

**MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Seventy-Seventh Session
February 7, 2013**

The Senate Committee on Health and Human Services was called to order by Chair Justin C. Jones at 3:30 p.m. on Thursday, February 7, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Justin C. Jones, Chair
Senator Tick Segerblom
Senator Joseph P. Hardy
Senator Ben Kieckhefer

COMMITTEE MEMBERS ABSENT:

Senator Debbie Smith, Vice Chair (Excused)

STAFF MEMBERS PRESENT:

Marsheilah D. Lyons, Policy Analyst
Risa Lang, Counsel
Jackie Cheney, Committee Secretary
Joyce Hinton, Committee Secretary

OTHERS PRESENT:

Tina Gerber-Winn, Deputy Administrator, Aging and Disability Services
Division, Department of Health and Human Services
Bruce Arkell, Personal Care Association of Nevada
Laura Coger, Consumer Direct Personal Care
Jon Sasser, Legal Aid Center of Southern Nevada
Marla McDade Williams, Deputy Administrator, Health Division, Department of
Health and Human Services

Gary Olsen, Nevada Association of the Deaf, with Shannon Archer, Interpreter from the Nevada Department of Health and Human Services approved list of interpreters

Jane Gruner, Administrator, Aging and Disability Services Division, Department of Health and Human Services

Brain Patchett, President/CEO, Easter Seals Nevada

Chair Jones:

We have a series of bill draft requests for introduction:

BILL DRAFT REQUEST 38-65: Makes various changes concerning the protection of children and youth in the child welfare system from identity theft. (Later introduced as [Senate Bill 99](#).)

BILL DRAFT REQUEST 38-68: Revises various provisions concerning reasonable efforts required of an agency which provides child welfare services to preserve and reunify the family of a child in the child welfare system. (Later introduced as [Senate Bill 98](#).)

BILL DRAFT REQUEST 38-69: Revises various provisions relating to the hearings concerning children who are removed from their homes. (Later introduced as [Senate Bill 97](#).)

BILL DRAFT REQUEST 40-501: Revises provisions relating to certain providers of emergency medical services. (Later introduced as [Senate Bill 100](#).)

SENATOR HARDY MOVED TO INTRODUCE BDR 38-65, BDR 38-68, BDR 38-69 AND BDR 40-501.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Jones:

We will now open the hearing on Senate Bill (S.B.) 51.

SENATE BILL 51: Makes various changes relating to the regulation of certain nonmedical and medical services provided to persons with disabilities. (BDR 40-309)

Tina Gerber-Winn (Deputy Administrator, Aging and Disability Services Division, Department of Health and Human Services):

Senate Bill 51 will move the certification of the intermediary service organizations from the Aging and Disability Services Division (ADSD), Department of Health and Human Services (DHHS) to the Bureau of Health Care Quality and Compliance, Health Division (HD), DHHS.

An intermediary service organization (ISO) must now go through a licensing process as a personal care agency (PCA) with the HD. The ISO must then go through a certification process with the ADSD. The two processes create a hardship for the ISO industry and create duplication of effort for DHHS. The move will streamline the certification process for the ISOs, and it will eliminate duplication of work for our staff.

An ISO provides personal care for disabled individuals by allowing the individuals to self-direct their own care. Through the PCAs, people can choose their caregivers and schedule the hours they want a caregiver to work. An ISO will also allow people to direct some physician-prescribed medical and home health services. They do more than a PCA.

This bill will recognize ISOs under *Nevada Revised Statutes* (NRS) 449. This bill will also recognize the ISOs under NRS 629.091 as agencies that provide additional medical, nursing and home health services.

We have also submitted an amendment from the ADSD ([Exhibit C](#)) that will make the background checks for a person working for an ISO and a person working for a PCA the same.

Neither the bill nor the amendment will cause a fiscal impact. The HD will collect the fees collected by ADSD.

Senator Kieckhefer:

Does this expand who has to be licensed?

Ms. Gerber-Winn:

It does not.

Senator Kieckhefer:

Will this bill change who can bill Medicaid?

Ms. Gerber-Winn:

There are no changes. This bill will only change who certifies the ISOs.

Senator Hardy:

Employees of a PCA are sometimes required to spend the night. Will the ISO employees also need to do this?

Ms. Gerber-Winn:

Yes, the ISOs and the PCAs have similar plans of care. The ISOs could work different hours if they are required to do that.

Senator Hardy:

Does this get into an overtime situation?

Ms. Gerber-Winn:

An entity such as Medicaid would create a plan of care or service plan designating the number of hours. This bill does not affect Medicaid policy. The way an agency is certified is all this bill addresses.

Bruce Arkell (Personal Care Association of Nevada):

We support this bill. In addition to the information Ms. Gerber-Winn discussed, there is another important provision. Senate Bill 51, section 26, restores the ability of PCAs to handle the unskilled services authorized by NRS 629 (629 services). The creation of the ISO statute caused the PCAs to lose the ability to provide the 629 services.

What if we have a disabled individual with a caregiver who works for a PCA, and the caregiver is required to change from a PCA employee to an ISO employee for half an hour a day so the 629 services can be provided? This is not effective for anybody.

We have a concern, as we could not find anything in S.B. 51 that requires the HD to adopt the current ISO regulations or to amend the PCA regulations to

conform to this new statute. There is a whole series of administrative regulations dealing with the ISOs. The PCAs and ISOs are completely different business models, and this needs to be recognized.

Risa Lang (Counsel):

With S.B. 51, section 37, the current regulations remain in force until new regulations are adopted. The regulations do not go away.

Mr. Arkell:

I understand that. We want assurance the HD will adopt the regulations that are there and not change them.

Ms. Lang:

They do not have to adopt anything; they will just transfer. Then they could adopt new ones.

Mr. Arkell:

It is a good bill other than that one concern.

Senator Hardy:

We recognize that every board has autonomy for regulations or proposed regulations. Would you like to see bridging that assures under the new NRS the *Nevada Administrative Code* (NAC) will stay the same?

Mr. Arkell:

That is what section 37 addresses. What I am concerned with is that after the HD takes over, we would like the HD to adopt the same regulations.

Senator Hardy:

I need to ask legal counsel this question. Is there a way to force a board to adopt a former board's regulations?

Mr. Arkell:

The HD should not be able to rewrite the NAC however they want. The ISOs and the PCAs are completely different models and that needs to be addressed. People working for PCAs are employees of the PCA. People working under the ISO model are not employees of the ISO, but employees of the disabled care receiver.

Senator Hardy:

Ms. Lang, if there is a different business model, would the new board have to write new regulations? Would they have to go through the regulatory process that includes public comments and the public hearings?

Ms. Lang:

The regulation will initially remain the same. The HD can then adopt, or change the regulations, just as any regulatory entity would.

Senator Hardy:

Not knowing the regulations at all, I am not in the position to say not to change them.

Ms. Lang:

The other issue is that I do not know what is meant by a whole different model. The sections have not changed other than who will be administering them.

Senator Hardy:

Is there nothing egregious in the regulation that would want to make us change statute?

Mr. Arkell:

That is correct. The concern needs to be addressed in the regulations later on.

Chair Jones:

We will leave this for a work session.

Laura Coger (Consumer Direct Personal Care):

We have been an ISO in Nevada since 2003. We specialize in self-directed care. The PACs have employees on staff that they send to the homes of the individuals who need help. We are a support service. We provide fiscal and supportive services for people with disabilities who need help at home. These people want to hire and control their own employees. They are co-employers with us. We share the employer responsibility. We provide tax identification, workers' compensation and unemployment insurance. We make sure everyone follows the regulations. We help care recipients train to be employers. We teach them how to schedule and supervise their caregivers. We help train their caregivers. Chapter 427 of the NRS covers and protects self-direction as an

option for people in Nevada. This gives them more choice and controls of the care they receive at home.

An important point to consider is that the ISO model is the only personal care provider that can cover the entire state. Traditional agencies cannot send caregivers to the rural areas. It is not cost-effective for them. We can help communities identify a couple of "angels" who can be trained to be caregivers. It is a model that works in rural Nevada, and we want to see that protected.

We agree with changing the certification of the ISOs to the Bureau of Health Care Quality and Compliance. We agree the processes need to be standardized and simplified. We do not want to see the regulatory process lost—it was hard to come by. It has been a long process to make sure self-directed care is protected.

We want to congratulate the DHHS on the change and on expanding the 629 services. This allows people with disabilities to self-direct simple medical tasks such as giving themselves shots or taking care of a wound on their knee without having a nurse come into the home. Having a nurse come in is a great expense to the State. We applaud the State for expanding these services to traditional agencies.

We would agree to an amendment. There is some conflict with S.B. 51 giving the PCAs the ability to provide the services listed in NRS 629 while the regulation governing them states they are prohibited from doing those exact services. The PCAs could come to us if they want feedback on how to go about a regulatory change. We intend that the regulation protect self-directed care.

Chair Jones:

Could you please provide a written amendment we can review?

Ms. Cogger:

I will be happy to provide it.

Jon Sasser (Legal Aid Center of Southern Nevada):

We do have some "dis-ease," because years ago when the ISO model came out the HD did not want to take it. They did not want to regulate it, they did not feel they could, and they did not feel they could license people to provide the 629 services. That was their position, and that is why the 629 services and the

ISO certification went to the ADSD. Now the HD that did not want them wants the certification and the services.

We are in favor of the change as it looks on paper. We are especially thrilled that the traditional PCA will be able, for the first time, to perform the 629 services.

We do want assurance the HD is supportive of the ISO model and they are supportive of people's ability to make their own decisions and utilize the 629 services. We want some assurance the shift does not mean a shift in philosophy.

Chair Jones:

Do you have any proposed language you would like to provide?

Mr. Sasser:

I do not, but I can work on that between now and your work session. I would also be glad to talk to Ms. Coger.

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

The HD supports taking on the activities of licensing the ISOs and administering the 629 services. There are individuals who are capable of training someone to provide the care. These individuals are now using the ISO model. The certification responsibility for ISOs as described in section 3 of this bill will assure that the employees working under the ISO obtain criminal background checks. It also assures that the ISO will provide services related to payroll, financial management and other employment services.

Personal care agencies hire staff. Their staff is limited in the services they are able to provide. When the services a PCA can provide are broadened to include consumer self-direct care, consumers will need to be able to ensure they are capable of directing their own care. The NRS 449 regulation would have to follow through for the HD to be able to do this. This is a heavy burden for the HD. We are still bound by NRS 629. Any regulations that we move forward would have to come through the Legislative Counsel Bureau (LCB) to ensure we are in compliance with that NRS.

It would be helpful if the LCB stated in the bill language that the NAC would be changed from the ADSD to the HD. If the LCB does not do this, the HD would have to come forward with new regulations just for the name change. There would be an expense for the HD. I would be willing to offer that amendment.

Senator Hardy:

Is there an opportunity for the same person who provides the PCA services for an individual to provide the ISO services, too? Will they be grandfathered in?

Ms. McDade Williams:

The HD provides licenses for a PCA. Under this bill, we will also provide certification for an ISO. The ISO will help a disabled person find the caregiver and then train the caregiver. The bill will allow the PCA to provide the same service. I do not see a need to grandfather in a caregiver. Caregivers can make a choice where they want to work. They can work for a PCA, or they can work on their own and have an ISO assist them in finding clients.

Senator Hardy:

Could they work in both models? Could they work for two agencies?

Ms. McDade Williams:

They could work for two agencies. They would need to understand the limits of each business model.

Senator Hardy:

Will this bill require a caregiver to transition from a PCA position to an ISO position?

Ms. McDade Williams:

Three facilities, out of the eleven facilities in the state, are licensed as PCAs and certified as ISOs. The rest of the entities have chosen to provide one model of business or the other. This bill does not change any of that. What business the providers want to operate does not change. They have to choose the business model they want. This bill would allow an agency to be both a PCA and an ISO and not have to choose to do one or the other.

Senator Hardy:

Will a business have to go through the same scrutiny for both models?

Ms. McDade Williams:

This bill does not change any of the existing requirements for a PCA or for an ISO. The PCA is a different level of care than the self-direct model. Individual caregivers wanting to perform self-directed care would have to make sure the agency they work for is an ISO. There is an amendment so that both models would have to conduct the same background checks on employees.

Senator Hardy:

Can a family member be hired for personal care under the ISO model?

Ms. McDade Williams:

I am not qualified to answer that.

Senator Hardy:

Is there anything in the bill that precludes that from happening?

Ms. McDade Williams:

A person who is eligible for self-directed care can choose the caregiver. I do not know if the pay source will follow.

Senator Hardy:

Somebody else is going to answer that question.

Chair Jones:

We have a head nod from Ms. Coger, so we will close the hearing for S.B. 51. The hearing is opened for S.B. 61.

SENATE BILL 61: Revises certain provisions relating to persons with communications disabilities. (BDR 38-310)

Ms. Gerber-Winn:

This bill will reconfigure the Subcommittee on Communication Services for Persons Who are Deaf or Hard of Hearing and Persons with Speech Disabilities (CSPD) from 11 members to 7 members. The description of the members will change. Originally three of the members were not voting members. They were people who provided interpretation services or Communication Access Realtime Translation. They were people who typed minutes for individuals who were deaf or hard of hearing so they could see and understand what was happening in a meeting. These people were not able to vote. These changes acknowledge the

fact that this committee is not adjudicating complaints that arise under NRS 656A, so interpreter and Communication Access Realtime Translators (CAT) interests no longer need to be represented. Our intention is to make the group stronger by making all the group members voting members. This would strengthen their ability to recommend service delivery models and programs we should be offering.

This bill will ensure that at least 50 percent of the members of the committee will actually be people receiving the services or family members trying to help initiate services for their family members. That was the intention in reconfiguring the committee. We also thought it would be helpful to make the group smaller. A smaller group would allow for greater participation and help with the scheduling of meetings, and would create efficiency. The primary objective is to strengthen the representation of the end users of these services.

After the bill language came out, we met with advocacy groups to ensure they understood our intention. Gary Olsen is with us today because he would like to offer an amendment. The Aging and Disability Services Division (ADSD) agrees with the changes Mr. Olsen would like to make through the amendment. It would make the group smaller and it would still meet our intention. There is no fiscal change with this legislation.

Gary Olsen (Nevada Association of the Deaf, with Shannon Archer, Interpreter from the Nevada Department of Health and Human Services approved list of interpreters):

I am a member of the CSPD. We have discussed the possible changes. The intention of this bill is good, but it does not meet our expectations. Instead of reducing the number of the subcommittee members to seven, we would like the number to be nine. The amendment will assure the deaf population, the speech-impaired population, and the hard-of-hearing population are not left aside. They have not been part of the political process. They have not been involved in the committees. The cost of them not being involved is exorbitantly large. We do not have the money to pay interpreters, so we are trying to work around different agencies. The ADSD has been supportive of us in their efforts. We need to make sure we maintain a good number of deaf people and hard-of-hearing people who are able to represent our issues in the State. This is especially needed with the communication issue we have. The amendment I provided ([Exhibit D](#)) is not necessarily complete. We will have a follow up later.

The amendment you have involves the need for enhancing the role and responsibilities of the Communication Access Council (CAC). This gives the CAC more teeth to be able to oversee and to look for accountability. It will allow the CAC to contract with different agencies and inform people about telecommunication relay services available to the community. We want to improve things, and we want to make it better for the State and for deaf individuals. That is why I propose this amendment.

Senator Hardy:

How does the amendment make the CSPD better?

Mr. Olsen:

It changes the number of representatives. Instead of 11, we could have 9. Seven is too low; it limits the opportunities for new ideas, and it limits the amount of new people who could be involved in learning about the process of communication issues. Some of the law needs to be changed. That will come with the next amendment.

Chair Jones:

When you say the next amendment, what are you referring to?

Mr. Olsen:

We need to expand the responsibilities of the CSPD. We need to investigate and follow up. We need to work with the ADSD in terms of bill processing. We are like a rubber stamp. We have no voice. We want to expand the responsibilities, to give guidance, to establish schools and to make plans. We want "the dog to wag the tail instead of the tail wagging the dog." The contracted group should not dictate what the ADSD has to do, or what ADSD should try to do for the contractor. It should be the other way around. We should have a list of things we want to see and have for the community. We as the CSPD should be responsible for looking for ideas and ways and means to resolve the issues. Without all of that, there is no authority. What are we? I see a problem with the relationship between the CSPD and the CAC. The CSPD requests guidance, but we have not had the opportunity to provide anything to them. This all will be with the amendment. We should have substantial information in two or three weeks that we can deliver to you.

Senate Committee on Health and Human Services
February 7, 2013
Page 13

Jane Gruner (Administrator, Aging and Disabilities Services Division, Department of Health and Human Services):

The ADSD looks forward to working with Mr. Olsen on the amendment.

Brian Patchett (President/CEO, Easter Seals Nevada):

I am the chairman of the CSPD, and we are looking at the best way to support this bill. Perhaps 51 percent of the members of the Commission should have hearing disabilities ensuring a majority. I look forward to working with Mr. Olsen and the community as part of this CSPD.

Senate Committee on Health and Human Services
February 7, 2013
Page 14

Chair Jones:

We will move this to a work session. I ask all who spoke here today to please work together to bring us something that we can all work with. I will adjourn the meeting at 4:22 p.m.

RESPECTFULLY SUBMITTED:

Joyce Hinton,
Committee Secretary

APPROVED BY:

Senator Justin C. Jones, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
S.B. 51	C	2	Tina Gerber-Winn	Letter Dated 2/1/13 Re: Proposed Amendment From Jane Gruner
S.B. 61	D	1	Gary Olsen	Proposed Amendment