Cortez Masto and the Nevada Prosecution Advisory Council.

Assembly Bill 56 does not increase the penalty for a first offense of selling drugs to a minor; A.B. 56 creates a penalty for a first offense of selling drugs to a minor. The statute in question is *Nevada Revised Statutes* (NRS) 453.334, and it currently provides penalty for a second or subsequent sale of a controlled substance to a minor. The Legislature originally enacted this statutory provision based upon a policy determination that drug dealers should face more severe penalty for selling drugs to children. Currently, the statute only includes the penalty for a second or subsequent offense. There is no statutory provision for a penalty for a first offense. Because of this deficiency, prosecutors are unable to charge under the statute. Rather, our prosecutors are limited to charging under NRS 453.321, which is the statute that prohibits the sale of a controlled substance in general.

Assembly Bill 56 would remedy this deficiency, carry out the legislative intent in enacting a harsher penalty for those who sell drugs to children by amending the statute, and provide for a first-offense penalty of a category B felony with a two- to ten-year imprisonment. For the record, I would like to note that A.B. 56 has been endorsed by the Nevada District Attorneys' Association, the Nevada Sheriff's and Chief's Association, and the Governor's Crime Commission.

John Jones Jr., representing the Nevada District Attorneys' Association:
Present with me in Las Vegas is Brian Rutledge from the Clark County District Attorney's Office. He is the district attorney who brought this error to our attention. I would like to turn it over to him.

Brian Rutledge, Chief Deputy District Attorney, Office of the District Attorney, Clark County:
I noticed this problem in 2011. We had a case in which someone lured three 14-year-old children from a school to his apartment to sell them some drugs. He waited until they all got high, took the girl to a bathroom, and sexually assaulted her. When this all came to light, the police wanted to charge him with selling drugs to minors, but we noticed that the statute as written said the first offense was a category A felony. It listed penalties for second or subsequent offenses but it did not say what the penalty was for a first offense. With category A felonies, you have to list a penalty, so we have a statute that only has penalties for second or subsequent offenses. That is clearly not what

was intended when the statute was originally passed. This bill fixes that error so that there would now be a first-offense penalty, and it would be possible to have subsequent offenses.

Assemblywoman Spiegel:
Can you give us examples of class B and C felonies so we have a frame of reference? Would this cover a situation in which an adult gave a child a beer? What exactly is this covering?

Brian Rutledge:
This only involves controlled substances subject to the U.S. Food and Drug Administration Controlled Substances Act. That means cocaine, heroin, and controlled substances like that. It would not involve alcohol in any way.

Brett Kandt:
To follow up, there is a separate statute that prohibits furnishing an alcoholic beverage to a minor. It is not a category B felony.

Assemblyman Oscarson:
Why would this language not reflect not only selling but providing? I am not sure those 14-year-olds purchased the drugs, but he certainly provided them.

Brett Kandt:
I refer you to the existing language in the statute which provides a criminal penalty for selling a controlled substance. It does not address the issue of furnishing. I believe there are separate statutes that prohibit furnishing a controlled substance.

Assemblyman Oscarson:
Do they provide the same penalties that this does?

John Jones Jr.:
I do not believe the same enhancement applies to furnishing a controlled substance to minors; it is just for selling.

Brian Rutledge:
The dangerous drug statutes specifically include selling or furnishing drugs, but when this statute was written, for some reason it only covers selling.

Assemblyman Oscarson:
Could this be amended to include furnishing as well?

Brett Kandt:
We would be amenable to that. One of the real-life problems with the furnishing issue is that is how drug traffickers get kids hooked on drugs. They furnish them; when the kids are hooked, then they turn to the sale. It is also a means by which pimps and sex traffickers lure young women into the sex trade—by getting them hooked on drugs and then using that addiction to facilitate their exploitation.

So, yes, in closing, if it is the Committee's pleasure to add furnishing to the statute, we would be amenable to that.

Assemblyman Hambrick:
What about a minor selling to a minor?

Brett Kandt:
We brought you the statute as it was enacted. Obviously in its enactment, the Legislature made a policy determination that adults or others selling drugs to a minor should face a more severe penalty. With regard to the issue of minors furnishing drugs, that would probably fall under the juvenile laws.

John Jones Jr.:
Yes, Assemblyman Hambrick, we could charge a minor under this statute. There are no specific penalties for crimes under NRS Chapter 62 which is the provision this crime would be charged under. The court at that time would have a range of options available to it from probation all the way up to commitment in a juvenile youth facility.

Assemblyman Hambrick:
This would be a certifiable event. Might it be certified to the adult court?

John Jones Jr.:
Yes, Assemblyman Hambrick, because it is a felony. If the child is 14 years or older, the district attorney could choose to seek discretionary certification.

Assemblyman Sprinkle:
Is there any particular reason why this is only about selling to minors and not selling to everyone?

Brett Kandt:
That is already criminalized and prohibited under NRS 453.321.

Chair Dondero Loop:
Are there any additional questions from the Committee? [There were none.] Is anyone else in support of A.B. 56?

Eric Spratley, representing Washoe County Sheriff's Office:
We would like to express support for this bill. I would like to answer the question regarding children being present during sales or transfers of controlled substances. That is covered under NRS 453.3325, unlawful to allow a child to be present during those violations—either sales, or transfers, or anything else—at a home, in a car, on a vessel, or anywhere like that where controlled substances are being transferred in some form. There are penalties associated with that.

I do not know if it would be appropriate to amend the language in this bill to selling or providing a controlled substance to a minor in that parents may be giving their minor something such as a scheduled narcotic. That may be why it was not covered in the bill. Obviously, you would not sell that to your child, but it might be the legislative reasoning and why it was not done before.

Arthur (A.J.) Delap, representing Las Vegas Metropolitan Police Department:
We are in support of this measure as well. We thank you for bringing this and ask for its approval.

Assemblyman Hogan:
This body will be hearing a bill within just a few days. That bill's intention is to decriminalize the use of marijuana. Should that bill be approved, would the bill we are currently considering block that intention or make it impossible to make the changes that bill proposes to do?

Eric Spratley:
That is a two-part question: should it be approved? And, will this bill have an effect on that?

Assemblyman Hogan:
As we anticipate, if the legitimatizing of marijuana is approved, would this bill, if approved, negate that action?

Eric Spratley:
I believe the voters have already approved the marijuana issue.

Assemblyman Hogan:
That is medical marijuana. This is a broader use.

Eric Spratley:
I would not want to speculate on that. It would not have an effect on this because this has a broader scope and goes to other controlled substances as well.

Assemblyman Oscarson:
You mentioned "provide" versus "selling" might be eliminated from that statute. Perhaps that would have an impact on parents who are giving their children controlled substances on a normal basis—those that would be prescribed rather than not prescribed.

Eric Spratley:
I would agree with that. I do not condone parents medicating their children with their hydrocodone or with something else because the child has an ache or a pain, but I can see the circumstance. A parent might give some sort of antibiotic to a child until they could get the child's prescription filled. Possibly, this would cause them to be guilty of a felony. I do not know if that was the legislative intent back when this was drafted. Speaking as a parent, that might be why.

Chair Dondero Loop:
Are there additional questions from the Committee? [There were none.] Is anyone else in support? Is there any opposition? Is anyone neutral? Seeing none, I will close the hearing on A.B. 56. Is there any public comment or comment from Committee members? [There was no response.] Our meeting is adjourned [at 2:43 p.m.].

RESPECTFULLY SUBMITTED:

_____
Terry Horgan
Committee Secretary

APPROVED BY:

_____
Assemblywoman Marilyn Dondero Loop, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: April 3, 2013 **Time of Meeting: 1:06 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Stephen Brown, representing Nevada KIDS COUNT	PowerPoint
	D	Stephen Brown	Nevada KIDS COUNT 2012 Data Book
A.B. 316	E	Assemblyman Sprinkle	Overview of the bill
A.B. 316	F	Assemblyman Sprinkle	Mock-up amendment
A.B. 316	G	Barry Gold, representing AARP NV	Letter in support
A.B. 316	H	Elisa Cafferata, representing Nevada Advocates for Planned Parenthood Affiliates	Letter in opposition