



NEVADA LEGISLATURE LEGISLATIVE COMMISSION'S COMMITTEE TO STUDY GROUP HOMES

(Assembly Bill 294, Chapter 298, *Statutes of Nevada 2009*)

SUMMARY MINUTES AND ACTION REPORT

The first meeting of the Legislative Commission's Committee to Study Group Homes was held on Wednesday, January 27, 2010, at 2 p.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. A copy of this set of "Summary Minutes and Action Report," including the "Meeting Notice and Agenda" ([Exhibit A](#)) and other substantive exhibits, is available on the Nevada Legislature's website at <http://www.leg.state.nv.us/interim/75th2009/committee/>. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835).

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblywoman Marilyn Kirkpatrick, Chair
Senator Shirley A. Breeden
Senator Allison Copening
Senator David R. Parks
Assemblyman Harry Mortenson

COMMITTEE MEMBER PRESENT IN CARSON CITY:

Assemblyman Ty Cobb

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Michelle L. Van Geel, Principal Research Analyst, Research Division
M. Scott McKenna, Senior Principal Deputy Legislative Counsel, Legal Division
Gayle Nadeau, Principal Research Secretary, Research Division

ELECTION OF THE CHAIR

- Michelle L. Van Geel, Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB), opened the nominations for Chair of the Legislative Commission's Committee to Study Group Homes.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR BREEDEN MOVED TO NOMINATE ASSEMBLYWOMAN KIRKPATRICK TO SERVE AS THE COMMITTEE'S CHAIR. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY.

OPENING REMARKS AND INTRODUCTIONS

- Chair Kirkpatrick opened the meeting with Committee and staff introductions and provided a brief explanation on the purpose of the Legislative Commission's Committee to Study Group Homes. Chair Kirkpatrick listed three goals for the Committee: (1) identify solutions to protect the residents who live within group homes and the residents who live in the neighborhoods where group homes exist; (2) eliminate unscrupulous group home establishments; and (3) examine ways to cease litigation associated with group homes.

REVIEW OF THE COMMITTEE'S DUTIES AND RESPONSIBILITIES

- Michelle L. Van Geel, previously identified, reviewed the provisions in Assembly Bill 294 (Chapter 298, *Statutes of Nevada 2009*) that detail the duties and responsibilities of the Committee; informed the members that the Committee will have a total of three meetings during the 2009-2010 Interim and that it is authorized to submit five bill draft requests (BDRs) by July 1, 2010; and introduced a document that lists the definitions for selected health-related facilities regulated by the Health Division within Nevada's Department of Health and Human Services (DHHS). (Please see [Exhibit B.](#))

REVIEW OF THE HOLDING OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA IN *NEVADA FAIR HOUSING CENTER, INC., V. CLARK COUNTY*

- M. Scott McKenna, Senior Principal Deputy Legislative Counsel, Legal Division, LCB, offered introductory remarks and began his testimony by providing background information on the statutes in the State of Nevada that address the existence of group homes in residential neighborhoods and distance requirements with respect to group homes. Mr. McKenna followed with a briefing on the evolution of federal case law on the issue of distance requirements for group homes and concluded with an explanation of *Nevada Fair Housing Center, Inc., v. Clark County*, in which court

decision he noted the law created by A.B. 463 (Chapter 297, *Statutes of Nevada 2007*) was challenged and resulted in a holding that Nevada's statutes are facially discriminatory. (Please see [Exhibit C.](#))

EXPLANATION OF THE JOINT STATEMENT OF THE U.S. DEPARTMENT OF JUSTICE AND THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT REGARDING GROUP HOMES AND DISTANCE REQUIREMENTS

- M. Scott McKenna, previously identified, focused his explanation of the Joint Statement of the U.S. Department of Justice and the U.S. Department of Housing and Urban Development on the portion of the Joint Statement dealing with distance requirements for group homes, noting that there are three points to understand relative to distance requirements: (1) mandatory distance requirements—at least when considering persons with disabilities—are almost always impermissible as they conflict with the Fair Housing Amendments Act of 1988; (2) if a governmental entity chose to encourage locating a group home in place “X” rather than place “Y,” the entity could provide financial incentives, but could not require it; and (3) in the approval process for a group home, without factoring in absolute distance requirements, the entity would seemingly be allowed to consider whether the establishment of a group home would create such a concentration between or among the group homes that the residents of those homes would no longer be afforded the ability to live in a normal neighborhood environment. (Please see [Exhibit D.](#))

In Mr. McKenna's closing remarks, he opined that the Committee will need to consider two issues relative to *Nevada Fair Housing Center, Inc., v. Clark County*: (1) since 1999, distance requirements with respect to group homes have been in State law with a provision that there is no presumption that locating one or more group homes within a minimum distance is inappropriate in all instances; and (2) the court stated that the Fair Housing Amendments Act of 1988 preempted the entirety of Nevada's statutes on group homes, including a former provision stating that certain group homes must be included within the definition of a “single-family residence.”

Discussion ensued between Chair Kirkpatrick and Mr. McKenna regarding whether separate legislative measures rather than one BDR from the work of this Committee should be drafted for consideration by the 2011 Legislature.

PRESENTATIONS CONCERNING STATE AGENCIES' RESPONSIBILITIES AND DUTIES PERTAINING TO GROUP HOMES

- Chair Kirkpatrick called attention to the list of definitions ([Exhibit B](#)) for selected health-related facilities regulated by DHHS and requested that the representatives from State agencies testifying under this item inform the Committee which definitions, if possible, apply to the agency they represent.
- Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance (BHCQC), Health Division, DHHS, provided a broad overview of the duties of the

Bureau. Ms. Williams' testimony addressed ([Exhibit E-1](#), [Exhibit E-2](#), and [Exhibit E-3](#)):

1. The different types of facilities that the BHCQC licenses and oversees;
2. Challenges in dealing with unlicensed facilities;
3. Over census homes for individual residential care;
4. Fines imposed by the BHCQC for State Fiscal Years 2007-2009;
5. Educational efforts utilizing a consultant to provide training to the dependent care community;
6. The establishment of a committee called the "Restraint Free Nevada Campaign" to work with facilities to help develop capacity for the harder-to-care-for populations;
7. Fines not covering the cost to investigate unlicensed facilities or for complaint investigations;
8. BHCQC's collaborative working relationship with other local government agencies to ensure oversight of licensed entities; and
9. Application checklist documents for the various facility types.

Responding to Chair Kirkpatrick's question regarding treatment for recovering alcohol and drug abusers (ADAs), Ms. Williams explained that a residential facility providing treatment for ADAs must be certified by the Division of Mental Health and Developmental Services (DMHDS), DHHS, through its Substance Abuse and Prevention Treatment Agency. Ms. Williams further explained that a halfway house does not provide services within the facility; those individuals go to outside services that they need in order to reintegrate into society.

In response to Senator Parks' inquiry regarding if BHCQC uses specific definitions to determine the type of facility a group home would be licensed as, Ms. Williams referenced the list of definitions referred to earlier in the meeting ([Exhibit B](#)), but she stated the Bureau's investigation evaluates each person to determine what type of services are being provided by the facility and then it will determine the applicable license category for the unlicensed entity.

Discussion ensued among Senator Breeden, Ms. Williams, and Chad W. Westom, Health Facilities Surveyor, BHCQC, regarding the average number of residents in unlicensed facilities and how the Bureau learns of such facilities.

Further discussion ensued between Senator Copening and Ms. Williams regarding the difficulty and the administrative burden the Bureau encounters when attempting to collect penalties and its statistical records on the amount of fees that should have been collected.

Discussion ensued between Chair Kirkpatrick and Ms. Williams regarding a for-profit facility versus a nonprofit entity and business license requirements versus licensing requirements through the BHCQC to operate a group home.

- Kathryn L. Wellington-Cavakis, Director of Community Based Services, DMHDS, DHHS, discussed the following items addressed in her presentation handout. (Please see [Exhibit F](#), [Exhibit G](#), and [Exhibit H](#)):

1. Definition of supported living arrangements;
2. Supported living arrangements within the continuum of care—intermittent support, host home support, and 24-hour support;
3. Myths versus reality of supported living arrangements;
4. Provider certification requirements; and
5. Quality assurance.

Discussion between Chair Kirkpatrick and Ms. Wellington-Cavakis ensued regarding the “myths versus the reality” of supported living arrangements. Ms. Wellington-Cavakis provided a clarification scenario and an explanation of the funding sources for residents of supported living environments and noted that providers of supported living arrangements do not need a license but rather certification that is issued by the DMHDS.

There was a discussion among Chair Kirkpatrick, Assemblyman Mortenson, and Ms. Wellington-Cavakis regarding the following:

1. The amount of money owners of homes of supported living arrangements receive for their services;
 2. A system to track the funds received by the owners to ensure that those persons in the homes are receiving the needed services and where to file complaints if the services are not being provided;
 3. The funding sources to pay the DMHDS employees who monitor the supported living homes for quality assurance; and
 4. How often reviews of supported living homes are conducted.
- Amber Howell, Deputy Administrator, Division of Child and Family Services (DCFS), DHHS, discussed: (1) the State’s licensing entities and requirements for foster homes;

(2) statistical data on the number of foster homes in Nevada; and (3) the protocol for placing a child in foster care. (Please see [Exhibit I](#).)

Discussion ensued between Chair Kirkpatrick and Ms. Howell regarding ensuring adequate supervision of children in foster care and consequences to the foster home provider if infractions occur.

There was a discussion among Assemblyman Mortenson, Chair Kirkpatrick, and Ms. Howell regarding financial arrangements and the rate of reimbursement for licensed providers of foster care services.

- Continuing her testimony, Ms. Howell provided information on:
 1. Reasons for denying a foster home license;
 2. The licensing authority's requirement to report statistical data such as the number of applications for foster homes, waivers, licenses revoked or suspended and the reasons for these, and complaints related to licensees to DCFS via the federally mandated computer system known as SACWIS (Statewide Automated Child Welfare Information System);
 3. A statewide work group to clarify the requirements and differences in *Nevada Administrative Code* regulations between group foster homes and treatment homes; and
 4. The requirement, as a result of the passage of A.B. 227 (Chapter 332, *Statutes of Nevada 2009*), for DCFS to adopt regulations regarding the placement of children in foster care.

Discussion ensued among Chair Kirkpatrick, Senator Breeden, and Ms. Howell regarding whether residents in the neighborhood of a foster home are notified when a license is revoked and if fines are assessed in the event of identified deficiencies in the foster home.

OVERVIEW OF NEVADA DISABILITY ADVOCACY AND LAW CENTER (NDALC) AND AGENCY ACTIVITIES RELATED TO GROUP HOMES

- William W. Heavilin, Esq., Supervising Rights Attorney, NDALC, provided an overview of the Nevada Disability Advocacy and Law Center and its services. He explained that the NDALC serves as Nevada's federally mandated protection and advocacy system for human, legal, and service rights for individuals with disabilities. Mr. Heavilin further discussed NDALC's activities related to living arrangements—group homes or supported living facilities—for persons with disabilities and the unique power that federal law gives the NDALC to conduct investigations when a complaint of abuse or neglect is received. (Please see [Exhibit J](#) and [Exhibit K](#).)

In response to Senator Copening's inquiry whether there are duplicative roles with NDALC and State agencies, Mr. Heavilin explained that NDALC will evaluate if a situation would fall under BHCQC's purview or if the matter meets the criteria for NDALC's intervention. He stressed that NDALC strives to complement not duplicate other State agencies' responsibilities.

There was a discussion between Chair Kirkpatrick and Mr. Heavilin regarding the following:

1. Residents who live in a community where group homes or assisted living facilities are located need an advocate to assist them in resolving problems that may arise within the homes or facilities which problems threaten the harmony and safety of the neighborhood;
2. Solutions are needed to ensure compliance and quality assurance enforcement of group homes and assisted living facilities in order to protect the entire community; and
3. NDALC's funding sources and how many clients the agency serves annually.

PUBLIC COMMENT

- Iris Gross, Clark County resident, expressed her concerns regarding: (1) a group home that was allowed in her neighborhood when the homeowners' Covenants, Conditions, and Restrictions (CC&Rs) prohibit businesses; (2) the resultant decrease in property values; (3) disposal of medical waste; (4) increased activity at the home; (5) violations of the licensing requirements; (6) confusion about certification and licensing requirements between State and local government; and (7) lack of communication among the various regulating authorities for necessary approvals.
- Brian Patchett, CEO for Easter Seals Southern Nevada, and President, State of Nevada Association of Providers (SNAP), invited the Committee to tour SNAP's supported living arrangement and intermediate care facilities, and he offered SNAP's assistance to the Committee as providers for persons with disabilities.
- Liane Lee, Legislative Officer, City of Las Vegas, informed the Committee of a February 4, 2010, community meeting that the City would host regarding group homes. Ms. Lee noted that because the City is considering changing its ordinance on group homes the purpose of the meeting is to educate constituents and provide a forum for the public to voice concerns about the proposed changes as well as to discuss licensing requirements as they relate to federal rules.
- James B. Lewis, City Attorney, City of Las Vegas, responded to Senator Copening's inquiry regarding the proposed changes to the City's group homes ordinance noting that

the City is reviewing the rules in the context of *Nevada Fair Housing Center, Inc., v. Clark County*.

- Charles Baker, a lead family advocate for a nonprofit known as “The Inner Circle” and resident of Henderson, expressed concern about children between 16 and 19 years old who are “timing out” of the foster care system or who choose to live on the streets with their siblings because they would be separated if they return to the system. Mr. Baker further explained his concerns for children living on the streets noting there is a difference between “foster care” and “group care” and that there is a lack of “across-the-board” understanding among agencies and local governments about the need for services for children living on the streets. He stated that current laws limit the number of group homes in a neighborhood and the category of needs for an individual to qualify to live in a group home.

Discussion ensued between Chair Kirkpatrick and Mr. Baker regarding: (1) ensuring the residents who live in group homes obtain the services they are supposed to receive; (2) involving the individuals who are represented by groups such as “The Inner Circle” in the community; (3) collaborating the work of nonprofit and for-profit entities for the benefit of all the stakeholders in community neighborhoods; and (4) improving communication among all levels of State government and local municipalities.

- Debra Clouten, resident of North Las Vegas, expressed concern regarding foster homes for children, calling attention to safety issues and the degradation of her neighborhood as a result of three group foster homes that were licensed to exist in her community when businesses are not allowed by the CC&R’s of her homeowners’ association. Ms. Clouten stressed that the licensing entities need to communicate with the homeowners and also consider their rights.

Discussion ensued among Assemblyman Mortenson, Chair Kirkpatrick, Ms. Clouten, and Anita Wood, member of the North Las Vegas City Council, regarding well-run versus poorly managed foster homes and the legal means to address problems and conflicts when they do occur in a neighborhood.

- Anita Wood, previously identified, offered, from the perspective of an elected official, the following key points that concern her: (1) there does not appear to be a distinction between a person who is the legal guardian of a family member but does not receive foster care reimbursement as opposed to a group home that is a for-profit business; and (2) appropriate supervision of group homes with respect to the need for collaborative communication and clarification of the respective roles of the State, counties, and cities in issuing licenses and determining which entity is responsible for licensing requirements and follow-up assessments when problems occur so that corrective actions are taken.
- Ms. Clouten, previously identified, further testified that she is familiar with the problems of group homes because she worked in community corrections in another

state as an administrator of halfway houses for adult and female felons in addition to serving as a counselor in a group home for dependent and neglected teenage girls, but as a homeowner herself, she declared the residents need to be included in the process.

- Joe Tinio, an owner of a group home that provides adult care, expressed concern about the problem of unlicensed group homes. He suggested that agencies that are currently having success in addressing this problem be provided more authority to eliminate the unlicensed group homes in the State.

ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 5 p.m.

Respectfully submitted,

Gayle Nadeau
Principal Research Secretary

Michelle L. Van Geel
Principal Research Analyst

APPROVED BY:

Assemblywoman Marilyn Kirkpatrick, Chair

Date: _____

LIST OF EXHIBITS

[Exhibit A](#) is the “Meeting Notice and Agenda” provided by Michelle L. Van Geel, Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB).

[Exhibit B](#) is a document titled “Appendix B, Definitions for Selected Health-Related Facilities Regulated by the Health Division,” provided by Michelle L. Van Geel, Principal Research Analyst, Research Division, LCB.

[Exhibit C](#) is a document titled “United States District Court, D. Nevada. NEVADA FAIR HOUSING CENTER, INC., Plaintiff v. CLARK COUNTY, etc., et al., Defendants,” provided by M. Scott McKenna, Senior Principal Deputy Legislative Counsel, Legal Division, LCB.

[Exhibit D](#) is a document titled “Joint Statement of the Department of Justice and the Department of Housing and Urban Development,” provided by M. Scott McKenna, Senior Principal Deputy Legislative Counsel, Legal Division, LCB.

[Exhibit E-1](#) is a document titled “Presentation Before the Group Homes Study,” provided by Marla McDade Williams, Chief, Bureau of Health Care Quality and Compliance (BHCQC), Health Division, Department of Health and Human Services (DHHS).

[Exhibit E-2](#) is a table regarding group home facility types licensed and overseen by the BHCQC within the Health Division of DHHS, provided by Marla McDade Williams, Chief, BHCQC, Health Division, DHHS.

[Exhibit E-3](#) consists of five documents titled: (1) “Application Documents for Residential Facilities for Groups (AGC)”;

(2) “Application Documents Required for Homes for Individual Residential Care (HIC)”;

(3) “Application Documents Required for Halfway House for Recovering Alcohol and Drug Abusers (HWH)”;

(4) “Application Documents Required for Transitional Living Facilities (TLF)”;

and (5) “Application Documents Required for Alcohol and Drug Treatment Facilities (ADA),” provided by Marla McDade Williams, Chief, BHCQC, Health Division, DHHS.

[Exhibit F](#) is a Microsoft PowerPoint presentation document titled “Division of Health and Human Services, Mental Health and Developmental Services,” provided by Kathryn L. Wellington-Cavakis, Director of Community Based Services, Division of Mental Health and Developmental Services (DMHDS), DHHS.

[Exhibit G](#) is a draft document titled “Developmental Services Certification Process for Contracted Providers of Supported Living Services,” provided by Kathryn L. Wellington-Cavakis, Director of Community Based Services, DMHDS, DHHS.

[Exhibit H](#) is a document titled “Basic Requirements for Developmental Services Providers of Supported Living and Jobs and Day Training Services and Existing Provider Organizations,”

provided by Kathryn L. Wellington-Cavakis, Director of Community Based Services, DMHDS, DHHS.

[Exhibit I](#) is a document titled “Division of Child and Family Services” regarding licensing of Nevada foster group homes and requirements for licensure of group foster homes, provided by Amber Howell, Deputy Administrator, Division of Child and Family Services, DHHS.

[Exhibit J](#) is a Microsoft PowerPoint handout titled “Nevada’s Protection and Advocacy System for Individuals with Disabilities,” submitted by William W. Heavilin, Esq., Supervising Rights Attorney, Nevada Disability Advocacy and Law Center (NDALC), Las Vegas.

[Exhibit K](#) is a document titled “Nevada’s Protection and Advocacy System for Individuals with Disabilities, 2010 Case Selection Criteria and Service Priorities,” provided by William W. Heavilin, Esq., Supervising Rights Attorney, NDALC, Las Vegas.

This set of “Summary Minutes and Action Report” is supplied as an informational service. Exhibits in electronic format may not be complete. Copies of the complete exhibits, other materials distributed at the meeting, and the audio record are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library online at www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm or telephone: 775/684-6827.