MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Eightieth Session
April 8, 2019

The Committee on Commerce and Labor was called to order by Chair Ellen B. Spiegel at 12:44 p.m. on Monday, April 8, 2019, in Room 4100 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 www.leg.state.nv.us/App/NELIS/REL/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Ellen B. Spiegel, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblywoman Maggie Carlton
Assemblyman Skip Daly
Assemblyman Chris Edwards
Assemblywoman Melissa Hardy
Assemblywoman Sandra Jauregui
Assemblyman Al Kramer
Assemblywoman Susie Martinez
Assemblyman William McCurdy II
Assemblywoman Dina Neal
Assemblywoman Jill Tolles
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Connie Munk, Assembly District No. 4
Assemblywoman Lesley E. Cohen, Assembly District No. 29
Assemblywoman Rochelle T. Nguyen, Assembly District No. 10
Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblywoman Sarah Peters, Assembly District No. 24

STAFF MEMBERS PRESENT:

Patrick Ashton, Committee Policy Analyst
Wil Keane, Committee Counsel
Karen Easton, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Stephanie Woodard, Licensed Psychologist, Senior Advisor on Behavioral Health, Division of Public and Behavioral Health, Department of Health and Human Services
Dave Doyle, Director of Operations, Eagle Quest of Nevada
Cody Phinney, Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
Helen Foley, representing Nevada Assisted Living Association
Lea Tauchen, representing Recovery Advocacy Project, Inc.
Amber Howell, representing Washoe County Human Services Agency
Jim Wilcher, Private Citizen, Reno, Nevada
Erica Tosh, Private Citizen, Las Vegas, Nevada
Kent M. Ervin, Legislative Liaison, Nevada Faculty Alliance
Ira Spector, representing International Association of Rehabilitation Professionals
Dalton L. Hooks, Jr., representing Nevada Self Insurers Association
Misty Grimmer, representing City of Las Vegas; and Employers Insurance Company
Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association
David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce
Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada
Dagny Stapleton, Executive Director, Nevada Association of Counties
Lea Cartwright, representing American Property Casualty Insurers Association of America
Susan Bauman, Executive Director, Nevada Independent Insurance Agents
Kimberly M. Surratt, representing Nevada Justice Association
Sarah Paige, Chief Operating Officer, ART Risk Financial & Insurance Solutions, Valencia, California
Catherine O'Mara, Executive Director, Nevada State Medical Association
Tom Clark, representing Nevada Association of Health Plans
J. David Wuest, Executive Secretary, State Board of Pharmacy
Daniel Burkhead, Private Citizen, Las Vegas, Nevada
Clevis T. Parker, Chief Medical Officer, Nathan Adelson Hospice
Lindsay Knox, representing Nevada Orthopaedic Society
Connor Cain, representing Comprehensive Cancer Centers of Nevada
Nikki Bailey-Lundhal, representing Nevada Nurses' Association

Joanna Jacob, representing Nevada Dental Association; and Dignity Health-St. Rose Dominican
Joseph J. Heck, representing Nevada Osteopathic Medical Association
Michael Hackett, representing Nevada Academy of Physician Assistants
Terry Murphy, Private Citizen, Las Vegas, Nevada
Kristine Leavitt, Private Citizen, Henderson, Nevada
Thomas Runnion, Vice President, CWA District 9, Communications Workers of America
Janice Porter-Moffitt, Private Citizen, Reno, Nevada
Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers
Marc Ellis, President, Local 9413, Communications Workers of America
Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO
Andy Donahue, representing Laborers-Employers Cooperation and Education Trust
Liz Sorenson, Area Director, Communications Workers of America, AFL-CIO, District 9
Randy J. Brown, Director, Regulatory and Legislative Affairs, AT&T Nevada
Craig Stephens, Senior Manager, Government and Regulatory Affairs, Cox Communications
Randy Robison, representing CenturyLink
Robert Teuton, Managing Director, Higher Integration
Scott Anderson, Chief Deputy, Office of the Secretary of State

Chair Spiegel:
[Roll was called. Committee rules were explained.] We will open the hearing on Assembly Bill 493.

Assembly Bill 493: Requires the certification of certain persons who provide services relating to behavioral health. (BDR 54-665)

Assemblywoman Connie Munk, Assembly District No. 4:
We are here today to present Assembly Bill 493. With me is Dr. Stephanie Woodard, a clinical psychologist with the Division of Public and Behavioral Health, Department of Health and Human Services, and Dave Doyle, the Director of Eagle Crest of Nevada, and President of the Family Focused Treatment Association.

This bill creates a process to certify certain staff who may work with persons with behavioral health issues, intellectual disability, developmental disabilities, and other cognitive or behavior disorders. These paraprofessionals perform tasks that are essential to certain persons with disabilities. They provide training and support to help them engage at their highest level of functioning in the community. The measure as introduced would establish a process for certifying basic skill trainers (BST), psychosocial rehabilitation providers (PSR), and peer recovery support specialists.

Working with stakeholders and interested parties, a conceptual amendment was developed (Exhibit C). Under existing law in Nevada, these services do not require that persons be certified. These professions affect public health, safety, and welfare of persons with behavioral health, intellectual, and developmental disabilities. The bill would require the BST, PSR, and peer recovery support specialists to have training and continuing education to become certified in the state of Nevada, on the basis of standards that are established by the State Board of Health. Basic skill trainers help with mental health interventions that are designed to reduce cognitive and behavioral impairments—they restore recipients to their highest level of functioning. The psychosocial rehabilitation workers help people with mental disabilities develop social, emotional, and intellectual skills. Their job can include medication management, psychological support, family counseling, vocational and independent living training—which includes housing, job coaching, case management, and conducting assessments. This certification would validate verification of professional expertise, provide assurances to consumers and clients, and enhance professional opportunities.

Stephanie Woodard, Licensed Psychologist, Senior Advisor on Behavioral Health, Division of Public and Behavioral Health, Department of Health and Human Services:

The conceptual amendment (Exhibit C) seeks to give statutory authority to the Division of Public and Behavioral Health to develop requirements for the certifications for BST and PSR, with approval through the State Board of Health, and to have the authority to administer the certification process. Since October, stakeholders representing the industry for BST and PSR have met to further delineate the certification requirements, which include education, training, work experience, and the need for a comprehensive competency examination. During those meetings they voiced some concerns that such a level of detail in statute could make adapting the certification requirements challenging over time. They also expressed a desire to use the regulatory process to ensure there was transparent dialog and decision-making during the certification requirements and the implementation plan. We believe this amendment would allow for the public process of regulation development and ensure stakeholders have opportunities to actively participate in developing rules that will directly impact professional standards of care in their respective industries.

For the draft language for the conceptual amendment, we actually referred to existing statute in *Nevada Revised Statutes* Chapter 458, which authorized similar authority for the Division to promulgate regulations to develop and administer certification for detoxification technicians. The conceptual amendment would grant statutory authority to the Division to certify or deny certification of BST and PSR on the basis of standards established by the Board, and publish a list of certified BST and PSR facilities and programs. It will also allow expedited certification by endorsement for reciprocity with other states and for active members of the armed forces and veterans, as well as their spouses. It will also allow for a recertification process to be developed. We anticipate the certifications would be housed in the Division of Public and Behavioral Health under the Bureau of Behavioral Health Wellness and Prevention, just as the detoxification technicians are. When the Division administers certifications, we cannot require fees for certification beyond the cost of

processing those applications—this will allow us to keep the fees low and reasonable for individuals applying for certification.

Dave Doyle, Director of Operations, Eagle Quest of Nevada:
I am the Director of Eagle Quest; I also serve as President at Family Focused Treatment Association (FFTA). The individual certification bill has been provider-driven by ethical and responsible mental health providers who desire to raise the bar regarding the quality of services offered to recipients of basic skills training and psychosocial rehabilitation. The individuals who receive BST and PSR are without question some of the most vulnerable children and adults in our community. They are deserving of quality service and the positive outcomes which this bill promotes. I firmly believe the certification process is the next step which will lead to an increase in the minimum standards.

I am hopeful that Medicaid will adopt and mirror the requirements of certification as a prerequisite to billing for the applicable services. While FFTA providers are committed to the highest quality of care and training standards, we believe there are certain providers who fly under the radar who, unfortunately, do not uphold training standards or promote quality and positive outcomes for the clients they work with. Is 16 hours enough training to deliver mental and behavioral health training to the most vulnerable individuals in our community? I believe the answer is absolutely not. I am hopeful this Committee will support this vital legislation so we can raise the bar and promote increased minimum standards for service providers delivering services to our most vulnerable children and adults living in our community.

Assemblyman Yeager:
The original bill also dealt with behavioral health care peer recovery support specialists. Are those still included in the conceptual amendment? Or, does the conceptual amendment replace the bill in its entirety?

Assemblywoman Munk:
The conceptual amendment replaces the bill, and the peer recovery support specialists were not in it.

Assemblywoman Neal:
How were the BST and PRS falling short?

Stephanie Woodard:
I would not say that all of the providers are falling short. What came up was a concern that there is a lack of a standard related to education, training, and experience, which is typically used to determine the competencies that are necessary in order for people to be able to provide these services. Assembly Bill 493 allows for an opportunity to develop the commensurate education, training, and experience necessary for an individual to be able to practice and provide these types of services in this state. For PSR there is a national certification that already establishes what they consider a minimum number of hours of experience, as well as competencies. We do not have a national certification for BST.

Assemblywoman Neal:
If this bill moves forward, how many individuals fall short of the new definition that you will be applying? Would there be a grace period for those that fall short so they would not be fined?

Stephanie Woodard:
I believe that is part of the development of the regulations. We need to figure out what the most commonsense implementation plan would be so we can ensure individuals moving forward meet a minimum standard. There are people who are already operating at a high level in the community—we need to find a way to balance both, making sure that individuals coming in or continuing to provide services meet a minimum standard. We need to work all of that out as we are developing the regulations.

Assemblywoman Carlton:
When it comes to licensure issues, it has been my experience that if you are going to do a grandfathering clause, that has to be in statute in order to be able to protect the people moving forward. I assume this will be under the State Board of Health. I am not sure about the actual jurisdiction and the authority they would have, especially when it comes to setting the fee. Is there no educational program for BST?

Stephanie Woodard:
There is a minimum. I believe it is a 16-hour educational training that is required in order for an individual to be able to provide these services.

Assemblywoman Carlton:
What impact would the change in scope and level of professionalism have? And why do we want to do this?

Assemblywoman Munk:
In most states, a PSR is required to have over 450 hours of training. In this state, they are allowing 18-, 19-, and 20-year-olds to say they are PSRs without the training or supervision. With this bill we want to bring the PSR standard certificate up to the level that most states have.

Assemblywoman Carlton:
Are they currently not licensed or regulated at all?

Assemblywoman Munk:
That is correct.

Assemblywoman Tolles:
What would the impact be for the ability to attract, hire, and bring in individuals?

Stephanie Woodard:
Under the Medicaid authority, an individual can provide BST or PSR if they are not otherwise licensed to provide behavioral health services if they are supervised by a qualified mental health professional. Currently there are no limits as to how many individuals a qualified mental health professional can supervise in providing these services. We know that when we have those types of scenarios in place, there is the possibility for dilution of the quality of services that are being rendered. It also requires that the qualified mental health professional has the experience necessary to not only prescribe the services that an individual needs, but also provide the training and supervision of the individuals that are providing the direct service. We are talking about services for individuals with serious mental illness and severe emotional disturbance. These services are supposed to be integral to an individual's treatment plan to help them gain necessary functioning in order to ameliorate some of the issues that are contributing to their mental health issues. Without some type of additional standard, there is no way we can ensure there is a high-quality individual that is able to provide these services directly.

Assemblyman Kramer:
I really hate to see one more job classification in Nevada where a person is required to have a certification in order to get a job. By having a standard that is strenuous, it may be difficult to hire the people you want because of the qualifications needed; therefore, your pay scale will have to reflect that. I know some of the money comes from Medicaid and that they do not reimburse much. I am concerned that you will be paying more for people; therefore, you will not have the money to pay them, and you will have fewer people to care for this population than you say you have qualified people now. At some point the licensed person who is overseeing them would have to say, I have too many people—it sounds more like a management problem to me.

Assemblyman McCurdy:
How did you arrive at the minimum requirement of two hours of suicide prevention training? What would be the maximum amount of training?

Stephanie Woodard:
In previous sessions, there were standards set for individuals providing health care services that required a minimum of two hours of suicide prevention training. Individuals who provide these services are typically meeting patients in clinics and out in the community. We feel it is an important priority to ensure they have some training on how to identify and intervene if someone expresses signs of suicide. I do not believe the maximum number of hours of training has been determined yet.

Assemblyman McCurdy:
How many individuals do you anticipate will be impacted by this in our state?

Stephanie Woodard:
We would have to look to see how many individuals are currently providing these types of services within Medicaid in order to give you a number.

Assemblyman McCurdy:
How do you anticipate communicating to all the providers that will be impacted?

Stephanie Woodard:
We would continue with the regulatory process with all the public noticing, and also partner with our state Medicaid agency to ensure that adequate information is disseminated to those individuals already enrolled in Medicaid and who are providing these services.

Assemblyman McCurdy:
I would like to make a request to have the Committee provided with the number of individuals currently working in this area and how you plan to communicate with them regarding what they are currently engaging in within their careers.

Assemblywoman Neal:
What happens when you find out the BSTs and PSRs that are billing Medicaid did not have training?

Cody Phinney. Deputy Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services:
Our current policy says that an individual has to have 16 hours of training and has to be enrolled in our program. If we were to discover someone did not have that training or should not have been enrolled, we would recoup those dollars that had been paid to them.

Assemblywoman Neal:
How will you treat individuals who are properly performing, yet fall below the standard set in this bill? How would you allow those hours to serve them under this new credentialing?

Cody Phinney:
My understanding is the regulations would lay out how those hours of experience would contribute to the certification going forward. We have found that the 16-hour training requirement does not appear to be sufficient to ensure that we have a high-quality provider for our recipients. There are about 5,000 providers working in this area. While we certainly would like to see additional behavioral health providers, we do not have a shortage of people seeking to be this level of behavioral health provider. We are not currently enrolling additional providers of this type; we want to see what the outcome of this bill is, and what options we have to make sure we have a high-quality program. Many of the 5,000 people are providing quality services, and those hours should contribute to their certification. We are eager to work with our sister agency to make sure that as few of those 5,000 as possible are negatively impacted by this improvement in our quality system.

Assemblywoman Munk:
The national certification for PSRs requires at least 450 hours. I know when I became certified, I had over 3,000 hours, but the providers that I worked with were able to justify my hours. The PSRs that are working now would be grandfathered in.

Assemblywoman Carlton:
Are the PSRs not fingerprinted currently?

Cody Phinney:
To be enrolled in the Medicaid program, you would be fingerprinted; not every provider would necessarily be enrolled with Medicaid.

Assemblywoman Carlton:
I am concerned that there are people out there who maybe should not be working with the vulnerable population. If you do not have regulations to protect the public, those are the states where the bad people will go. The fact that these BSTs and PSRs do not have any background checks and are allowed to work with the public is something we should seriously consider rectifying.

Chair Spiegel:
Is there anyone to testify in support of Assembly Bill 493? [There was no one.] Is there anyone to testify in opposition to A.B. 493?

Helen Foley, representing Nevada Assisted Living Association:
I originally did not have a problem with the bill. I think it is very good; however, there has been a problem with some of the community-based living arrangements. One of the problems that raised a concern is they mention all different kinds of psychological issues, but also cognitive impairment. As you know, most people who live in assisted living facilities have some form of cognitive impairment as time goes on. The people I am concerned about are the actual caregivers. They are not trainers for basic skills training, they are not billing the state of Nevada to provide those services, but they are providing activities of daily living. I just want to make sure people within assisted living facilities, primarily the elderly, are not swept up into this law unintentionally.

Chair Spiegel:
Is there anyone to testify in neutral to Assembly Bill 493?

Lea Tauchen, representing Recovery Advocacy Project, Inc.:
We are in neutral because of the conceptual amendment presented. We are committed to working with Assemblywoman Munk on the certification process and how it affects the peer recovery support specialists.

Amber Howell, representing Washoe County Human Services Agency:
We are neutral at this point but with a lot of unanswered questions. We have been trying to tackle the BST issue around the specialized foster care population since 2011. We are concerned with what trainings will be available to the providers and how often they will receive the training. We are also concerned that we will professionalize something and not increase the rates, which could have a recruitment and retention issue if you expect more from someone yet you do not increase the rates. Finally, we are concerned about how the regulations are developed. However, we are in full support of providing higher standards of

care for delivery of these services. It is more that it is implemented carefully and strategically.

Assemblywoman Munk:
As many of you know, I worked in the mental health field for more than a decade. I served as a licensed mental health professional, I am a certified psychosocial rehabilitation provider, addiction counselor, and a rape crisis counselor. In my past professional experience, I have earned multiple certifications to ensure that I had adequate training and experience necessary to provide the best treatment to my clients. This brings me to A.B. 493. I urge you to pass this bill. It is imperative that as a state we recognize the need for more certified providers—by certifying, training, and maintaining credentials for supporting and providing Nevada with much-needed behavioral health recovery support.

Chair Spiegel:
We will close the hearing on Assembly Bill 493 and open the hearing on Assembly Bill 128.

Assembly Bill 128: Revises provisions governing vocational rehabilitation. (BDR 53-829)

Assemblywoman Lesley E. Cohen, Assembly District No. 29:
Existing law requires a vocational rehabilitation counselor to develop a plan for a program of vocational rehabilitation, including job placement assistance for eligible employees. *Nevada Revised Statutes* (NRS) 615.140 defines vocational rehabilitation services as "any goods and services necessary to prepare an individual with a disability to engage in competitive integrated employment or to determine the rehabilitation potential of the individual." I will walk you through the amendment (Exhibit D).

The goal of the bill is to allow injured workers more time to work through a vocational rehabilitation plan. There are no changes to the statutory language in section 1, subsection 1. However, for a better understanding, that section sets forth that a vocational rehabilitation counselor develop a plan for a program of vocational rehabilitation with an eligible worker. Subsection 2 involves an employee who has marketable skills. The definition of marketable skills is defined as applying demonstrated work skills acquired through previous employment, training, or education, within the physical limitations of the injured employee. To be considered marketable skills, those skills must have been acquired in the preceding seven years. In addition, the skills have to lead to gainful employment in an occupation that is continuously available in the Nevada labor market [NRS 616C.550]. If the vocational rehabilitation counselor determines that the injured employee has marketable skills, the counselor will provide job placement assistance for up to six months.

An example of a marketable skill is a floor nurse. A floor nurse has a lot of education and training, but it is a physically demanding job. If a floor nurse is injured and has marketable skills, he or she just needs someone to point him or her in the direction of another nursing position that would not require so much physical effort.

Section 1, subsection 3 has to do with injured employees without marketable skills. It breaks down the length of a possible plan based on that employee's impairment rating. An employee's rating is determined by a doctor or chiropractor. Paragraph (a) deals with someone with a permanent physical impairment rating of 1 percent to less than 11 percent and that plan must not exceed 24 months. The vocational rehabilitation counselor will determine the length of the plan, and paragraph (b) is if an employee has a rating of 11 percent or more.

Section 2 deletes unnecessary language because of the changes in section 1. It also adds that a vocational rehabilitation plan may be extended by a hearing or appeals officer. Existing law allows an injured worker to choose a lump-sum payment in lieu of retraining. Section 3, subsection 4 states that the buyout will not be more than 60 percent of the maximum amount of the vocational rehabilitation maintenance due to the injured employee. There is also a conceptual amendment which is to try and prevent any concern in the future about effective dates—when people are injured versus the effective date (Exhibit E). The effective date of the bill is July 1, 2019. If an employee is in an existing program or executed a program at the effective date, the new bill does not apply to them. However, if the employee was injured prior to the effective date, but the worker is not in a program or they are in the process of litigating their program, the bill and its new language will be applicable to them.

Jim Wilcher, Private Citizen, Reno, Nevada:
I am here to advocate for the vocational rehabilitation benefits and for injured employees in Nevada. My role is to provide information and answer questions specific to vocational rehabilitation, the existing law, and proposed changes to the law. I think it is important to look at extending the time of retraining to 24 months because many of our injured employees need additional assistance to get back to gainful employment. Those could be police officers, firefighters, laborers, or a variety of occupations. That 24 months would allow the injured worker access to community colleges, trade schools, or private schools, and give them the opportunity to return to gainful employment.

Erica Tosh, Private Citizen, Las Vegas, Nevada:
I am in support of this bill. On a day-to-day basis I argue cases where I am fighting to try to get vocational rehabilitation for claimants and to enhance their ability to get back into the workforce. Typically, injured workers are not injured because of their own doing; they now have permanent restrictions and impairments that have removed them from their job, and they have also lost their health benefits and other forms of livelihood. Vocational rehabilitation is their means to get back into the workforce. As it currently stands, we see that the amount of time allowed does not get them either the education or skill set necessary to go out and find new employment. Enhancing the level of education and training that would be available to these types of employees is very important. It would open the door to a new manner of educating individuals.

Assemblywoman Jauregui:
Do you know what percentage of injured employees lose their job training assistance because it goes beyond the six months?

Erica Tosh:
I can only speak to the clients that I represent; there is a large percentage that cannot return to the same type of employment as previously. It happens quite frequently. There are situations where they have either lost their job because they are not capable of doing it—while the claim is in process—meaning light duty, or at the end when they receive permanent impairments. Ideally, vocational rehabilitation is all that is available to them at that point.

Assemblyman Kramer:
How will the new program compare with other states?

Jim Wilcher:
I did not do an analysis of other states, but the state of California eliminated the vocational rehabilitation benefit due to the overwhelming cost.

Assemblyman Kramer:
Would what you are proposing apply to all employees in the state of Nevada? If this will also apply to state employees, I can see that the amount of money we would have to set aside for workers' compensation is going to have to increase. Would this have a fiscal impact?

Assemblywoman Cohen:
We did not receive any fiscal notes.

Chair Spiegel:
There was one from Clark County, and I think two others that were not very big.

Assemblywoman Cohen:
We are working on those.

Assemblyman Kramer:
Has anyone done an estimate of how much the workers' compensation fees would go up?

Jim Wilcher:
Hypothetically, it is hard to determine because there are moving variables. The variable we do know is that the maximum eligibility time for retraining under the law now is 18 months—that would increase to 24 months. The additional cost would be the six months of maintenance that they are receiving during their training—the benefit amount they get from the insurer while they are participating in a program. The ranges vary because an injured employee gets a percentage of the wage they were earning at the time of their injury. That could range from a person who is a maximum wage earner to a person that is a minimum wage earner. Their compensation rate is going to vary. There will be an impact because you are raising the amount of time by six months.

Assemblyman Kramer:
I was not asking how much more money would be spent for these people. I was asking how much more the employers are going to have to pay to do this?

Erica Tosh:
When you choose to do a program you are paid what is known as a temporary total disability (TTD) rate throughout the program. That is your average monthly wage, calculated to a daily rate. That is paid out in addition to a program you may select. In workers' compensation and vocational rehabilitation, these programs can range from $15,000 to $60,000. You are paying for the vocational rehabilitation program itself, the TTD amount, and those tend to be on the higher scale. When you do a lump-sum buyout, you are paying a percentage share of just the TTD value; you are not paying the value of the entire program. There is a fiscal savings to employers under that scenario. As far as the program itself, if they were to choose a 24-month program, they could attend a community college, whose rates are substantially lower than some of these programs. If a client does not get enough training to go back into the workforce, say they only get nine months of training—in those situations they get a certificate. Employers sometimes will not choose to hire an individual with a certificate. Absent full education, meaning the potential for an associate degree, they lose out on job opportunities. On a day-to-day basis I get calls from employees who have completed the program and it is not sufficient for them to get back into the workforce or find employment within their restrictions. When an employee is hurt on the job, usually through no fault of their own, they now have a permanent impairment. No matter what position they have to find in the future, they are still bound by those restrictions, which makes it very difficult for them to find employment absent a proper length of training and education.

Assemblywoman Neal:
Can you tell me the reason for the significant strike-out in section 2 of the original bill?

Assemblywoman Cohen:
The new language we added in section 1 covers the strike-outs in section 2.

Assemblywoman Neal:
How does section 2 work by adding, "By order of a hearing officer or appeals officer"?

Assemblywoman Cohen:
That is allowing for an appeal if the worker feels they need to extend their program. The injured worker has gone to their vocational rehabilitation counselor, and if the counselor will not allow more time, they can now appeal it, so they get more time to complete a program so they will be able to go back to work.

Assemblywoman Carlton:
The workers' compensation program was set up, and they called it the "Grand Bargain." The state legislators set up a process by which a worker would be made whole and put back to work in exchange for not suing their employer. The goal is to make sure the people can be gainfully employed so they do not end up in our safety net system. I think this discussion about vocational rehabilitation is very important. By allowing people to get additional education within a reasonable amount of time, it is perfectly fair. I do not believe someone can be retrained in six months to be able to make a commensurate wage to what they were making before they were injured. I just wanted to put on the record that anytime we can help

an injured worker get back to work, it is a good thing for the state—that person does not end up needing all the state services.

Assemblyman Edwards:
What is the current cost for the programs?

Jim Wilcher:
The current cost varies dramatically based upon the eligibility.

Assemblyman Edwards:
How much is the state spending on this now?

Jim Wilcher:
I do not have that number.

Chair Spiegel:
If the bill goes forward, I am guessing it will wind up in the Assembly Committee on Ways and Means because of the fiscal notes.

Assemblywoman Cohen:
The fiscal notes are what they are paying for their employees.

Assemblywoman Carlton:
That is part of our statewide decision units. You cannot really say how many people are going to get hurt in a year, but it is like buying any other insurance policy.

Chair Spiegel:
Is there anyone to testify in support of Assembly Bill 128?

Kent M. Ervin, Legislative Liaison, Nevada Faculty Alliance:
I represent the Nevada Faculty Alliance, the statewide independent association of faculty at all eight Nevada System of Higher Education institutions, including our community colleges, where we have very good programs for career, technical, and vocational programs that are offered at good prices, with good faculty. We appreciate the part of the bill that allows those programs to be utilized.

Ira Spector, representing International Association of Rehabilitation Professionals:
The International Association of Rehabilitation Professionals (IARP) is a national and international organization in northern and southern Nevada. It is the goal of IARP to respect the integrity and welfare of the client, defined as the person with the disability who we represent. Our goal includes functioning as an advocate for persons with disabilities, and to assist injured employees in getting back to work in the most effective manner that is reflected in the NRS and *Nevada Administrative Code*. It is also important to remind you that IARP is here to maintain objectivity and not favor any particular side in this manner. On March 27, 2019, we submitted a position paper that discussed several issues that we are behind

(Exhibit F). When an injured employee is found to have transferrable and marketable skills, we do support the current six months of job placement. We have found it is an effective amount of time with an effective counselor and injured worker who is willing to work, with sincerity and motivation. We do not feel it is our role to comment regarding the percentage an injured worker should get as a lump-sum buyout amount. After a program is completed, the 28 days of job placement is sorely insufficient and needs to be moved to at least 60 days.

Chair Spiegel:
Is there anyone to testify in opposition to A.B. 128?

Dalton L. Hooks, Jr., representing Nevada Self Insurers Association:
We are in opposition to the current draft of the bill. The extension of the program is already going to be an increase in the amount of the lump-sum buyout because it is dependent upon the length of the program. If you go from a 9-month program to a 24-month program, you are talking about an average of almost a 200 percent increase in cost. We agree with the IARP regarding the programs for disability ratings. There were some comments made about current programs being insufficient. In talking with the stakeholders, we see very few secondary programs which is some indicator that the current programs are working and helping people get back to placement.

Misty Grimmer, representing City of Las Vegas; and Employers Insurance Company:
As noted, the City of Las Vegas did submit a fiscal note. Even though it looks relatively small, it is actually just for one claim—so it gives you the sense of the cost of what a claim could be. The Employers Insurance Company ran some of the actuarial numbers which I think will help answer some of your questions. The current statute states a buyout is 40 percent, which is for 18 months. That general buyout for the maximum wage earner is just over $28,000. The increase proposed in the bill would go to 60 percent at 24 months, which would increase each of those buyouts to over $56,000. The cost of that is borne by the employer, whether it is the government employer or the private employer—that all gets rolled into the premium or the self-insured costs for the employers. As written, the bill would create about a 3 percent increase in the premium to employers.

Michael Pelham, Director of Government and Community Affairs, Nevada Taxpayers Association:
This bill would potentially create a costly burden for all employers, including government employers. If the costs are large enough for an employer, expenditures will be cut or prices increased. If the costs for the government employer increase beyond their control, it will be the taxpayer who ultimately foots the bill, either through reduced services or revenue increases as available.

Assemblywoman Hardy:
Are there any restrictions on how the buyout money is to be used?

Dalton Hooks:
The idea is the funds are supposed to be used to take the place of the program. As the statute is currently written, there are no restrictions.

Misty Grimmer:
I do not believe there is any restriction on the use of those dollars once a buyout is chosen. Our numbers show that approximately 85 to 90 percent of the people do take the buyout as opposed to pursuing the vocational rehabilitation avenue.

David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:
The significant increase in the overall cost of workers' compensation that will result from this bill will be passed on to every policyholder and employer, both public and private. For that reason, and the ones already stated, we are in opposition of this bill.

Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada:
We are in opposition to this bill as currently written. I would like to say, me too. We would like to express our concern for the 3 percent increase in premiums that the National Council on Compensation Insurance predicted would happen if this bill moves forward in the current form (Exhibit G). I do appreciate the sponsor's willingness to work with the stakeholders, and hopefully we can come to some type of agreement.

Dagny Stapleton, Executive Director, Nevada Association of Counties:
We are also opposed based on potential impacts to all of Nevada's counties. I would echo the comments made by others in opposition. We also look forward to working on the amendment with the sponsor.

Lea Cartwright, representing American Property Casualty Insurers Association of America:
We are opposed to A.B. 128 as written. Ditto to all of the other comments. We have submitted a letter on the Nevada Electronic Legislative Information System (Exhibit H). We would request the changes should apply to claims filed on or after a specific date so that insurers can have time to ensure that the price in the policy is accurately reflected in the benefits.

Susan Bauman, Executive Director, Nevada Independent Insurance Agents:
We represent over 1,200 small businesses. It would greatly affect the cost of doing business and could be not only detrimental to the employers, but to all employees as employers would not necessarily have monies for raises or for additional employees. Our concerns are about unintended consequences. I would like to say ditto on what everyone who spoke before me has said.

Chair Spiegel:
Is there anyone to testify in neutral? [There was no one.]

Assemblywoman Cohen:
To be clear, if you get the buyout, you cannot come back. I believe the numbers the opposition stated are overblown. In most of the situations, you are not getting 24 months—you may get up to 24 months if your vocational rehabilitation counselor says that is what you need. In most situations you will probably not be getting the full 24 months. If these employees were seriously injured, through no fault of their own, they do not have the opportunity to sue their employer because they are getting this retraining. The goal of the bill is to make sure they get a decent amount of retraining so they can get new jobs, not look to the state for further care, not look to their employer for further care, but are able to get back to work.

Erica Tosh:
I agree that the numbers may be overblown. A reference was made that they were using a max wage earner as an example. The vast majority of employees do not fall within a max wage earner category and would be something less than what was cited there to you. You have taxpayers that need to be trained in order to get into the workforce to better this community. If they are not sufficiently trained, all parties suffer. This is the point where we need to move forward to make sure those people who are injured are put back into the workplace, with skills and education that will better this community.

Jim Wilcher:
There is a cost-benefit ratio for providing vocational rehabilitation services. Additionally, regarding the buyout, when we first came up with this 40 percent number, the reason was to get a minimum so people would get enough money that they could use for their retraining—it was specifically stated to be a minimum. Unfortunately, the minimum has become the maximum in most workers' compensation cases. The 40 percent then becomes the maximum an injured employee gets, and in some cases it is not enough money for them to get their retraining.

Chair Spiegel:
We will close the hearing on Assembly Bill 128. We will now open the hearing on Assembly Bill 472.

Assembly Bill 472: Revises provisions relating to insurance coverage of maternity and pediatric care. (BDR 57-812)

Assemblywoman Rochelle T. Nguyen, Assembly District No. 10:
I am here on behalf of the Assembly Committee on Health and Human Services and would like to introduce Kim Surratt, who brought this concept of Assembly Bill 472 to our attention. Ms. Surratt is a family law attorney in northern Nevada who has been practicing in the area of assistive reproduction technology and lobbying for domestic law since 2003. In addition, she brought Sarah Paige with her, who has worked for ART Risk Financial & Insurance Solutions for the past eight years and also works specifically in the area of assistive reproduction. Ms. Surratt will introduce the need for A.B. 472 and what the

amendment does (Exhibit I); and Ms. Paige is here to assist in answering any questions surrounding the need for this bill.

Kimberly M. Surratt, representing Nevada Justice Association:
There is a growing problem getting insurance for women who have maternity coverage; however, the insurance companies say they are acting as a surrogate or a gestational carrier, so they will not cover them. They are telling some women they can have maternity coverage, and others they are telling they cannot. We have always had choices, but we are now at a point of absolute necessity. Wisconsin has gone to their Supreme Court, who said it is a form of discrimination to give some women coverage based on how conception occurred. The insurance companies ask intensely personal questions from these women. They ask if you are going to give your child up for adoption or what kind of technology you used to get pregnant. We set forth with a goal of avoiding that discrimination when I requested this bill. The original language in the bill is the result of a family law attorney doing her best to ask what she needed in the insurance language; which is a vast contrast to extensive work with the health plans as to what is the proper language. The amended language is the preferred language—it is a lot cleaner and more simplistic.

There are multiple sections in the bill meant to cover all of the different versions of insurance that would have maternity coverage. Section 1 is a policy of health insurance. Section 3 is a policy of group health. Section 4 is a health benefit plan. Section 6 is a society that offers a benefit contract. Section 7 is a contract for hospital or medical services. Section 8 is a health maintenance organization that issues a health care plan. Section 11 is a managed care organization. The foregoing all provide maternity coverage. We are going to keep those designations, but the core language is what we are looking at replacing, which is what is in the conceptual amendment (Exhibit I). It contains more simplistic language, with a paragraph that states, "An insurer that offers or issues a policy of health insurance that includes coverage for maternity care shall not deny, limit or seek reimbursement for maternity care based on the covered person acting as a gestational carrier as defined in NRS [*Nevada Revised Statutes*] 126.580." The difference between a gestational and surrogate is that traditionally a surrogate is utilizing her own genetics. When we set forth a policy for surrogacy or gestational carriers in Nevada, we said we did not want her using her own genetics. So a gestational carrier is carrying a baby that is genetically related to donor eggs, donor sperm, donor embryos, or that of the intended parents, but not her own genetics.

One of the big recommendations we got from the health plans was that we tie this bill to the original statutes so that our language is not confusing and we can be clear about what we are talking about. The last part of the paragraph states, "In the case of a child born from a gestational carrier, the child is considered a dependent of the Intended Parents as defined in NRS 126.590." This language assists both sides of the aisle in which we protect the intended parents and we protect the surrogates, but we also protect insureds. We want it to be clear that it is not the surrogate's policy that covers the child, the child is covered as that of the intended parents. The additional element of the conceptual amendment is to delete section 15. That is to avoid an impact on the state and it was not contemplated as the original

intent of this bill. The third major change is to change the effective date to January 1, 2020; that was a negotiated date that made the health plans happy.

Sarah Paige, Chief Operating Officer, ART Risk Financial & Insurance Solutions, Valencia, California:
When Anthem insurance pulled out of the market, Health Plan of Nevada also limited what they were going to offer. Nevada ran into a situation where not every county was going to be represented. Ambetter came in and decided to represent those districts, providing full coverage for the state of Nevada. There was some ambiguous language within the Ambetter policy which no longer provided coverage for gestational carriers. Anyone who is a gestational carrier does not have access to their maternity benefits. There is one company, Anthem, who offers a catastrophic policy—unfortunately that policy caps at the age of 30. The average gestational carrier in the state of Nevada is 32.

Assemblyman Daly:
Did you say that some of the gestational carriers have an agreement with the parents? Most of the time all of the medical costs are covered by the intended parents. Your language says an insurer that includes coverage for maternity care shall not deny, limit, or seek reimbursement for maternity care based on the covered person. I am not sure if I understand your language.

Kimberly Surratt:
There are two different issues: one is the maternity care for the surrogate herself; the other is pediatric care of the child. The intent is to say that the gestational carrier does not give birth to the child, the child is already the child of the intended parents and should be covered by their insurance. For the maternity care, we do extensive contracts for each of these surrogates, and we do say that the intended parents are responsible for the premiums, out-of-pocket, and any uncovered medical expenses, but the actual maternity care coverage is for her body because she is the one that is pregnant. The other thing is to ensure they are not seeking reimbursement for the maternity care from the person acting as a gestational carrier. We do not want the insurance company going after her for reimbursement of any money they paid on the maternity care.

Assemblyman Daly:
The person who is pregnant is going to be covered by her insurance and there is a contract with the intended parents to reimburse the cost of the insurance. What if the mother did not have insurance? What if they did not put it into the contract? Does the insurance carrier have any course of action to recover any monies paid out?

Kimberly Surratt:
That is what we are trying to avoid. We are trying to avoid having the complete irresponsibility of having a woman who is pregnant, in the event she could have a catastrophic event with no insurance in place. We want to make sure she is obtaining insurance policies; we do not have the option of finding policies for her right now. We want the intended parents covering those costs and having to be responsible for it. Without

options for insurance policies right now, there are people entering into gestational carrier agreements with surrogates, saying they are just going to negotiate a cash rate with the hospital for the birth—but those are for deliveries with no complications. If something goes wrong, she is uninsured and not covered. We are trying to encourage policies be put in place in all circumstances for surrogacy.

Chair Spiegel:
Is there anyone in support of Assembly Bill 472?

Catherine O'Mara, Executive Director, Nevada State Medical Association:
Our physicians support coverage for prenatal care. Prenatal care is critically important, not only for the health development of the baby, but also for the health and wellness of the delivery and carrier. We hope this will help clarify an area of the law and make sure that those carriers are covered.

Tom Clark, representing Nevada Association of Health Plans:
Our members worked very closely with Ms. Surratt and the language in the proposed conceptual amendment; therefore, we very much support the bill as amended.

Chair Spiegel:
Is there anyone who wishes to testify in opposition to A.B. 472? [There was no one.] Is there anyone who wishes to testify in neutral? [There was no one.]

Kimberly Surratt:
This will really set a trend for Nevada and we are once again going to be viewed as the starting block for appropriate language for other policies and states.

Chair Spiegel:
We will close the hearing on Assembly Bill 472. Since we have all our members here, we are going to have a work session. Our policy analyst will start with Assembly Bill 141.

Assembly Bill 141: Prohibits a pharmacy benefit manager from imposing certain limitations on the conduct of a pharmacist or pharmacy. (BDR 57-947)

Patrick Ashton, Committee Policy Analyst:
On Friday, April 5, we reviewed Assembly Bill 141. I would like to point out item 3 on the amendment, which was changed, as well as a proposed conceptual amendment (Exhibit J). Amendment 3 clarifies that the provisions of this bill apply to every pharmacy and pharmacist, regardless of ownership of the pharmacy, with the exception of institutional pharmacies in hospitals or a pharmacist while working in an institutional pharmacy in a hospital.

Chair Spiegel:
Does anyone have any questions or comments regarding Assembly Bill 141, either the new conceptual amendment or what we were speaking about on Friday?

Assemblywoman Hardy:
I just wanted to advise that I spoke with Bill Welch from the Hospital Association; he was fine with the bill as amended.

Chair Spiegel:
I will entertain a motion to amend and do pass.

> ASSEMBLYWOMAN TOLLES MOVED TO AMEND AND DO PASS ASSEMBLY BILL 141.
>
> ASSEMBLYMAN EDWARDS SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Hardy. We will move to the work session on Assembly Bill 319.

Assembly Bill 319: Revises provisions governing professional licensing. (BDR 54-314)

Patrick Ashton, Committee Policy Analyst:
Assembly Bill 319 was also on the work session last Friday. There is a change on page 2, item 6. Amendment 6 adds a new subsection that authorizes a regulatory body to request that a petitioner submit a criminal history record. The new subsection must provide that, to the extent consistent with federal law, if the regulatory body requests that a petitioner submit a criminal history record, then the regulatory body must require the petitioner to submit a criminal history record which includes both a report from the Central Repository for Nevada Records of Criminal History and a report from the Federal Bureau of Investigation (Exhibit K).

Chair Spiegel:
Is there any discussion on the bill? [There was none.] I will entertain a motion to amend and do pass.

> ASSEMBLYMAN YEAGER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 319.
>
> ASSEMBLYMAN McCURDY SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

I will assign the floor statement to Assemblywoman Tolles. Now we will open the hearing on Assembly Bill 239.

Assembly Bill 239: Revises provisions governing prescriptions for controlled substances. (BDR 54-703)

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27:
Thank you for hearing Assembly Bill 239. We are going to be talking about opioids and controlled substances. What I was hoping to do is start off with a short, yet informative, overview of what has been happening in the state around controlled substances and opioids, and then move on to talking about A.B. 239. We have a couple of amendments that we will walk through as well.

J. David Wuest, Executive Secretary, State Board of Pharmacy:
On the Nevada Electronic Legislative Information System (NELIS) is a handout I will be referring to (Exhibit L). The State Board of Pharmacy has been in existence for 117 years—you gave us our authority, and we are here to protect the public. The prescription monitoring program (PMP) is administered by both the Nevada Division of Insurance within the Department of Business and Industry and the State Board of Pharmacy. Although it was the first PMP in the country, now every state has a prescription monitoring program. The Legislature passed Assembly Bill 474 of the 79th Session. This bill fixes some of the components of A.B. 474 of the 79th Session. The overall view of it, although it had some prescribing factors to consider before prescribing, was that the patient deserves to have informed consent before receiving a controlled substance.

If you refer to page 8 (Exhibit L), this is some data that has come back. The Department of Health and Human Services (DHHS) and the State Board of Pharmacy worked together to present this data to you. Individually, there may be patients who need a controlled substance and cannot get them, or they should not have a controlled substance and they do get them. This data is just an overview of the state. It does not talk about an individual patient or doctor. It should always be up to the physician or the nurse practitioner when they are prescribing to decide if the drug is appropriate. Nothing in A.B. 474 of the 79th Session says if it is appropriate or not appropriate to prescribe. If you look at the data, the yellow line can be considered to be long-term chronic use of opioids—these are people who are getting a 30-day supply or greater. The red line represents acute patients. By reviewing this chart, you could say that the object of A.B. 474 of the 79th Session was reached. We did not want to impact the chronic patients, but we have seen a major decrease in acute patients—meaning that fewer people are becoming exposed to opioids.

Page 9 (Exhibit L) shows a decrease between the use of benzodiazepines and opioids together. Page 10 shows that there is now a requirement for ICD-10 codes [International Classification of Diseases] to be listed on the prescription by the prescriber—they choose what they are treating. You can see a lot for back pain, and three out of the top ten are dentists. In the acute range, chronic pain is associated more with skeletal muscular pain. Page 11 is what the PMP was originally meant to do—limit "doctor shoppers." If you look back to 2013, and we used the same criteria today, we would have 200 to 300 doctor shoppers per quarter; and in 2018 it was 14, 13, 17 and 12 for the quarters. Page 12 shows

inquiries of the PMPs—in 2014 there were minimal people using it, and now it is widely used, as required by law.

Several laws require us to attempt to integrate the PMP into the doctors' charts. The Board of Pharmacy and the DHHS has made inroads to that. If this bill passes, it would solidify that the Board of Pharmacy and the DHHS should do more to allow people to opt in. In the future, they could still opt in, but there would not be a cost for them to integrate into the records. We have had a lot of concerns about definitions, which are on page 17 (Exhibit L). The next several pages show what we saw as practitioner and patient concerns. Most of the practitioner concerns are how to operate under the bill. The patient concerns are, Am I going to be able to get my pain medication? The DHHS did some public outreach for that. The overview of Assembly Bill 474 of the 79th Session is, it allows verbal consent; it takes the definitions that the Board of Pharmacy put in regulations and puts them in statutes and streamlines things for group practices.

The final page I will refer to is page 24, which is a snapshot of the United States that shows only two states are meeting all the requirements for what they consider to be safe prescribing of opioids and the treatment around that—they are Nevada and New Mexico. The rest of the pages relate to Assembly Bill 94, and it is about education. It references what the Board of Pharmacy and DHHS has done for educating people about A.B. 474 of the 79th Session. We welcome any direction of how we should educate in the future.

Catherine M. O'Mara, Executive Director, Nevada State Medical Association:
When we approached this bill, trying to streamline what we did in Assembly Bill 474 of the 79th Session, we did it with the idea that we were trying to refine the bill that was passed, not undo it. We took the 2018 National Safety Council report card that scores Nevada as an A and used that as the benchmark—we really tried to focus on the workflow issues. What you will not see in Assembly Bill 239 is undoing the mandated prescriber education—that will remain intact. We will still keep the opioid prescribing guidelines, and we will still integrate the PMP into the clinical setting. Our physicians have embraced the PMP, and they are using it with increasing numbers every quarter. This bill also does not impact elements 4, 5, and 6 that are referenced on page 24 (Exhibit L).

Assemblywoman Benitez-Thompson:
This Legislature has done amazing work in this field, starting with Senate Bill 459 of the 78th Session, which was the state's first take of an opioid bill; then coming back with Assembly Bill 474 of the 79th Session. There have been a lot of groups working over the interim to make sure that we had legislation that worked on paper, and that made sense in the practical applicability of all the different types of medical settings that could be had, as well as all the different types of prescribers. We are codifying the definition of "acute pain" in section 10.

We have a conceptual amendment which will be presented by Ms. O'Mara (Exhibit M). Section 2 is regarding the dentists and dental hygienists; section 3 is nursing—specifically, we are getting at the advanced practice nurses who can prescribe medication. Section 4 is

osteopathic prescribers; section 5, podiatrists; and section 6, optometry. Section 7 deals with the pharmacy board as well as the course of treatment. Section 9 deals with a patient utilization report which is required for an initial prescription for controlled substances. Section 10 is when you are writing prescriptions for controlled substances; it also codifies the definition being used. We were trying to fit the best applicability, but we took out patients who are receiving care for cancer, palliative care, hospice, or end-of-life care, where we see they are serving a different purpose than the intent our Legislature is trying to reach. In section 11 there are changes to the valuation and risk assessment for the patient, which involves an informed consent and what is happening with the initial prescription.

We have Assembly Bill 94, and we have amended it into this bill to make it a more precise package. There will be a requirement for all the different licensing boards to post on the website a technical advisory bulletin regarding these laws, any regulations associated with it, and then revisions as we move forward.

Catherine O'Mara:
This conceptual amendment is on NELIS (Exhibit M). We want to make it clear that there are exemptions for hospice, palliative, oncology, and sickle cell disease. The practitioner will be doing the PMP check before they prescribe to ensure they know what other prescriptions their patient has obtained. There will still be informed consent so the patient understands the risks and benefits of the medication. The practitioner will still comply with new state requirements for what is considered a valid prescription—that includes putting the ICD-10 code onto the prescription and the number of days for the prescription. That information helps us upload to the PMP so we understand what the diagnosis is and why the medication is being dispensed. It is important to note that even though hospice, palliative, cancer, and sickle cell will provide the informed consent and do all the other requirements, we are asking that PMP checks be done prior to the initial prescription, unless it would unreasonably delay care to a patient. The informed consent will be done, but it will be done under the national standards that these specialties follow.

The second thing we are asking is to refine the physical examination and medical history by the practitioner. Section 11 would require the practitioner to obtain a relevant medical history of the patient. It will also require the practitioner to conduct a physical examination of the patient, directed specifically to the source of the patient's pain, and within the scope of practice of the prescriber. This is to help doctors focus on their specific practice.

The next item is informed consent. Informed consent may, but is not required to, be in writing. There are cases where you cannot get an informed consent in writing or a patient's status has changed. You want to be able to give them a prescription with the conversation over the phone, without requiring them to come in for an office visit, paying a co-pay, and doing all the things they need to do so they can get the medications. We are suggesting that informed consent follow the ethical guidelines done by the American Medical Association, which requires the provider to document the informed consent conversation and the patient's decision in the medical record. If the patient provides written consent, that form will be included in the record.

Assemblyman Kramer:
I particularly like the change in section 9 where it says you are putting the doctor back in charge. My only concern is whether we are opening this up to federal oversight and whether that risk is any greater now than it was before. I am concerned because doctors tell me they have the Drug Enforcement Administration (DEA) looking over their records. Is this going to be an issue?

Catherine O'Mara:
I would like to respond to your comments about section 9 so the Committee is aware. This section is still requiring that you check the patient utilization review—you still have to have the PMP check.

Dave Wuest:
We put that concept in regulation after the bill passed. The Board of Pharmacy put that into regulation with the help of the other medical boards. In practice, the boards always see that the patient needs to be taken care of. To the DEA, that is the essence of prescribing to them—medical necessity—so I do not think they would have any issue with that.

Chair Spiegel:
Is there anyone in support of A.B. 239?

Daniel Burkhead, Private Citizen, Las Vegas, Nevada:
I am here to offer support for A.B. 239 with the proposed amendments. I have also provided written testimony (Exhibit N). I was involved with the implementation of Assembly Bill 474 of the 79th Session when I was given a position with the Department of Health and Human Services as a Special Advisor for Public Health Policy and Practice. In that capacity, I served as a liaison between the governing and regulatory bodies and the prescribing practitioners in Nevada. Most providers do understand the spirit behind A.B. 474 of the 79th Session and do recognize there is an opioid use problem in our state. However, A.B. 474 of the 79th Session was a broad law that was easily misunderstood. It had several unintended consequences within the implementation of the law which caused a significant impact to patient care. Assembly Bill 239 will address several of the unintended consequences.

Many of the requirements in A.B. 474 of the 79th Session were clerical in nature. Doctors felt threatened that they would lose their license based on a few errors in their medical records department, which they may never be aware of until it is too late. Therefore, a lot of primary care physicians across the state started to refuse to write prescriptions for opioids or pain medications. Pain clinics in Nevada faced a dramatic increase in patient referrals, many of whom could have been easily handled by their primary care physicians. This meant patients needed to wait weeks or months to be seen for treatment of their pain symptoms—some who were suffering from acute pain, but the pain was gone before they could even get in to be seen. Ultimately, it was the patients who ended up suffering needlessly.

The provisions in A.B. 239, along with the proposed amendments, will smooth out some of the more complicated provisions in A.B. 474 of the 79th Session, giving comfort to primary care providers that they can appropriately prescribe without the fear of violating the law. It clarifies certain workflow requirements and allows physicians the flexibility to focus on the individual needs of the patients.

Clevis T. Parker, Chief Medical Officer, Nathan Adelson Hospice:
I am here to offer support for A.B. 239 with the proposed amendments. The practice of hospice and palliative care is already very heavily regulated by federal mandate through Centers for Medicare and Medicaid Services. These current regulations mandate that potential patients undergo an extensive hospice election process with their hospice providers, which includes a thorough and specific informed consent covering a multitude of different aspects of hospice care. Specific patient and family education is required for each individual medication that is prescribed. This process already supersedes any requirements that were brought forth by A.B. 474 of the 79th Session.

With the advent of A.B. 474 of the 79th Session, the job of providing efficient and effective pain treatment for dying patients became quite complex, and patients were the ones who suffered. First, multiple providers are required in order to provide effective hospice care for each patient. With the new requirement, a single consent form was not sufficient to allow each of our team members to prescribe appropriate opioids or other medications as necessary. Further delays in providing medications arose due to the added steps required by each individual provider every time a medication was prescribed or adjusted. With hospice care, some medications are adjusted on a daily basis, depending on the patient's rapidly dying process.

Lindsay Knox, representing Nevada Orthopaedic Society:
We are here in support of A.B. 239 and its conceptual amendments. We believe this will be a positive benefit to not only our prescribing physicians but also to their patients.

Connor Cain, representing Comprehensive Cancer Centers of Nevada:
We are in support of A.B. 239 and the amendments. Comprehensive Cancer Centers of Nevada treats more than 12,000 new patients annually, and has more than 376,000 office visits per year. We are supportive of your efforts in the 79th Session to address opioid abuse, but we ask that additional consideration be given to the unique nature of cancer care and patient suffering from cancer-related pain. I would like to read a few sentences from a letter available on NELIS from a patient of Comprehensive Cancer Centers of Nevada (Exhibit O).

> As stage IV warriors, we see our doctors on a regular basis and communicate openly when we are (or are not) in pain. The pain caused by MBC [metastatic breast cancer] can be debilitating, and as a professional career woman, it would be extremely disheartening to know that there is something out there that can help improve my pain, but because of very broad language, I was denied access to it (or enough of it). I go to work every day and have only been off while I had surgery. I have not needed a sick day yet. Trying to lead

> a "normal" life is very important for stage IV fighters—part of being able to do that requires pain management.

For Comprehensive Cancer Centers of Nevada, this piece of legislation is about patients; it is also about their ability to provide the best care possible. We have spent a lot of time in the interim working on regulations with the State Board of Pharmacy and the Board of Medical Examiners. I was on a flight to Reno from Las Vegas about a year ago to work on one of these regulations with the Board of Pharmacy. I was sitting next to the former practice president—she turned to me and said, All I want to do is provide the best care that I possibly can to my patients. I think that is the biggest takeaway for us; this is a bill that will help improve care for cancer patients and will certainly help Comprehensive Cancer Centers of Nevada's practice.

Nikki Bailey-Lundhal, representing Nevada Nurses' Association:
The Nevada Nurses' Association is in support of A.B. 239.

Joanna Jacob, representing Nevada Dental Association; and Dignity Health-St. Rose Dominican:
We appreciate that the amendment narrows down the scope of the medical history of the patient relevant to the condition in which they are presenting in the doctor's office.

Joseph J. Heck, representing Nevada Osteopathic Medical Association
The majority of osteopathic physicians are primary care providers. Assembly Bill 474 of the 79th Session, while well intentioned, created many obstacles to the patient care for primary care providers. It is for those reasons that we thank the sponsor for bringing this bill forward and we are in support of A.B. 239 and the proposed amendments.

Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada:
We are representing the Retail Association of Nevada and their Chain Drug Committee, representing the pharmacies in Nevada. We are in full support of A.B. 239, and we thank the sponsor and other stakeholders for bringing us in to talk about this. I believe that patients who receive opioids in our state are receiving informed consent at every stage. They talk about it with their doctors, and once they get their prescription filled, their pharmacist then counsels them. There are now federally mandated laws, and patients are aware of the potential danger and risk of taking these opiates. I think we have covered this; the medical community has worked hard together.

Assemblywoman Carlton:
Since you represent the chain drug stores, it was brought to my attention that people were going to their regular pharmacy and being told they were out of the medication. They cannot get the prescription somewhere else because that would be prescription shopping. I have concerns that some of the larger drug retailers, in order to keep themselves protected from the opioid abuse discussion, are not stocking them at a level that they did in the past. We are putting patients in an awkward position. Could you please investigate it? Hopefully, this bill will make them a little more comfortable keeping the drugs available, but I do not believe

patients should be put in a position of having to go find someone who will fill their prescription. If they present a legal prescription, I think the pharmacists should do everything within their power to fill that prescription.

Liz MacMenamin:
I will try to gather as much information as I can on the guidelines now. I believe the federal guidelines have limited the purchases within some of these major stores. There is a 50/50 responsibility between the prescriber and the doctor. I think we will see a lot more comfort within the pharmacy and the pharmacists who are filling these opiates.

Michael Hackett, representing Nevada Academy of Physician Assistants:
We just want to get on record in support of this bill with the amendments that have been proposed, and for the many reasons that have been cited already. We would like to express our appreciation for everybody that is involved in this effort in terms of bringing this bill forward.

Terry Murphy, Private Citizen, Las Vegas, Nevada:
The voice of the patient has been one that is missing from a lot of the discussions. However, I think this bill shows there has been a tremendous amount of work in terms of trying to understand; I truly appreciate everything that has been done. For about a year and a half, I was able to experience what long-term chronic pain patients go through every single day. I know they need someone to stand up for them and be their voice in this process. I support this legislation, but I have to say that, in addition to cancer and sickle cell disease, there are literally hundreds of diseases that cause long-term, unrelenting chronic pain. I can also tell you that it takes a long time for those to be diagnosed and finally properly treated, whether with opioids or other mechanisms. Pain from any disease is insidious; it invades every aspect of your life. Right now in Nevada, we have people who have been stable for many years and are suddenly being force-tapered from their medications or having them denied entirely. Dr. Terry Lewis from the University of Illinois has been conducting research and so far she has identified three individuals in Nevada who have committed suicide due to pain. The American Medical Association has adopted resolutions calling for the Centers for Disease Control and Prevention guidelines not to be used to formulate laws that take away clinical judgment (Exhibit P). This bill goes a long way to helping them and putting Nevada in the forefront. I definitely support the bill with the amendment that was discussed.

Kristine Leavitt, Private Citizen, Henderson, Nevada:
I am a board-certified family nurse practitioner and proud Las Vegas native. I support this bill because it unties our hands as clinicians; however, it really must go further to help our patients with chronic pain. I have the honor to treat patients in both the hospice and outpatient primary care setting, and the goal with both treatment places is to give patients the best quality of life possible. The regulations thus far have burdened pharmacists and providers. There are increased calls from pharmacists and rejected prescriptions. I had a patient who said that the pharmacist would not fill this prescription, and told him to go back and tell the doctor to reduce his prescription. This has impacted our citizens in Las Vegas. I have seen patients in complete panic; unable to work or participate in their own lives due to

force-tapering and rejected prescriptions—which has left them in uncontrolled pain. I have seen these same patients withdraw from their families and friends and forego activities they once enjoyed because of this. I am really glad we are going in this direction. I urge you to consider putting something in this bill to require insurers and pharmacists to fill a prescription when there is a diagnosis of a painful disease.

Chair Spiegel:
Is there anyone who wishes to testify in opposition to Assembly Bill 239? [There was no one.] Is there anyone who wishes to testify in the neutral position? [There was no one.]

[(Exhibit Q), (Exhibit R), (Exhibit S), and (Exhibit T) were submitted but not discussed.]

We will close the hearing on Assembly Bill 239. We will open the hearing on Assembly Bill 271.

Assembly Bill 271: Revises provisions relating to call centers. (BDR 53-900)

Assemblywoman Sarah Peters, Assembly District No. 24:
Assembly Bill 271 is intended to protect jobs in the state of Nevada. Sections 2 through 5 include definitions on words and phrases. We do have a conceptual amendment on the Nevada Electronic Legislative Information System that changes the definition of call center in section 3, to more discretely define what a call center would be (Exhibit U). We believe that section 4, together with section 3, sufficiently addresses who would be employed at these call centers. Section 6, subsection 1, states that an employer who moves 30 percent or more of the operating communications or call volume to a foreign country, shall notify the Labor Commissioner at least 120 days before relocating. Subsection 2 sets forth that the Labor Commissioner will keep and distribute a list of employers who have notified them twice a year to appropriate agencies who negotiate incentives. Subsection 3 sets forth that employers on the compiled list will be ineligible to receive incentives from the state for a period of five years. Subsection 4 states that an employer who has been added to the list will have to repay any state agency incentives. The idea is that these incentives are carried on the backbone of the people who pay taxes in the state of Nevada.

If these jobs leave the state, then we have eaten that cost—the cost to the employees who have lost their jobs and cost to the state tax revenue. This also expresses a very specific situation in which a call center located in the state of Nevada moves 30 percent of the volume of calls overseas. This does not stop call centers from moving to other states. Additionally, these incentives packages often have clawbacks within the contract. If a company has an incentive and does not meet the contracted portions of that incentive, then they already have to repay some of those. Section 6, subsection 5 states that an employer may be waived from this five-year hiatus of incentives through a show of good cause.

Section 7 sets forth penalties for not meeting the notification requirements, including an imposed fee ceiling, or in lieu of the fee, allowing for a financial impact assessment at the expense of the employer. This section's requirement of 120 days is there to address these

employees who will lose their jobs and are citizens of the state of Nevada. They deserve the opportunity to figure out what they are going to do after that job is lost. If they are not given sufficient time, they could be on our state systems, unemployment, or potentially needing other assistance until they can find another job—this is designed to recoup that cost.

Section 8 refers to when the state contracts with a call center. The idea is that if the state is spending dollars on contracted work for these jobs that already exist in the state of Nevada, then they should be done by people who are working in the state of Nevada. Section 9 sets aside that the act does not authorize, withhold, or deny payments, compensation, or benefits under the law.

I did receive some concerns from the Labor Commissioner, and I think that a fiscal note is attached to this bill. Her concerns were that this would cause additional work for her office. I assured her that the intent of this is just for her office to maintain a list. That list is a product of an employer who knows that they are leaving the state of Nevada to move jobs offshore—it would let the Labor Commissioner know. They would write that down, maintain a list, and send it to agencies who are working in programs that incentivize those types of jobs to the state of Nevada.

Thomas Runnion, Vice President, CWA District 9, Communications Workers of America:

Call centers are important economic lifelines for many communities in the state of Nevada and across this country, with 26,150 call center workers employed in the industry in Nevada alone. Thousands of call center workers across the country have lost their jobs in recent years as major employers and corporations have offshored customer service operations overseas. AT&T closed an Internet service call center in Las Vegas in 2018, laying off 60 Communications Workers of America (CWA) members. The company also closed an Internet service call center in Reno in 2015, laying off 40 CWA members. I might add that these were the numbers of people left at the time the decision was made to finally close, but there were more members there before that were not replaced as they left. Wells Fargo closed a Reno call center in August of 2018, laying off 340 workers. At the same time, Wells Fargo continued to hire workers at its call centers overseas. This trend has harmed working families and communities in Nevada and across America, while endangering consumer security. Call centers in Costa Rica were home to a massive telemarking scam that defrauded thousands of U.S. citizens, most over the age of 55, upwards of $20 million.

With new tax provisions in President Trump's tax bill, companies are even more likely to move their customer service work overseas. According to the U.S. Congress Joint Committee on Taxation, the new territorial tax system exempts offshore income from U.S. taxation. The system continues to see people leaving, or the jobs being moved offshore, which is creating undue problems. At the same time, these corporations are getting benefits through tax incentives. The government passed a tax law that will create a tax incentive for a corporation to move jobs offshore. Companies are already taking advantage of that provision. AT&T, a company that netted $20 billion in savings from the tax savings plan, has eliminated over 10,000 call center jobs in the U.S. alone. We need new efforts that put

Nevada workers first, add new levels of accountability to the offshoring process, and ensure that we are not rewarding companies who are actively eliminating good jobs in our state. The new call center bill in Nevada is an opportunity to ensure jobs stay in Nevada and protect consumers. I want to thank Assemblywoman Peters for sponsoring this bill, and I urge all legislators to support the effort.

Janice Porter-Moffitt, Private Citizen, Reno, Nevada:
I am here to speak in support of A.B. 271. As a former employee for AT&T Internet services, I was one of the many hundreds of employees who were hired starting in early 2009 to help staff the new digital subscriber line (DSL) call center in Reno, Nevada. As customer service assistants, our focus was to provide our incoming caller customer base with troubleshooting for the myriad aspects of Internet connectivity. Along with my colleagues, I had every expectation that AT&T would provide a long-term onshore solution for the delivery of exceptional U.S.-based customer service. I, along with many of my coworkers, was very pleased for the opportunity to gain employment with a corporation that seemed to take local economic development seriously by establishing call center work in northern Nevada.

I was active in my call center workplace as a CWA Local 9413 union steward, and was later elected to serve as one of the vice presidents for our local membership. As time went by, I also served on the 2013 bargaining committee that negotiated with AT&T for our Internet services contract—that contract would expire in July 2016. Even though I was the representative of our bargaining committee, I did not know that our Reno call center would close prior to the expiration of our contract. In March 2015, AT&T announced that our DSL call center in Reno would close in May 2015, in approximately 60 days, not the 120-day notice included in this bill.

Our DSL office closure came as a surprise, and there was little time to find replacement employment with such short notice. I saw my fellow coworkers scramble to find other employment opportunities while fulfilling their roles as exceptional customer service assistants. Upon learning the news, some employees broke down in tears, while others left the company immediately upon being informed. As for me, I went on to finish my master's degree in teaching and also to pursue web design and development. Although I am in a good place now, our office closure was a difficult time for me and for so many of my coworkers—many of us thought we would stay until retirement. My hope is that the bill will help keep employers from taking good jobs out of Nevada. I thank the Committee for the opportunity to share my story, and I hope you will all support A.B. 271.

Richard P. McCann, Executive Director, Nevada Association of Public Safety Officers:
Today I am here on behalf of the Communications Workers of America, Local 9110. Assembly Bill 271 is based upon one simple premise, the protection of Nevada's workers. Make no mistake, this is not an anti-employer bill; it is not a bill that discriminates against non-Nevada workers. If you operate a call center in Nevada, you employ Nevada residents. You can relocate that call center to another state without a penalty, but if you relocate your call center to a foreign country, you must notify the Labor Commissioner 120 days before

relocation. If you do not, you are put on a list and are ineligible to receive state incentives, loans, tax credits, or abatements for a period of time. You must also repay the amount of any incentives that you have received, or show good cause in order to avoid those penalties. In essence, this bill has definitions, a standard of conduct, penalties, and an appeal process for the employers.

Similar bills are being introduced in 25 states across the country. Big businesses spend time researching their foreign options. They decide what is best for its bottom line and deliberate before its board of directors before making a decision to separate Nevadans from their jobs. Nevada's workers deserve to be adequately notified so they can decide their futures as well. They need to research their options, decide what is best for their bottom line, and deliberate at the kitchen table with their board of directors, otherwise known as their families. If AT&T or any other call center operation wants to take their business to foreign countries and pay pennies on the dollar for labor, that is their business. Working Nevadans, who are being displaced from their jobs in favor of foreign jobs, are our business. We believe this bill protects Nevada's workers from losing their jobs to foreign countries. Accordingly, we fully support A.B. 271 and we urge this Committee to do the same.

Assemblywoman Neal:
If a call center relocates out of the country, how will the penalties be enforced?

Assemblywoman Peters:
I am not sure if we have a standard for doing that in the state of Nevada. I think if they do not give their 120-day notice before they leave, it adds a debt to the state if they decide to come back.

Assemblyman Daly:
In section 6, subsections 3 and 4, an employer is put on the list and the employer is not allowed to get any additional incentives for five years, and then the employer would have to pay some clawback provision. Why are we just limiting state agencies? I would suggest you also add local governments.

Assemblywoman Peters:
Thank you for your comment. I would like to go back to Assemblywoman Neal's question. A number of these entities have more jobs in the state of Nevada than call centers; we are talking about large corporations that have several call centers, so they may still be in the state if they move 30 percent of their call volume overseas. I think it would be a very specific situation in which all of the call center jobs from an entity were in the state of Nevada. In most cases we would see that at least some jobs were lingering here, or that the entity would still remain in the state.

Assemblywoman Hardy:
Do you have any information or data as far as how many of these call centers have received these incentives or abatements?

Assemblywoman Peters:
I have reached out to the Economic Development Authority of Western Nevada to ask what information they have, but I have not spoken with them yet.

Assemblywoman Tolles:
In section 5, you defined "part-time employee." I looked in the *Nevada Revised Statutes* (NRS) and did not see part-time employee defined anywhere else. Are we creating a definition for part-time employee?

Assemblywoman Peters:
I do not know.

Tom Runnion:
There are numerous call centers that hire part-time employees only to get out of having to pay benefits. We wanted to have some floor to characterize what is a part-time worker. In some of our contracts we have a definition of part-time, and those people still get benefits, but they may be prorated. In the case of nonrepresented entities, we just wanted to make sure because this is a global issue and it is not just about AT&T or some other company that we do business with.

Wil Keane, Committee Counsel:
I just did a quick search, and we have two existing definitions of part-time employee: one in the NRS, and one in the *Nevada Administrative Code* (NAC). In these cases, those definitions do not apply because all of those definitions are limited to their circumstances. The definition in the current bill would be as well. For an example, NAC 284.0745 defines a part-time employee as an employee whose work schedule is less than 100 percent of the full-time equivalent established for the employee's pay class designation. That is for the purposes of state employees.

Assemblywoman Tolles:
If we were to pass these tighter restrictions on call centers, regardless of the incentives, would that keep companies from either starting up a new call center here or bringing a call center here?

Rick McCann:
If a company is going to come here with the idea that they will be leaving and going to foreign countries, stay away. If they are coming here and cannot make it, those things happen.

Assemblywoman Peters:
I really think of this bill as being supportive of our employees, the citizens of the state of Nevada. If a company is coming intending to move jobs out of the state, or if they are in such dire need of cheaper labor costs, then I am not sure if their business plan was very good in the first place.

Tom Runnion:
There is also a provision that allows them to have an excuse, and if you are going out of business and have made a good faith effort to do business here, that could be a rationale or a reason that is accepted.

Assemblyman Edwards:
I see two aspects the bill seems to be trying to fix. One is the clawbacks for the incentives if the company does not live up to its word. If the company does not do what it promises to do, they should have all that incentive money clawed back. It seems as though there is already that provision in the laws in Nevada. Two is protecting jobs in Nevada, preventing them from going overseas, and I am totally with you. Would a collective bargaining agreement prevent the loss of jobs? If so, is the only addition here to the bill that we get an additional 60-day period before the company can move out?

Tom Runnion:
The contracts do not tell the employer where they can move or where they can house their work; it represents the people who currently work in an environment. If a business decides to consolidate and move that location—maybe they move it from northern Nevada to southern Nevada—they have the right to do that, and the contract does not prohibit it. We do have layoff agreements and language in the contract that provides that if they do something that causes the downsizing of the unit, the employees are to be compensated in some fashion. It does not prohibit any type of movement or actions where they might take something overseas.

Assemblyman Edwards:
Is the 60 days becoming 120 days the real benefit of the bill?

Assemblywoman Peters:
That is one of the benefits of this bill. I think the other benefit is that this creates a clawback for incentives in the case that we lose jobs from the state; our current incentives may be more specific to scenarios related to that incentive agreement. This is really for a specific scenario and would claw back all of those incentives that have been given without contingency.

Chair Spiegel:
I have a question regarding the definition of a call center in section 3. I know there are two types of call centers—there are probably more. One would be an internal call center which is owned by a company. It has its own employees who are providing call center services, which might not just include customer service; it might also include inbound or outbound telemarketing; it might also include outbound surveying, or inbound survey receipt. There are also companies that are stand-alone vendors that provide call center services on a contract basis for their clients. Again, they would not just provide customer service, they might also be providing inbound or outbound telemarketing, surveying, or a mix of business. Why did you limit the definition of a call center to just say customer service? How would it be assessed if a company performs multiple types of operations within their internal or external call center?

Tom Runnion:
With respect to a call center, part of the bill states about 30 percent of the business calls going overseas—they could still be here operating under some other fashion, but 30 percent of their work is now leaving and going to a foreign entity. From our perspective, a lot of those are considered contractors. The company contracts this work rather than having its own employees. We see it similarly anywhere that work can be moved; we want to try and eliminate that. It is Nevadans who are doing that work and receiving the benefits of that employment; and the state is receiving the benefits of the tax and monies that they generate. I think both would apply.

Chair Spiegel:
My question was regarding limiting it to just customer service functions and not having it be more expansive to the other functions.

Assemblywoman Peters:
We have been struggling with the definition of a call center. We thought of the Mervyn's customer service counter, where that person also may take customer service calls, but that is not that their primary function. This definition is a work in progress. The conceptual amendment was an attempt to narrow it down to a more specific job that pertains to the activity of answering and making phone calls. I appreciate your input—we were definitely not trying to limit it to just customer service.

Chair Spiegel:
I once worked for a very large financial services company that had one department that took customer service phone calls; another department that made and took credit and collections phone calls; another department that performed telemarketing services; and yet another department that did surveys and internal market research to their customers. They had four operation centers in the U.S., and multiple operation centers worldwide. I can see what you are talking about with shifting the mix of business but, as you are thinking about it, I would encourage you to think about all of the employees that could be affected.

I will now open it up for testimony in support of Assembly Bill 271.

Marc Ellis, President, Local 9413, Communications Workers of America:
We are in strong support of the bill.

Rusty McAllister, Executive Secretary-Treasurer, Nevada State AFL-CIO:
We also stand in support of this legislation. If we are going to give incentives to companies to come here, then we certainly would not want them to leave and take our incentives with them—leaving us all the employees they had initially hired.

Andy Donahue, representing Laborers-Employers Cooperation and Education Trust:
In concurrence with the sponsor's praiseworthy presentation, we are in support of the aforementioned measures.

Liz Sorenson, Area Director, Communication Workers of America, AFL-CIO, District 9:
Everything you stated is correct. It was our intent to cover all those people, not just customer service. We will continue to work with all the stakeholders on this matter.

Chair Spiegel:
Is there anyone to testify in opposition to A.B. 271?

Randy J. Brown, Director, Regulatory and Legislative Affairs, AT&T Nevada:
Thank you to the sponsor of the bill; she has been open to meeting with us on this topic. I would like to point out that AT&T employs more full-time union workers than any other private company in this country. We employ more union workers than the Big Three automakers combined—we do value our union member partnership. Under existing U.S. labor law, the Worker Adjustment and Retraining Notification Act, AT&T and others are already required to provide 60-calendar-day advance notice to employees when 50 or more are being displaced from a single location. We are required to notify not only the employees, but we are required to notify the employer's union. We are required to advise the chief elected official in the jurisdiction where this is occurring, as well as the state dislocated-worker unit. This bill actually has the potential to harm investment in Nevada. For instance, call centers that do not employ 50 people today are going to be incentivized to not employ 50 or more people going forward as a result of this legislation.

I really want to focus on section 8. We did offer some amendments to clarify the definition of an employee to make sure we were speaking about call center employees. We also suggested this bill could be improved by adding companies to the list only if they have taken incentives from the state, not adding companies to the list who have not taken incentives. We also suggested there might be some benefit in limiting the timeline of the clawback. Under the bill, as it is currently written, you could have taken an incentive a hundred years ago and your business model changes, and you are required to pay back your incentive from a hundred years ago. We have been told that section 8 is really to address companies that have contracts with the state of Nevada for call center-type work. The Assemblywoman mentioned it again today, but we think the conceptual amendment does not necessarily say that. If we could come to some sort of terms to ensure that we are strictly talking about call center contracted work for the state, that would go a long way to ease our concerns.

Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada:
I would like to say me too to Mr. Brown's testimony in opposition. I would like an opportunity to work with the sponsor. The bill refers to other electronic communications; many of our major retailers utilize some form of electronic communications to contact their customers. I have some concerns, and would like to continue to work and be a part of the discussion going forward.

Craig Stephens, Senior Manager, Government and Regulatory Affairs, Cox Communications:
I also would like to thank the bill sponsor for meeting with us several times to discuss this bill. Cox Las Vegas currently houses one of the largest call centers in the country. We just recently expanded by another 300 employees; we now have about 600 employees at our Las Vegas headquarters. I can also say that we do not take any tax incentives when it comes to this call center. We agree with Mr. Brown, if we are going to be doing this, and it is truly about incentives, then those that take incentives should be the ones participating in something like this bill. We also believe that perhaps there are many ways to capture that data, especially if they do come back to Nevada—they do not get these incentives for five years. Make them sign an affidavit that says they did not do that—you do not need to create a list that is distributed to the Labor Commissioner. We will continue to work with the bill sponsor on this bill, but in its current form, we simply cannot support it.

David Dazlich, Director, Government Affairs, Las Vegas Metro Chamber of Commerce:
We believe the incentives and economic investment dollars are vital to the development of long-term jobs within the state. However, we have some serious concerns with this bill; specifically in section 4 regarding the definition of part-time employee. By lowering that floor and broadening this definition, we are concerned that a number of businesses are going to be affected, even if the call center functions are purely ancillary to their primary operations. Second, we are worried about the 120-day notice in section 6; that is a very large window. There may be changing economic conditions that could affect business decisions in which that 120-day period of time is just simply not a reasonable turnaround. We would be much more comfortable with something in the line of 30 to 60 days. Finally, in section 7, we are concerned with the amount of the fine. Throughout a large portion of the NRS, the first-time fine is set at $5,000 for any number of Nevada Equal Rights Commission-related offenses, and we believe that $5,000 is much more standard with the current NRS.

Randy Robison, representing CenturyLink:
I would like to echo the issue raised with section 8 and would like to see that clarified as much as possible.

Chair Spiegel:
Is there anyone who wishes to testify in neutral? [There was no one.] [(Exhibit V) is testimony in the neutral position to Assembly Bill 271 that was submitted but not discussed.] We will close the hearing on Assembly Bill 271.

We will now open the hearing on Assembly Bill 432.

Assembly Bill 432: Establishes provisions governing worker cooperative corporations. (BDR 7-1026)

Assemblyman Jason Frierson, Assembly District No. 8:
I am here to present Assembly Bill 432. Today I have with me Robert Teuton, who approached me with an idea last year regarding the formation of worker cooperatives in the state of Nevada. I thought it was a wonderful idea and got more information. This bill establishes provisions governing worker cooperative corporations. Creating quality jobs is vital to our economic health, and worker cooperatives are value-driven businesses that put workers and community benefits at the core of their actual purpose. We do have a nonprofit version of worker cooperatives, and not one in the rest of our corporate statutes. Worker cooperatives are not new. There was one in Spain that enabled the Basques to lift themselves out of poverty [Mondragon Corporation]—today it is one of the largest corporations in that country.

There was a study done in Spain, and it showed that the worker-run corporations grew significantly faster than those not run by workers. Cooperative workers have the opportunity for substantial employee involvement and training. They also have strong incentives because they have a financial stake in the firm. Essentially, worker cooperatives are equally owned and governed by employees; each of them earns money from the profits of their labor. If they do have struggles within the worker cooperative, they can collectively decide to all take a pay cut rather than have layoffs, because they are all equal owners. This also gives the little guy the opportunity to get into the corporate world.

According to the United States Federation of Worker Cooperatives, the worker cooperatives are currently experiencing a surge in popularity—marked by industry and sector concentrations, and the growth of support infrastructure that includes financing, technical assistance providers, and trade associations at the local, regional, and national levels. The interest in worker cooperatives is on the rise. This is the spirit of letting the little guy in on the action when it comes to corporate opportunities. Small businesses in Nevada act as crucial anchors in their communities. Worker cooperatives can create a stronger base from which a business can continue to exist and even grow.

I am going to briefly go through the provisions of the bill, as well as a conceptual amendment, which was uploaded to the Nevada Electronic Legislative Information System (Exhibit W). Section 2 of this bill provides a legislative declaration concerning worker cooperatives and states that it has a purpose of creating and maintaining suitable jobs and generating wealth. Sections 3 through 10 define members, membership shares, patronage, patronage dividend, quorum, worker cooperatives, and written notice of allocation. These are all important definitions to protect the participants of a worker cooperative and to make sure we are doing it right.

Section 11 of the bill authorizes a private corporation to elect to be governed as a worker cooperative. An existing corporation that is not a cooperative could decide to make themselves a worker cooperative and be governed by the provisions of this bill. Section 12

sets forth various requirements of the articles of incorporation and bylaws. Sections 15 and 16 establish requirements for the expulsion, termination, or suspension of a member, as well as remedies for a member whose membership was expelled, terminated, or suspended. Section 13 establishes the qualifications and duties of the director. Section 14 of the bill provides for a worker cooperative to issue membership shares and other capital stock, and specifies the rights of members and stockholders.

Sections 17 through 24 establish the requirements relating to worker cooperative corporation meetings and notice requirements for those meetings. Section 25 authorizes the board of directors to distribute ballots. These are traditional corporate terms. Sections 26 through 28 authorize the cooperative to declare patronage dividends from net earnings, which is the whole point of the bill—allowing the little guy to get into the game and have a corporate interest. This would also inspire new businesses and new ideas from people who would not otherwise have an opportunity.

Section 29 authorizes the worker cooperative to act as an internal capital account cooperative. Section 30 revokes its election to be governed as a worker cooperative and provides procedures for that. Section 31 prohibits a worker cooperative from merging with another corporation, unless the merger is with another worker cooperative corporation.

Robert Teuton, Managing Director, Higher Integration:
I would like to present the conceptual amendment (Exhibit W). This amendment would add a provision modeled after benefit corporations, *Nevada Revised Statutes* (NRS) Chapter 78B, authorizing the board of directors of the cooperative itself, in the discharge of their duties, to consider the impacts of any action upon: their shareholders; their employees and workforce; the interests of their customers; community and societal factors; the environment; and other factors. As an example, see NRS 78B.150.

I think this conceptual amendment is particularly important because you can think of a cooperative as a type of business structure that provides services to its patrons: a consumer cooperative, its patrons are consumers; a producer cooperative, its patrons are producers; a worker cooperative, its patrons are workers. The benefits it provides to its patrons in a worker cooperative is jobs, benefits, and all the things that come with a good paying job. As such, they should be able to make decisions, taking into account more than just profit in their mere bottom line, because it is an organization that is providing jobs.

I would like to discuss why worker cooperatives are so important to the state of Nevada and why this bill is so important. Worker cooperatives have been used for economic development all over the world, including Spain. Right after the civil war, the Basque region of Spain was completely destroyed—people were having a hard time taking care of themselves. A group of people, led by a priest, came together and made a worker cooperative, which provided jobs and lifted the whole community out of poverty. When economic recessions hit, worker cooperatives act differently than traditional businesses. In a traditional business, they have to make their decisions based on their bottom line—which is, maybe we are going to have to lay off some people. In a worker cooperative, they

collectively decide to cut hours to maintain employment, so when the economy comes back, they have not fired their best workers.

Worker cooperatives tend to pay better—the average salary of a worker cooperative member is $9,000 to $15,000 greater per year. They also have better benefits and they reduce inequality. In an average corporation, the inequality difference between the highest paid and lowest paid person was 303 to 1; in a worker cooperative it is more like 2 to 1. Also important is economic multiplier effects. Worker cooperatives have been found to significantly enhance economic multipliers in the places where they are situated. That is extremely important for states like Nevada that do not have state income taxes, because more people with more money can buy more things, thereby increasing revenue to the state. There are at least 13 other states that have similar provisions. This provision takes into account Subchapter T of the Internal Revenue Code of 1986, which provides significant tax benefits for worker cooperatives. If someone were to follow the steps outlined in A.B. 432, they would also be able to use all of the Subchapter T benefits that are available to them from the Internal Revenue Service (IRS).

Chair Spiegel:
I was a big fan of benefit corporations and I was a cosponsor of Assembly Bill 89 of the 77th Session. What is the difference between a benefit corporation and an employee cooperative?

Robert Teuton:
The difference is that worker cooperatives have a structure, and there are some things that need to be included in the bill, especially to be in alignment with Subchapter T. A worker cooperative is based on one member, one vote; and a corporation is based on one share, one vote. Does that answer your question?

Chair Spiegel:
No, it does not. If you had a benefit corporation, and there were five owners, and each of those five owners had 1,000 shares—they each had 20 percent of the vote. Is there a difference between the two?

Assemblyman Frierson:
A corporation that is required to act for the benefit of the corporation is different than a corporation where the members decide what they want, and what they want might not be necessarily what would be objectively for the benefit of the corporation, but could be for the benefit of the individuals collectively. I think that the one thing that stuck out to me is whether it is a creative endeavor. Even if they have to take a pay cut in order to continue to survive, it is the members that can make that decision without being necessarily tied to what might otherwise be an objective set of criteria.

Robert Teuton:
You could have a benefit corporation that is a worker cooperative now, but not a lot of people understand what a worker cooperative is and that would probably take legal counsel and legal research. A worker cooperative is a corporation with parameters already in place.

Assemblyman Kramer:
Can you describe a typical employee corporation in Nevada?

Robert Teuton:
There is an employee stock ownership plan (ESOP)—it is not a worker cooperative, but it is a casino in southern Nevada. There are bakeries that are worker cooperatives; there are manufacturers that are worker cooperatives. I have heard of small law firms being worker cooperatives, and I have also heard of construction companies being worker cooperatives. It could be any business structure. I think from a business perspective, the best businesses to form a worker cooperative would be anything in the service industry. The research shows the most successful worker cooperatives, compared with corporations that are not completely employee-owned, are businesses in the service industry.

Assemblyman Daly:
It sounds like a worker cooperative is the same thing as an employee-owned business. There are already employee-owned businesses in the state. How would this affect the existing companies?

Robert Teuton:
There are other types of employee-owned ownership formations. There is an ESOP—that is usually for big businesses with lots of money, because every year they have to spend money in business valuation, and money to a trustee. There is about $20,000 of some cost every year to be an ESOP. A worker cooperative is more for smaller corporations that do not have the money to be an ESOP. Any business could be a worker cooperative, but to be a worker cooperative in the eyes of the IRS, they would already have to be in alignment with a lot of these provisions. The bylaws have to follow the structure of A.B. 432, and they would then have to be submitted to the Secretary of State. I spoke with the Secretary of State and the Secretary of State seems to be on board with the bill.

Assemblyman Frierson:
They could be the same, but employee-owned businesses would not have the structural parameters that a worker cooperative would. This bill is intended to create a structure in place that they have to conform to that provides a certain level of security to the employees, whereas the articles of incorporation for an employee-owned business could be this, but it could not be this—this is intended to create a set structure.

Assemblyman Daly:
How does the worker cooperative establish a board? Obviously, there would have to be rules.

Assemblyman Frierson:
It would be up to the worker cooperative to come up with certain details in the bylaws. The essentials for a worker cooperative are the definition of a worker cooperative and the definition of a member. They could come up with bylaws as to how to embrace a new member with the recognition that a member is defined by statute.

Assemblywoman Neal:
In section 27, is book value the same as par value?

Assemblyman Frierson:
You have officially gone beyond my expertise in the area of corporate law.

Robert Teuton:
I have an idea but I am not sure it is right, so I will get that information to you later.

Assemblyman Edwards:
I am curious regarding the set-up of the cooperative. Does everyone have to contribute equal amounts of money?

Robert Teuton:
It depends on the worker cooperative. If everyone agreed the membership share is $2,000, they would all put in $2,000. If another person has more than $2,000, the balance would be reflected in their internal capital account.

Assemblyman Frierson:
I would direct you to section 12. The articles of incorporation or bylaws must establish, among other things, the method of acceptance, expulsion, termination, and suspension of members. It gives the body the flexibility to come up with what would qualify as being accepted, as well as being expelled.

Assemblywoman Neal:
In section 14, what is the reason for the company not being able to be publicly traded?

Robert Teuton:
In order to be publicly traded, those shares come with certain rights. We want to limit those rights to only one voting share per member.

Assemblyman Frierson:
I think that publicly traded corporations have a set of guidelines that they are already regulated by. This is designed to give a group of individuals an option that is not currently under either the Secretary of State's Securities Division, or on the scale of a publicly traded corporation. I think this is really small business-oriented.

Chair Spiegel:
If a worker cooperative were to become a big company down the road and decided it wanted to change the corporate governance structure, knowing that at least 51 percent of the members would have to be employees, would they have the flexibility to change their corporate structure?

Assemblyman Frierson:
I believe that is addressed in sections 30 and 31.

Chair Spiegel:
Is there anyone to testify in support of Assembly Bill 432? [There was no one.] Is there anyone to testify in opposition to Assembly Bill 432? [There was no one.] Is there anyone to testify in neutral?

Scott Anderson, Chief Deputy, Office of the Secretary of State:
We are able to handle any changes internally, if there are any. We do not really see that there will be many changes because most of this affects the governance. I did want to clarify that we are not aware of any conversation with Mr. Teuton. We are neutral on this bill.

Robert Teuton:
I did speak with someone in the Secretary of State's office in September or early October.

Chair Spiegel:
We will close the hearing on Assembly Bill 432. Is there any public comment? [There was none.]

The meeting is adjourned [4:39 p.m.].

RESPECTFULLY SUBMITTED:

_____
Karen Easton
Committee Secretary

APPROVED BY:

_____
Assemblywoman Ellen B. Spiegel, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a conceptual amendment to Assembly Bill 493, presented by Stephanie Woodard, Licensed Psychologist, Senior Advisor on Behavioral Health, Division of Public and Behavioral Health, Department of Health and Human Services.

Exhibit D is a proposed amendment to Assembly Bill 128, submitted by Assemblywoman Lesley E. Cohen, Assembly District No. 29.

Exhibit E is a conceptual amendment to Assembly Bill 128, submitted by Assemblywoman Lesley E. Cohen, Assembly District No. 29.

Exhibit F is a position paper, dated March 27, 2019, submitted by International Association of Rehabilitation Professionals, and presented by Ira Spector, representing International Association of Rehabilitation Professionals, in support of Assembly Bill 128.

Exhibit G is an analysis of Assembly Bill 128, dated March 4, 2019, provided by Brett J. Barratt, Senior Relations Executive, Nevada Council on Compensation Insurance, and presented by Liz MacMenamin, Vice President of Government Affairs, Retail Association of Nevada.

Exhibit H is a letter dated April 8, 2019, in opposition to Assembly Bill 128, to Chair Ellen B. Spiegel, Vice Chair Jason Frierson, and members of the Assembly Committee on Commerce and Labor, submitted by Mark Sektnan, Vice President, American Property Casualty Insurance Association, and presented by Lea Cartwright, representing American Property Casualty Insurance Association of America.

Exhibit I is a conceptual amendment to Assembly Bill 472, submitted and presented by Kimberly M. Surratt, representing Nevada Justice Association.

Exhibit J is the Work Session Document to Assembly Bill 141, presented by Patrick Ashton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit K is the Work Session Document to Assembly Bill 319, presented by Patrick Ashton, Committee Policy Analyst, Research Division, Legislative Counsel Bureau.

Exhibit L is a copy of a PowerPoint presentation titled "Overview – State of Nevada Board of Pharmacy Controlled Substances – A.B. 239", presented by J. David Wuest, Executive Secretary, State Board of Pharmacy.

Exhibit M is a conceptual amendment to Assembly Bill 239, dated April 6, 2019, submitted and presented by Catherine O'Mara, Executive Director, Nevada State Medical Association.

Exhibit N is written testimony dated April 8, 2019, presented by Daniel Burkhead, Private Citizen, Las Vegas, Nevada, regarding Assembly Bill 239.

Exhibit O is a letter with proposed amendments to Assembly Bill 239, dated April 4, 2019, submitted by Kelly Trolia, Private Citizen, Las Vegas, Nevada.

Exhibit P is a packet of information in support of Assembly Bill 239, submitted by Terry Murphy, Private Citizen, Las Vegas, Nevada.

Exhibit Q is a letter with proposed amendments to Assembly Bill 239, dated April 4, 2019, submitted by Rupesh J. Parikh, Comprehensive Cancer Centers of Nevada,

Exhibit R is a letter with proposed amendments to Assembly Bill 239, dated April 3, 2019, submitted by Jet Mitchell, Private Citizen, Las Vegas, Nevada.

Exhibit S is a letter dated March 7, 2019, including a packet of information, in support of Assembly Bill 239, submitted by Sandra Coyle, Private Citizen, Minden, Nevada.

Exhibit T is a letter in support of Assembly Bill 239, submitted by Linda Sipple, Private Citizen, Pahrump, Nevada.

Exhibit U is a conceptual amendment to Assembly Bill 271, submitted by Assemblywoman Sarah Peters, Assembly District No. 24.

Exhibit V is neutral testimony regarding Assembly Bill 271, submitted by Shannon M. Chambers, Labor Commissioner, Office of the Labor Commissioner, Department of Business and Industry, regarding Assembly Bill 271.

Exhibit W is a conceptual amendment to Assembly Bill 432, submitted by Assemblyman Jason Frierson, Assembly District No. 8.