

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

**Eighty-second Session
April 14, 2023**

The Senate Committee on Health and Human Services was called to order by Chair Fabian Doñate at 2:05 p.m. on Friday, April 14, 2023, in Room 2134 of the Legislative Building, Carson City, 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 Fabian Doñate, Chair
Senator Rochelle T. Nguyen, Vice Chair
Senator Roberta Lange
Senator Robin L. Titus
Senator Jeff Stone

STAFF MEMBERS PRESENT:

Destini Cooper, Policy Analyst
Eric Robbins, Counsel
Mary Ashley, Committee Secretary

OTHERS PRESENT:

Richard Whitley, Director, Nevada Department of Health and Human Services
Stacie Weeks, Administrator, Division of Health Care Financing and Policy,
Nevada Department of Health and Human Services
Joan Hall, Nevada Rural Hospital Partners
Lea Case, Children's Advocacy Alliance
Jeanette Belz, Nevada Psychiatric Association
Jonathan Norman, Nevada Coalition of Legal Service Providers
Joanna Jacob, Clark County
Sarah Adler, National Alliance on Mental Illness, Nevada Chapter
Susan Proffitt, Vice President, Nevada Republican Club

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CHAIR DOÑATE:

I have made the decision to pull Senate Bill (S.B.) 348 from the work session. We had a work session yesterday on this bill and I will make a statement on the Floor when it gets there.

SENATE BILL 348: Revises provision relating to health facilities. (BDR 40-51)

We will open with the work session and our first bill is S.B. 191.

SENATE BILL 191: Makes certain changes relating to applied behavior analysis. (BDR 38-545)

DESTINI COOPER (Policy Analyst):

I have a work session document (Exhibit C) describing the bill and its amendments.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 191.

SENATOR LANGE SECONDED THE MOTION.

SENATOR STONE:

I was informed there is a proposed amendment to reduce the fee from \$550 to \$450. Is this part of the amendment?

The autistic population is underserved, not only in Nevada, but across the Nation. I have an autistic granddaughter who is nonverbal. I am concerned for her health and welfare. Too many families do not have healthcare alternatives for their autistic children. Therefore, I support this bill.

THE MOTION CARRIED. (SENATOR TITUS VOTED NO.)

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CHAIR DOÑATE:

Let us move on to S.B. 441.

SENATE BILL 441: Revises provisions relating to public health. (BDR 40-451)

Ms. COOPER:

I have a work session document ([Exhibit D](#)) describing the bill.

CHAIR DOÑATE:

The hearing on S.B. 441 resulted in a lot of questions and there are portions of the bill that are still unanswered. Given the nature of how this bill is running, I would ask my Committee members to make a motion to move this bill out without a recommendation, so it makes the deadline.

SENATOR NGUYEN MOVED WITHOUT RECOMMENDATION ON
S.B. 441.

SENATOR LANGE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR DOÑATE:

We will close the work session and open the hearing on S.B. 435.

SENATE BILL 435: Revises provisions relating to Medicaid. (BDR 38-1069)

RICHARD WHITLEY (Director, Nevada Department of Health and Human Services):
My co-presenter, Stacie Weeks, is going to walk the Committee through S.B. 435. I will follow her to discuss the proposed amendment ([Exhibit E](#)) to the bill.

STACIE WEEKS (Administrator, Division of Health Care Financing and Policy,
Nevada Department of Health and Human Services):

The bill corrects an issue with State law which currently allows only a narrow use of the provider tax to those that pay the tax. Federal law in recent guidance strongly indicates the current language could be viewed as violating the federal prohibition on holding harmless providers paying the tax. This means we cannot guarantee everyone paying the tax will get their money back. It could violate federal law, and we would not be able to draw down the federal Medicaid share.

The changes in the language will help the State defend the legality of the tax design. This bill will allow the Division of Health Care Financing and Policy (DHCFP) to share a portion of the revenue from the new assessment authorized under *Nevada Revised Statutes* 422.3794 with operators not subject to paying the tax. This use is contingent upon support by a poll from a majority of the operators who pay the assessment.

Currently, DHCFP is implementing a private hospital provider tax. We project to implement the tax by no later than January 1, 2024. This tax will support about 55 private hospitals in the State. It will create new inpatient and outpatient supplemental payments and State-directed payments for the managed care program. This new provision will allow DHCFP to address the legality issues of the tax under federal law. It will also address the potential risk to public rural hospitals in current Medicaid programs and payments.

We are at risk every time the State opens the Medicaid State Plan. For those who are unfamiliar with this Plan, it is our agreement with the federal government on how to recover and pay Nevada benefits. For example, the Centers for Medicare & Medicaid Services (CMS) has been known to change existing provisions in our Plan. Every time we open a section, CMS has the right to make changes. By adding a new upper payment limit or supplemental payment for private hospitals, the State risks changes to existing programs from CMS. Many of the programs have been on the books for some time. Over the years, there have been different federal administrations with different opinions on how supplemental payments work.

Although the risk is low, Governor Joseph Lombardo recommends adding this provision in statute to ensure that this tax is permissible. It will protect public hospitals, especially in rural areas, from any adverse, indirect consequences related to the private hospital tax and the new payment program.

The State's public rural hospitals receive approximately \$11 million annually in supplemental payments. Operating margins for these hospitals are tight and we want to make sure that these payments are held harmless. If something changes and the payments are reduced, then we will be able to use the assessment money to cover their losses. It will ensure they do not experience any reduction in funding.

MR. WHITLEY:

The proposed amendment will draw 15 percent of what is collected from the provider tax. This amendment has two purposes. The first one is to fund the cost of managing the program. Historically, Medicaid has cut itself short when doing supplemental payments to adequately fund the administrative costs, which include compliance with CMS requirements.

The funding's second purpose is covering the shortfall for Nevada's behavioral health system. Each year, Nevada spends approximately \$95 million of Medicaid on hospital charges for people with serious mental illness. The majority of the payments are for emergency room visits. We do not have adequate services in the Medicaid network in the community. We project the 15 percent tax will generate \$30 million to match with federal money. It will add services and raise rates for behavioral health. In October 2022, the State was notified by the U.S. Department of Justice (USDOJ) that our children's behavioral health program had a substantiated complaint on providing adequate community-based services. Many children, who could have received services upstream, were ending up in the emergency room or in institutions.

The intent of this 15 percent allotment will help fund the program and will add services currently deficient in State community-based behavioral health services. It will benefit adults and children. It will reduce the impact to hospitals and the crisis services currently provided in emergency rooms.

SENATOR NGUYEN:

I understand you are using the provider tax to comply with federal requirements. We have another provider tax with long-term care facilities. Does it have language in statute or is it different than this proposal?

MS. WEEKS:

The long-term facility provider tax does not have that language. It is a different tax structure and has a waiver for that tax model.

SENATOR NGUYEN:

My second question has to do with the 15 percent for administrative costs. How did you determine this percentage of the total revenue collected annually?

CHAIR DOÑATE:

It was my recommendation.

SENATOR NGUYEN:

Some of this revenue goes into the increased premium tax paid for the collection. Is 15 percent adequate to cover the increased premium costs? What is the actual amount? Can you provide an estimate to explain that percentage?

MS. WEEKS:

We considered the impact of the managed care program's premium tax. The payments passing through the managed care program increase the size of that tax, which is paid out of our budget. We project it is approximately \$29.5 million a year in costs. We will use about \$11 million to \$12 million of the funding to draw down the federal share to help pay for the fee. We consider it an administrative fee to manage this program that we will pay for.

SENATOR NGUYEN:

Is 15 percent enough? It sounds like the allotment will be used to pay for actual administrative costs and the increased taxes to cover managed care costs. We want to use the money to address quality-of-care issues with psychiatric and behavioral health conditions. This may not be enough.

MR. WHITLEY:

The proposed language states it is up to 15 percent and we currently do not have a spending plan to provide to you. Our intention is to submit the spending plan to the Interim Finance Committee (IFC). This bill aims to benefit hospitals with supplemental payments, hold rural hospitals harmless, pay our taxes and administer the program. As mentioned earlier, we project it will be \$30 million held up for a federal match. We could have flexibility to use that money for adding services or raising rates.

Nevada's Medicaid rates are very low. One reason for the provider shortages or their willingness to provide services is the rates. We requested flexibility so we can submit a detailed plan to IFC. A second challenge is the complaint filed on the lack of community-based services. We are negotiating with the USDOJ and the Office of the Attorney General on an agreement for additional services.

This bill is packed full of solutions, but the 15 percent is an adequate amount.

SENATOR NGUYEN:

I had some concerns and I appreciate Chair Doñate looking at industry standards. This is an incredible task, and I do not think it has been done across the Country at this level.

MR. WHITLEY:

The skilled nursing facility's tax goes to the General Fund. There are many different methods to arrive at supplemental payments. This one requires voluntary participation. Other states have interesting ways to collect revenue that can be held up for a federal match.

Given this is a voluntary program, it makes it challenging. There has to be something in it for everyone. In turn, we must leverage it to have an additional benefit to Medicaid.

SENATOR NGUYEN:

Are there any withholding measures included as a part of the CMS process? Are there federal mandates the State or hospitals have to comply with to receive the matching dollars?

MS. WEEKS:

We have to comply with the quality components for the State-directed payment portion. We are still in the process of putting it together. We are not currently looking at withholding any of the payment, given the situation with hospitals and their funding needs. In future years, if the Legislature wanted to direct us or CMS strengthens its guidance, we could reconsider tying a portion of the payment to quality performance.

SENATOR NGUYEN:

This is a voluntary program and requires a 67 percent buy-in. Will you be required to poll hospitals each year to see if it remains at 67 percent? It seems like a huge investment. We have already used federal funds to start some of this process.

MS. WEEKS:

We plan to poll the hospitals in June 2023. It does depend on how this Legislative Session goes and what we find out in the polls. Under State law, once the agreement is made it will remain in place. However, if we changed

how to tax the hospitals or use the funds, then we would need to have another poll.

SENATOR NGUYEN:

If the hospitals are profiting off this process, are there any protections for the State to curb it?

Ms. WEEKS:

No, there is nothing.

SENATOR TITUS:

Medicaid is such a complex system for reimbursement and obligations in the match of State funding. I want to acknowledge the effort you have put into this bill and thinking out of the box. You are attempting to keep Nevada safe and ensuring we can sustain some of this funding.

SENATOR NGUYEN:

The proposed amendment states the remaining money is collected for the purpose of improving access to behavioral healthcare services. I understand it is currently conceptual. How would you formulate it through the regulatory process? How would you see what the measures look like, and how that potential \$30 million a year was reinvested into those services?

MR. WHITLEY:

We are working through the USDOJ settlement. The gaps identified by the federal government are the same gaps our communities and emergency rooms have identified. These are services in the community that can stabilize and provide early intervention. One gap is for children and adults home services. Ms. Weeks has identified a 90/10 match for it.

The \$30 million estimate might be available to hold up. We know the State has to raise rates. We are not prepared today to say which services. However, we do know we have to look at the services falling short for supporting the community. We need to address the shortage of service providers; the likely issue is the low Medicaid rates. Once we have a plan prepared, we will submit it to the IFC.

SENATOR NGUYEN:

I applaud Ms. Weeks' initiative; the State is fortunate she found a 90/10 match for these kinds of services. Do we have the flexibility to use these funds in another way? Is it your intention to use it only for services tied to the USDOJ settlement?

MR. WHITLEY:

The use is part of the polling process, and the hospitals have to agree to participate. However, if the Legislature directed us to change the use of funds, then we would engage again with the hospitals. This is not necessarily a bad thing, because this same provider fee or tax is available to other industries that are seeking rate increases. If it went through, other industries may take an interest and seek a provider fee or tax to receive a supplemental payment. The statutes already exist, but it has not been utilized.

JOAN HALL (Nevada Rural Hospital Partners):

We support S.B. 435 because it is a protective solution for Nevada's public rural hospitals. It will help avoid unintended consequences for the provider fee, which is important for the rest of the hospitals. We are also supportive of the behavioral health component because we have a need for this service.

LEA CASE (Children's Advocacy Alliance):

We support S.B. 435. As mentioned by Director Whitley, on October 4, 2022, the USDOJ released a report finding Nevada had unnecessarily institutionalized children, sometimes out of state away from their families and communities. The State responded with an investment of \$43 million in federal funding to help create home and community services. However, a sustained funding source is still needed.

The amendment to S.B. 435 starts this process. A review of DHCFP's Budget Account 3177 revealed that the provider tax will bring in a total of \$388.8 million annually. Fifteen percent of the tax will fund the administration of the program and for behavioral and psychiatric health.

Nevada has a history of leaving mental and behavioral health behind or on a bus to another state. We support this as a first step. There is still a need for increased and sustainable funding to address the shortcomings noted in the USDOJ report. It will put Nevada on the right track for children's mental health.

JEANETTE BELZ (Nevada Psychiatric Association):

We support S.B. 435. The needs are great, and we are grateful these dollars have the potential to assist. Hopefully, the funding is adequate to address the mental health issues in Nevada.

JONATHAN NORMAN (Nevada Coalition of Legal Service Providers):

We support S.B. 435. At any given time, we represent between 3,000 and 4,000 children in foster care. I will not belabor the topic since others have said it really well. I appreciate the Committee's questions because it did clarify some areas of concern. This bill can help our community and our clients.

JOANNA JACOB (Clark County):

We have worked over the last 18 months with legal aid, the State and various stakeholders on the children's behavioral health crisis. We do need sustainable funding to address the gaps identified and the outcome of the USDOJ report. This bill is proposing a sustainable way to fund the work we started last year. We are in support of S.B. 435, and thankful for the State's work to address some of the issues.

SARAH ADLER (National Alliance on Mental Illness, Nevada Chapter):

We support S.B. 435. As someone whose sister manifested with bipolar disorder 42 years ago, I am aware that mental health issues will continue. The State's activism and sustainable funding streams can turn safety nets into solid floors of support.

SUSAN PROFFITT (Vice President, Nevada Republican Club):

We support S.B. 435. I like this bill a lot and am excited about every bit of it. I will look forward to seeing how fast the cost of aspirin comes down at the hospitals. Thank you for producing another bipartisan bill that we can all feel good about.

CHAIR DOÑATE:

We will close the hearing on S.B. 435, and I will entertain a motion.

SENATOR NGUYEN MOVED TO AMEND AND DO PASS AS AMENDED
AND RE-REFER S.B. 435 TO THE SENATE COMMITTEE ON FINANCE.

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SENATOR TITUS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR DOÑATE:

Hearing no public comment, this meeting is adjourned at 2:38 p.m.

RESPECTFULLY SUBMITTED:

Mary Ashley,
Committee Secretary

APPROVED BY:

Senator Fabian Doñate, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 191	C	2	Destini Cooper	Work Session Document
S.B. 441	D	3	Destini Cooper	Work Session Document
S.B.435	E	3	Richard Whitley/ Nevada Department of Health and Human Services	Proposed Amendment