MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Eightieth Session
March 4, 2019

The Senate Committee on Health and Human Services was called to order by Chair Julia Ratti at 4:07 p.m. on Monday, March 4, 2019, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Julia Ratti, Chair
Senator Pat Spearman, Vice Chair
Senator Joyce Woodhouse
Senator Joseph P. Hardy
Senator Scott Hammond

GUEST LEGISLATORS PRESENT:

Senator Joseph P. Hardy, Senatorial District No. 12

STAFF MEMBERS PRESENT:

Megan Comlossy, Policy Analyst
Eric Robbins, Committee Counsel
Vickie Polzien, Committee Secretary

OTHERS PRESENT:

Andrew Schulke, Supervising Senior Deputy Attorney General, Medicaid Fraud Control Unit
John Piro, Public Defender, Legislative Liaison, Office of the Clark County Public Defender
Kendra G. Bertschy, Washoe County Public Defender's Office
Joe Heck, Nevada Osteopathic Medical Association
Linda Anderson, Chief Deputy Attorney General, Attorney General's Office
Braden Cox

Lauren Cox
Rique Robb, Deputy Administrator, Aging and Disability Services Division
Jared Busker, Children's Advocacy Alliance
Penni Echols
Mike Eifert, Executive Director, Nevada Telecommunications Association

CHAIR RATTI: Meeting called to order. We will open the hearing on Senate Bill (S.B.) 60.

SENATE BILL 60: Revises provisions relating to health care. (BDR 40-414)

ANDREW SCHULKE (Supervising Senior Deputy Attorney General, Medicaid Fraud Control Unit):
I am here today, with my colleague Linda Anderson, to present S.B. 60 and will read from my written testimony (Exhibit C), and present the proposed amendments to S.B. 60 (Exhibit D).

CHAIR RATTI:
We see a number of bills moving forward during this Legislative Session to address Community Based Living Arrangements (CBLA). There are others that move CBLA into *Nevada Revised Statutes* (NRS) 449. If we see that happen in another vehicle, is this acceptable to you if that does not happen here?

MR. SCHULKE:
That is our understanding as well.

CHAIR RATTI:
I would also like to make clear that your bill suggests specific penalties for Medicaid fraud, but not the intent of your bill to have that specifically be the penalty, but rather align those penalties with those similar to theft. Therefore, if we make changes to similar penalties for theft we would be seeking an amendment, is that correct?

MR. SCHULKE:
That is correct.

JOHN PIRO (Public Defender, Legislative Liaison, Office of the Clark County Public Defender):

Our issue with S.B. 60 deals with section 15 and those criminal penalties without looking at the potential for things to change. This will raise the penalty to a Category B, punishable by 1 to 10 years. We recognize the Attorney General's Office has said should any similar criminal justice reform bills pass during the session, they will align their penalties.

CHAIR RATTI:

Is it fair to say if reform moves forward during this Session and reduces the penalty for theft, and this bill aligns with that reform, that might change your position?

MR. PIRO:

Yes it would. That would be data-backed criminal justice reform. This is just upping penalties in our opinion.

KENDRA BERTSCHY (Washoe County Public Defender's Office):

I echo the statements of Mr. Piro. Our objection is regarding sections 15 and 16 for the reasons he stated. It is increasing penalties, as well as information we received through the data-driven studies. It also indicates the monetary amount should be increased.

JOE HECK (Nevada Osteopathic Medical Association):

The Nevada Osteopathic Medical Association (NOMA) fully supports the Committee and the Attorney General's efforts to regulate the CBLA and combat Medicaid fraud for the provisions outlined in the legislation.

We do have concerns with the requirements for fingerprints and background checks as currently proposed in section 14. We do not oppose the need for fingerprints and background checks in principle. The vast majority of health care providers in Nevada already undergo fingerprinting and background checks as required by statute as a condition of professional licensing.

Senate Bill 60 does not clearly provide an exception to what would be a duplicative action for those health care providers who have previously submitted fingerprints, and undergone a background check by their respective licensing board. Section 14, subsection 1, paragraph (b), subparagraph (2), provides for the submission of a written verification from the provider that fingerprints were obtained and directly forwarded to the central repository for the purposes of completing a background check. It is not clear this includes the fingerprints and background checks completed by the licensing boards.

While the Attorney General's Office recently submitted amendment changes, the requirement from "must" to "may" makes me wonder who, as a provider, would voluntarily submit the fingerprints. NOMA respectfully requests the Committee consider amending S.B. 60 to clearly and definitively state that health care providers, who have submitted fingerprints and undergone background checks as a condition of professional licensure, are exempt from the provisions of section 14.

LINDA ANDERSON (Chief Deputy Attorney General, Attorney General's Office):
The purpose of the amendment as a "may" as he suggested is to allow much more flexibility as to when Medicaid would request background checks. It is not the intent to have duplication when background checks have been done. However, in order to ensure reimbursement from Medicaid, background checks are often required. The purpose of the amendment to S.B. 60 was to allow Medicaid to have the opportunity to perform the background check if there was no other background check in place.

CHAIR RATTI:
When the bill was presented, and as I understood the expansion, the focus was on CBLA and Medicaid fraud. When we talk about the background check being expanded to all provider types, I was thinking all congregate living provider types. Is the intent to include all provider types that bill Medicaid?

MS. ANDERSON:
The purpose of S.B. 60 was to give Medicaid the ability to conduct background checks. The reason for putting "may" in place of "must" was in the event a background check had not been done for any other health care provider. We agree with Dr. Heck that in most cases health care providers who would be seeking Medicaid reimbursement will already have had a background check. There is no intent to create any type of duplication. If an individual had not had a background check and wanted to seek Medicaid reimbursement, and we see an extension in the behavioral health area of more providers wanting to onboard to seek Medicaid reimbursement, we wanted to give Medicaid the option of providing background checks. In order to do that they need a statutory authority to conduct.

MR. SCHULKE:
I believe Ms. Anderson has explained the intent behind the background section. This bill gives the ability for Nevada Medicaid to have access to, and screen, the records of the providers that might not necessarily be covered under NRS449, or those not specifically covered by a professional background check.

CHAIR RATTI:
Would it be fair to say your intent of the "may" is to allow Medicaid, through regulatory authority, to decide there may be other categories of providers they would like to add background checks for?

MR. SCHULKE:
That is correct. The "may" would allow Medicaid the ability to get the information for the providers not necessarily covered statutorily by NRS 449, but could be Medicaid providers and those providing those services.

CHAIR RATTI:
If Medicaid identified a category of providers they felt should have a background check, once they put that into the regulatory process, an individual provider would not be able to opt in or out, the "may" does not apply to them.

MS. ANDERSON:
If that provider wanted to seek Medicaid assistance, yes, they would have to have a background check completed. The "may" allows the statutory authority for Medicaid to conduct background checks as the federal government will not accept regulation as an authority for seeking a background check. It has to be in statute.

CHAIR RATTI:
I am going to ask our legal counsel if they feel the way the bill is crafted now is matching the intent, or if there is still work to be done on the amendment.

ERIC ROBBINS (Committee Counsel)
We would, knowing the intent behind the amendment, more than likely draft it differently.

CHAIR RATTI:
We will close the hearing on S.B. 60 and open the hearing on S.B. 222.

SENATE BILL 222: Revises provisions relating to persons with disabilities. (BDR 38-74)

SENATOR JOSEPH P. HARDY (Senatorial District No. 12):
Senate Bill 222 had its genesis when I visited one of my high school students from Moapa Valley, Nevada, who is married and has a family. I realized the hearing deficit his children experience was shared congenitally.

It became apparent people of limited income will have a difficult time obtaining hearing devices to help them in their process. This bill is designed to perhaps focus on the already existing law that is a surcharge for not more than 8 cents per month on each access line, for each customer of a local exchange of a telephone company.

In as much as children take priority in life, what can be done to grant such a priority? Senate Bill 222, section 1 speaks to providing hearing aids for children who are hard of hearing. The remainder of the bill conforms to this priority.

Section 3, subsection 2, requests the Aging and Disability Services Division to develop and administer a program whereby any child whom the Division determines is hard of hearing, may apply to obtain a hearing aid at no charge if the child resides in a home in which the household income is at or below 205 percent of the federally designated level signifying poverty.

Jared Busker provided a graph showing a family of four at 200 percent federal poverty level; you would be making $50,200 a year in order to qualify. I have asked the Cox family from Nevada to speak as to the need for S.B. 222 and why we would like to do something for children with hearing disabilities.

BRADEN COX:
Today I have with me our son, Case, he is three years old and wears hearing aids. My wife Lauren and my youngest son Miles are also with me today. I wear hearing devices myself and remember as a child my mother talking about how expensive my hearing aids were. I come from a family of nine, so it was a challenge for me to get hearing aids, and they cost my family quite a bit of money. I later found when my son tested with a significant hearing loss, I had the same concerns my parents had. How are we going to afford hearing aids?

Fortunately, we were able to find the resources to obtain hearing aids for our son. Once we were able to accomplish this, it significantly improved his ability to hear us, benefiting his safety, learning and various other things. I have to work, so fortunately my wife is able to stay at home with the children. Given Case's health issues and various needs, she has been tenacious about meeting with different people and making the connections possible to get him the help he needs.

I have met and had conversations with other families who are not as lucky. They do not have the same connections, the same resources available to them. Ultimately, what we have found is there is a significant gap between the responsibility of a government being able to help their citizens and families, and receiving that help when it comes to the youngest members of Nevada. I was born here, am raising my family here, and it was frustrating moving from Colorado to Nevada in order to take care of my family and seeing this gap.

I am grateful to reconnect with Senator Hardy and grateful for his efforts presenting this bill to correct the issue. This bill will help children obtain hearing aids ensuring there is more access to community programs which can help these families. My wife found the assistance and guidance we received from the Deaf Centers of Nevada. Having had conversations with the previous director of that organization, I found there was a lot of difficulty in permanently obtaining funding for help. It is one thing giving children hearing aids; it is another to allow an organization to have the tools to grant language and teach parents and siblings American Sign Language (ASL).

It has been exceptionally challenging for us to juggle the responsibilities of being parents, along with learning a new language in order to communicate with our son. Trying to be the best parents we can requires us to constantly learn new things. We found we were on the bottom of a waiting list of 80 people looking for assistance. Fortunately, because of my wife's ability to make the connections she did, we were able to cut in line and get services through the Deaf Centers of Nevada. We know there are those who are still waiting, and it has been heartbreaking to see other families struggle through that. We know this bill can help rectify that.

SENATOR SPEARMAN:
Your wife explained to me, when I was fortunate to have met her, that before Case is 10 years old he will lose most of his hearing, is that correct?

LAUREN COX:
That is correct. The hearing loss he has is genetic and progressive. From our experience with the genetic side, it does change with each member of the family. As far as we can tell, in Case's situation his hearing loss is worse than his father's loss was at his age. He is losing his hearing a little faster than his father.

SENATOR SPEARMAN:
Without this legislation or similar legislation, what might be the outcome for your family?

MS. COX:
Because of the wonderful help we have received from the Deaf Centers of Nevada, we have been able to learn ASL in order to communicate with Case and others in the deaf community. Without the Deaf Centers of Nevada we would be on our own to learn about the deaf community, which is a whole new game for us. It is not easy to pay for extra schooling in order to learn these new things, which is why the Deaf Centers of Nevada is so valuable for our family. It is important for them to have the funding they need so they can continue to be a support for families such as ours.

MR. COX:
It is one thing to provide hearing aids for children and assistance to the families; it is another to put them on the path to successful communication, whatever those needs may be. I believe S.B. 222 will greatly expand the ability of the State to help our youngest members, to give them every opportunity they can to succeed. I was fortunate to receive the help I did when I was young, and I hope to be as successful as my parents were to provide the best for my son.

CHAIR RATTI:
You have identified a funding source in this bill. As is with all funding sources, this one is paying for other things at this time. What is it currently paying for; are we giving up anything else to get this support?

SENATOR HARDY:
The fiscal note is $8 million for a biennium. I do not know how much of that is available, or not available, for other things. I would defer to the fiscal group to answer that question.

CHAIR RATTI:
Section 3, subsection 2, states the Division shall establish by regulation the manner in which a person may apply to receive a hearing aid, and applications must be approved to the extent money is available in the order in which the applications are received. It appears the direction the Division has given is each year they will set an amount. There will be the line of folks who apply and we will award service until the money is gone, and others will wait until the next year to apply. Is the $8 million what it would cost to fund everyone in that income range?

RIQUE ROBB (Deputy Administrator, Aging and Disability Services):
Based on the fiscal note for how the current bill is written, this is for birth to 18 years of age and would be within the Telecommunication Device for the Deaf (TDD) surcharge, which is where we were directed to review. Depending on funding, because there is a cap of 8 cents, this is where the limitations could potentially come; we are currently at 6 cents. The challenge with the budgeting piece on the TDD surcharge is that we are always two years in arrears. We are waiting for the 2019 budget from our February 1st submission. The funding, if utilized through the TDD surcharge, is based on the availability of funds.

CHAIR RATTI:
My understanding is that if you qualify for Medicaid, you have a hearing aid covered. The 205 percent poverty limit on this bill is taking that next level above qualifying for Medicaid up to 205 percent, costing $8 million to cover the gap from birth to 18 years of age.

MS. ROBB:
Yes, that is correct.

CHAIR RATTI:
This does not mean we will jump right to $8 million. As it is written, each year you would work to establish the numbers. Who is on the Telecommunications Committee, how do they set their funding and how is it allocated?

MS. ROBB:
With the 8 cent cap, our budget is submitted to the Deaf Centers of Nevada, or a grantee of a similar sort, to provide those deaf and hard of hearing services it submitted to the Public Utilities Commission (PUC). The PUC sets the rate based on the budget requested for all services. We have the relay contract directed by

NRS 427A. That is how the amount is determined. We are currently at 6 cents. We have not received confirmation from the PUC to determine whether it will be up to 7 cents, or remain at 6 cents for this year's budget.

CHAIR RATTI:
Right now you are using 6 cents and you have put in a budget for all of the qualifying services for the following year. They will come back with whether they will stay with 6 cents or bump it up to 7 cents. If you add this into the next year's planning process, they could come back and say that will take us to 8 cents and still may not be able to meet the entire need. Is the 8 cent cap set in statute?

MS. ROBB:
Yes that is all correct. The 8 cent cap is set in NRS 427A.

SENATOR SPEARMAN:
We have heard there are other bills proposed to pay for the Executive Director position for the Commission for the Deaf and Hard of Hearing. How would those two bills either interact or impact each other?

MS. ROBB:
They would be competing for the same funding based on how both bills are currently written.

JARED BUSKER (Children's Advocacy Alliance):
During the interim we worked with advocates and families to look at the high cost of hearing devices and the financial burden these devices place on those families. The Children's Advocacy Alliance has proposed two conceptually friendly amendments (Exhibit E) to S.B. 222. I have a handout (Exhibit F) outlining the reasoning behind the amendments.

PENNI ECHOLS:
I am here in support of S.B. 222. My daughter is four years old and she is deaf and blind. She benefits from the use of hearing aids. She receives Nevada Medicaid as a participant in the Tax Equity and Fiscal Responsibility Act income waiver program (TEFRA)/Katie Beckett as she has additional medical needs beyond her vision impairment and hearing disability. This bill could potentially open access to another handful of families to make use of hearing aids for their children, including steps for language acquisition. Not all children benefit solely

from the use of hearing aids; alone they do not provide equal access to spoken English. My daughter requires American Sign Language to understand what happens around her. This legislative term has huge potential to change the lives of the deaf and hard of hearing individuals in Nevada.

MIKE EIFERT (Executive Director, Nevada Telecommunications Association):
The Nevada Telecommunications Association (NTA) rises in the neutral position as its members do not oppose hearing aids for children of low-income families. The NTA does oppose diversion of the TDD funds for purposes the funds were not established to support. The NTA believes legislative intent is unequivocally clear that any funding generated by the TDD surcharge can only be used for telecommunications equipment and related services. This position is supported, given the requirement to fund the TDD which appears within the sole statute under the subheading entitled Program to Provide Devices for Telecommunications to Persons with Impaired Speech and Hearing. It appears Nevada has turned to telecommunication surcharges to fund things that divert the funds.

Last Session we dealt with a diversion of 911 surcharges that now has us on a list of six states the Federal Communications Commission is monitoring to divert 911 surcharges for things they were not intended to do. This Session we have two new bills that are asking for more money from the 911 surcharge. Diverting funds for any other reason is simply bad policy, lacks transparency, undermines public competence in elected officials and was not the legislative intent when the Nevada Legislature codified the TDD program in 1985.

I would also like to clarify items mentioned earlier. Last Friday, the PUC ruled on the TDD surcharge for State Fiscal Year 2020. They kept the surcharge at 6 cents.

I heard discussion about the cap and what can be done inside the cap. Clearly, if this was not capped, we would be looking at a significant tax increase. If I were to apply the revenues generated by one cent to the $8,123,000, we are talking about an additional 20 cent TDD surcharge. I am unsure if the $8,123,000 was derived using the 205 percent above the poverty level; I suspect it was. If we apply the 400 percent above the poverty level, I also suspect the $8,123,000 will go up significantly. If we are looking at a tax increase, I believe this bill should be looked at as requiring a two-thirds majority to pass in both houses.

The Commission for the Deaf and Hard of Hearing is dedicated to working for the deaf community. It is comprised of the deaf, and they are working on a strategic plan that has been developed by the deaf. That plan lays out the goals and aspirations of the deaf over the next five years, and then will be perpetuated. Hearing aids are needed for children; there are lots of things needed for the deaf community. At this moment, the priorities set for the deaf community do not include hearing aids for children. It is in the five year program under advocacy for policy change in 2021. I only mention this, as to the best of my knowledge, the Commission for the Deaf and Hard of Hearing was unaware this bill was going to be brought forward. It is only respectful, that if we wish to make changes for the deaf, we come to the Commission that was established for Nevada and let them know what we would like to do with their TDD surcharges.

CHAIR RATTI:
What is the value of one cent of TTD money?

MR. EIFERT:
That fluctuates. My understanding is the PUC typically looks at between $420,000 and $430,000 per cent.

CHAIR RATTI:
One cent is less than $500,000?

Mr. Eifert:
Yes, that is correct.

CHAIR RATTI:
Are you aware currently of the 6 cents we are collecting, and the way the funding is awarded in the plan referenced by an earlier speaker? Is there anything we are currently doing that is beyond the limited scope you are supporting, the telecommunication specific assistance?

MR. EIFERT:
We had this discussion in 2015. At that time there was discussion around expanding the program in the deaf centers. A number of court actions were taking place and actually went to the Supreme Court. At that time the Supreme Court saw deaf centers could use funds for what they deemed necessary for

the deaf. The industry entered into negotiations with the Legislature, in good faith, and this is where the 8 cent cap was instituted.

To the best of my knowledge, the previous speaker described the expenditures fairly well. There are centers in Las Vegas and in Reno providing an invaluable service to the deaf. They are the focal point for the deaf in this State. The relay service, an operator intercepted call, goes without saying, and are fully funded under that 6 cents.

CHAIR RATTI:
I want to be clear of your opposition. I heard you state your association is against TDD funds being used for anything outside of telecommunications assistance. Then I heard you say in the negotiations that followed the 2015 legislation, you agreed as long as it stayed capped at 8 cents, use it for whatever you want.

MR. EIFERT:
We are comfortable with the negotiated 8 cent cap and the centers use that money. We are not in opposition to the use of the 8 cents as it is being used today. We are in opposition to diverting above, and further from, what we negotiated in good faith with the State.

SENATOR HARDY:
Telecommunication is an interesting thing. We have come a long way since 1985 and we are a Legislature that can change laws. This is a time, when and if I had $400,000, I would say "what can I do with it"; how many children can I help would be the question this Committee has to answer.

CHAIR RATTI:
Testimony in support of S.B. 60 was sent to the Committee by Ms. Emerson to be added to the record (Exhibit G).

I will close the hearing on S.B. 222.

Seeing no further business, we are adjourned at 5:04 p.m.

RESPECTFULLY SUBMITTED:

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Vickie Polzien,
Committee Secretary

APPROVED BY:

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Senator Julia Ratti, Chair

DATE:______________________________________

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	7		Attendance Roster
S.B.60	C	3	Andrew Schulke/ Supervising Senior Deputy Attorney General, Medicaid Fraud Control Unit	Written Testimony
S.B.60	D	21	Andrew Schulke/ Supervising Senior Deputy Attorney General, Medicaid Fraud Control Unit	Proposed Amendments
S.B.222	E	1	Jared Busker/ Children's Advocacy Alliance	Amendment Request
S.B.222	F	2	Jared Busker/ Children's Advocacy Alliance	Reasoning for Amendment Request
S.B.222	G	1	Candace Emerson	Written Testimony