MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-Eighth Meeting
February 11, 2015

The Senate Committee on Health and Human Services was called to order by Chair Joe P. Hardy at 3:30 p.m. on Wednesday, February 11, 2015, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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 Joe P. Hardy, Chair
Senator Ben Kieckhefer, Vice Chair
Senator Mark Lipparelli
Senator Joyce Woodhouse
Senator Pat Spearman

STAFF MEMBERS PRESENT:

Marsheilah Lyons, Policy Analyst
Eric Robbins, Counsel
Ellen Walls, Committee Secretary

OTHERS PRESENT:

Laurie Squartsoff, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Mason VanHouweling, CEO, University Medical Center, Las Vegas
Lisa Logsdon, Deputy District Attorney, District Attorney, Clark County
Joan Hall, President and CEO, Nevada Rural Hospital Partners Foundation
Barry Smith, Nevada Press Association
Dena Schmidt, Deputy Director, Programs, Department of Health and Human Services
Laura Freed, Deputy Administrator, Division of Public and Behavioral Health, Department of Health and Human Services
George A. Ross, Hospital Corporation of America, Inc.; Sunrise Hospital and Medical Center, LLC

Dan Musgrove, The Valley Health System
Deborah Huber, Executive Director, Nevada HealthInsight
Michael Hillerby, Renown Health; State Board of Pharmacy
Katie Ryan, Director, Dignity Health-St. Rose Dominican Hospitals
Daniel Mathis, President and CEO, Nevada Health Care Association
Chuck Callaway, Las Vegas Metropolitan Police Department
J. David Wuest, Deputy Executive Secretary, State Board of Pharmacy
John T. Jones Jr., Nevada District Attorneys' Association
Keith Lee, Board of Medical Examiners
Stacy Woodbury, Executive Director, Nevada State Medical Association
Liz MacMenamin, Retail Association of Nevada
Eric Spratley, Lieutenant, Washoe County Sheriff's Office
Kathleen Conaboy, Executive Director, Nevada Orthopedic Society
Denise Selleck, Executive Director, Nevada Osteopathic Medical Association

Chair Hardy:
We will open the meeting by introducing a bill draft request (BDR) for consideration, BDR 38-195.

BILL DRAFT REQUEST 38-195: Revises requirements governing child welfare. (Later introduced as Senate Bill 148.)

SENATOR KIECKHEFER MOVED TO INTRODUCE BDR 38-195.

SENATOR LIPPARELLI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Hardy:
We will open the hearing on Senate Bill (S.B.) 14.

SENATE BILL 14: Revises provisions governing the Pharmacy and Therapeutics Committee within the Department of Health and Human Services. (BDR 38-325)

Laurie Squartsoff (Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services):
I support S.B. 14. This bill modifies the membership composition of the Pharmacy and Therapeutics Committee (P&T Committee) within the Department of Health and Human Services (DHHS). The bill decreases the minimum membership from nine to five members and removes the requirement that the membership not be more than 51 percent of either physicians or pharmacists. The P&T Committee is a Governor-appointed committee. With these two modifications, it will be easier to recruit and retain members. A member is appointed to serve a 2-year term. With the current requirements, it is difficult for us to recruit the exact membership for compliance with the statute. The P&T Committee is a valuable resource to the DHHS. Pharmacists and physicians volunteer their time to help manage the preferred drug list for Medicaid in our State. This modification will facilitate the convening of quarterly meetings to manage the preferred drug list.

Chair Hardy:
We will close the hearing on S.B. 14 and open the hearing on S.B. 33.

SENATE BILL 33: Makes various changes relating to county hospitals. (BDR 40-475)

Mason VanHouweling (CEO, University Medical Center, Las Vegas):
I would like to summarize some major provisions of this bill. The University Medical Center (UMC) is owned by Clark County and is a public entity subject to the Nevada Open Meeting Law (OML). The OML provides for closed meetings when topics of matters such as litigation and collective bargaining are discussed. This bill would allow a public hospital governed by chapter 450 of *Nevada Revised Statutes* (NRS) to allow its governing body the ability to go into a closed meeting to discuss proprietary matters defined in this bill by the term "strategic plan." This enables the hospital's board of trustees and the governing board to discuss, in a closed meeting format, the possibility of providing a new service or expanding a current service, acquiring a new facility or expanding or changing the use of an existing facility, and also acquiring another hospital or health care facility. Senate Bill 33 would allow the hospital to keep certain records relating to a strategic plan confidential if the disclosure would enable a competitor to frustrate objectives of the plan. There is the requirement of holding a public meeting for approval of contracts associated with the strategic plan discussed in a closed meeting.

While UMC operates in the public as a subdivision of Clark County, it is a unique public entity. The UMC conducts a competitive business with other hospitals that are not subject to the OML. Private competitors have an advantage when adding services in a timely manner and can obtain a market advantage by keeping their strategic plans from their competitors. Many states with public hospitals have passed laws to allow for closed meetings when it is necessary to deliberate new services or programs or when adding new facilities. If these plans were disclosed prematurely, it would create a substantial probability that the public hospital would be deprived of an economic benefit.

The UMC is facing increasing financial challenges in order to stay competitive. The hospital owes the public it serves the best use of supplemental funding provided by taxpayers. The governing board of UMC has been given oversight of the hospital's strategic plan, and is expected to support changes to operations while financially benefitting the hospital. To accomplish this, the governing board must have the ability to discuss potential projects in a closed meeting. We ask support for S.B. 33 to allow UMC the ability to discuss strategic plans without competitors present and to keep the records of deliberation confidential.

Senator Kieckhefer:
How much oversight and review of expenses does the Clark County Board of Commissioners have over UMC? The Clark County Commissioners do not act as UMC Board of Trustees, is this correct?

Mr. VanHouweling:
The Clark County Board of Commissioners is our Board of Trustees, but the Commissioners have delegated a UMC governing board comprised of community members that manage our budget, strategic planning and hospital operations.

Senator Kieckhefer:
Who approves specific expenditure decisions for capital investments?

Mr. VanHouweling:
Approval of an expenditure depends on the dollar amount. We have an operating budget approved by the Clark County Commissioners on an annual basis. If the amount is $5 million or more, the expenditure would be authorized by the UMC Board of Trustees.

Senator Kieckhefer:
What is the annual budget of the UMC?

Mr. VanHouweling:
The annual budget of UMC is approximately $450 million, depending on the year. Any capital investments or items relating to our strategic plan go through review by our Audit and Finance Department, and to the Governing Board. Then, depending on the dollar amount, an expenditure request for $5 million or more goes to the Board of Trustees. This would be done in a public meeting.

Senator Kieckhefer:
What happens if the expenditure is to further part of the strategic plan?

Mr. VanHouweling:
If we were deliberating investing in robotic technologies as part of strategic planning, we would discuss it privately, but when it came to approval and voting, that would be public. The closed meetings would include discussions on providing new services, entering into a new service line or other expansions. Ultimately, it would be presented in a public meeting for our governing board, the Clark County Commissioners sitting as the University Medical Center Hospital Board of Trustees, to approve.

Senator Kieckhefer:
If an elected official had to vote on an expenditure above $5 million in a public meeting, would this bill restrict that official from justifying that expenditure publicly, if part of the strategic plan had to be revealed in order to do so?

Mr. VanHouweling:
No. The final decision vote would be held in an open meeting, and there would be public comment.

Senator Kieckhefer:
I am not reading this bill that way. In section 5 of S.B. 33, it states, "Any strategic plan of the board of hospital trustees of the county hospital …" Is the plan itself confidential?

Mr. VanHouweling:
The plan is confidential until we need to take action.

Senator Lipparelli:
Section 4, subsection 1, paragraph (c) of S.B. 33 mentions a material change in the use of the facility. What does material change mean?

Mr. VanHouweling:
Reallocating or repurposing the number of hospital beds to address a community need for use as a long-term care or rehabilitation facility would be an example of a material change related to the strategic plan.

Senator Lipparelli:
I am concerned about asking for things to be removed from the open meeting requirements, but having a generalized term such as "material change" also concerns me, especially if this term is not defined. The UMC can define this term to be whatever they want it to be and remove that subject from the public meeting. Why is there a need to define what the term does not include in section 4, subsection 2?

Mr. VanHouweling:
Material change relates to adding a hospital service, expanding a service, adding beds for new functions and hospital space usage. These topics would be held in a closed meeting. Final decisions would be held in an open meeting.

Lisa Logsdon (Deputy District Attorney, District Attorney, Clark County):
We wrote S.B. 33 with exclusions based on legislation from other states in order to clarify what was not included when we define "strategic plan." Examples of what is not considered a strategic plan include hiring employees and contracting with physicians. We wanted to define what a strategic plan was not.

Senator Spearman:
In reference to section 5, subsection 1, paragraph (a) of S.B. 33, if there is a reasonable likelihood that disclosure of the strategic plan would allow competitors to frustrate the objectives of the county hospital's strategic plan or gain some advantage, would this need to be kept confidential and discussed in a closed meeting?

Mr. VanHouweling:
Yes, that is the intent. We compete with other hospitals and try to attract the same patient population, physicians and services. We would like to keep

deliberations confidential until we act upon a plan. When acted upon, those initiatives would be held in a public meeting for all to see.

Senator Spearman:
Can you give examples of how the UMC was harmed because meetings concerning strategic plans have to be held in public?

Mr. VanHouweling:
Previously, we looked at expanding urgent care facilities or primary care clinics with respect to acquiring new properties. Competitors found out about our plans, then acquired those properties in advance. Another competitor has entered the market we were planning to enter.

Chair Hardy:
When I was on the City Council of Boulder City, we would go into a closed meeting on a personnel issue and then meet in public to make our decision. Similarly, the UMC would make any final decision in public, is that correct?

Mr. VanHouweling:
Yes, that is the process and the intent of this bill. We intend to have open dialogue related to the final vote and the decision process.

Chair Hardy:
This bill applies to the Clark County Commissioners and the UMC Board of Trustees. Does the UMC Board of Trustees tell the Clark County Commissioners what they decided in a closed meeting? If so, when does it become public knowledge?

Ms. Logsdon:
It would depend on what was being decided and what the Clark County Commissioners had delegated to the UMC Governing Board. If the strategic plan included a project within the $5-million limit, that would be approved only by the UMC Governing Board. It would not go to the Clark County Commissioners. If the strategic plan were for something over $5 million, the UMC Governing Board would meet in a closed meeting. They would make a recommendation to the Clark County Commissioners, who could go in a closed meeting if needed. After that, the plan would become public in an open meeting.

Chair Hardy:
Is it a closed meeting for the UMC Governing Board if it is a $10-million project? They do not publicly disclose the outcome of the closed meeting as they report to the Clark County Commissioners, and the Clark County Commissioners may make a decision in a closed meeting after hearing the UMC Governing Board's decision. Is this correct?

Ms. Logsdon:
It would be a closed meeting by the UMC Governing Board, then a public meeting by the same board. After that, there would be a closed meeting by the Clark County Commissioners, then a public meeting by them afterwards. Any closed-door meeting that results in a need for action must be done in public.

Chair Hardy:
What would be the point of the UMC Governing Board coming out of a closed meeting and disclosing what they have decided, then going to the County Commissioners in a closed meeting to deliberate on what was already decided by the UMC Governing Board?

Mr. VanHouweling:
For example, we have entered the robotic surgery market. We would have held this subject in a closed meeting. This is a strategic initiative; we would have heard it in a closed meeting to give us timing and market advantage, but openly voted on that capital purchase. All the deliberations prior to voting would have been in a closed meeting.

Chair Hardy:
Can I tell easily which is which, the UMC Board of Trustees or the Board of County Commissioners, or is it always the UMC Board of Trustees in the bill?

Ms. Logsdon:
The bill only addresses the UMC Board of Trustees. They are the governing body of UMC, pursuant to chapter 450 of NRS. The Governing Board has been adopted by ordinance. Under NRS 451, the OML applies to them. The Clark County Commissioners could elect to disband the UMC Governing Board.

Senator Lipparelli:
Section 8, subsection 6 of S.B. 33 discusses "minutes" of the closed meeting. Must minutes be kept in the closed meeting? If so, why are they to be kept for 5 years in this bill?

Ms. Logsdon:
Nevada Revised Statutes chapter 241 requires that minutes be taken during closed meetings. We felt 5 years was a reasonable amount of time to keep the minutes.

Senator Kieckhefer:
The strategic plan is a document that will have many diverse components. The UMC Board of Trustees may be asked to make a decision about 1 of 50 items in a strategic plan. Does that one item require the whole strategic plan document be heard in an open meeting?

Mr. VanHouweling:
You are correct. The strategic plan is a working document with many components. We execute the components of our strategic plan which could be an annual or 5-year plan and make decisions on the components. We discuss it. The strategic plan would be protected in closed meetings until we take it to a vote in an open meeting.

Senator Kieckhefer:
Does the strategic plan itself become public upon adoption? That is not how I am reading this bill. The plan is confidential, but I thought it was said that upon a decision to implement a part of the plan, at that time it becomes public.

Mr. VanHouweling:
At the time we decide to execute a strategic plan item, we would go into a closed session and work on the process as the UMC governing board. The entire document is protected until we decide to pursue the item. After that, it would go to subcommittees of the UMC governing board, such as audit and finance or quality. These would be openly discussed and forwarded to the UMC governing board for ultimate execution or vote. We can deliberate on a component of the strategic plan, but it is confidentially protected until we decide to take action in open format.

Chair Hardy:
Does this mean a specific part of the strategic plan could be discussed in a closed meeting, come out of that meeting to be voted on, and then become public knowledge? So, the strategic plan will be sent to the Clark County Commissioners, who will discuss it in public: thus, the only thing that was not done in public was in the UMC governing board meeting. Am I correct in this scenario?

Mr. VanHouweling:
Yes, that is correct. If the subcommittee decided to execute a part of the strategic plan, it would be held in an open forum just as you outlined.

Chair Hardy:
For instance, if the UMC decided to buy other local hospitals, the Board could have its closed meeting on purchasing Sunrise Hospital, for example, and have the strategic plan to buy out other local hospitals, but only discuss the Sunrise Hospital acquisition in a closed meeting? Afterwards, that decision can be discussed in an open meeting and be voted upon. Then it goes to the Clark County Commissioners. They agree to the purchase, and it is public after the strategic plan portion was discussed. At this time, you keep it "close to the vest" and not say, "by the way, we also want to buy other local hospitals." Am I correct in this?

Mr. VanHouweling:
Yes, that is the correct scenario. Again, it would become public early on, once the UMC governing board decided to vote on that purchase as you described. It is all the prior discussion which is private. From the subcommittees on, it would be an open meeting format from that point and continuing.

Chair Hardy:
Who is the "Board of Hospital Trustees" referenced in the bill?

Ms. Logsdon:
The Board of Hospital Trustees is the Clark County Board of Commissioners.

Chair Hardy:
In section 4, subsection 2, paragraph (a) of S.B. 33, there is another reference to board of trustees. Is this the appointed board?

Ms. Logsdon:
It is still the Board of Hospital Trustees, which is the Clark County Board of Commissioners.

Chair Hardy:
Where in the bill does it give protection for a closed meeting for the appointed board that is not the Board of Hospital Trustees?

Ms. Logsdon:
The UMC governing board is not specified in this bill.

Chair Hardy:
Is the subservient board to the Board of Hospital Trustees included in the ability to have closed meetings, as well as the Clark County Board of Commissioners? What we have heard today is the Clark County Board of Commissioners is not going to have a closed meeting because an issue has already been vetted in a closed meeting by the time it gets to them.

Eric Robbins (Counsel):
I will look into whether the appointed board is included in this bill.

Chair Hardy:
We are trying to accomplish finding out about two things: if the plan is under $5 million, the appointed board can have a closed meeting and they can then send it to the Clark County Board of Commissioners for discussion. After that, the Clark County Board of Commissioners can have a closed meeting and vote on something in the strategic plan that is over $5 million. Is this accurate?

Ms. Logsdon:
Yes, that is accurate.

Senator Lipparelli:
When Senator Kieckhefer asked his question, it left me with some doubt about what kinds of things could be moved into closed meetings. Correct me if I am wrong, the only protected elements of the strategic plan, not the plan itself, could be those listed in section 4, subsection 1, paragraphs (a) through (d) of S.B. 33, and all the other elements in the strategic plan would not be protected. Is this correct?

Mr. VanHouweling:
That is correct.

Senator Spearman:
In section 8, subsection 6 of S.B. 33, it states minutes become public 5 years after the date of the meeting or when the board of hospital trustees determines the matter discussed does not require confidentiality, whichever occurs first. I read this as part of a business process, am I correct?

Mr. VanHouweling:
Yes, the intent is that the strategic plan is 1 to 5 years in process. Once the strategic purchase is executed, any minutes associated with the purchase can be made public. I would see that happening sooner than the 5-year time frame. Our intent would be to release the minutes sooner than 5 years.

Joan Hall (President and CEO, Nevada Rural Hospital Partners Foundation):
Seven of our hospital members have been established under NRS chapter 450. They are public hospitals. They have an elected board of trustees and all of them are supported by taxes. This bill is important. We do not have as much competition as hospitals in Las Vegas. We have had issues when the hospitals were looking at implementing hospital-based dialysis. The hospitals publicly give financial numbers and information about the volume of patients, along with distances patients must travel. Private dialysis companies who previously had no interest in rural hospital communities hear the numbers and get interested. It is a much easier process for a private entity to purchase property and establish the business. A public entity has a longer process to accomplish this. The same thing has happened with the business of mobile magnetic resonance imaging (MRI). Some of our hospitals determined that due to the volume, it would be cost-effective for the hospital to buy its own MRI. All of this planning must be done in public. We support S.B. 33. Strategic planning that all businesses perform behind closed doors makes sense for county hospitals, as well. Sometimes the discussion phase takes months. Once a decision is made, it is made in a public meeting. At least when the discussion is done in a closed meeting, the competitors do not know what is being planned ahead of time.

Chair Hardy:
Nevada Revised Statute 450.175 allows the board of hospital trustees, mentioned today in this meeting as the Clark County Commissioners, to appoint the advisory board and delegate the powers to the advisory board. The trustees

can delegate any of their powers to the advisory board. The advisory board then would have the power to hold closed meetings if S.B. 33 is enacted.

Barry Smith (Nevada Press Association):
I am concerned about creating statutory exemptions to the OML. I understand the competitive nature of county hospitals, but they are funded by public money. County hospitals need to be open and transparent to let the taxpayers know what they are planning. I have concerns with the bill as it is written. There is some very broad language used in S.B. 33. The way some of the scenarios were presented today regarding boards and open and closed meetings are not outlined in the bill's language. Section 3 has a different definition of managed care than currently defined in statute. The language in S.B. 33 is vague. There may be issues relating to the county hospital that the public might not be aware of, at least until all the discussion is over, if closed meetings are allowed. A county hospital board can spend years and a large amount of money to establish a strategic plan that would never be heard in an open meeting.

Senator Spearman:
Is there anything that can be changed in S.B. 33 that would allow the county hospital to be competitive, especially in light of the Patient Protection and Affordable Care Act?

Senator Lipparelli:
The UMC is often the provider of last resort in Clark County. It handles some of the most underserved residents. Strategic planning for hospitals has included shutting down obstetrics and emergency departments. If those decisions were made behind closed doors, I believe the community might take exception to them.

Chair Hardy:
Clark County significantly subsidizes the UMC. If we were able to allow the UMC to be competitive, it would benefit the taxpayers. When managed care insurance rates are negotiated in the open meeting format by the UMC, it puts the county hospital at a disadvantage. Other hospitals in the market have a competitive advantage.

Chair Hardy:
The hearing on S.B. 33 is closed, and we will open the hearing on S.B. 48.

SENATE BILL 48: Revises provisions relating to health information exchanges. (BDR 40-323)

Dena Schmidt (Deputy Director, Programs, Department of Health and Human Services):
I am here to introduce S.B. 48. This bill revises language related to the operations of a health information exchange (HIE). We propose these changes to reflect the advances in technologies and to implement "lessons learned" during the implementation of the State Information Technology Strategic and Operational Plan.

The Department of Health and Human Services proposes to amend the bill as introduced in order to have a better definition of the HIE and clarify processes. The proposed amendment (Exhibit C) has been provided to the Committee. I will read modifications we have requested. Our intent for the modification of section 3 is to adopt federal regulations as they evolve. This gives us the flexibility to be more restrictive or to implement best practices, as we deem necessary. Changes requested in section 3 provide the State flexibility to create or contract with a HIE to serve as the statewide HIE, should it be decided that DHHS needs to be more involved in the State health information exchange in the future. In section 4, we request to remove language relating to the governance of the HIE.

The creation of a statewide HIE was piloted by a nonprofit board authorized by DHHS. This board determined that a statewide HIE could not be fiscally sustainable once the federal funding ceased. Instead, we propose to create a certification program for all HIE systems that wish to operate in the State. This structure would provide residents in our State with added security by allowing the State to suspend or revoke certification if any HIE was found in violation of provisions in the NRS. In section 5, we modify revisions relating to patient consent to reflect current business practice, which requires patient consent at the time the provider is retrieving a health record, rather than at the time the health record is entered into the HIE. Once consent is granted, it remains in place until revoked by the patient. We also remove provisions relating to excluding a portion of the health records; keeping this provision would prevent an HIE from operating, as there is not a technological way to separate out individual records and make them searchable. This type of technology is being explored nationally, but is not sufficiently developed at this time to make it a statewide requirement. In section 7, we clarify that any changes to medical health records or requests for patient records must be made to the provider, and

not through the HIE. In section 11, there is a typographical error, and we request a reference to "health insurance exchange" be corrected to "health information exchange."

I have submitted a fact sheet regarding the federally funded HIE project (Exhibit D). This federally funded project ended in February 2014. Two public hearings were held on July 7 and July 17, 2014, to solicit feedback from interested parties and the public regarding portions of NRS relating to HIEs. The proposed revisions outlined previously are consistent with the recommendations of those hearings.

Senator Kieckhefer:
Where does this leave our State in terms of health information technology—is it being used, and who has oversight?

Ms. Schmidt:
There is a current HIE operational in our State. This bill allows DHHS to have oversight.

Senator Kieckhefer:
We do not have a designated and official State HIE after this bill is enacted, correct?

Ms. Schmidt:
Correct, this allows us the option to have one if we feel we need it, but it does not require our State to do so.

Senator Kieckhefer:
How is the current State HIE funded?

Ms. Schmidt:
I believe they are a nonprofit organization; however, I am not sure.

Senator Lipparelli:
This bill states that a fine may be imposed against a person who operates an HIE without holding a certificate. Are there boundaries on the fines?

Ms. Schmidt:
Our intent is to establish the boundaries once we establish and adopt regulations, and the regulations will enumerate the fines.

Chair Hardy:
How much is the top-end fine that the DHHS might impose?

Ms. Schmidt:
The original draft mentioned a $500 limit, but we need time to look at other states to see what they are doing in this matter.

Laura Freed (Deputy Administrator, Division of Public and Behavioral Health, Department of Health and Human Services):
If there is a certification process, it may be overseen in the Division of Public and Behavioral Health. We are still working out the process.

Ms. Hall:
I am not representing Nevada Rural Hospital Partners with regard to this bill. I am former chair of the State's HIE board. This proposal is well thought out. It removes issues relative to the State HIE. It has been a stumbling block having regulations that were not directed at a private HIE versus the State HIE.

George A. Ross (Hospital Corporation of America, Inc.; Sunrise Hospital and Medical Center):
The Hospital Corporation of America and Sunrise Hospital support S.B. 48 with the proposed amendment by DHHS, Exhibit C.

Dan Musgrove (Valley Health System):
The Valley Health System supports S.B. 48.

Deborah Huber (Executive Director, Nevada HealthInsight):
HealthInsight manages and operates HealtHIE Nevada, which is a community-governed, private- and community-funded, statewide HIE. We support S.B. 48, with the proposed amendment, Exhibit C. Physicians would be able to provide more quality and expeditious care in a safe and secure manner to benefit the residents of Nevada without unintended consequences in current statute.

Michael Hillerby (Renown Health):
Renown Health supports S.B. 48 with the proposed amendment, Exhibit C.

Katie Ryan (Dignity Health-St. Rose Dominican Hospitals):
Dignity Health-St. Rose Dominican Hospitals supports S.B. 48 with the proposed amendment, Exhibit C.

Daniel Mathis (President/CEO, Nevada Health Care Association):
The Nevada Health Care Association supports this legislation.

Chair Hardy:
We will close the hearing on S.B. 48 and open the hearing on S.B. 114.

SENATE BILL 114: Makes changes relating to prescriptions for certain controlled substances. (BDR 40-239)

Senator Joe P. Hardy (Senatorial District No. 12):
The concept of opiate addiction is the genesis of this bill. We have had much interest in solving the problem of prescription addiction. We wrote this bill to identify the upper 5 percent of medical providers who write prescriptions within their specialty and who overprescribe scheduled medication. Senate Bill 114 was also written to identify those prescribers for scrutiny by the Board of Medical Examiners and various other boards. There are dentists, nurses, podiatrists and physicians that write prescriptions for scheduled medicines. This bill is attempting to identify overprescribers of these scheduled medicines. We need the identification so particular boards who govern these overprescribers can be notified. The boards can then provide education and oversight to the overprescribers in an attempt to correct the problem of opiate addiction.

Michael Hillerby (State Board of Pharmacy):
I have submitted an amendment (Exhibit E). I would like to give an overview of the prescription monitoring program (PMP). Prescription drugs are divided into two categories: dangerous drugs and controlled substances. In this bill, we focus on controlled substances known as "pain killers." Controlled substances are categorized within five schedules. Schedule I drugs have no accepted medical use or the U.S. Food and Drug Administration (FDA) approval. These include heroin, marijuana, and peyote. Schedule II narcotics include the strong narcotics such as oxycodone, hydrocodone and codeine. Schedule V drugs have very low potential for abuse. This category includes the drug "Tylenol with low

dose codeine." The provisions of NRS 453.1545 provide for the tracking of prescriptions for controlled substances in schedules II, III, and IV. Every prescription written and filled in these categories is entered into the PMP database.

The Board of Pharmacy manages the database. Three people within the Board of Pharmacy have the ability to access this information. The Department of Public Safety (DPS) also has a small number of people who may access the PMP database for criminal investigations. In practice, the State Board of Pharmacy works with the PMP Advisory Committee. The PMP Committee consists of members of the health care licensing boards of those medical providers that are able to prescribe controlled substances, representatives from the DPS, pain-management physicians, representatives from the Nevada State Board of Veterinary Medical Examiners, general practice physicians, and representatives from Medicaid. This committee determines policy, and based on those policies, the staff at the State Board of Pharmacy will set algorithms and look for patients who are frequenting a high number of pharmacies and a large number of physicians "shopping" for large amounts of controlled substances. In some cases, they are abusing the medications and overmedicating themselves—and in other cases, they are selling the drugs on the street. It has not been difficult to identify those medical providers who are the overprescribers. Most of them have been identified and dealt with by their professional licensing boards.

In order to prescribe a controlled substance, a provider must have a registration number assigned by the FDA. This is accomplished through the State Board of Pharmacy. A number of overprescribing providers have been disciplined or had their licenses taken away; some are in jail. Others are harder to identify. Records of patients who are receiving large amounts of controlled substance prescriptions are identified by the PMP algorithm. When the system flags an amount prescribed above a certain level set by the algorithm, the Board of Pharmacy will send a copy of the patient's report showing how many prescriptions and the names of the medical providers, to each prescriber. At the next patient visit, the prescriber or pharmacy can discuss the report with the patient for intervention. Perhaps the prescriber did not write the prescriptions in question, and determines fraudulent activity with regard to the written prescriptions.

Section 1, subsection 1, paragraph (a) of S.B. 114 outlines when the report is generated by the PMP, that in addition to providing it to the prescribers of the

drugs and the pharmacies filling the prescription, the report also be sent to the professional licensing board with oversight of the prescribers identified. The State Board of Pharmacy cannot decide the standard of care for prescribing narcotics by physicians in specific fields of medicine. The individual physician's professional licensing board does this best. This board would be able to determine if overprescribing has occurred and is the most appropriate place to determine what should be done.

Chuck Callaway (Las Vegas Metropolitan Police Department):
I am here to propose an amendment (Exhibit F). Prescription drug abuse is a huge problem. Law enforcement is responsible to investigate illegal activity and prosecute people for violation of the law. The PMP is valuable for law enforcement. Approximately 9 months ago, some of our narcotics detectives discovered, based on the advice of general counsel or someone at the State Board of Pharmacy, that law enforcement should no longer have direct access to the PMP database. The detectives were told they must fill out a request and submit the request through the State Board of Pharmacy. This was brought to my attention and I was asked to bring this to the Legislature. I was told that the State Board of Pharmacy did not have an issue with law enforcement officers having access to information, but the way statute was written, it did not specifically allow access by law enforcement. Fewer than ten officers in Clark County are assigned to investigate illegal prescription abuse. If these officers need access to the PMP, they have only one investigator who can access the patient information. The officer must submit a written request through the State Board of Pharmacy and wait for access to be approved. Having to submit a request this way causes delays in the investigation. We feel it is necessary for a limited amount of officers to have access to the PMP.

A primary concern raised about allowing access is misuse of the PMP system. For example, misuse would occur if a law enforcement officer would be looking at information in the database that does not relate to a specific law enforcement case. My proposed amendment, Exhibit F, allows access for officers who are assigned on a full-time basis to investigate prescription drug abuse or illegal activity involving prescription medications. A patrol officer would not have access to the PMP data. There would be a requirement to log into the PMP system with a specific case number to prevent unauthorized access. The PMP system could not be used to gather random information that is not directly related to an open investigation. Under federal law, law enforcement has access to criminal history databases with strict sanctions if the databases are misused.

Thus, if a person accesses the database without a direct relationship to a case, the person could be charged with a misdemeanor offense, or the agency could lose access. We propose something similar to ensure accountability with the State PMP database. We average approximately 35 to 40 cases per year that require access to the PMP database for law enforcement purposes.

Senator Lipparelli:
Would the access to the PMP system be granted through system administration and limit the number of people who have access?

Mr. Callaway:
Yes, the system administration would work with the State Board of Pharmacy and submit the names of officers assigned to access the database.

Senator Lipparelli:
Would the access to the system be audited?

Mr. Callaway:
I believe so, but that would be a question the Pharmacy Board could answer.

Mr. Hillerby:
The Board of Pharmacy does not have the ability within the database to check a case number.

J. David Wuest (Deputy Secretary, State Board of Pharmacy):
Yes, we could audit the system to determine access.

John T. Jones Jr. (Nevada District Attorneys' Association):
The Nevada District Attorneys' Association supports S.B. 114 with the proposed amendment by the Las Vegas Metropolitan Police Department.

Keith Lee (Board of Medical Examiners):
The Board of Medical Examiners supports S.B. 114 with the proposed amendment, Exhibit E, and we have no problem working through Mr. Callaway's proposed amendment, Exhibit F, as we think his proposals are good ideas.

Stacy Woodbury (Executive Director, Nevada State Medical Association):
The Nevada State Medical Association supports the proposed amendment, Exhibit E, brought forth by the State Board of Pharmacy.

Liz MacMenamin (Retail Association of Nevada):
The Retail Association of Nevada supports the proposed amendment, Exhibit E, by the State Board of Pharmacy. Our members, who are pharmacies, provide information to the PMP. We ask that the Committee consider complete immunity for pharmacies for the information they input to the PMP that law enforcement uses in a case. There could be typographical errors, and law enforcement will build a case against "Jane Doe," and it should have been input as "John Doe." The pharmacies need immunity should this happen.

Eric Spratley (Lieutenant, Washoe County Sheriff's Office):
The Washoe County Sheriff's Office supports S.B. 114 with the law enforcement proposed amendment, Exhibit F.

Mr. Wuest:
There is no verification by the State Board of Pharmacy of the data from the date it is entered into the system by the pharmacists, so the data could be erroneous at times. When investigations are conducted, hard copies of the prescriptions are requested to make sure they match the information in the PMP database. The police department will need to do the same.

Kathleen Conaboy (Executive Director, Nevada Orthopedic Society):
The Nevada Orthopedic Society supports the concept of tracking the abusers of prescription drugs and identifying overprescribers. The providers in the medical specialty of orthopedics are involved in the issuing of prescriptions for controlled substances, specifically for the treatment of pain for their patients. The current language in statute already provides for not infringing on legal use of a controlled substance and that obviously stays in statute. We are glad to hear that the intent is to look at perceived abuses by specific specialty; that is important to our organization.

Denise Selleck (Executive Director, Nevada Osteopathic Medical Association):
The Nevada Osteopathic Medical Association supports both proposed amendments, Exhibit E and Exhibit F.

Senator Lipparelli:
There is no fiscal note associated with the DPS; however, there may be a fiscal note for S.B. 114 with respect to the State Board of Pharmacy.

Chair Hardy:
There being no further business before the Committee, the meeting is adjourned at 5:12 p.m.

RESPECTFULLY SUBMITTED:

_____
Ellen Walls,
Committee Secretary

APPROVED BY:

_____
Senator Joseph P. Hardy, Chair

DATE:_____

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	6		Attendance Roster
S.B. 48	C	2	Dena Schmidt	Proposed Amendment
S.B 48	D	5	Dena Schmidt	Health Information Exchange-(HIE)-Fact Sheet
S.B. 114	E	1	Michael Hillerby	Proposed Amendment
S.B. 114	F	1	Chuck Callaway	Proposed Amendment