

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

**Seventy-Seventh Session
April 19, 2013**

The Committee on Health and Human Services was called to order by Chair Marilyn Dondero Loop at 12:36 p.m. on Friday, April 19, 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. 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 Andrew Martin
Assemblyman James Oscarson
Assemblyman Michael Sprinkle

COMMITTEE MEMBERS ABSENT:

Assemblywoman Teresa Benitez-Thompson (excused)
Assemblyman Joseph M. Hogan (excused)
Assemblywoman Peggy Pierce (excused)

GUEST LEGISLATORS PRESENT:

Senator Debbie Smith, Washoe County Senatorial District No. 13



STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Michael Hackett, representing the Nevada State Medical Association
Tom McCoy, Nevada Government Relations Director, American Cancer
Society Cancer Action Network
Don Gallimore, Private Citizen, Sparks, Nevada

Chair Dondero Loop:

[Roll was taken. Committee rules and protocol were explained.]

We are going to take our bills out of order today and begin with Senate Bill 117, so I will open the hearing on S.B. 117.

Senate Bill 117: Revises provisions governing the powers of the Department of Taxation. (BDR 32-536)

Senator Debbie Smith, Washoe County Senatorial District No. 13:

The intent of Senate Bill 117 is to update our taxation statutes to ensure some patient health information protection. Senate Bill 117 clarifies an ambiguity in existing Nevada statute to exempt medical records from privacy law and brings the Department of Taxation in line with other state agencies that meet patient privacy standards for the Health Insurance Portability and Accountability Act (HIPAA). The bill ensures that the Department of Taxation will no longer have the authority to subpoena health care records with protected individually identifiable health information. Individually identifiable health information is information that can identify a person to their specific physical or mental condition.

There is a perception among the general public that HIPAA laws protect their protected health information from use by all governmental agencies of the state. The fact is that HIPAA laws only apply to entities deemed as covered entities. Covered entities are defined as health plans, health care clearing houses, or health care providers who transmit health information in connection with certain transactions. These transactions include claims, benefit eligibility inquiries, referral authorization requests, or other transactions for which the Department of Health and Human Services has established standards under HIPAA transaction rules.

Current Nevada law governing the Department of Taxation provides the agency with the authority to subpoena the production of books or papers for their various agency purposes. Additionally, the Department of Taxation is not identified under HIPAA as a covered entity, therefore exposing patient health information to security breaches, et cetera.

As legislators, I believe it is incumbent upon us to ensure the privacy of everyone's health records as best as possible, so I encourage you to pass this legislation. I think it is good consumer protection. I do not think there would be a purpose for the Department of Taxation to have access to our health care records.

Please note that on the Nevada Electronic Legislative Information System (NELIS) there is a letter from a national organization called "patientprivacyrights" supporting this legislation ([Exhibit C](#)). The letter very clearly outlines what I just testified to and the importance of keeping this information private.

Chair Dondero Loop:

Are there any questions from the Committee?

Assemblyman Hambrick:

Could you define what you consider to be medical records?

Senator Smith:

Medical records are as defined in the law I described during my testimony regarding the information related to a specific physical or a mental condition. The point is that the Tax Department would not have the authority to go into a medical office and subpoena those records associated with that physician.

Assemblyman Hambrick:

Then you would not consider financial information in those records to be medical?

Senator Smith:

If it is not associated with that patient's medical condition or mental condition. That would be my perception. What are you getting at?

Assemblyman Hambrick:

You are speaking about taxation agencies. What if a taxation department subpoenaed records for patient X, wanting to know how much patient X spent. Not what the money was spent on, but how much money was spent; for instance, if patient X was claiming to be indigent but spent \$150,000 on plastic surgery. The tax department does not care what medical procedure was done;

just the fact that such an amount of money was spent. The fact that funds were spent could assist a taxation department in coming forward with a potential prosecution. Again, they do not care what it was spent on, just the fact that the funds were available and utilized in an area of medical care.

Senator Smith:

When we are talking about associating an individual taxpayer to a physician, that would not be permitted. That would be my take on it, but we might have to have a legal analysis of that. My point with this legislation is that I do not think our personal medical records, as associated with a physician and our condition, should in any way be open to the Tax Department.

Assemblyman Eisen:

It appears to me that the definition of individual identifiable health information in the bill is drawn almost verbatim from the definition of protected health information under HIPAA. We are talking about the same information that those covered entities are prohibited from disclosing. This bill draws a line around that protected health information with the health care providers, rather than putting the burden on the tax division to adhere to all the requirements under HIPAA to protect information.

Senator Smith:

That was what I was trying to describe.

Assemblyman Oscarson:

I also think the Health Information Technology for Economic and Clinical Health (HITECH) Act also codifies some of the things you are talking about. It has to do with the privacy of some of that information. Those are all encompassed, and I think this is a good step toward protecting people's health information that really does not belong in some of the hands it seems to be getting into.

Senator Smith:

I agree.

Assemblyman Duncan:

In your opinion, why is redaction not an option? Along the same lines as Mr. Hambrick's questions, if you were trying to locate an entity where a person was spending money and you did not want to know the particulars—what services they had or their health information—why does redaction not go far enough?

Senator Smith:

I have been down the redaction path in my tenure here, and I know it is very expensive. It is very hard to delineate and identify. I have been through two legislative sessions trying to fix redaction legislation and dealing with resistance from agencies because it is expensive.

Also, I cannot think of a scenario where the Tax Department would need to have information about anything related to our constituents' health spending habits. In the Senate hearing on this bill, the Department of Taxation certainly did not object to this legislation.

Chair Dondero Loop:

Are there any additional questions? I would note for the record that the letter on NELIS ([Exhibit C](#)) concerning patient privacy acts does say "to protect state residents' right to the privacy of individually identifiable health information." It does not say money. It is pretty clear that they are talking about knowing your private health information and not how much you paid. Is that correct?

Senator Smith:

The point here is there does not seem to be an appropriate use of any vehicle that would allow the Tax Department to have access to anything about my health information associated to my spending habits or to my tax payments. If you want to protect your individually identifiable health information, you have to draw a line around that information, as Dr. Eisen indicated.

Chair Dondero Loop:

I always find it interesting that my children, my mother, or whoever I choose, such as a spouse, could not have that information without me designating them, but the Tax Department could get it. This has been really good information. Is there anyone else you would like to call forward?

Senator Smith:

I do not know if there is anyone here who would like to speak. In the Senate, there was no opposition to this bill in the committee hearing, and we did have several people testify in support.

Chair Dondero Loop:

At this time, I will call anyone else in support of S.B. 117.

Michael Hackett, representing the Nevada State Medical Association:

We testified in support of this bill when it was in the Senate, and appreciate Senator Smith bringing it forward. We want to go on record again as being in support of this bill. We are not aware of any incidents that have occurred in

Nevada based on something like this, but we feel this is a very common sense measure and provides an additional level of protection to a patient's personal health information.

Chair Dondero Loop:

Are there any questions from the Committee? Is there any additional support? Is there any opposition? Is anyone neutral? [There was no response.] I will close the hearing on S.B. 117 and open the hearing on Senate Bill 81.

Senate Bill 81: Allows certain physicians to dispense cancer drugs donated for use in the Cancer Drug Donation Program. (BDR 40-500)

Tom McCoy, Nevada Director of Government Relations, American Cancer Society Cancer Action Network:

[Mr. McCoy submitted a letter in support of the bill ([Exhibit D](#)).]

In 2009, Assembly Bill No. 213 of the 75th Session was the first bill I brought forward through the process. It is like my legislative child. We are the advocacy affiliate for the American Cancer Society and, as a result, I have come to know a lot of people in the cancer community. One reason we brought our bill forward in 2009 was that we took a look at some of the situations across Nevada and found that people who were underinsured, as well as those who were uninsured, had problems affording cancer medications. Other states had addressed that problem by establishing what we wanted to establish—a cancer drug donation program. There was another reason, too. As I started to get into this whole process I heard stories, and one story in particular was probably the strongest motivation for me personally to really get behind this. It was not an easy passage situation in 2009. We had to negotiate with the trial lawyers and with the pharmaceutical people, as well as some others with opposition to it.

Chris from Henderson, Nevada, was a victim of leukemia. He was receiving a lot of very expensive oral cancer medications. Chris died on his 16th birthday. At that time, 2009, there was nothing that could be done with Chris's remaining drugs. Our Nevada law would not permit the family to pass those cancer drugs to someone else. You have to understand the cancer community. The cancer community is such that people start sharing stories and support with each other. The family wanted to give this medication to someone else's child who possibly could not afford it. This was a very strong motivation and we were able to get the bill through the Legislature, and it became the Cancer Drug Donation Program here in Nevada.

If you were to ask me whether it has been a success, I would say, "Quantitatively, no." One of the problems we have with the program, and one

of the reasons Senate Bill 81 tries to respond to that, if there were no funds allocated for any type of marketing of this program. It was only through the kindness of the State Board of Pharmacy which said they would do it internally so it would not have a fiscal impact on the state of Nevada. The Board of Pharmacy has information on its website, but they are not in a position to do much and no one is really marketing this to the public, so it has not been what we had hoped it would be. However, from a qualitative standpoint, there is a lady in Las Vegas who would probably tell you she is alive today because of the program; so as far as I am concerned, it served its purpose in that one situation.

Last year I addressed the Interim Legislative Committee on Health Care. I was asked to talk about this program. As a result of that, when we identified the fact that this program is not functioning as intended, a bill draft request was introduced. The concept was that we could expand the cancer drug donation program by including physicians as potential dispensers of the donated cancer drugs. One of the problems we noticed with the pharmacies being the only sources for dispensing of these medications is that they are in the business of selling prescriptions. Another is that there is some time involved in the process. The identification by a physician of a patient or patients they hear about who could use medication that is no longer needed by someone else just makes a lot of sense.

This is a very short bill. Section 1 of *Nevada Revised Statutes* (NRS) 457.460 is being amended to add "or by a physician who is licensed pursuant to Chapter 630 or 633 of NRS." If someone is an osteopath or medical doctor and authorized by the Board of Pharmacy to dispense, and several hundred of our doctors are, they would be in a position to participate in this program. That is basically what the bill does.

Chair Dondero Loop:

We had a couple of family members die and it was a travesty to me to throw that medicine away or destroy it so no one could use it. That was thousands of dollars down the drain, so I agree.

Michael Hackett, representing the Nevada State Medical Association:

I am here to support Mr. McCoy and the provision in this bill that allows physicians and those who are licensed to dispense. This change would make the program more effective than it is right now and provide the resource we feel this program can ultimately provide to those who are the most in need.

Assemblywoman Spiegel:

I think this is a great bill. I have been supportive of this program all along and am happy to see it expanding. In NRS Chapter 630, administrative physicians are defined but they do not have any clinical practice. I wanted to be certain for the record that they are exempted from this.

Michael Hackett:

That is my understanding as well.

Assemblyman Hambrick:

I echo my colleague's remarks, and I am going to be voting in favor of this both in Committee and on the floor. With your background, do you ever see an opportunity to donate prescription drugs that have already been issued to a patient? I am talking about tablets; things you and I would assume could not be adulterated. Would they ever be eligible for these programs? I understand the difficulty for liquids or tear-apart caplets where adulteration could be a concern, but there are some medicines you and I would think could not be adulterated. Do you think we will ever expand that program to avoid liability questions?

Michael Hackett:

I know there has been legislation before other state legislatures this year, as well as in the past, to broaden it to a more general prescription drug donation program. I do not recall the fate of those pieces of legislation. To me, that seems a natural progression, with the same qualifying conditions that are extended to the cancer drugs in terms of the condition they have to be in when submitted to a place for dispensing.

Assemblyman Eisen:

I want to clarify for the record in terms of the administration of this program, much of which is defined specifically in the *Nevada Administrative Code* (NAC) instead of in the statute. There are some specific lines in the NAC on dispensing these drugs, for example NAC 457.587 which indicates that a drug must not be dispensed by a pharmacist if the pharmacist suspects that the cancer drug is adulterated or misbranded. I want to make sure we are clear, should this bill pass and be signed by the Governor, that there will be a thorough scouring of those regulations to ensure they apply to all participants in the program who may dispense drugs under this program.

Tom McCoy:

Once the bill was passed in 2009, we went through the regulatory process. It is my understanding that the State Board of Pharmacy will adapt the regulations under the Cancer Drug Donation Program to reflect the changes in the bill.

Michael Hackett:

Prior to this hearing, I had a chance to talk to two of the lobbyists for the State Board of Pharmacy. They extended their apologies that neither could be here for this hearing today, but they did want me to convey their support of this bill. I wanted to get that on the record.

Chair Dondero Loop:

They did talk to me about this, but thank you for reiterating that information for the record.

Can you explain to me why some physicians may not be able to write prescriptions?

Michael Hackett:

They would have to be licensed with the State Board of Pharmacy in order to be able to dispense. If there is a way to facilitate that so more physicians are able to participate, it will be very beneficial. Offhand, just looking at those who are licensed to dispense under the State Board of Pharmacy's statutes and regulations, I think you are capturing most of the oncologists, who are obviously a very critical component in terms of this program. There are probably ways to get to where we all want to be and have more participants in this plan. Again, that would have to be done through the prescribing provisions in the State Board of Pharmacy's statutes and regulations.

Chair Dondero Loop:

Are there any additional questions? [There was no response.] Is there any additional support for S.B. 81? [There was none.] Is there any opposition to S.B. 81? Seeing none, is there anyone neutral?

Don Gallimore, Private Citizen, Sparks, Nevada:

I am a businessman. This seems to be such an easy decision to make in terms of drugs in general. They are being flushed down the toilet, and systems are being polluted. We need to make sure we do anything we can to consolidate our resources and make certain everything is as economically used as possible. I am speaking in the neutral position on this bill, but that is something everyone should take into consideration.

Chair Dondero Loop:

Seeing no additional questions from the Committee on this bill, I will close the hearing on S.B. 81. Is there any public comment? [There was no response.]

Are there any questions from the Committee? With no further comments from the Committee, we are adjourned [at 1:06 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 19, 2013

Time of Meeting: 12:36 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 117	C	Senator Debbie Smith	Letter in support
S.B. 81	D	Tom McCoy, NV Government Relations Dir., American Cancer Society	Letter in support