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

Eighty-First Session
May 3, 2021

The Committee on Commerce and Labor was called to order by Chair Sandra Jauregui at 1:04 p.m. on Monday, May 3, 2021, Online and in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, 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/81st2021.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Sandra Jauregui, Chair
Assemblywoman Maggie Carlton, Vice Chair
Assemblywoman Venicia Considine
Assemblywoman Jill Dickman
Assemblywoman Bea Duran
Assemblyman Edgar Flores
Assemblyman Jason Frierson
Assemblywoman Melissa Hardy
Assemblywoman Heidi Kasama
Assemblywoman Susie Martinez
Assemblywoman Elaine Marzola
Assemblyman P.K. O'Neill
Assemblywoman Jill Tolles

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Joseph (Joe) P. Hardy, Senate District No. 12
Senator Roberta Lange, Senate District No. 7
Senator Heidi Seevers Gansert, Senate District No. 15

STAFF MEMBERS PRESENT:

Marjorie Paslov-Thomas, Committee Policy Analyst
Sam Quast, Committee Counsel
Terri McBride, Committee Manager

Louis Magriel, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Daniel Pierrott, representing Nevada Academy of Physician Assistants
Carmella Downing, Private Citizen, Carson City, Nevada
David Dazlich, Director, Government Affairs, Vegas Chamber
Susan Fisher, representing State Board of Osteopathic Medicine
Keith Lee, representing Board of Medical Examiners
Serena Evans, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence
Joseph Jakubiec, Private Citizen, Las Vegas, Nevada
Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry
Phil Jaynes, President, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local No. 720
Kent Ervin, representing Nevada Faculty Alliance
Rob Benner, Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada
Marlene Lockard, representing Service Employees International Union Local No. 1107
James Kemp, representing Nevada Justice Association
David White, Co-Chair, Council on Government Affairs, Nevada Dental Association
Richard Dragon, Co-Chair, Council on Government Affairs, Nevada Dental Association
Stacie Sasso, Co-Chair/Director, Health Services Coalition
Maya Holmes, Healthcare Research Manager, Culinary Health Fund/UNITE
Helen Foley, representing Delta Dental

Chair Jauregui:
[Roll was called. Committee protocol and rules were discussed.] On today's agenda we have four bills for hearing. I will be taking those in numerical order for those of you who are watching and would like to know where your bill will be heard. With that, we will open the hearing on Senate Bill 184 (1st Reprint). I believe we have Senator Hardy here to present it. Senate Bill 184 (1st Reprint) revises provisions relating to the practice of medicine.

Senate Bill 184 (1st Reprint): Revises provisions relating to the practice of medicine. (BDR 54-25)

Senator Joseph (Joe) P. Hardy, Senate District No. 12:
Senate Bill 184 (1st Reprint) is designed to get more access. That is one of the things we are interested in doing. It basically does two things. It allows a physician—medical doctor (MD) or doctor of osteopathic medicine (DO)—to apply for licensure in the state of Nevada

after two years of postgraduate medical education. Then, for foreign graduates other than those from Canada—because the U.S. and Canada are pretty similar—it is after three years of postgraduate medical education.

The other parts of the bill largely deal with physician assistants and what they would propose to be doing. When I look at the bill, it looks at *Nevada Revised Statutes* (NRS) Chapter 630, which is the MD portion of the NRS, and NRS Chapter 633, which is the DO portion of the NRS. Physician assistants (PAs) are now in a position where they are supervised by either an MD or a DO, and many times they are supervised by either/or. What this will do is allow the PA to simultaneously apply to both the Board of Medical Examiners and the State Board of Osteopathic Medicine. That way, there will be a seamless opportunity to be supervised by either one.

Right now, they can be supervised by either one. But with the simultaneous application to be in the Boards, they will have to pay less than they are paying now because they will pay half price for one Board and half price for the other Board if they want to do a simultaneous application for the Boards. What the bill does, then, is allow the physicians to have a volunteer aspect of it.

I go back to what the emergency declaration of the Governor did where he opened the door, basically, for all medical practitioners and mental health practitioners. That was a huge opportunity we had to recruit, so if somebody automatically came into the state, we could say, Now you can do what you need to do during this emergency time. It gave us the opportunity to recruit.

In the state of Nevada, depending on what day it is, we are one of four to five other states who require a three-year residency in order for the MD or the DO to be able to practice. That means there are 27 states that have a one-year requirement after medical school of training or postgraduate medical education, and about 16 states that require two years. After my second year of residency, I was able to get full license in the state of Arizona, for instance. I was able to practice medicine.

This will actually open up the door for one year after medical school and two years after medical school to come and practice in the state of Nevada and give us a pool of candidates that we can recruit from. The physician assistant issues are the bulk of the bill. I would be happy to answer any questions that you may have.

Chair Jauregui:
Committee members, any questions?

Assemblywoman Carlton:
If you could just expand on why you think it should be two years of postgraduate medical education rather than three years. I actually remember when we did the three and we had conversations about three years. I noticed you are keeping it three for those outside of the

country but two for in. Is there a difference in the educational level? Do they complete more classes within those two years? Why are you proposing to change it to two years?

Senator Hardy:
I think it was in 1985 that we went to three years. Since then, the world has changed, but it probably has not changed as much as we would like for foreign medical graduates. For yes, they probably do not have as much experience coming out of medical school as those in the United States or Canada. That is why the three-year requirement is still kept for the foreign medical graduates, to make certain that they have the training they need to get up to par, as it were, with those in the United States or Canada.

Assemblywoman Carlton:
Is there anything in this legislation—I tried to read through it—that changes the supervision level of PAs? Or is it just who can supervise?

Senator Hardy:
What we did is look at what the PAs do in reality now. All the things related to numbers, how many and how you do it, would be up to the Boards more than it would be in this statute. This statute looks at the Boards being able to make those decisions about how many PAs a person supervises. This does not get into the weeds, I will call it, as to how many people they can supervise.

Assemblywoman Carlton:
Maybe I am not remembering correctly, but do we not currently set that in statute?

Senator Hardy:
That is currently in statute.

Assemblywoman Carlton:
So we are going to let the Boards make the public policy decision of how many they can supervise.

Senator Hardy:
Yes. The thing we are finding with PAs is they are probably as well trained and educated as some of our other practitioners. We are looking at the reality of what a PA can do and their training. The ultimate responsibility is on the doctor who is going to be the one supervising them.

Assemblywoman Carlton:
Well, Senator Hardy, you just lost me there because that has been an issue in this building for probably as long as I have. I have concerns about handing that over to a board. We have seen some boards have some real issues, and I think the Legislature should still set some type

of parameter for public safety's sake. We have had folks come in here and say that they want to supervise folks, and they could have been 100 miles away. I just have some concerns about that. I will have to have more conversations with the Boards on that to see where they are going. That is really opening up a big door.

The one I am confused about is section 11. You have NRS 630.047 and that the chapter does not apply to—I believe that refers back to the practice act—and you are including the performance of medical services by a student. In essence, does this state on page 6 under section 11, subsection 1, paragraph (l), that PA medical students will not be under the supervision of a board if they are performing something in an educational realm? Are they going to be giving treatment to the public and not be under the Boards' jurisdictions? What are you actually trying to fix with that particular section?

Senator Hardy:
We are fixing it both in the DO section and in the MD section. This one you are talking about is in the MD section. This clarifies that the performance of medical services by a student is still going to happen, but it is going to still be under the auspices of the physician.

The student is not going to be doing things in and of himself or herself, but this clarifies the reality of the Accreditation Review Commission on Education for the Physician Assistant, Inc., for instance, to make sure that students have the ability to be a part of the medical team and take care of patients. That is what this is doing. Then, the physician assistant is likewise doing clinical things and they are still under the auspices or direction of the physician. That language is duplicated further on under NRS Chapter 633.

Assemblywoman Carlton:
So, the physician assistant will still have to be under the supervision of an actual doctor? Or will they just be under the supervision of the educational program? I know in the past we have had conversations about PAs going out and doing volunteer work with Remote Area Medical and things along that line without having that direct supervision. Will they still have direct supervision under this?

Senator Hardy:
Short answer: Yes, they have to.

Assemblywoman Carlton:
And it does repeat in the other section [section 30, subsection 1, paragraph (e)]. I am assuming the same answers move true in the same way.

Senator Hardy:
Right. There is comporting language.

Assemblywoman Tolles:
Thank you for bringing this bill forward. I had a constituent reach out to me in appreciation for this bill. I always love getting that direct contact. I wanted to direct our attention to

section 16, subsection 1. If you could just walk us through it to clarify and make sure my understanding is correct. We have two new additions, first for an application for and issuance of a simultaneous license as a physician assistant capped at $200, and then the biennial simultaneous registration of a physician assistant capped at $400.

Would that be in addition to the initial licensure as a physician assistant, or is that instead of? Today, currently, would they have to pay, for example, two $400 fees, and this is just saying that if you are adding on the second one, you get a discounted rate at $200? Could you just walk me through those fee caps and how that works in application.

Senator Hardy:
On page 12 in lines 39 through 43, if the physician assistant, for instance, does not want to do a simultaneous registration, they would be paying $400 instead of $200 to the State Board of Osteopathic Medicine under NRS Chapter 633, or they would be paying $800 for the registration under NRS Chapter 630. In other words, the issuance is less and the biennial registration is less for the physician assistant if they do a simultaneous registration. They get two Boards at half the price.

Chair Jauregui:
Committee members, any other questions? [There were none.] I do have a couple of questions, Senator Hardy. What my colleague, Assemblywoman Tolles, asked just triggered a question. We are giving them two Boards for half the price to encourage them to register and license with two Boards. Are these new fees?

Senator Hardy:
No.

Chair Jauregui:
Are you bringing these fees in from somewhere else, or are they in there already?

Senator Hardy:
They are in statute now, Madam Chair, but they are basically twice as much. If you went to one Board, it would be $400; if you went to the other Board, it would be $800. That is my understanding.

Chair Jauregui:
I started writing it down and I did not write it down fast enough. Could you walk me through again—you said that there were 16 states that had moved to two years of residency? Was that correct? Or was it 14 states?

Senator Hardy:
As I said, sometimes it changes. Right now, there are at least 14 states with two years. Some graphs will tell you 16 states with two years.

Chair Jauregui:
And the remainder of them continue to have the three-year residency?

Senator Hardy:
I am glad you asked that question. No, there are only five states that require three years. The rest of them—27 states, as it were—would be one year. What we are doing with this bill is we are allowing people to have easier access to get into the state of Nevada. If you do the math, the easier access to get into the state of Nevada for a physician is still perhaps a little more onerous than for some of the other care providers.

Chair Jauregui:
I am just going to ask one last question. I do not know if this is information that you have, but have the 27 states that have reduced the residency to one year seen greater numbers of doctors heading in that direction and coming to their states, as opposed to the five states with three years or the 14 states with two years?

Senator Hardy:
There are some states—for instance, I think it is in Missouri or Kansas, on that border—that have what we call assistant physicians. They just take the physician out of medical school and, under the direction of a physician, have that person with a license.

I think it is kind of the opposite. I do not think people have moved back to one year as much as we leaped forward to three years. I do not think other states are going back to one year as much as we, California, Arkansas, Maine, and South Dakota, at the latest count, went to three years. The majority of states are at one year of postgraduate medical education. Then there are a significant number at two years, which is what I am proposing. Three years is for the vast minority of states.

Chair Jauregui:
I know I said that was my last question, but I do have one more. It was three years for residency, and you are proposing to take it down to two years. It would be three years for postgraduate residency training at foreign schools. What was it before?

Senator Hardy:
When we went, in 1985, to three years—I believe I was around then—it was a one-year requirement, and so we went to three years. The theory was that if we go to three years, we will focus on quality because we had enough quantity. Now we are desperate.

All the time, I have somebody ask if I recommend a doctor. I may recommend a doctor, and they will say the doctor is filled up and is not accepting new patients. I hear that over and over and over. The reality is they might not be able to get in to see a doctor, but they have other options they pursue, such as nurse practitioners. It is a time when we need more doctors, and this is one venue to do it.

Chair Jauregui:
I do not think I asked my question correctly. For section 2, subsection 1, paragraph (b), where it is requiring three years of residency for those who maybe did their schooling outside of the United States, what was it before? Has it always been three years residency as well for those who maybe received their education outside of the United States?

Senator Hardy:
Yes.

Chair Jauregui:
Committee members, last call for questions? [There were none.] Is there anyone on Zoom? I did see someone registered; do you have anyone on Zoom, Senator Hardy?

Senator Hardy:
There was going to be a physician assistant, but I do not see that physician assistant on your Zoom.

Chair Jauregui:
I do not see them either, so then we can go ahead. Is there anyone in Carson City wishing to provide testimony in support of Senate Bill 184 (1st Reprint)? [There was no one.] If there is anyone on Zoom, would you please turn on your camera. [There was no one.] Can we please check the telephone line for those wishing to testify in support of Senate Bill 184 (1st Reprint)?

Daniel Pierrott, representing Nevada Academy of Physician Assistants:
[Mr. Pierrott read from written testimony submitted to the Committee, Exhibit C.] I am testifying today in support of Senate Bill 184 (1st Reprint) on behalf of my client, the Nevada Academy of Physician Assistants (NAPA). Founded in 1977, NAPA's goal is not only to improve the quality of health care by increasing accessibility throughout the state but to also give a voice to the physician assistant profession through education and advocacy. With 1,200 PAs working in every facet of the medical industry, we are determined to bring high-quality health care to Nevadans.

As frontline workers during the COVID-19 pandemic, now more than ever we need to take swift action to improve our health care system. One solution we see is passing legislation on physician assistants. As a rapidly growing profession, we firmly believe that S.B. 184 (R1) streamlines PA licensure and best practices. This legislation will pave the way for additional regulations that will, in turn, better the health care system in the state of Nevada. We would like to conclude our remarks by thanking the bill sponsor for bringing S.B. 184 (R1) forward. Thank you for your time and consideration of this important piece of legislation.

Carmella Downing, Private Citizen, Carson City, Nevada:
I am a practicing physician assistant and an active member of the Nevada Academy of Physician Assistants. I am testifying today in support of Senate Bill 184 (1st Reprint). I have been practicing medicine for almost 13 years. Since then, my love for health care and

patient care has only grown. As a frontline worker during the COVID-19 pandemic, we need swift action now more than ever to improve our system. One solution is passing legislation on physician assistants. I firmly believe that S.B. 184 (R1) streamlines PA licensure and best practices. This legislation will pave the way for more regulations that, in turn, will better the health care system in the state of Nevada.

David Dazlich, Director, Government Affairs, Vegas Chamber:
We would like to thank Senator Hardy for bringing this bill and for all the long hours of work he put in on the Southern Nevada Forum's Committee on Healthcare. This bill responds to one of the identified priorities from the Forum's Committee on Healthcare, namely expanded access to care providers within the state of Nevada. I would like to echo some of the comments made by the physician assistants and their association. I would urge your support for S.B. 184 (R1).

Chair Jauregui:
Is there anyone in Carson City wishing to testify in opposition to Senate Bill 184 (1st Reprint)? [There was no one.] Seeing no one signed in on Zoom, can we please check the telephone line. [There was no one.] Is there anyone in Carson City who would like to testify in the neutral position on Senate Bill 184 (1st Reprint)?

Susan Fisher, representing State Board of Osteopathic Medicine:
We are neutral on the bill now. I would like to thank the bill's sponsor. We did have some concerns with the bill as it was originally introduced. He did consider our concerns and make some revisions.

There is one section that we do still have a concern on, and that is on waiving the inactive fees. We currently have 49 inactive physician assistants. They have put their licenses on inactive status. So that would be an $8,000 hit to our budget, but if that is the will of the Committee, we will learn to adjust.

Chair Jauregui:
Committee members, any questions?

Assemblywoman Carlton:
On the Board's side of this, how many PAs can an osteopathic physician currently supervise?

Susan Fisher:
Three.

Assemblywoman Carlton:
With giving the Board the opportunity to make that change, what type of work would the Board do, such as a time study, to understand how many folks they can physically supervise? What would the process be that the Board would look at moving forward if they were allowed to set this regulatorily?

Susan Fisher:
We do have ours set in our regulations now, I believe. That is where it is set at three.

Assemblywoman Carlton:
But under this legislation, the Board would be allowed to change that number without input from the Legislature. So as a Legislature, we are looking for an answer to how you would decide. Would it be five? Would it be ten? What would the proximity be? I mean, what type of criteria would the Board start to look at in changing it from three? The Legislature set it at three, so if you were going to change it, what type of criteria would you come up with to be able to make sure that public safety was still there?

Susan Fisher:
I cannot answer that because I am not in our Board members' heads, but I sit in on all of our meetings. In the conversations that I have heard, they are very firmly set on the number three. They have had proposals come before the Board to expand the number, and they have been adamantly opposed to it.

They have discussed direct supervision. They are very emphatic about having direct supervision. There are times, sometimes in rural situations, where the physician may not be right in the facility, but that is where the chart review is a very important piece of it. That is one area of the proposed bill where Senator Hardy did make a concession for us because it was limiting the chart review. We did not want that limited. They should be checking charts all the time, all the way through, not just for a certain time period for PAs.

Chair Jauregui:
Is there anyone else in Carson City wishing to provide testimony in neutral? [There was no one.] Mr. Lee, are you here on behalf of the Board of Medical Examiners? I know we have Committee members with questions for you.

Keith Lee, representing Board of Medical Examiners:
I submitted my statement in neutral [Exhibit D] and was not intending to come forward, but I would be happy to try to answer any questions that the members of the Committee may have.

Assemblywoman Carlton:
What number does the Board of Medical Examiners currently have as far as PAs go with supervision?

Keith Lee:
I believe it is the same as the State Board of Osteopathic Medicine, but I will get back to you on that. I am not absolutely confident about that. I remember one time there was a discussion, or at least some back and forth going on, about increasing it above three to maybe as many as nine. However, I think that never went anywhere. I am not really sure, but I will get back to you, Assemblywoman Carlton and members of the Committee, on what that current number is.

Assemblywoman Carlton:
If I could ask you the same question along the lines that I asked Ms. Fisher. I am not trying to sideswipe you, but if you would discuss what types of policies and procedures the Board would put into effect in order to evaluate what that number would be. As I shared earlier, I am quite uncomfortable with opening the door and letting a board decide. I think we set these parameters for a reason. I would like to understand the Board of Medical Examiners' view on this, if they have taken an opinion on this, and where they think they might go in the future if this were to pass.

Keith Lee:
I do not know. Again, I will talk with the members of the Board. I know that in some discussions I have had with staff, not particularly with respect to this bill right now but over time, regarding the regulatory process for determining such matters as we are discussing here—which is, in this case, the number of PAs who would be directly supervised through a physician and what that number should be—I think it is fair to say that the overall approach is the fewer, the better.

I will say personally, if I may, I have had great experiences with PAs and a couple of them at my doctor's. I cannot even tell you the last time I consulted with my doctor. I am very comfortable with my PA. I think she does a terrific job. But again, it is a question of what the appropriate number for supervision is. I think it is fair to say that the fewer, the better.

At the end of the day, the most important aspect of everything that we are trying to do here in NRS Chapters 630 and 633 and the other Title 54 boards with respect to medical providers is to make sure that we provide a quality of care that is second to none. Clearly, more supervision rather than less supervision, I think, achieves that goal of providing quality health care. I skirted the issue, Assemblywoman Carlton, because I do not know the answer, but I have given you my anecdotal conversations I have had with staff over a number of years with respect to these supervision issues.

[Exhibit E, Exhibit F, Exhibit G, and Exhibit H were submitted but not discussed and are included as exhibits of the hearing.]

Chair Jauregui:
Committee members, any other questions? [There were none.] Seeing no one signed in on Zoom to testify in the neutral position, could we please check the telephone line? [There was no one.] Senator Hardy, would you like to give any closing remarks?

Senator Hardy:
I think, like any other board, it comes with a regulation process where the regulations are made only with open meeting laws and involving the stakeholders and people who are interested. Those obviously come through the Legislative Commission's Subcommittee to Review Regulations in order to get final approval, if that gives anybody any solace to how

the process can be used. The bottom line is, right now we have not looked in this bill to increase anything or decrease anything, but to allow the PAs to have opportunities to do two Boards at once.

[Exhibit I is a chart that was submitted but not discussed and is included as an exhibit of the hearing.]

Chair Jauregui:
With that, I will close the hearing on Senate Bill 184 (1st Reprint). Committee members, next on our agenda is Senate Bill 196. I do see our sponsor here ready to present, so I will open the hearing on Senate Bill 196, which prohibits the performance of a pelvic examination in certain circumstances.

Senate Bill 196: Prohibits the performance of a pelvic examination in certain circumstances. (BDR 54-34)

Senator Roberta Lange, Senate District No. 7:
Thank you for the opportunity today to present Senate Bill 196, a bill that seeks to prohibit health care providers from conducting pelvic exams on patients without their informed consent. Health care providers are required to obtain informed consent for patients to provide medical treatment. However, state law does not currently prohibit providers, or medical students practicing under their supervision, from performing pelvic exams on anesthetized or unconscious female patients.

While it may be surprising, this is common practice. In an article by *The New York Times* published on February 17, 2020, a nurse in Arizona outlined her unsettling experience after being admitted for stomach surgery. The nurse, who had a history of sexual abuse, reported having panic attacks and triggering traumatic memories after she learned that a resident had conducted a pelvic exam while she was unconscious. This came after explicitly telling her physician that she did not want medical students to be directly involved in her surgery.

This story is just one of many that have led states across the nation to consider or pass legislation requiring informed consent for pelvic exams. In fact, this issue is so pervasive that women have begun sharing their stories with the hashtag, #MeTooPelvic.

While medical teaching is crucial in training medical professionals to identify normal and abnormal anatomy as necessary, some exams by their very nature are intimate and invasive. A study published by *The Lancet* found 100 percent of women reported "they would prefer to be asked before their pelvis is used as a teaching tool." A pelvic exam performed without a woman's consent in any other context is considered sexual assault. Senate Bill 196 does not prohibit performing pelvic examinations when they are necessary, nor does it prohibit the instruction of medical students to perform this exam. Instead, the bill requires obtaining the informed consent of the patient.

Section 1, subsection 1, paragraph (a) of this bill prohibits health care providers from performing or supervising pelvic examinations they are not appropriately licensed, certified, or registered to perform, or that are not within the scope of their practice.

Section 1, subsection 1, paragraph (b) also prohibits health care providers from performing or supervising pelvic examinations on an anesthetized or unconscious patient without first obtaining the patient's informed consent. This is unless the pelvic examination is within the scope of a surgical procedure or diagnostic examination to which the patient has given informed consent; or the patient is unconscious and incapable of providing prior informed consent, and:

> (I) The pelvic examination is required for diagnostic purposes and is medically necessary; or
> (II) The patient is an alleged victim of a sexual assault and the physician or physician assistant reasonably concludes that exigent circumstances justify conducting a forensic medical examination ….

In addition, section 1, subsection 2 prohibits a person, such as a student or trainee who is not licensed, certified, or registered as a health care provider and who is working under the supervision of a health care provider, from performing or supervising a pelvic examination if the supervising provider of health care is prohibited from supervising a pelvic examination. These unlicensed individuals are also prohibited from supervising the performance of a pelvic examination if conducted by a person outside the immediate presence of his or her supervising provider of health care.

Finally, sections 2 through 12 authorize the imposition of professional discipline or denial of a license or certificate for providers of health care who perform or supervise a pelvic examination when prohibited. Thank you, Chair Jauregui and Committee members, for the hearing on Senate Bill 196. This is important legislation that has the support of many medical professionals. Currently, 15 states have banned unauthorized pelvic examinations and seven states have introduced similar legislation in 2021.

On a final note, I am happy to have worked with former Senator Yvanna Cancela on this legislation. I hope you will agree with us that codifying in statute the requirement to obtain a patient's informed consent is vitally important for women in Nevada. With that, I would be happy to take any questions.

Chair Jauregui:
Do you have copresenters, or are you ready for question and answer?

Senator Lange:
I am ready for question and answer.

Chair Jauregui:
Committee members, any questions for Senator Lange?

Assemblywoman Carlton:
Senator Lange, you are citing *Nevada Revised Statutes* (NRS) Chapters 629 through 641C. So this provision is to apply to all of those chapters? Am I reading that correctly?

Senator Lange:
Yes, ma'am.

Assemblywoman Carlton:
When I look at these NRS chapters, it goes from alcohol, drug, and gambling counselors to athletic trainers, audiologists, and autism behavioral interventionists. I will not go through the whole list, but it has a number of, I believe, different chapters in there.

I am not sure if you were just trying to sweep everybody in or what the actual thought process was to having this put into, let us say, the dispensing opticians chapter, emergency voluntary health practitioners, marriage and family therapists, or music therapists. You have got a very long list in this chapter. It seems to me that this should probably be a little more focused to a certain type of health care provider. I want to understand the thought process behind that.

Senator Lange:
I appreciate your input. In the bill, I worked with Senator Hardy in the Senate, being a physician himself. We tried to narrow the types of physicians and physician assistants who could be supervisors in this instance, because in how it was written before, a dentist, an eye doctor, or other people could do pelvic exams, and they could happen without the consent of a woman. We tried to narrow it down. If it is your recommendation that we try to narrow it down a little more in that section, I am happy to work on that.

Assemblywoman Carlton:
I may not have read it as thoroughly because I am looking at just the overarching chapters and in section 1 of NRS Chapter 629, and in Chapter 629 it lists all those cross references. I just wanted to understand what we were actually trying to get to because there are pharmacists in there, oriental medicine, and occupational therapists.

If there is a way for you to do that, I do not want to slow down your bill, but it seems like it might be a bit of overkill to insert this language into every single chapter unless you are just going to insert it into the overarching chapter for health care and go from there. I wanted to verify that I was reading it correctly.

Assemblywoman Tolles:
I did not mean to go here, but that last question made me reflect on a good friend whose daughter was abused by a music teacher who claimed that a certain type of technique was going to help her to find her diaphragm and her voice. I appreciate that you are bringing forward this bill, and I wonder why it took us so long to pass legislation like this. I am wondering if you would be amenable to amending on some Assembly cosponsors.

Senator Lange:
Absolutely, I would love to have more cosponsors. I think that this is so important, and we can only look to the huge court case that involved the Michigan State University gymnastics team and what they went through with a licensed physician who told them he was doing certain things that would help them perform in their gymnastics. We have to do what we can to protect the rights of patients, and in this case, women.

Chair Jauregui:
Committee members, any other questions? [There were none.] Senator Lange, I am going to move us into testimony in support. Is there anyone in Carson City wishing to testify in support of Senate Bill 196?

Susan Fisher, representing State Board of Osteopathic Medicine:
We do not typically testify either in support or in opposition to bills. Usually, we say neutral with concerns, but we are in full support of Senate Bill 196. We thank Senator Lange for bringing this bill forward. This gives the State Board of Osteopathic Medicine some teeth to provide for some severe penalties if there are infractions of this law, if you do so choose to pass it.

Chair Jauregui:
Is there anyone on Zoom? [There was no one.] Could we check the telephone line for those wishing to testify in support of Senate Bill 196?

Serena Evans, Policy Specialist, Nevada Coalition to End Domestic and Sexual Violence:
We want to first applaud Senator Lange for bringing this bill forward, and we are here today in strong support of Senate Bill 196. The Nevada Coalition to End Domestic and Sexual Violence has been working with sexual assault advocates and programs throughout the state to examine Nevada's sexual assault and associated statutes.

Consent is an important part of that work. Specifically on the context of consent, this ongoing work group has had conversations around medical consent and the unfortunate victimization that occurs through uninformed pelvic exams. Pelvic exams are intimate, invasive, can be very uncomfortable, and can have lasting effects. Every individual should have the right to give informed consent to what happens to their body during a medical procedure. Consent to one medical procedure does not mean consent to all medical procedures.

Many individuals may not be comfortable being used for learning purposes. Informed consent is an essential part of empowering and protecting patients as they undergo medical procedures. Unconsented pelvic exams can be incredibly traumatizing and violating, especially to a patient who may have had previous sexual violence victimization.

Everyone should feel safe and empowered when seeking medical care. We must not allow providers to take advantage of vulnerable patients. Senate Bill 196 is an excellent step in addressing medical informed consent, and we encourage its passage.

[Exhibit J is a letter in support of Senate Bill 196 that was submitted but not discussed and is included as an exhibit of the hearing.]

Chair Jauregui:
Is there anyone in Carson City wishing to testify in opposition to Senate Bill 196? [There was no one.] Seeing no one signed in on Zoom, can we check the telephone line? [There was no one.] Is there anyone in Carson City wishing to testify in neutral? [There was no one.] Seeing no one signed in on Zoom, can we check the telephone line? [There was no one.] Senator Lange, would you like to give any closing remarks?

Senator Lange:
I would just leave you with this. Patients should have the freedom to decide from whom they receive treatment and what aspects of their medical care will be performed by a student or students, particularly if they are not awake during that treatment.

This legislation improves the process for obtaining, documenting, and ensuring consent for examination under anesthesia, and supports patients' freedom to make informed decisions about their medical treatment. Thank you so much, and I am available to meet with anyone about this legislation at any time. I hope you will support this important legislation.

Chair Jauregui:
Do not go too far; we have you up next. I will now close the hearing on Senate Bill 196. Committee members, our third bill on the agenda is Senate Bill 245 (1st Reprint) and we have Senator Lange with us already. I will open the hearing on Senate Bill 245 (1st Reprint), which makes changes regarding employment.

Senate Bill 245 (1st Reprint): Makes changes regarding employment. (BDR 53-829)

Senator Roberta Lange, Senate District No. 7:
Thank you for the opportunity to present Senate Bill 245 (1st Reprint), a bill that seeks to provide recourse for individuals who are owed wages or compensation by a former employer. I am pleased to be joined by Randy Soltero, who is in the room and representing the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, as well as Labor Commissioner Shannon Chambers, who is on Zoom but not on video because she is also in another meeting. They will assist me in presenting Senate Bill 245 (1st Reprint).

According to Prosperity Now, almost 52 percent of Nevada households do not have sufficient liquid savings to cover basic expenses for three months if they experience a sudden job loss, a medical emergency, or another financial crisis leading to the loss of income.

Unfortunately, this means that when our residents lose a job, sometimes through no fault of their own, they do not have the ability to wait very long until their next paycheck. With us on Zoom is Joseph Jakubiec. Joseph, would you please tell your story?

Joseph Jakubiec, Private Citizen, Las Vegas, Nevada:
Thank you, Madam Chair, Senator Lange, and Committee members for this invitation to testify and for all your work on behalf of those of us working in the convention industry here in Nevada. My name is Joseph Jakubiec, and I am a technical director and stage manager. I work for various production companies here in Las Vegas.

I worked the ASHP [American Society of Health System Pharmacists] show in the fall of 2019 for 3,000 attendees here in town. My job involved seeing to the execution of everyone's job in a timely fashion for the success of the show. This particular show went on perfectly and all elements of the production—sounds, lights, staging, et cetera—went nominally and the audience went home educated and entertained. The client was satisfied; the convention was a success.

However, the contract that my coworkers and I were working under at the time had expired and a new agreement was being negotiated. My coworkers and I dealt with the consequences of no paychecks for weeks. When we were finally paid at the leisure of our employer, there were no late fees or penalties included. With this new legislation, Senate Bill 245 (1st Reprint), I believe that working people like myself will have an added layer of protection if the employer fails to pay in a timely manner.

Senator Lange:
Currently, when an employee is fired or terminated, the employee's final, unpaid wages must be paid immediately upon termination. If an employee quits or resigns, the former employer has to make the final payment available within seven days or by the next scheduled payday, whichever is earlier. Employers who miss the deadline owe their former employees wages for each day they go without their final paycheck until paid in full, or up to 30 days.

Senate Bill 245 (1st Reprint) provides former employees who are owed their final paycheck a remedy to obtain these unpaid wages. Chair Jauregui, may I go through the sections of the bill?

Chair Jauregui:
Yes, Senator Lange.

Senator Lange:
Section 1 requires the Labor Commissioner to decline jurisdiction of a claim or complaint concerning the payment of wages, commissions, or other benefits if a claimant is covered by a collective bargaining agreement that provides a claimant with exclusive remedy or relief for violation of its terms until those remedies, reliefs, or appeals are exhausted. The Labor Commissioner may, however, assert jurisdiction under certain circumstances.

Section 1.5 of the bill expands the definition of "wages" to include the amounts due to a discharged employee or an employee who resigns or quits, and whose former employer fails to pay the employee by the statutory deadlines. These are considered wages. If the Labor Commissioner, Shannon Chambers, is on the line, please discuss your amendment that you gave us previously. Then we can open it for questions.

Shannon M. Chambers, Labor Commissioner, Office of Labor Commissioner, Department of Business and Industry:
I worked with Senator Lange on this bill, Senate Bill 245 (1st Reprint), to clarify when the Labor Commissioner would take jurisdiction of a claim or complaint if there is a collective bargaining agreement in place. The Labor Commissioner has great respect for the collective bargaining process, does not typically get involved in that process, and would not take jurisdiction of a claim or complaint that was brought to my office if there were a collective bargaining agreement.

In discussions with Senator Lange and some of the other unions that I deal with, there have been issues where, if a collective bargaining agreement has expired and there are new negotiations going on, sometimes there are issues that the collective bargaining agreement does not cover. Or, quite frankly, in some situations the collective bargaining agreement does not have language that reflects current Nevada law. This clarifies that the Labor Commissioner would only take jurisdiction of a claim or complaint if that relief under the collective bargaining agreement was inadequate. That would be a determination made by the Labor Commissioner.

In the opinion of the Labor Commissioner, this is good language and clarifying language to inform not only the claimants, but also the different unions and trade organizations whose collective bargaining agreements essentially need to comply with Nevada labor laws. If they do not, there is the potential for the Labor Commissioner to take jurisdiction of that claim or complaint. I am happy to answer any questions.

Senator Lange:
If I could have the Labor Commissioner speak to one thing regarding the impact of an employee to pursue a private right of action as it affects this language, that would be terrific.

Shannon Chambers:
It is the opinion of the Labor Commissioner that the language proposed in Senate Bill 245 (1st Reprint) does not impact a private right of action. The Nevada Labor Commissioner has specific language in our statutes; it is *Nevada Revised Statutes* (NRS) Chapter 607. If an individual has the ability to hire private counsel, the Labor Commissioner can decline jurisdiction of that claim or complaint.

I do not see any language in Senate Bill 245 (1st Reprint) that would limit or prevent an individual from bringing a private right of action, but if there are folks up there who feel differently, I am happy to have that conversation. In my opinion, there is nothing in this proposed language that would affect that right.

Chair Jauregui:
I am going to go to our legal counsel as well. Thank you for having the Labor Commissioner address that, Senator Lange, but at this time I am just going to jump over to Sam Quast to see if he can confirm that information.

Sam Quast, Committee Counsel:
I agree with the assessment of the Labor Commissioner. I do not see anything in the provisions of this bill that would limit an individual from bringing a private right of action for these sorts of wage claims.

Senator Lange:
I am happy to answer any questions.

Chair Jauregui:
At this time, I will go ahead and go to the Committee. Committee members, any questions? [There were none.] Let us go ahead and move on to testimony in support of S.B. 245 (R1). Is there anyone in Carson City wishing to testify in support of S.B. 245 (R1)? [There was no one.] Seeing no one signed in on Zoom, can we check the telephone line?

Phil Jaynes, President, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local No. 720:
I am calling in to support Senate Bill 245 (1st Reprint). This bill will help working men and women by adding a pathway and remedy to allow workers to get paid in a fair and timely manner. I appreciate your time and thank you very much. [Mr. Jaynes also submitted a letter in support of Senate Bill 245 (1st Reprint), Exhibit K.]

Kent Ervin, representing Nevada Faculty Alliance:
We support S.B. 245 (R1) in solidarity with our union partners and for our future students out in the workplace.

Rob Benner, Secretary-Treasurer, Building and Construction Trades Council of Northern Nevada:
We are calling in support of S.B. 245 (R1). No one should have to wait weeks or months to be paid or have to go to small claims court to receive their pay. We strongly support this bill as it would help ensure timely payment for vulnerable workers.

Marlene Lockard, representing Service Employees International Union Local No. 1107:
We are in support of S.B. 245 (R1) and urge your positive consideration of the bill. After the horrendous year that everyone has had—and at any time, really—no one should be without their paycheck who has worked hard to receive it.

Chair Jauregui:
Is there anyone in Carson City wishing to testify in opposition to Senate Bill 245 (1st Reprint)? [There was no one.] Seeing no one signed in on Zoom, can we check the telephone line for those wishing to testify in opposition?

James Kemp, representing Nevada Justice Association:
We are in minor opposition to S.B. 245 (R1) simply in that we would like to see a slight amendment to ensure it is clear that there would be no interference from this bill in the ability of employees to pursue their rights and remedies on their own behalf. At minimum, we would like a clarification that the bill would just apply to the employees who have this procedure through a collective bargaining agreement to pursue their rights.

The reason is that for more than 15 years now, there has been this delicate balance going on. The Supreme Court of Nevada sometimes says that in some statutes in NRS Chapter 608 or in NRS Chapter 613, there is an implied cause of action for employees, and in some there is not. For example, in the case of *Wynn Las Vegas, LLC v. Daniel Baldonado et al.,* 129 Nev. Adv. Op. No. 78, October 31, 2013, NRS 608.160, the Supreme Court said that there is no implied private right of action. In NRS 608.040, which is mentioned in this bill and covers penalties for the late payment of final paychecks, the Supreme Court has said that there is an implied right of action. They have said that for NRS 608.018.

The state courts have never reviewed it, but for NRS 613.200 and 613.210, which is for blacklisting—when an employer interferes with an employee getting a job with a future employer—there is no private right of action for that. Anytime there is a statute like this that gets passed that might upset that balance, we have to be concerned. We would just like to see it be clarified that there is no impact on any other employees other than the ones who are intended here to have the collective bargaining agreement procedure.

Chair Jauregui:
Mr. Kemp, I am going to do a quick check to see if anyone has any questions for you. [There were none.] Is there anyone in Carson City wishing to give testimony in the neutral position? [There was no one.] Seeing no one signed in on Zoom, can we move to the telephone line, please? [There was no one.] Senator Lange, if you would, closing remarks?

Senator Lange:
Thank you, Madam Chair. I just want to thank you and the Committee for the opportunity to present Senate Bill 245 (1st Reprint). Thank you, Jay, Stan, and the Labor Commissioner, Ms. Chambers. We really appreciate the help of everyone to make this bill work.

I urge your support. It will help, especially during this bad time when so many people are out of work. It is a time of financial insecurity. Passing this bill will help so many people, and I really appreciate your time.

Chair Jauregui:
With that, I will close the hearing on Senate Bill 245 (1st Reprint). Committee members, the last bill on our agenda today is Senate Bill 269. I see Senator Seevers Gansert here and ready to present. So with that, I will open the hearing on Senate Bill 269, which revises provisions relating to dental insurance.

Senate Bill 269: Revises provisions relating to dental insurance. (BDR 57-817)

Senator Heidi Seevers Gansert, Senate District No. 15:
On Zoom, I am joined by Dr. David White and Paul Klein. Dr. White provides family cosmetic dentistry in northern Nevada, and he has done so since 2004. He went to the University of Nevada, Reno for his undergraduate and then Michigan for his graduate degree in dentistry, where he is indoctrinated into their spirit and mission of developing leaders and citizens who will challenge the present and enrich the future. Paul Klein is with TriStrategies; he is here on behalf of the Nevada Dental Association.

Right now, dental insurance companies have the ability to retroactively deny claims long after a dental procedure has taken place. In some cases, patients have received a claim of denial years after the procedure was done, and in some cases, they have denied claims for people who have passed away. What happens is a patient will undergo a significant dental procedure for which they have already had prior authorization, and in some cases, the company will deny the claim for the procedure and then attempt to recover the payment from the dentist.

There is also an issue around overpayment. Currently, Nevada does not have a process in place for patients or dentists to challenge insurance companies who demand overpayment after a claim denial has been made. There are 24 other states that have adopted legal provisions to limit this practice.

Additionally, insurance companies in Nevada have the ability to deny coverage of dental procedures even after prior authorization has been granted. Ten other states have added measures in an effort to protect patients and dentists from this practice.

As previously mentioned, Senate Bill 269 adds to the *Nevada Revised Statutes* a couple of sections that limit an insurer's ability to retroactively deny dental procedure claims and to demand overpayment at a later date. When you look at the bill, sections 4 and 10 require an insurer to submit written notice to a dentist of the attempt to recover overpayments and establish written procedures that allow a dentist to file an appeal. Insurers are also prohibited from trying to recover overpayments more than 12 months after the date of the original payment.

Sections 5 and 11 prohibit an insurer from denying a claim after prior authorization has been given for a procedure. Something I want to point out is that these are two problems: the overpayment issue and then the prior authorization. But what happens is when either of those takes place, the dentists are the people who are responsible for addressing this with

patients. In these situations, the dentists are placed in a very difficult situation that often puts a strain on the patient-practitioner relationship, which creates feelings of resentment and distrust for patients.

This bill is a means to maintain trust and rapport and ultimately to help patients in their cost-saving efforts. Hopefully, you can support Senate Bill 269, and again, I have Dr. White and Mr. Klein here to answer any questions.

Chair Jauregui:
Are they just here for question and answer, or are they giving remarks?

Senator Seevers Gansert:
Probably just question and answer, but I am sure that if you need exact examples, Dr. White could share those with you. Again, Paul Klein is representing the Nevada Dental Association. He can probably give you more information as far as frequency and how these problems have arisen.

Chair Jauregui:
Committee members, any questions?

Assemblywoman Carlton:
Senator Seevers Gansert, I guess what I would like to figure out is that there is a difference between prior authorization and eligibility. I can get prior authorization for a procedure, but on the day I show up at the dentist office, my insurance may not be eligible. I may not have worked enough hours or paid the bill; there could be a number of issues that would address eligibility.

It is my understanding that the common practice for health care providers is on the day that I show up, they check my eligibility. So this almost seems to imply that even if I were ineligible on that day, the dentist would still be reimbursed just because there was a prior authorization.

I am reading this and trying to put the pieces of this puzzle together. I do not think that was clarified in here. Most folks do not understand the difference between the two, so I just want to make sure the record is clear.

Senator Seevers Gansert:
First of all, I sponsored this with Senator Kieckhefer and he is out of town today, so I am substituting. When I look at section 5, subsection 1, it talks about "has granted prior authorization unless . . ." and part of that is whether or not you were eligible at the time of the prior authorization.

So I think it is actually covered in here under section 5 when you go to subsection 1, paragraph (a), subparagraphs (1) and (2), because if it was authorized but you were not covered at the time, then this would not apply. But if you were covered or should have been

covered and you were eligible at the time, this would apply. I will go ahead and see if Dr. White or Mr. Klein would like to add to that.

David White, Co-Chair, Council on Government Affairs, Nevada Dental Association:
You bring up an excellent point. Without a doubt, this is a complicated situation and one that patients do not quite understand. When a patient comes in, that person may have had a predetermination for a procedure, and usually these procedures are pretty expensive. That is why it takes extensive time to build the doctor-patient relationship.

Let us use an example. The patient has lost his or her front tooth, and we need to go ahead and get a predetermination to get an idea of how much the out-of-pocket cost for the patient is going to be. We submit a pre-authorization, it comes back, and at the current time, this pre-authorization gives whether the patient is eligible and what the estimate is going to be, from what the co-pay is going to be for the patient as well as for the insurance carrier. However, there is a disclaimer at the bottom that essentially says this is nonbinding. This is where we are pre-authorizing.

The day that the patient shows up for the procedure, Assemblywoman Carlton is exactly correct. There is an issue of if that person is actually eligible, whether from having worked enough hours to still being employed or whatnot. In most cases, if the patient is still employed, it is that predetermination that a person is trying to go ahead and take advantage of to conduct the procedure for the patient.

Typically, we would go ahead and proceed with the procedure, conduct the procedure, and get it done, but afterward we would then receive a notice that it was a noncovered procedure. Essentially, they have denied it retroactively, and then that cost is now shifted onto the patient. Both of us receive notice—the patient, obviously, through the [unintelligible] as well as ourselves—and then we go ahead and have to have those difficult conversations.

Usually, these costs are very expensive and are now shifted entirely onto the patient. Oftentimes, the patient would not have even remotely considered this procedure if they would have known that it was not going to be covered. [unintelligible] make that financial decision to move forward with the treatment. But again, it is predetermination versus when the patient first comes to our office, we give that quick eligibility call to make sure we have the verification of benefits—which is essentially what we do, we verify if they are eligible, at what level, and if there is a waiting period.

Of course, this is so important to patients now because obviously, finance is of the utmost concern. Being a provider nowadays, we are making sure we have that at the forefront of our discussions with patients.

Senator Seevers Gansert:
If I could add, the beginning of section 5, subsection 1 talks about how they cannot refuse to pay unless, in paragraph (g), "The insured was not eligible to receive the dental care for

which the claim was made on the date that the dental care was provided and the health carrier or administrator, as applicable . . . ." I think that probably covers it.

This gets categorized sort of like the emergency room visits we had and surprise billing. You think you are covered, that you have got the notification and the prior approval, and then later they come back and say that you do not have that coverage. But this does specifically have language that if you are not eligible, then they can refuse to pay. So, you have to be eligible.

Assemblywoman Carlton:
So under section 5, subsection 1, paragraph (g), there are subparagraphs (1) and (2) which state, "Did not know of the eligibility status …," which technically means that if they do not call then they do not know, and therefore they could go forward; and "Could not have discovered the eligibility …." When I heard the gentleman from the Nevada Dental Association speaking, I am hearing that there are times when eligibility is checked and you move forward, and then it is denied afterward. Is that what I am hearing?

It seems to me that there would be some type of document or proof that the person was eligible. I think a lot of it has to go with timing here. As a patient, when I walk in and check in at the desk, I am basically told if the procedure is going to go forward or not. The burden falls on the dentist to make sure that I am eligible for this. I guess I am just trying to get what is happening here. There is something missing that I am not getting.

Senator Seevers Gansert:
Again, when I look at section 5, subsection 1, paragraph (g), subparagraphs (1) and (2), it looks like the health carrier or administrator is the entity that needs to know whether they are eligible or not. It is not the patient. The patient, I think, if they get the pre-approval, has assumed that the administrator or the health carrier has done the homework to make sure they are eligible, or they believe the patient is eligible at the time.

Again, back to the patient, the patient is going to be surprised if they have gone through the process required by the health carrier or administrator, and later it ends up getting denied. I completely understand what you are saying because sometimes eligibility changes, but it is really up to the administrator and the health carrier to determine who is eligible. They are also the ones making the decision as far as whether it should be authorized and whether they have the pre-authorization.

Assemblywoman Carlton:
I guess where I am missing it is, I am not sure it is a real-time determination. I know particularly in my health care, if you call today, depending upon the hours I have worked, it is paid forward by a couple of months. It is not in real time. That can be one of the issues coming up. Not all of this happens in real time. A pre-authorization is not an eligibility.

I guess I am still trying to figure out how the pieces of this puzzle fit together when you may call the authorizing agent and they may not know because they may not have the most

current data. If you are self-paying, you can self-pay up to the last day of the month. We may not know if someone is eligible or not. They may have been eligible when the pre-authorization went through, but they may not be eligible today. Thank you very much; I appreciate the explanation.

David White:
I completely agree with you, Assemblywoman Carlton, but in this situation, where we are having the most difficult situations are with the patients who continue to be eligible versus the patients who are not eligible. In my case, for all of the individuals who say that they did not work the number of hours that were required, those are easy conversations for them to understand the responsibility for coverage.

For the folks who continue to be covered the entire time and decide to move forward based upon the predetermination, that is what the intent of the bill is attempting to solve. It is the folks who continue to cover their hours and continue to conduct themselves in a way to stay employed who are then taking their hard-earned money, assuming the co-pay is accurate, and moving forward with the procedure, only to come back a month or a month and a half later to have it denied. They then have the very expensive cost shifted over to them.

Again, our challenge as providers is not with the patients who are ineligible because they understand where that responsibility is and ultimately, they understand where that breakdown in communication happened. It is really with the patients who continue to be employed. I hope that provides a little bit of clarity to the intent behind this bill.

It is the folks who continue to do the diligence and stay employed. They are the ones affected most greatly in this situation because they are attempting to be fiscally responsible and plan well ahead before performing an irresponsibly expensive procedure that they maybe would not have otherwise chosen to do had they known they were not covered.

Chair Jauregui:
Thank you, Dr. White, for jumping in and answering that. At this time, I am going to check to see if Committee members have any other questions. [There were none.] I do have a couple, Senator Seevers Gansert, so I am going to jump right in. In section 4, subsection 3, and this is more for my curiosity, but why are you limiting the recovery period to 12 months after the date of overpayment? How did you land on that 12-month period?

Senator Seevers Gansert:
I am going to refer to Dr. White and Mr. Klein because I know there is a basis for that. I will let them explain it.

David White:
Absolutely. Right now, we are only able to submit a claim 12 months from the date of service. This is an attempt to go ahead and provide a very fair playing ground. If we do not submit a claim within that 12-month window, then the claim is automatically denied, and we are not able to receive any sort of reimbursement for that. At this particular juncture, there

are individuals and dentists who are receiving these retroactive claim denials years later. At this point, we are forced to operate and conduct ourselves in a very focused and specific way. That is why the 12-month window is being put in.

Chair Jauregui:
Perfect, thank you. Moving on to section 5, subsection 1, I know it says they cannot refuse to pay unless, and then it goes down the paragraphs. In section 5, subsection 1, paragraph (e), it says, "The dentist has previously been paid for the procedures covered by the claim." What if it is an ongoing procedure? That is to say, a patient had a cavity filled and you were paid for that, and then the patient had to come back and have work done on that filling again. Would that be excluded from payment because you had previously been paid for that procedure?

David White:
Typically, what we have is if a service was performed on a tooth, then through the eligibility we obtain the information of when you can conduct any more work that may be the exact same thing done on a tooth. This is the challenging situation, obviously, with dental insurance. If you put a filling into a tooth and then the person has very poor oral hygiene or immuno-medical conditions and that filling breaks down rather quickly, there is usually a 12- or 24-month window where you cannot get reimbursement for that particular procedure.

You have two scenarios. Either the patient pays full price—or the contracted rate, at that point—or the dentist decides to do the filling at no cost. I can say in my office, in 95 percent of situations if a filling breaks down within a 12-month window, we will then go ahead and perform that procedure at no cost. There are some plans that give 24 months and that becomes a little bit of a different discussion, but it is entirely up to the doctor-patient relationship and what has been formed.

It really comes down to what is fair, and typically within my office, we just do it again for free. But absolutely, with the insurer, they lay it out crystal clear for us that within a specific time frame, that same procedure will not be covered on that tooth again.

Chair Jauregui:
I guess I was just a little confused as to why this exemption would be in there. Why would you not want this procedure to be covered for the patient? Why are we giving them authorization not to pay for a procedure if it has been previously covered?

Senator Seevers Gansert:
The way that I read this was that if they already paid once, this potentially could be an overpayment. So if you paid for a filling and you paid again—because in section 5, subsection 1, paragraph (e), it says "The dentist has previously been paid for the procedures covered by the claim"—then they should not charge it again. That is the way I read it.

Chair Jauregui:
Thank you, Senator Seevers Gansert, I think I needed that clarification. I think I was reading it just a little differently. Committee members, last call; any questions? [There were none.] I am going to move on to testimony in support. Seeing no one here in Carson City and no one signed in on Zoom, could we check the telephone line for anyone wishing to testify in support of Senate Bill 269?

Richard Dragon, Co-Chair, Council on Government Affairs, Nevada Dental Association:
I am a practicing dentist in Gardnerville, Nevada. I am the immediate past president of the Nevada Dental Association (NDA) as well as a nonpaid lobbyist for the current Nevada legislative session. I am currently the Co-Chair of the NDA's Council on Government Affairs with Dr. David White.

I support S.B. 269. Senate Bill 269 supports and ensures fair practices regarding dental insurance claims as understood by the consumer of their products. Senate Bill 269 addresses retroactive claim denials for procedures performed that exceed a 12-month period. A claim by the consumer—or those dental offices that provide the service on behalf of the patient—has to be filed within a 12-month period following treatment. We have examples of retroactive claim denials that exceed a 12-month period by months and even years.

In addition, there is considerable frustration when approved predeterminations of treatment are denied when an actual claim is submitted. These practices create trust issues and unwarranted suspicions between patients and providers when the patient is asked to make up any financial differences they previously understood would be covered by insurance.

Insurance only allowed for a fraction of what was spent on personal protective equipment (PPE) for a short period of time during the pandemic, a time when claim submissions were greatly reduced and full premiums were still collected by insurance. In addition, PPE coverage on the most part became what is known as a noncovered service, meaning they can control our billings all the way down to zero. Who covers these costs? Providers do, who have already accepted reduced fees from PPOs [preferred provider organizations] and other contracted services between the providers and the networks they belong to.

Chair Jauregui:
We do have a question for you from one of our Committee members, if you do not mind hanging on.

Assemblywoman Carlton:
Doctor, did you say you were billing for PPE, personal protective equipment?

Richard Dragon:
I am being forced to, yes, because [unintelligible]. I am being told by my accounts payable that my monthly billing for PPE, even just gloves alone, went from $400 to $1,600 a month.

Assemblywoman Carlton:
I guess I am a little concerned because dental offices use PPE on a regular basis. A dental office that I am very familiar with that had to close during the pandemic was very gracious enough to donate all of their PPE to a nonprofit I work with to make sure our employees were safe.

I guess I am trying to figure out why the day before March 18, you were not billing for PPE—or I am not sure what date it was—but now you are billing for PPE. Is that one of the concerns with the back payments and the eligibility? How does that fit into this bill, that you are not able to bill for PPE?

Richard Dragon:
It may or may not. I mentioned that as a point of interest. I would stand corrected concerning that. If you are more interested in understanding that topic, I could defer to Dr. White, who has information and knowledge that is national. The reason is that Dr. White is also the Chair of the Council of Government Affairs for the American Dental Association, so he sits in that position nationally. But yes, it has been a concern. It was something of issue, and you are right. We did not include it in the bill. I just mentioned it, and for that I am sorry.

Assemblywoman Carlton:
I just wanted to clarify. Is the issue that you are billing the insurance provider for PPE and you are not being reimbursed for it?

Richard Dragon:
Well, for instance, if I remember correctly, they allowed it for two or three months between July and September. You cannot quote me on that per se, but I am in the general ballpark. They were covering for $10 a sitting. It is more than that.

When we cannot raise our fees because of the fee structures that are being handed to us by insurance, as well as other limitations that we sign up for contractually as far as networks are concerned, then these particular costs become excessive. In that regard, I had no other means to do it. I am charging a $17 fee per sitting for that coverage. I had to hire another employee for cleaning up behind each sitting as well as additional PPE and all of the other stuff.

Assemblywoman Carlton:
I just wanted to make sure that I understood and if that is an issue of being able to back bill on PPE. I was a little surprised because you walk into a dental office and everybody is wearing all that stuff already. I wanted to make sure I understand what is going on.

Senator Seevers Gansert:
I do not know if Dr. White wants to respond because I do not think this bill addresses that at all. This is really about the broader issue of pre-authorizations and then retroactive denial of claims.

Chair Jauregui:
Maybe we can have Dr. White reach out to Assemblywoman Carlton off-line so we can move through testimony. Thank you, Dr. Dragon, for staying on and answering those questions. If we could move to the next caller in support. [There was no one.] Is there anyone on the telephone line wishing to give testimony in opposition? There is no one here in Carson City and no one signed in on Zoom.

Stacie Sasso, Co-Chair/Director, Health Services Coalition:
The Health Services Coalition is testifying today in opposition to Senate Bill 269. The prior authorization group is tasked with determining if a procedure is medically necessary and appropriate as determined by clinical professionals. The prior authorization process does not determine eligibility for services.

Prior authorization of services by our plans cannot guarantee eligibility of the patient. The purpose is to review necessity and there are limited resources available in that area to also review and guarantee eligibility. Eligibility does change and each of our plans has different eligibility rules. In some cases, a patient could pay for coverage and become eligible the same day as their appointment. The utilization review department cannot track that daily. We hope to see an amendment deleting section 5, subsection 1, paragraph (g), and section 11, subsection 1, paragraph (g) to correct the piece of the bill.

Maya Holmes, Healthcare Research Manager, Culinary Health Fund/UNITE:
[Ms. Holmes read from written testimony submitted to the Committee, Exhibit L.] The Culinary Health Fund is a nonprofit labor management trust fund providing benefits for Culinary Union workers and their dependents. We are in opposition to Senate Bill 269 at this time over concerns regarding section 5, subsection 1, paragraph (g), and section 11, subsection 1, paragraph (g).

We are members of the Health Services Coalition, and we share their concerns. Prior authorization is a process done by clinicians to determine whether a treatment is clinically appropriate. It is not about whether the patient is eligible for services. Plan clinicians have limited capacity and cannot be expected to guarantee eligibility. Providers are responsible for checking eligibility on the date of services.

Sections 5 and 11 are about eligibility, and plans cannot pay for patients who are not eligible. Also, under federal law, our plans are simply not able to pay for patients who are not eligible. So specifically, we hope to address these issues by deleting the language in section 5, subsection 1, paragraph (g), and in section 11, subsection 1, paragraph (g), after the word "provided" in line 39 on page 3 and in line 26 on page 6.

The language is sustained in both of these sections that applies to health carriers versus dental care organizations or dental plan administrators. Part of the reason we would like to see this removed is we are very unclear on what the term "reasonable care" means, and we really hope to be able to work with the sponsors moving forward to address these specific concerns.

Chair Jauregui:
Ms. Holmes, could you do me a favor and email that over to us in writing?

Maya Holmes:
Yes, definitely.

Chair Jauregui:
Thank you so much, Ms. Holmes. Seeing no one in Carson City and no one signed in on Zoom to testify in neutral, can we please check the telephone line.

Helen Foley, representing Delta Dental:
I worked very closely with the sponsors of the bill, specifically Senator Kieckhefer, on the Senate side on this issue. I am in neutral today because we would not mind if the bill died completely. However, we felt that some of our concerns had been addressed.

I wanted to make sure for the record that this bill deals with prior authorization. We have seen the term used intermittently by Dr. White with predetermination and pre-authorization. The bill does not deal with that. What happens with dental plans is, the very day that you go in for your cleaning and they determine you might need some other things to happen, they immediately look up online whether or not you are eligible and whether or not you have had coverage within the last six months, or whatever else your plan requires. They can tell you within moments at the predetermination or pre-authorization that you are eligible for some kind of procedure.

Prior authorization is different. You have to follow the form prescribed by the health carrier to get a prior authorization. I would estimate that only about 15 to 20 percent of the cases before a dentist require prior authorization. The other predeterminations or pre-authorizations can be immediate and so that streamlines the process.

If the bill passes just the way it is with no amendments, we do not have opposition. But we certainly understand what the Health Services Coalition is concerned about, and we want to make sure we have a seat at the table in working closely with Senator Kieckhefer and Senator Seevers Gansert in trying to find resolution to this issue.

Chair Jauregui:
Senator Seevers Gansert, would you like to give closing remarks?

Senator Seevers Gansert:
I appreciate your hearing Senate Bill 269 today and I will work with Senator Kieckhefer, Dr. White, Mr. Klein, as well as those who are on the line to see if we can find a resolution. Again, I appreciate your hearing the bill, and I hope that you can support it.

Chair Jauregui:
I will now close the hearing on Senate Bill 269. Committee members, the last item on our agenda is public comment. [Protocol concerning public comment was discussed.] Is there anyone on the line wishing to give public comment? [There was no one.] Are there any comments from the Committee members before we adjourn? [There were none.] Our next meeting will be on Wednesday, May 5, 2021, at 1 p.m. You should have already received the agenda. That concludes our meeting for today. We are adjourned [at 2:49 p.m.].

RESPECTFULLY SUBMITTED:

_____
Louis Magriel
Committee Secretary

APPROVED BY:

_____
Assemblywoman Sandra Jauregui, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is written testimony presented by Daniel Pierrott, representing Nevada Academy of Physician Assistants, in support of Senate Bill 184 (1st Reprint).

Exhibit D is a written statement submitted by Keith Lee, representing Board of Medical Examiners, regarding Senate Bill 184 (1st Reprint).

Exhibit E is a document titled "Legislative History on SB64 from the 1985 Session," submitted by Keith Lee, representing Board of Medical Examiners, regarding Senate Bill 184 (1st Reprint).

Exhibit F is a document titled "2021 Current License Numbers," submitted by Keith Lee, representing Board of Medical Examiners, regarding Senate Bill 184 (1st Reprint).

Exhibit G is a document titled "Physician Supervision of Physician Assistants," submitted by Keith Lee, representing Board of Medical Examiners, regarding Senate Bill 184 (1st Reprint).

Exhibit H is a map titled "United States Time to Medical Doctor Licensure," submitted by Keith Lee, representing Board of Medical Examiners, regarding Senate Bill 184 (1st Reprint).

Exhibit I is a chart titled "Number of Years of Postgraduate Medical Training Required to Obtain a License as a Physician for Graduates of Medical Schools in the United States and Canada," dated March 26, 2021, submitted by Senator Joseph (Joe) P. Hardy, Senate District No. 12, regarding Senate Bill 184 (1st Reprint).

Exhibit J is a letter dated March 11, 2021, submitted by Christine Smith, Private Citizen, Las Vegas, Nevada, and Teri Greenman, Private Citizen, Las Vegas, Nevada, in support of Senate Bill 196.

Exhibit K is a letter dated May 3, 2021, submitted by Phil Jaynes, President, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada Local No. 720, in support of Senate Bill 245 (1st Reprint).

Exhibit L is written testimony dated May 3, 2021, presented by Maya Holmes, Healthcare Research Manager, Culinary Health Fund/UNITE, in opposition to Senate Bill 269.