



NEVADA LEGISLATURE
LEGISLATIVE COMMITTEE ON HEALTH CARE
(*Nevada Revised Statutes 439B.200*)

SUMMARY MINUTES AND ACTION REPORT

The twelfth meeting of the Nevada Legislature's Legislative Committee on Health Care was held on July 29, 2008, at 9 a.m. in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. 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 www.leg.state.nv.us/74th/Interim. 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 CARSON CITY:

Assemblywoman Sheila Leslie, Chair
Senator Maurice E. Washington, Vice Chair
Senator Joseph J. Heck
Senator Steven A. Horsford
Assemblywoman Susan I. Gerhardt
Assemblyman Joe Hardy

OTHER LEGISLATOR PRESENT:

Senator Maggie Carlton

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Marsheilah D. Lyons, Principal Research Analyst, Research Division
Sarah J. Lutter, Senior Research Analyst, Research Division
Sara Partida, Senior Deputy Legislative Counsel, Legal Division
Rebecca C. Dobert, Senior Administrative Assistant, Research Division
Sally Trotter, Senior Research Secretary, Research Division

OPENING REMARKS

Assemblywoman Sheila Leslie, Chair, welcomed members, presenters, and the public to the twelfth meeting and work session of the Legislative Committee on Health Care (LCHC). She explained the protocol for the work session portion of the meeting.

APPROVAL OF MINUTES OF THE MEETING HELD ON JUNE 17, 2008, IN CARSON CITY, NEVADA

- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO APPROVE THE “SUMMARY MINUTES AND ACTION REPORT” OF THE JUNE 17, 2008, MEETING HELD IN CARSON CITY, NEVADA, THE MOTION WAS SECONDED BY ASSEMBLYWOMAN GERHARDT AND PASSED UNANIMOUSLY. VICE CHAIR WASHINGTON WAS NOT PRESENT FOR THE VOTE.

PRESENTATION AND RECOMMENDATIONS CONCERNING THE HEPATITIS C INVESTIGATION IN LAS VEGAS AND RELATED PUBLIC HEALTH IMPLICATIONS

- Richard Whitley, M.S., Administrator, Health Division, Department of Health and Human Services (DHHS), described activities undertaken by the Health Division in response to the hepatitis C crisis investigation, summarized in a two-page handout detailing the Division’s policy change and bill draft request (BDR) recommendations ([Exhibit B](#)). Recommendations included: changing regulations and legislation related to sentinel events; the Division’s ability to respond to public health crises; disease investigation and cost recovery; and various items to assist the Bureau of Licensure and Certification (BLC), Health Division, DHHS, with their medical facility inspection processes.
- Senator Heck asked how “cease and desist” recommendations were different from the Division’s current authority to suspend a facility’s license.
- Mr. Whitley responded that the changes could focus on suspending the performance of a single procedure as opposed to suspending the license of the entire facility. He noted that this recommendation was the result of discussion with facility surveyors. Mr. Whitley also affirmed Senator Heck’s statement that the Division viewed the “cease and desist” recommendation as a lesser penalty that would effect more immediate change when action at the level of suspending a license is not warranted.
- Chair Leslie asked for clarification of the “sentinel events” recommendation, specifically with regard to the reporting of sentinel events.

- Mr. Whitley responded that this recommendation was made to ensure that communications of all sentinel event information and data sources are complete within State agencies and across programs. He noted the importance of information being communicated to the surveyors. Mr. Whitley stated the Division was requesting statutory changes to make the reporting more thorough and current.
- Chair Leslie asked if most states reported sentinel events by facility.

Discussion followed regarding the difference of reporting sentinel events by facility versus by facility type and the potential for standardization of sentinel event reporting and subsequent agency responses and training requirements.

- Senator Horsford asked how public access to sentinel event reporting and related information could be strengthened.
- Mr. Whitley answered that public reporting of events was not done by facility name, but breaking out reports by facility type could improve public access. He noted that the information and reporting was presently fragmented. Mr. Whitley stated the Division's proposed changes would improve public information.
- Senator Horsford said he agreed that providing continuity in event reporting was a necessary step but urged a more transparent reporting by naming the facilities. He said this presents an opportunity to think more broadly about how to inform the public utilizing all available resources.
- Marla McDade Williams, Chief, BLC, Health Division, DHHS, responded that the BLC's survey findings would be made available on the BLC's website. She noted that survey findings would allow increased public access to information about specific sentinel events.
- Chair Leslie asked if this information was currently available.
- Ms. Williams responded that only the previous six months' data for ambulatory surgical centers (ASCs) was available and there was an effort underway to expand this information to include findings from all types of facilities inspected by the BLC.
- Lawrence K. Sands, D.O., M.P.H., Chief Health Officer, Southern Nevada Health District (SNHD), presented a handout providing the SNHD's policy recommendations for enhancing the language of Chapter 441A of *Nevada Revised Statutes* (NRS), "Communicable Diseases," to allow health authorities to strengthen public health response, and better investigate disease and potential sources of disease, and outbreaks ([Exhibit C](#)).
- Responding to Chair Leslie's inquiry about the Health Division's response to the SNHD's recommendations, Mr. Whitley replied that further discussion between the Division and local health authorities would be worthwhile.

Discussion ensued as to how recommendations in [Exhibit B](#) and [Exhibit C](#) could fit together, to create legislation. It was agreed that work could be done to dovetail the two documents and their recommendations prior to the 2009 Legislative Session.

- Assemblywoman Gerhardt asked about the best way to determine when sentinel events are not being properly reported.
- Mr. Whitley responded that he did not have the tools to identify improper reporting of sentinel events. He discussed some other states' reporting strategies, including Michigan, noting there does not appear to be a standard of practice. Mr. Whitley stated the most useful strategy is to create a culture that encourages the cooperation of medical personnel in making a health care system which is as effective as possible.
- Assemblywoman Gerhardt noted her concern with the types of data comparisons being made once a complaint was lodged to obtain compliance.
- Mr. Whitley stated that the first step in the process would be to use the collected data to identify missing information and then add to the data. He acknowledged the fact that the Division had made progress in strengthening regulations to improve response to public health crises and the reporting of sentinel events. Mr. Whitley described some training, intervention, and corrective actions that were being standardized.
- Chair Leslie asked if the accreditation recommendations in [Exhibit B](#) included outpatient surgical centers.
- Mr. Whitley affirmed that outpatient surgical centers were included. He commented that the recommendation still had to be approved by the State Board of Health, Health Division, DHHS.
- Chair Leslie commented on progress in recruitment and staffing for the Health Facility Surveyor positions within the Division.
- Mr. Whitley explained some restructuring issues being assessed for the BLC to make inspection and response processes more thorough and efficient. He discussed some currently shared duties that could be assigned more specifically to individual staff.
- Ms. Williams said that, though there was still some resistance from facilities regarding these changes, as the staff worked within the facilities they were able to educate personnel and clarify the intention of the Division to provide education. She explained additional communication tools, including a listserv, available via the BLC's website.
- Vice Chair Washington asked, in reference to [Exhibit B](#), if there was a set of standards or best practices for general practice and for accreditation the Division wanted to adopt

and if the Division would require local health divisions to submit reports for the Division's review.

- Mr. Whitley replied that the Division referenced the Centers for Disease Control and Prevention (CDC) guidelines for general clinical practices such as infection control. For training, he stated that training modules were decided upon with consultation with other State and local health authorities. Mr. Whitley addressed options for reporting and accreditation practices for facilities, pointing out that a memorandum of understanding is pending between the Health Division and the individual accrediting bodies so that the Division will be apprised of their findings.

Discussion followed regarding the data reporting capabilities of nationally recognized accrediting bodies, the different local health authorities in Nevada, and communication between the Health Division and local health authorities.

- Chair Leslie called for any updates about the public health crisis, noting the recent reporting of an additional confirmed case of hepatitis C.
- Dr. Sands responded by summarizing the timeline of developments related to the outbreak, including: additional hepatitis C cases identified in patients related to the investigated endoscopy centers; CDC testing and involvement; increased knowledge of the transmission process of the disease, including sentinel dates, via unsafe clinic practices; the identification of source cases of hepatitis C; and the implementation of a hepatitis C exposure registry.
- Chair Leslie asked if Dr. Sands thought that the bulk of new cases had been identified.
- Dr. Sands replied that they likely had not been, but that the scope of the investigative frame work had been expanded and made more efficient.
- Senator Heck asked if the two identified source cases had been aware of their disease status before their procedures and whether they informed the medical practitioners performing their procedures of that status.
- Brian Labus, M.P.H., Senior Epidemiologist, SNHD, responded that the source patient who underwent a procedure on September 21, 2007, had their positive hepatitis C status listed in their medical chart; therefore, it was known to both the patient and the medical staff. For the source patient whose procedure was on July 25, 2007, Mr. Labus was uncertain if the patient's positive hepatitis C status was charted, but said that the patient had tested positive several years earlier and the diagnosing test had been ordered by the Gastroenterology Center of Nevada, which was the endoscopic center performing the July 25, 2007, procedure.
- Senator Heck asked if it were possible to narrow the scope of patients potentially exposed based on the identification of the source cases.

- Mr. Labus responded that due to unsafe medical practices, all of the currently identified patients were still considered at risk.
- Assemblyman Hardy inquired with regard to the identification of unsafe medical procedure practices and if the investigations included any additional instruments of transmission, specifically the colonoscopes and medical equipment used during procedures and cleaning procedures related to the durable equipment.
- Mr. Labus stated that the possibility of transmission via scopes and other equipment had been thoroughly investigated, including the efficacy of cleaning procedures for reusable equipment. He said that durable equipment was not identified as being reused on multiple patients. Mr. Labus pointed out that there is also a greater risk of transmission from syringe to syringe. He explained the vial contamination and disease transmission processes.
- Chair Leslie called for public testimony on this item and there was none.

PRESENTATION AND RECOMMENDATIONS CONCERNING MEDICAL CLEARANCE FOR PERSONS WAITING FOR EMERGENCY ADMISSIONS TO MENTAL HEALTH FACILITIES AND RELATED MENTAL HEALTH SERVICES

- Shannon E. West, M.S.W., Regional Homeless Services Coordinator, Southern Nevada Regional Planning Coalition, used a Microsoft PowerPoint presentation to provide an update and discuss recommendations to the LCHC from the Southern Nevada Mental Health Design Work Group ([Exhibit D](#)). She provided: background related to the Work Group and its ongoing discussions of mental health care in Nevada; the discussion process followed by the Work Group; membership; a summary of progress; consensus items; proposals; and recommended NRS augmentations.
- Richard Failla, Deputy Administrator, Division of Mental Health and Developmental Services (DMHDS), DHHS, discussed the DMHDS's goals for treating the mentally ill and their involvement in the Working Group's process, including their support of the One System of Care and Resources (OSCaR) one-stop-shop triage model. He stated that legislation needed to be changed regarding medical clearance.
- Assemblyman Hardy asked for clarification of the OSCaR model.
- Richard E. Steinberg, President/CEO, WestCare Nevada, replied that the OSCaR model is a triage center model developed to streamline the admission and treatment processes for mental health patients within the existing health care system in an effort to afford appropriate treatment for mental health and medical patients. He stated that one issue that had plagued the Working Group was finding an actual location where the OSCaR model could be implemented, detailing several possibilities and related

accreditation and use details. Mr. Steinberg noted that many communities did not support a treatment facility in their neighborhood. He explained the OSCaR model's efficiency and related triage details.

- Chair Leslie reviewed NRS 433A.165(1), "Examination required before transportation of person to mental health facility; treatment required under certain circumstances before transportation of person to mental health facility; payment of costs; regulations."

Discussion ensued regarding the previous attempt to change the language, what the objections had been, particularly regarding patient transportation, and why the change did not pass.

- Mr. Steinberg explained details related to personnel who may initiate Legal 2000 hold and release processes for mental health patients and suggested changes relative to recommended statutory augmentations.

Discussion followed regarding release of Legal 2000 patients from facilities and proposals to amend authorization.

- Senator Heck explained Legal 2000 documentation currently in use and provided suggestions for improving the process.
- Mr. Steinberg agreed that it appeared the Legal 2000 process could use some tightening. He commented that all of the stakeholders seemed to be in general agreement regarding how to accomplish that objective.
- Chair Leslie asked if it was being suggested that statute define that a medical clearance related to a Legal 2000 hold did not need to occur in an acute care hospital.

Discussion continued regarding the transportation and medical clearance issues that might be raised related to this change and how statute might provide for this medical clearance.

- Senator Heck stated that current statute required a medical evaluation but was silent on where the evaluation needed to take place. He commented that this allowed flexibility for practitioners to perform medical clearance, but not necessarily in a certain type of licensed medical facility.
- Ms. West affirmed Chair Leslie's comment about the Work Group being in agreement regarding the recommendations.
- Mr. Steinberg noted there were additional pieces to the recommendations forthcoming, but that the Work Group was designing a system to keep the process moving despite current budget shortfalls.
- Chair Leslie called for public testimony on this item.

- Leon Ravin, M.D., Senior Psychiatrist, Associate Medical Director, Director of Student and Resident Education, Southern Nevada Adult Mental Health Services, DMHDS, DHHS, testified that he was in agreement with the proposed language change related to transportation of mental health patients.
- Lesley R. Dickson, M.D., President, Nevada Psychiatric Association, Las Vegas, testified that the proposed language regarding expanding the ability to discharge Legal 2000 patients should be fine-tuned—including changing “licensed psychologist” to “psychiatrist.”
- Harold Cook, Ph.D., Administrator, DMHDS, DHHS, clarified which medical professionals could legally initiate and discharge a Legal 2000 petition under current statute, NRS 433A.170, “Certificate of psychiatrist, licensed psychologist or physician required.”

Discussion ensued regarding physician issues with Legal 2000 petition initiation and release methodology and the authorization of various medical health professionals to release Legal 2000 patients.

- Chair Leslie asked if Dr. Dickson desired to have language in statute to better define the specific medical professionals authorized to release a Legal 2000 hold.
- Dr. Dickson affirmed she was in favor of having supervision of professionals authorized to release a Legal 2000 hold by a licensed psychiatrist.
- In response to Chair Leslie’s question, Mr. Steinberg stated he agreed to Dr. Dickson’s proposed “licensed psychiatrist” change to the Work Group’s suggested Legal 2000 language augmentation, as listed in [Exhibit D](#).

Discussion followed regarding the potential use of the language: “licensed physician” versus “licensed psychiatrist” in the Work Group’s recommended NRS augmentations. The discussion focused on whether allowing a “licensed physician” would preclude patients from receiving a proper psychiatric evaluation. It was also noted that a phone consultation service could be an option for rural areas.

- Senator Heck stated that the original discussion regarding this language concerned trying to maintain consistency between practitioners who could initiate a Legal 2000 petition and practitioners who could release a Legal 2000 hold.
- Assemblyman Hardy commented that most emergency room physicians would consult with a specialist if they had any questions or uncertainties about treating a patient. He stated he was reluctant to define supervising professionals in statute.

- Ms. West pointed out that the intent of using the term “licensed physician” was to include “licensed psychiatrists.”
- Dr. Ravin added that transitional step-down treatments were an important consideration in the OSCaR model.
- Dr. Dickson suggested that a final language change to [Exhibit D](#) include “in the absence of a licensed psychiatrist or mental health professional, a licensed physician could discharge a Legal 2000 patient.”

PRESENTATION REGARDING THE IMPACT OF RECENTLY ENACTED FEDERAL LEGISLATION ON THE MEDICAID PROGRAM IN NEVADA

- Charles Duarte, Administrator, Division of Health Care Financing and Policy (DHCFP), DHHS, presented a spreadsheet ([Exhibit E](#)) detailing the impact of recently enacted federal legislation on Medicaid programs in Nevada. He explained the background of the federal legislation and the subsequent state responses and requests for additional fiscal consideration before implementation. Mr. Duarte noted that federal legislation related to case management had impacted Nevada quite heavily. He explained programmatic changes made by Congress, which resulted in Nevada having to cease paying certain case management claims with very little notification. Mr. Duarte cited his concerns with these changes, including pending regulation changes being put on hold indefinitely and some of the changes related to items not in the DHCFP’s budget.

Mr. Duarte next explained the DHCFP’s analysis of federal changes related to school-based administration and transportation (see [Exhibit E](#)). He proposed eliminating the rule on page 4 due to a moratorium stating it excludes reimbursement for graduate medical education. Mr. Duarte explained on page 5 of [Exhibit E](#) that he anticipated this federal oversight intended to save money for the federal government to continue in the future; however, he noted it would impact states and their spending authority. He continued on page 6 reporting that federal rules established to limit hospital services, particularly outpatient clinic services, will move forward but will not affect Nevada. Mr. Duarte concluded that significant oversight by the federal government of state Medicaid programs will continue.

- Responding to Chair Leslie, Mr. Duarte stated that an administrative change after the 2008 General Election could change the approach making it more cooperative with states but that it would take time.

Discussion ensued regarding what the future may hold for these specific moratoria based on the pending change of administration after the November 2008 General Election.

- Chair Leslie asked about the Federal Match Participation (FMAP) rate.

- Mr. Duarte responded that FMAP figures are based on statistics that are several years old. He commented that United States Senator Harry Reid's office has attempted to address this issue in the overall subsidy package so that Nevada will receive a higher rate.
- Chair Leslie noted that Nevada is currently in 51st place nationally for Medicaid provision and stated her concern that the federal government might decide to discontinue their portion of Medicaid funding if Nevada continues to reduce costs due to the State's budget crisis.
- Mr. Duarte replied that this issue was being assessed by the federal government. He stated that they have proposed a 10 percent reduction in reimbursement to providers.
- Chair Leslie called for public testimony on this agenda item.
- Jon Sasser, Washoe Legal Services, Reno, encouraged the LCHC to consider sending a letter of support for an increase in FMAP funding. He opined that Nevada meets the definition of needy and a petition for relevant FMAP is warranted.
- Chair Leslie stated that was a good suggestion and would be considered.

CONSIDERATION OF REGULATIONS PROPOSED OR ADOPTED BY CERTAIN LICENSING BOARDS PURSUANT TO NRS 439B.225

Legislative Counsel Bureau (LCB) File No. R114-08, State Board of Pharmacy

LCB File No. R115-08, State Board of Pharmacy

LCB File No. R116-08, State Board of Pharmacy

LCB File No. R117-08, Board of Psychological Examiners

LCB File No. R122-08, Board of Examiners for Audiology and Speech Pathology

LCB File No. R158-08, Board of Dental Examiners of Nevada

LCB File No. R159-08, Board of Dental Examiners of Nevada

LCB File No. R176-08, Board of Medical Examiners

- Sara Partida, Senior Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau (LCB), provided a review of regulations proposed or adopted by certain licensing boards in Nevada, including a brief summary of each recommendation ([Exhibit F](#)).
- Assemblyman Hardy asked if R116-08 addressed a requirement that the State Board of Pharmacy share information with other agencies such as the BLC and the Board of Medical Examiners (BME).

- Ms. Partida responded that the regulation only specified that pharmacists must report to the State Board of Pharmacy.
- Dr. Larry Pinson, Executive Secretary, State Board of Pharmacy, Reno, testified that the duties of contracted pharmacists are not specified in statute. He stated that during the hepatitis C crisis he considered what pharmacists could do to contribute to effecting nonabusive use of medicines. Dr. Pinson commented that a meeting was convened and workshops constructed contributing to the creation of this regulation. He said that pharmacists could assist with the tracking of medicine use via time periods of drug use and could track how long it takes a facility to reorder single use vials relative to the number of patients seen.
- Responding to Chair Leslie's question, Dr. Pinson replied he was unsure if sharing of information could be achieved by regulation or statute.
- Assemblyman Hardy commented that there was a need to include language stating an obligation to share facts between public boards.
- Assemblywoman Gerhardt inquired how this type of tracking could be included for private physician offices that provide colonoscopy procedures.
- Dr. Pinson responded it would be a challenge to figure out how pharmacists could track the use of medicine in private physicians' offices.

Discussion of potential tracking methods ensued.

PUBLIC COMMENT

- Robert Desruisseaux, Policy Analyst, Nevada Disability and Advocacy Law Center, Reno, offered his assistance to the LCHC.
- Rosalind Tuana, Executive Director, Board of Examiners for Social Workers, Reno, asked to clarify a recommendation that she made to the Subcommittee. She requested the language in Recommendation No. 46 include psychotherapists who are not licensed by any recognized licensing board in Nevada. She reported many states limit the ability to use the title "psychotherapist" and that definition should be expanded.
- Caroline Ford, Director, Center for Education and Health Services Outreach, School of Medicine, University of Nevada, Reno, submitted [Exhibit G](#) regarding health workforce data collection and offered the Center's assistance in facilitating a pilot study.

Discussion ensued between Chair Leslie and Ms. Ford regarding costs for the pilot program. Chair Leslie noted that a general estimate would be needed.

- Jon Sasser, previously identified, provided supportive remarks for Recommendation No. 13 included in the LCHC “Work Session Document” ([Exhibit H](#)).
- Carl Heard, M.D., Chief Health Officer, Nevada Health Centers, requested the LCHC include a comparative analysis of regulations and licensing procedures to ensure Nevada is competitive with other states.
- Chair Leslie noted the presence of Maggie Carlton, Nevada State Senator, Clark County Senatorial District No. 2, who she commented is not an LCHC member and would not be voting.

WORK SESSION—DISCUSSION AND ACTION ON RECOMMENDATIONS RELATING TO:

- *Access to Care*
- *Mental Health and Substance Abuse*
- *Children and Senior Health Issues*
- *Public Health Programs*
- *Hepatitis C Investigation*
- *Health Care Provider Licensing Boards*
- *Whistleblower Protections*
- *Recommendations from the Subcommittee of the Legislative Committee on Health Care to Review the Laws and Regulations Governing the Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic Substances (Senate Bill 4, Chapter 4, Statutes of Nevada 2007, 23rd Session)*
- *Legislative Committee on Health Care*

The following “Work Session Document” ([Exhibit H](#)) has been prepared by the staff of Nevada’s Legislative Committee on Health Care (LCHC) (*Nevada Revised Statutes* 439B.200). This document contains recommendations that were submitted in writing to Committee staff, provided through correspondence with Committee members, or presented during one of the Committee’s hearings.

This document is designed to assist the Committee members in determining what action they may wish to take on certain issues, which may include making statements in the Committee’s final report, writing letters of recommendation or support, or forwarding recommendations for legislation to the 2009 Session of the Nevada Legislature. The Committee may vote to make as many statements or send as many letters as they choose; however, pursuant to NRS 218.2429, the Committee is limited to ten bill draft requests (BDRs), including requests for the drafting of resolutions. The BDRs must be submitted to the Legal Division of the Legislative Counsel Bureau (LCB) before September 1, 2008.

The recommendations listed in this document are conceptual recommendations arranged by topic, are in no particular order of importance, and do not necessarily have the support or opposition of the Committee Chair or members. The members may accept, reject, modify, or take no action on any of the proposals. The source of each recommendation is noted in parentheses when available. Please note that specific sources may not be provided if the proposals were raised and discussed by numerous individuals during the course of the interim, or only one main source may be listed when there were also others who contributed. Additional recommendations may be considered based on discussions held and presentations made at the July 29, 2008, hearing. Please see the agenda for details concerning the scheduled presentations. The Chair of the Committee may choose to raise related issues for discussion or Committee action during the work session.

The recommendations may have been modified by being combined with similar proposals or by the addition of necessary legal or fiscal information. It should also be noted that some of the recommendations may contain an unknown fiscal impact. If a recommendation is adopted for a BDR, then the Committee staff will work with interested parties to obtain fiscal estimates for inclusion in the final report. During the drafting process, specific details of approved requests for legislation or other Committee action may be further clarified by staff in consultation with the Chair or others, as appropriate. Also, if a recommendation includes reference to specific chapters or statutes of NRS, as part of the drafting process, amendments to other related chapters or sections of NRS may be made to fully implement the recommendation.

CONSENT CALENDAR

- Chair Leslie called attention to the Consent Calendar ([Exhibit I](#)). She advised members they could remove or add items before the Committee vote.
- Sarah J. Lutter, Senior Research Analyst, Research Division, LCB, reviewed the following Consent Calendar recommendations proposed by the LCHC:

RECOMMENDATION NO. 2—Draft a letter to Nevada’s congressional delegation requesting that certain federal policy revisions be made to enhance Nevada’s ability to support, recruit, and retain physicians that work through the J-1 Visa Waiver program, including a provision that gives priority or preference, or both, to physicians that have participated in the J-1 Visa Waiver program, when they apply for lawful permanent residency. (*Discussed October 31, 2007.*) (See Tab 2 of [Exhibit H.](#))

RECOMMENDATIONS CONCERNING MENTAL HEALTH AND SUBSTANCE ABUSE

RECOMMENDATION NO. 3—Draft a letter or include a statement in the Committee’s final report encouraging the Division of Mental Health and Developmental Services (DMDHDS), DHHS, to collaborate with the Mental Health Redesign Work Group to

continue to review Nevada's process for admitting persons to mental health facilities under emergency circumstances, known as the "Legal 2000" process. The letter will request the DMHDS to prepare recommendations to refine the "Legal 2000" process, including, without limitation:

a. Suggestions to:

- 1) Expand the criteria of what must be included in an examination required pursuant to NRS 433A.165 before a person may be transferred to a mental health facility. (Discussed November 27, 2007.)**
 - 2) Reconcile the definition of "admission" as the term is used in NRS and the practical application as the term is used for billing practices of medical professionals. (Discussed November 27, 2007.)**
 - 3) Propose amendments to change the statutory language which requires an examination be performed before a person may be transferred to a mental health facility in order to allow for one-stop-shop arrangements. (Discussed November 27, 2007.)**
- b. Propose amendments to NRS 433A.165 to clarify the legal status of patients and ensure that patients are tracked by the court psychiatrists and hospital risk management offices until medically stable and either transferred to a mental health facility or psychiatrically cleared for discharge. (Submitted by Lesley Dickson, M.D., President, Nevada Psychiatric Association, June 17, 2008.)**
- c. Suggest developing procedures and policies within hospitals to ensure the psychiatric and legal status of patients is known to all members of the treatment team and hospital risk management office. (Submitted by Lesley Dickson, M.D., President, Nevada Psychiatric Association, June 17, 2008.)**
- d. Suggest requirements for in-service training for physicians, nurses, social workers, ward clerks, and others regarding the "Legal 2000" process. (Submitted by Lesley Dickson, M.D., President, Nevada Psychiatric Association, June 17, 2008.)**
- e. Suggestions that would require general hospitals to have psychiatric coverage available and encourage financial arrangements that facilitate psychiatric consultation to the medically or psychiatrically uninsured. (Submitted by Lesley Dickson, M.D., President, Nevada Psychiatric Association, June 17, 2008.)**
- Ms. Lyons noted that Recommendation No. 3 was included in the Consent Calendar and stated that there had been a proposal from the Southern Nevada Mental Health Design Work Group regarding statutory changes relative to transportation, which was heard earlier in the meeting.**

- Senator Heck commented he was in favor of the transportation language changes proposed in Recommendation 3.a.1.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO ADOPT LANGUAGE REGARDING STATUTORY CHANGES TO NRS 444A.165 RELATIVE TO TRANSPORTATION ISSUES. ASSEMBLYMAN HARDY SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY.

Discussion ensued regarding amending Recommendation No. 3.b to include drafting language regarding which medical practitioners can discharge a Legal 2000 hold for a mental health patient.

- Dr. Harold Cook, previously identified, stated that there are two issues. One is taking a person off of a Legal 2000 hold and the other is discharging a Legal 2000 patient from a facility. Currently statute only allows for a physician to admit or discharge a patient from a facility; therefore, language would be needed to make that distinction. He noted that any language change had to be specific to a Legal 2000 hold and not a general discharge from a medical facility. Dr. Cook stated that a psychiatrist or a psychologist could adequately release a hold based on their training and experience and added if the language were included in statute it would release emergency room physicians from liability.
- Assemblyman Hardy commented that a psychiatrist is qualified to release a hold and was of the opinion that a general physician should be able to release a Legal 2000 hold since they are liable. He proposed language to include a psychiatrist, or a physician, followed by a group of professionals including a psychologist, able to release a Legal 2000 hold.

Discussion followed regarding specific language and if it would adequately cover the recommendations made by Dr. Dickson.

- Senator Heck clarified that the topic was not of discharge, but of releasing a Legal 2000 hold.

Discussion continued regarding listing the practitioners by title, omitting “in the absence of” language, and extra qualification language for some practitioners.

- Senator Heck amended his motion to list the practitioners: psychiatrists, psychologists, physicians, and other practitioners.
- Ms. Partida asked about including “in consultation with” language.

- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO AMEND RECOMMENDATION NO. 3 LISTING PSYCHIATRISTS, PSYCHOLOGISTS, PHYSICIANS, AND OTHER PRACTITIONERS AND TO OMIT THE LANGUAGE “IN THE ABSENCE OF” AND NOT INCLUDE “IN CONSULTATION WITH” LANGUAGE IN A BILL DRAFT REQUEST. THE MOTION WAS SECONDED BY ASSEMBLYMAN HARDY AND PASSED UNANIMOUSLY.

RECOMMENDATION NO. 4—Draft a letter to Nevada’s congressional delegation requesting the amendment of various federal lands acts to allow for the conveyance of federal land to support the development of behavioral health and substance abuse facilities, with the intent of encouraging investment and management of these types of facilities in Nevada, as part of a strategy for decreasing the number of out-of-state patient placements. *(Submitted by Ernie Nielsen, Senior Law Project Attorney, Washoe County Senior Law Project, January 23, 2008.)*

RECOMMENDATION NO. 6—Draft a letter to the Senate Committee on Finance and the Assembly Committee on Ways and Means requesting an ongoing line item for mental health and substance abuse services and programs within the Department of Corrections’ budget. *(Submitted by Senator Horsford, January 23, 2008.)*

RECOMMENDATION NO. 7—Draft a letter or include a statement in the Committee’s final report encouraging the DMHDS to create a plan for addressing compensation and organizational challenges which constrict the DMHD’S ability to recruit and retain psychiatrists, including, without limitation, recommendations to:

- a. Make the pay rate more flexible and to allow for certain overtime pay or nighttime differential pay;
- b. Adjust the on-call rate of \$60 per weeknight and \$100 per weekend day so that those rates are competitive; and
- c. Provide additional compensation for psychiatrists who take on additional administrative responsibility or residency training.

RECOMMENDATION NO. 9—Draft a letter to encourage the DMHDS to work with hospitals and law enforcement in rural Nevada to document the impact of the loss of mental health emergency services in rural Nevada on suicide rates, the wait time for patients to see a psychiatrist, and the relationships between mental health providers, hospitals, and law enforcement. (See Tab 3 of [Exhibit H](#).)

RECOMMENDATION NO. 11—Draft a letter to the Director of the DHHS to encourage the Bureau of Licensure and Certification (BLC), Health Division, and the Division of Health Care Financing and policy (DHCFP), DHHS, to develop a plan to:

- a. *Support and encourage the development of effective and ongoing training for existing care staff to transition and stabilize residents diagnosed with dementia, Alzheimer's disease, and Traumatic Brain Injury (TBI). (Submitted by The Honorable Frances Doherty, Department 12, Family Division, Second Judicial District Court of Nevada, January 23, 2008.)*
- b. *Create industry incentives and remediation of potential misperceptions of licensing challenges encountered by facilities housing individuals diagnosed with dementia, Alzheimer's disease, and TBI. (Submitted by The Honorable Frances Doherty, Department 12, Family Division, Second Judicial District Court of Nevada, January 23, 2008.)*

RECOMMENDATION NO. 16—Draft a letter or include a statement in the Committee's final report to support the BDR of the Health Division, DHHS, to revise provisions relating to the State's public health system. The purpose of the BDR is to: (See Tab 6 of [Exhibit H](#).)

- a. Allow the State Board of Health to adopt regulations to specify the conditions under which a medical facility can be closed during an ongoing investigation;
- b. Clarify statutory language as it relates to the power of the Health Division to fine medical facilities for violations;
- c. Give authority to the Health Division to take control over a facility's medical records in the event the facility is closed during the course of an investigation;
- d. Clarify statutory language related to sentinel events and establish penalties for facilities that do not report a sentinel event;
- e. Strengthen the authority of local health authorities or officers of health districts to subpoena records related to an ongoing investigation of a medical facility;
- f. Clarify statutory language as it relates to the powers of a local health authority or officer of a health district during disease investigations and establish methods to cover the costs of such disease investigations; and
- g. Clarify the method by which information in an investigation is shared with law enforcement authorities.

RECOMMENDATION NO. 22—Draft a letter encouraging the State Board of Pharmacy, in collaboration with the Board of Medical Examiners, the State Board of Osteopathic Medicine, the State Board of Nursing, and the State Board of Health, to develop a system for monitoring the sale and use of anesthesia in Nevada to determine where surgical

procedures are being performed and the type of health care professionals that are conducting those surgeries. *(Submitted by Senator Washington, April 21, 2008.)*

RECOMMENDATION NO. 41—Draft a letter requesting the Board of Medical Examiners, the State Board of Osteopathic Medicine, and the State Board of Nursing to regularly survey licensees to obtain details about locations and areas of practice in order to provide information to support programs to obtain more practitioners. *(Submitted by the Subcommittee to Review the Laws and Regulations Governing Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic Substances [Senate Bill 4, Chapter 4, Statutes of Nevada 2007, 23rd Special Session].)* (See Tab 12 of [Exhibit H.](#))

- Chair Leslie asked members if there were any items to be removed from the Consent Calendar.
- The Committee **APPROVED THE FOLLOWING ACTION:**

VICE CHAIR WASHINGTON MOVED TO ADOPT ALL RECOMMENDATIONS ON THE CONSENT CALENDAR. THE MOTION WAS SECONDED BY SENATOR HORSFORD AND PASSED UNANIMOUSLY.

- Ms. Lutter noted that some of the recommendations presented earlier in the meeting could be encompassed in certain BDRs, as proposed in the “Work Session Document.”

RECOMMENDATIONS CONCERNING ACCESS TO CARE

RECOMMENDATION NO. 1—Draft legislation requiring the Department of Health and Human Services (DHHS) to establish a system that allows applications for Medicaid and the Children’s Health Insurance Program to be submitted electronically. This bill would further require an agency that is designated by the director of the DHHS to receive applications or determine eligibility for the programs to use the system to forward applications, but applicants for services must not be required to submit applications electronically. *(Submitted by Chair Leslie, October 31, 2007.)* (See Tab 1 of [Exhibit H.](#))

Estimated Biennium Cost: \$590,792.00 for the start-up year (27% or \$159,513.84 from the State General Fund), and \$46,092.00 for subsequent years (27% or \$12,444.84 from the State General Fund).

- Vice Chair Washington questioned if the costs for this recommendation could be covered by an earmark for unclaimed funds.
- Chair Leslie concurred and stated that it may be the only way to obtain funding.

- Assemblyman Hardy asked if using unclaimed funds would qualify for matching federal funds.
- Charles Duarte, previously identified, replied that there is matching federal money available, clarifying that those funds had been included in the estimated biennium cost in the recommendation.
- The Committee **APPROVED THE FOLLOWING ACTION:**

VICE CHAIR WASHINGTON MOVED TO APPROVE USING FUNDS FROM UNCLAIMED PROPERTY AND DRAFT LEGISLATION REQUIRING THAT THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ESTABLISH AN ELECTRONIC APPLICATION SYSTEM. THE MOTION WAS SECONDED BY SENATOR HORSFORD AND PASSED UNANIMOUSLY.

**SUBSTANCE ABUSE AND MENTAL HEALTH TREATMENT FOR
PERSONS IN THE CRIMINAL JUSTICE SYSTEM**

RECOMMENDATION NO. 5—Make an appropriation to support the work of the Justice Center, Council of State Governments, to continue work to improve public safety through effective substance abuse and mental health treatment for persons in the criminal justice system in Nevada. The amount of the appropriation will be determined in consultation with the Fiscal Analysis Division, LCB. *(Submitted by Fred C. Osher, M.D., Director of Health Systems and Services Policy, Justice Center, Council of State Governments, June 17, 2008.)*

- Chair Leslie reviewed the history of Recommendation No. 5, including previous testimony regarding inadequate mental health assessment for persons in the criminal justice system. She advised there was no conflict with her volunteer service on the Board of Directors, Justice Center, Council of State Governments (CSG). Chair Leslie offered her support for one system working both within and out of the prisons. She added her desire to forward the BDR to enable further discussion of the item.
- Senator Horsford agreed the BDR is a useful proposal based on testimony he heard during the Advisory Commission on the Administration of Justice (NRS 176.0123) meetings.
- Vice Chair Washington noted that although he disagreed with some of the views of the Justice Center, he was in support of forwarding the BDR for further discussion.
- Assemblyman Hardy stated that this proposal deserved to be fully vetted.

- The Committee **APPROVED THE FOLLOWING ACTION:**
SENATOR HORSFORD MOVED TO APPROVE RECOMMENDATION NO. 5 TO MAKE AN APPROPRIATION TO CONTINUE THE WORK OF THE JUSTICE CENTER. ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION, WHICH WAS PASSED UNANIMOUSLY.

RURAL MENTAL HEALTH

RECOMMENDATION NO. 8—Draft legislation to require certain emergency mental health services in rural Nevada. (Submitted by Ray C. Kendall, L.C.S.W., Agency Director, Rural Clinics, DMHDS, DHHS, April 10, 2008.)

Estimated costs for providing emergency room (ER) services 24 hours per day, 7 days per week, are as follows:

Center Directors' standby pay	\$130,100.00
Line staff standby pay	\$123,930.00
Center Director call-out pay	\$28,080.00
Line staff call-out pay	<u>\$334,380.00</u>
Annual costs for 24/7 ER	\$616,490.00

Estimated Biennium Cost: \$1,232,980. (Fiscal information provided by Dr. Harold Cook, Administrator, DMHDS, DHHS, submitted July 2, 2008.)

- Chair Leslie noted the attachments under Tab 3 of [Exhibit H](#) for this item and asked Dr. Cook to address the LCHC.
- Dr. Cook provided further background on rural mental health and staff losses precluding the loss of 24-hour emergency room (ER) coverage in some areas. He noted that it currently was not possible to reinstate those positions, given budget restrictions.
- Chair Leslie asked for clarification regarding the ER costs and the estimated biennium costs.
- Dr. Cook replied that the issue is the lack of staff. He commented that one possibility would be to contract for emergency services with private providers in the rural areas at a lesser cost than what is listed in the recommendation.

Discussion ensued regarding the positions currently funded versus what positions might be needed to reinstate 24-hour ER coverage, with Dr. Cook reiterating that pay increases would not compensate for a general lack of staff. The closure of some clinics and staff relocation was also discussed.

- Chair Leslie noted her disappointment with the clinic closures, stating the rural suicide rate is nearly double that elsewhere. She also commented that it is frustrating to hear of closures since Nevada already lacked adequate mental health services.
- Dr. Cook suggested the possible merging of health care provider systems in some rural areas. He noted that perhaps a mechanism to allow closer collaboration among providers would be useful.
- Chair Leslie stated that she would like to see a comprehensive overall plan for mental health in Nevada to fulfill what she views as the State's obligation.

Discussion continued regarding what the State's obligations to the mentally ill are and whether the LCHC could meet again before the 2009 Session to continue to work on this recommendation.

- Chair Leslie said she preferred taking Recommendation No. 8 off the table for further consideration and modifying it before presentation to the 2009 Session of the Legislature.
- Assemblyman Hardy discussed the possibility of using videoconferencing as a tool to deliver care to rural areas.
- Michael J. Willden, Director, DHHS, stated he wanted to ensure that the LCHC understood the recruiting and staffing issues related to this item. He provided a brief history of efforts to staff followed by staff and clinic reductions related to budget cuts.
- Chair Leslie commented she understood the restrictions the DHHS and providers were facing.
- Senator Horsford asked if Mr. Willden was aware of any states being sued for not providing adequate mental health services.
- Mr. Willden, referenced the Olmstead Act (*Olmstead v. L.C.*, 527 U.S. 581, 119 S.Ct. 2176, 1999) and said that he was not aware of any states being sued, but commented that under this decision Nevada was in violation of wait-time guidelines. He stated this could open the door for problems or class action suits.

In response to Senator Horsford's inquiry regarding tracking and wait-time information, Mr. Willden affirmed the information could be tracked and projected.

- Chair Leslie requested the DHHS bring wait-time information to the next LCHC meeting and asked that the rural mental health items be removed for further consideration.

RECOMMENDATIONS CONCERNING CHILDREN AND

SENIOR HEALTH ISSUES

RECOMMENDATION NO. 10—Draft legislation creating the Legislative Committee on Child Welfare and Juvenile Justice in accordance with Sections 2 through 8, inclusive, of Senate Bill 170, 2007 Legislative Session. *(Submitted by Senator Washington, December 18, 2007.)* (See Tab 4 of [Exhibit H](#).)

Estimated Biennium Cost: \$242,582 (based on a fiscal note for S.B. 170, submitted February 28, 2007). The fiscal note for S.B. 170 included the cost for the creation and support of two committees, due to differences in the meeting schedules and membership of those committees this estimate is based on 40 percent of the total original cost.

- Vice Chair Washington noted his support for adoption of the recommendation.
- Senator Horsford commented that this proposal is a follow-up to some topic areas discussed in the Advisory Commission of the Administration of Justice.
- Vice Chair Washington stated that this recommendation encompasses work from previous interims and was of the opinion it should be continued.
- Chair Leslie verified that this was a bill carried over from the LCHC from the last interim.
- The Committee **APPROVED THE FOLLOWING ACTION:**

VICE CHAIR WASHINGTON MOVED TO ADOPT RECOMMENDATION NO. 10, CREATING THE LEGISLATIVE COMMISSION ON CHILD WELFARE AND JUVENILE JUSTICE. THE MOTION WAS SECONDED BY ASSEMBLYWOMAN GERHARDT, WHICH PASSED UNANIMOUSLY.

RECOMMENDATION NO. 12—Draft legislation to amend the definition of mental illness pursuant to NRS 433A.115 to include Alzheimer's disease. *(Discussed January 23, 2008.)*

According to the DMHDS, changing the statutory definition so that Alzheimer's disease is specifically included as a mental illness could have a significant budgetary impact on the State. Such a statutory change would mean that individuals with Alzheimer's disease could be referred to State mental health hospitals as an emergency admission. According to the DMHDS, no State mental health hospital is equipped or staffed to serve and treat these individuals; thus, provisions for doing so would have to be made if such a statutory change goes into effect.

Estimated Biennium Cost: According to the DMHDS, significant cost is associated with this change; however, no specific estimate is available at this time.

- Dr. Cook testified that Alzheimer's patients need their own facility because they cannot be housed with populations of the mentally ill. He surmised that the housing would be most feasible in the Las Vegas area, noting it would be very costly.

In response to Chair Leslie's question about how Alzheimer's patients are currently being cared for, Dr. Cook stated they were being cared for in nursing homes or in out-of-state facilities.

- Senator Heck asked if any other states had redefined Alzheimer's and dementia as a mental illness.
- Dr. Cook affirmed it has been redefined in some states.
- Mr. Duarte commented on the proposed level of care and clarified that Alzheimer's patients needed skilled nursing care with trained staff in locked units to provide adequate protection for them.
- Chair Leslie noted concerns that there is no care available for this population in the State and recognized a total lack of funding for this item.

Discussion ensued regarding how Nevada currently defines Alzheimer's patients and the costs of not forwarding this item as a BDR, as well as the lack of funds available to recommend a BDR.

- Mr. Willden testified that Nevada had 80 to 90 out-of-state placements every month and that Nevada paid approximately \$175 per day to nursing facilities for Alzheimer's patients. He commented that often Nevada's facilities do not accept these patients but other states will and sometimes at less than \$175 per day of billed charges.
- Chair Leslie asked about the Medicaid option in other states that keep Alzheimer's patients in their own homes.
- Mr. Duarte noted that Recommendation No. 11 provides how a service continuum might be developed for individuals with Alzheimer's and dementia. He also noted that it is not only a financial issue but a liability issue in Nevada. Mr. Duarte commented that facilities are concerned about jeopardizing their licensing if they accept Alzheimer's patients.
- Mr. Willden commented that Nevada completed a "Request For Information" to try and locate national institutions willing to assist with providing this care, including an attempt to find capital projects.
- At the call of Chair Leslie, no further action was taken on Recommendation No. 12.

RECOMMENDATIONS CONCERNING PUBLIC HEALTH PROGRAMS

RECOMMENDATION NO. 13—Draft legislation to maintain the Health Insurance for Work Advancement (HIWA) program and the TBI waiver and make an appropriation for the necessary amount. *(Submitted by Paul Gowins, Strategic Plan for People with Disabilities Statewide Accountability Committee, May 6, 2008.)*

Estimated Biennium Cost: The budget approved by the Legislature for Fiscal Year (FY) 2008-2009 included funding to exclude unearned income when determining eligibility for the HIWA Program and to provide 45 waiver slots for TBI patients. Because these were new programs, they were eliminated to achieve necessary budget reductions. To eliminate the unearned income cap for the HIWA Program in FYs 2010 and 2011 would require a total funding of \$2,180,933 over the biennium with a State General Fund appropriation of \$996,254. The program would increase the HIWA Program's caseload by an average of 216 in FY 2010 and 268 in FY 2011. To reintroduce the TBI waiver slots in FYs 2010 and 2011 would require total funding of \$4,641,988 over the biennium with a State General Fund appropriation of \$2,320,995. This would provide 30 residential habitation slots and 15 adult day care slots. Cost estimates for both programs assume a start date of October 1, 2009. Funding requirements could be reduced by moving the start date on one or both programs.

- Chair Leslie asked the LCHC to consider including a statement in the final report on this recommendation noting that it likely would not be included in the Governor's budget.
- Vice Chair Washington stated he supported making the recommendation.
- The Committee **APPROVED THE FOLLOWING ACTION:**

VICE CHAIR WASHINGTON MOVED TO APPROVE RECOMMENDATION NO. 13 AS A STATEMENT IN THE FINAL REPORT TO PROVIDE FOR AN APPROPRIATION TO THE HIWA PROGRAM. THE MOTION WAS SECONDED BY ASSEMBLYWOMAN GERHARDT AND PASSED UNANIMOUSLY.

RECOMMENDATION NO. 14—Draft legislation to expand the lead poisoning prevention project by requiring State and local health authorities to adopt and enforce regulations for testing children under the age of six for lead exposure in accordance with standards set forth by the National Centers for Disease Control and Prevention. *(Submitted by the Southern Nevada Health District [SNHD], May 6, 2008.)* (See Tab 5 of [Exhibit H.](#))

Estimated Biennium Cost: No estimate available at this time.

RECOMMENDATION NO. 15—Draft legislation that requires laboratories that examine the blood of a child under the age of 18 for the presence of lead to report the results of the examination to the appropriate health authority not later than five calendar days after the examination. *(Submitted by the SNHD, May 6, 2008.)* (See Tab 5 of [Exhibit H.](#))

- Chair Leslie questioned the cost of Recommendation Nos. 14 and 15 and asked Mr. Duarte for clarification regarding who was referred for testing and if the testing had been completed.
- Mr. Duarte commented that he understood the recommendation included all Nevada children and stated that schedules for testing are outlined in the rules of the federal government. He noted there are no penalties, but if it is believed the testing is clinically necessary, a physician will order the test and it is paid for.
- Assemblyman Hardy stated that children who undergo this particular testing are generally Medicaid eligible children. He commented that a policy statement could be put forth encouraging physicians to regularly test all children for lead poisoning, regardless of their Medicaid eligibility.
- Mr. Duarte agreed that staff would like to expand the population of children being tested. He noted that work was continually being done to expand education and outreach.
- Assemblyman Hardy stated that he would individually sponsor a BDR for Recommendation No. 14.
- Senator Horsford said that he would join Assemblyman Hardy in sponsoring a BDR.

Responding to Chair Leslie's request, Assemblyman Hardy affirmed that Recommendation No. 15 would also be included in the BDR.

RECOMMENDATIONS CONCERNING THE HEPATITIS C INVESTIGATION

RECOMMENDATION NO. 17—Amend Chapter 449 of NRS, “medical and other related facilities,” to require the recommendations of a health authority which investigated a disease outbreak or potential exposure to be included in any statement of deficiency of a licensed health care facility and require an appropriate response in the resulting action plan. *(Submitted by the SNHD, April 21, 2008.)* Note: After review and discussion the members of the LCHC agreed that Recommendation No. 17 would be included in the Consent Calendar as a statement in the final report supporting the BDR request of the Health Division.

RECOMMENDATION NO. 18—Draft legislation to define the process for a declaration of a “public health emergency.” This bill will provide clear authority and expectations for the coordinated actions of all public agencies that have statutory responsibilities for some aspects of any required investigation, intervention, or sanctions. *(Submitted by Larry Matheis, Executive Director, Nevada State Medical Association, June 17, 2008.)* (See Tab 7 of [Exhibit H](#).)

RECOMMENDATION NO. 19—Draft legislation to authorize the BLC, when a public health emergency exists, to:

- a. Temporarily close a facility, or the appropriate portion of a facility, in order to make a determination within 24 hours as to whether the facility can be reopened and provide safe services. During that 24-hour period, the facility employees will be tested and/or educated in order to ensure that the services being provided are safe;**
- b. Designate a location for a central record repository in the case of a public health emergency and ensure that the team working with the records is trained regarding Health Insurance Portability and Accountability Act compliance, and allow a facility or medical professional to voluntarily allow the records to remain on the grounds of the facility and to allow the team handling the records to work out of the facility; and**
- c. Develop a central information and education hotline. (Submitted by Assemblyman Hardy, March 24, 2008.)**

Estimated Biennium Cost: No estimate available at this time.

- Chair Leslie asked the LCHC to consider Recommendation Nos. 18 and 19 simultaneously.
- Senator Horsford voiced his support for Recommendation No. 18 and stated he had concerns about Recommendation No. 19.b. noting it could impede proper investigation by law enforcement.
- Chair Leslie asked Assemblyman Hardy if he would recommend putting Recommendation Nos. 18 and 19 into one bill draft request.
- Assemblyman Hardy gave his consent and discussed items related to ensuring that medical records were safe during an investigation.
- Chair Leslie called for public comment.
- Larry Matheis, Executive Director, Nevada State Medical Association, stated that Recommendation No. 18 assumes an extraordinary circumstance such as a public health emergency and is complementary to the proposals made by the Southern Nevada Health District and the Health Division of the DHHS.
- Marla McDade Williams, previously identified, reported that the BLC is including the control of medical records in a BDR to address situations absent a public health crisis.

- Assemblywoman Gerhardt stated that she preferred to include law enforcement in Recommendation No. 19.b. to protect the chain of custody.
- Senator Horsford asked if records could be held in facilities that were under investigation.
- Mr. Matheis responded that the intent is covered in Item 4 (Tab 7 of [Exhibit H](#)). He stated that once a public health emergency was declared, a State administrator would secure the facility and assume control of medical records relevant to an investigation. Further, he noted someone would be assigned to safeguard the records during an investigation.
- Senator Horsford requested that statutory language include that a State administrator would secure the facility and assume control of medical records to avoid investigated persons claiming the rights to records.

Discussion of Recommendation Nos. 18 and 19, and Item 4 of Tab 7 ensued regarding the inclusion of law enforcement to protect the chain of custody involving an investigation during a public health emergency.

In response to Senator Horsford's request for clarification on what items would be voted on, Chair Leslie stated that the vote would include approval of both Recommendation No. 18 and the items brought forward by Assemblyman Hardy in Recommendation No. 19.

- Dr. Hardy commented on Recommendation No. 19.c. regarding the central information and electronic record keeping and mentioned that it had not yet been addressed. He reiterated the need for a safeguard mechanism in the electronic record keeping to avoid errors. Dr. Hardy stated this is a work in progress and not definitive.
- Mary E. Wherry, Deputy Administrator, Health Division, DHHS, reported that a "Request for Information" regarding the electronic medical records issue would be sent out in an effort to locate vendors who were able to provide electronic medical records services, and if an interested vendor was located, the Division would complete a "Request For Proposal" to procure a vendor to be in place in the event a health crisis occurred.
- Senator Horsford questioned three of the provisions in Tab 7 of [Exhibit H](#). He asked for clarification of Item 6(b), specifically who appoints the State health officer, what statutory provisions exist for the appointment, and who would be given the authority to direct a crisis investigation.

Discussion ensued regarding location of records, appointed authority, reporting, and response time during a crisis investigation.

- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HORSFORD MOVED TO APPROVE RECOMMENDATIONS NOS. 18 AND 19. ASSEMBLYMAN HARDY SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY.

REGULATION OF SURGICAL CENTERS FOR AMBULATORY PATIENTS AND OFFICES WHERE OUTPATIENT PROCEDURES ARE BEING PERFORMED

RECOMMENDATION NO. 20—Draft legislation to require surgical centers for ambulatory patients (ASCs) and offices where outpatient surgical procedures are being performed to be accredited by a federally recognized accrediting entity. (*Discussed April 21, 2008.*)

- Senator Heck stated that the issue is inspection and felt more frequent and thorough inspections were the real solution. He noted that mandating accreditation could mislead the public regarding a facility's safety.
- Chair Leslie noted that the State was going to add the requirement for accreditation to their regulations.
- Assemblywoman Gerhardt declared that private offices providing sedated procedures needed to be included in the standards. She reported that she had received data indicating 22 sentinel events in private physician offices in 2007.

In response to Senator Horsford, Richard Whitley, previously identified, responded that the recommendation addressed only ASCs and did not include private physician offices.

Discussion ensued regarding accreditation of private physician offices that perform procedures under sedation including expanding the authority of the BLC.

- Assemblyman Hardy explained how private physicians report sentinel events.

Discussion continued regarding reporting of sentinel events in Nevada and reports due to be released documenting this information in Nevada.

- Keith Lee, Legislative Counsel, BME, stated that compliance of physicians' reporting sentinel events is currently at 87 percent. In particular, he discussed how physician offices could be licensed and overseen by the BME. Mr. Lee commented that restricting physicians' practices and procedures could be difficult and may create a burden to inspectors to add physician offices to the ASCs inspection process. He outlined processes that could be implemented between the BME and the BLC to provide inspections for physicians' offices.

- Sara Partida, previously identified, stated that accreditations and inspections needed to be kept as separate items.

Discussion continued regarding pharmacists and tracking the use of medicines.

- Larry Pinson, previously identified, responded that physicians offices would need a contract pharmacist to review practices that could be enlisted for additional reporting.
- Assemblywoman Gerhardt commented that information indicates that, though there are many procedures being performed, it is in a limited number of private practices.
- Vice Chair Washington asked if the State Board of Pharmacy would be willing to track vials of medicines in offices that perform procedures.
- Assemblyman Hardy wondered if physicians who write prescriptions or receive sedative medicines are tracked.
- Mr. Pinson replied that he assumed that most of the Schedule 2 sedative drugs are being ordered from wholesalers and would be tracked federally. He stated there would be no tracking for other schedules of drugs. Mr. Pinson commented that if a pharmacist was present in a physician's office they would have access to medicinal use and patient records.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HORSFORD MOVED TO DRAFT LEGISLATION FOR RECOMMENDATION NO. 20 THAT WOULD PROVIDE MORE AUTHORITY TO THE HEALTH DIVISION AND THE BOARD OF MEDICAL EXAMINERS TO TRACK AND INSPECT FACILITIES PROVIDING PROCEDURES THAT REQUIRE SEDATION AND TO PROVIDE FOR ADDITIONAL FINES. ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY.

RECOMMENDATION NO. 21—Recommendations relating to surveys of ASCs include:

- a. Draft legislation to require the BLC to survey ASCs once every two years and require the BLC to increase the fees for licensing these types of facilities to include the additional cost for conducting these surveys. (Discussed April 21, 2008.)

Estimated Biennia Cost: No estimate available at this time.

- b. Draft legislation that shifts the responsibility for surveying ASCs from the BLC to the health district in which the ASC is located, if applicable. The health district would be required to conduct the initial survey for licensure, scheduled surveys, and any surveys that result from a complaint. Fiscal impact information has been requested from each health district. Currently there are two health districts in the

State: Southern Nevada Health District and Washoe County Health District.
(Submitted by Vice Chair Washington, April 21, 2008.) (See Tab 8 of [Exhibit H.](#))

Estimated Biennium Cost: No estimate available at this time.

- Ms. Lyons noted that the BLC would provide biennia cost estimates and that fiscal impact information had been requested.
- Ms. Williams testified that one full-time employee or dedicated position at \$75,000 would be required to survey the ASCs.
- Assemblyman Hardy stated that he did not know how many physician offices were doing colonoscopy procedures and suggested that a physician's office which performs this type of procedure requiring sedation be redefined as an ASC.
- Ms. Williams replied that accreditation was reasonable for procedures performed in physicians' offices. She cautioned that if the redefinition caused a requirement for additional BLC staff, then more discussion would be necessary.

In response to Assemblyman Hardy's inquiry regarding other states using a similar process in which a private entity would accredit, educate, and inspect and would allow the State to have overruling jurisdiction of inspection and penalties, Ms. Williams stated that she had heard of such proposals but would need to do more research to answer Assemblyman Hardy's questions.

Discussion ensued among members regarding annual inspections and accreditation of ASCs.

- Senator Heck said it would seem redundant to have accreditation and BLC inspections in the same year. He also noted concerns with opening up all physician offices to annual inspection and accreditation. Senator Heck requested that the full ramifications of additional regulation be considered.
- Assemblywoman Gerhardt agreed that the level of sedation should be the guide for regulating accreditation and inspection.
- Vice Chair Washington offered support for Senator Heck's statement regarding additional regulation and explained his rationale for proposing Recommendation No. 21.
- Ms. Williams commented that this work could be absorbed into the BLC infrastructure. She added that the BLC was working with local health districts to assist them with inspections.
- Senator Horsford noted that the State has a statutorily provided role to oversee public health that is productive to industry and protects the consumer. He stated that he had

heard from physicians who would welcome annual inspections to restore public trust after the hepatitis C outbreak. Senator Horsford offered his support for annual inspections for both ASCs and physician offices.

- Senator Heck agreed with Senator Horsford and commented the inspection could be modeled after the process used in dental offices.
- Assemblywoman Gerhardt noted that NRS 631.015, “Accredited defined,” is the statutory regulation governing accreditation standards for dental bodies.
- The Committee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYWOMAN GERHARDT MOVED TO APPROVE RECOMMENDATION NO. 21 REQUIRING ANNUAL INSPECTIONS OF BOTH AMBULATORY SURGICAL CENTERS AND PHYSICIAN OFFICES THAT CONDUCT PROCEDURES REQUIRING SEDATION. THE MOTION WAS SECONDED BY SENATOR HORSFORD. THE MOTION PASSED WITH ASSEMBLYMAN HARDY VOTING NAY.

- Vice Chair Washington commented that he would not impede the approval of this item; however, he opined that health districts should provide inspections and the inspections would be more effective if they were random. He requested the removal of Item 21b from the recommendation.
- Chair Leslie pointed out that the BLC inspections are unannounced.

Discussion ensued regarding the definition of unannounced inspections, requirements for annual inspections, and fee schedule increases.

RECOMMENDATION NO. 23—Draft legislation that requires the BLC to prepare and submit an annual report regarding the frequency of inspections of health care facilities licensed in this State and the findings from those inspections. The report must include a summary of any major issues and problems that have been identified and any follow-up. The report must be submitted to the LCHC and the Legislative Commission. (*Discussed April 21, 2008.*)

- The Committee **APPROVED THE FOLLOWING ACTION:**

VICE CHAIR WASHINGTON MOVED TO ADOPT RECOMMENDATION NO. 23. SENATOR HORSFORD SECONDED THE MOTION, WHICH PASSED UNANIMOUSLY.

RECOMMENDATION NO. 24—Make an appropriation or send a letter of support to the Assembly Committee on Ways and Means and the Senate Finance Committee to increase the salary for non-nurse health facility surveyors to an amount equal to the salary for nurse health facility surveyors.

Estimated Biennium Cost: \$400,000. (Fiscal impact estimate provided by Marla McDade Williams, Chief, BLC, Health Division, DHHS.)

- Mr. Whitley testified that this salary disparity continues to exist and stated it is a barrier to recruitment of health facility surveyors.
- Chair Leslie asked if it was useful to have nurse and non-nurse staff providing these inspections.
- Mr. Whitley noted that the teams were multi-disciplinary and that had proven effective. He added that this recommendation had not been fully vetted through the budget process at this point.

Responding to Chair Leslie's question about whether a letter of support would be helpful, Mr. Whitley said it would.

- Assemblyman Hardy asked about how the current economic downturn has affected recruitment.
- Mr. Whitley replied that the publicity surrounding the hepatitis C outbreak had made health surveyor applicants more aware of the recruitment efforts by the Health Division.
- At the request of the members, Recommendation No. 24 was withdrawn.

RECOMMENDATIONS CONCERNING HEALTH CARE PROFESSIONAL LICENSING BOARDS

APPOINTMENT PROCESS

RECOMMENDATION NO. 25—Draft legislation to require professional associations and educators affiliated with a particular professional group to submit to the Governor recommendations for nominees to serve on respective professional licensing boards.

- a. The Governor's final appointments must include recommendations from the following entities: (1) the medical societies; (2) the University of Nevada School of Medicine; and (3) a public member chosen by the LCHC.
- b. Require the nominating entities to submit their recommendations for consideration to a committee which will perform a background check to, among other considerations, ensure the absence of any conflicts of interests, ensure ethical

patterns of practice, et cetera. (Submitted by James S. Tate Jr., M.D., F.A.C.S., F.I.C.S., President, Association of Black Physicians, and Chairman, Board of Directors, Association of Black Physicians, May 6, 2008.)

OR

RECOMMENDATION NO. 26—Draft legislation that creates a screening committee to select nominees for gubernatorial appointment to boards. Require the Governor to select appointees from a screening committee slate. The screening committee panel will present a minimum of three names to the Governor for each vacancy and the Governor would be required to select one of the three candidates. (*Discussed April 21, 2008.*)

- a. To accommodate the number of appointees in any given year, several screening panels may be convened in a configuration that allows members from one panel to serve as substitutes on another panel.
- b. Each panel would consist of seven members, with three selected by the Governor, one each by the Senate Majority and Minority Leaders, and one each by the Speaker of the Assembly and the Assembly Minority Leader. A substitute from one panel may only replace a member of another panel if both were appointed by the same official. One of the Governor's selections, designated by the Governor, would serve as panel President and five members of a panel would have to agree on a nominee.
- c. The screening panels would be composed of volunteers who serve without pay as a public service.
- d. Videoconferencing and electronic mail could be used whenever possible to reduce travel time and expense.
- e. The Governor may suggest nominees to the screening committee; however, the process may be open for individuals to make their own application. Incumbents, if not term limited by statute, may be considered for reappointment.
- f. Nominees would be presented to the Governor at least 30 days prior to the occurrence of the vacancy or, if insufficient notice was given, as soon as practicable. The Governor would be required to make an appointment by the time the position is vacant.

RECOMMENDATION NO. 27—Require involvement of the LCHC in the process for appointment to health care professional licensing boards, including: (*Submitted by James S. Tate Jr., M.D., F.A.C.S., F.I.C.S., President, Association of Black Physicians, and Chairman, Board of Directors, Association of Black Physicians, May 6, 2008.*)

- a. **Draft legislation to require the LCHC to provide a list of nominees to the Governor. The Governor must select appointments for health care professional licensing boards from the list provided by the Committee; or**
- b. **Draft legislation to require the Governor to provide to the LCHC advance notice of potential appointments. The LCHC would be authorized to make inquiries concerning the potential appointments. The LCHC would not be able to veto any selections but may report to the Governor concerning the advisability of making such appointments.**
- Chair Leslie stated that she was not in favor of Recommendation No. 27. She noted her preference for Recommendation No. 26 because it provided for the appointment process to have input from others beside the Governor.

Discussion followed regarding the LCHC members' support for the recommendations.

- Senator Heck stated he supported Recommendation No. 25. He commented that it provided for a more streamlined process. Senator Heck noted that he would add a requirement that the Governor choose appointees from a submitted list. He discussed the provision requiring the input of medical societies.
- Chair Leslie noted that Vice Chair Washington had left the meeting.
- Senator Horsford stated that, in light of the testimony heard during the interim, the appointment process needed to be as transparent and fair as possible. He opined that while it might be cumbersome, Recommendation No. 26 provided for a clear process. Senator Horsford reiterated that the appointment hearing process be made public.
- Senator Heck asked whether these provisions were for health care related boards or all boards in general. He suggested that professionals would nominate someone they knew would do a good job based on professional assessment.
- Senator Horsford commented that the appointment process should be open and based on statutory qualifications.
- Assemblyman Hardy noted that the open meeting law would provide for transparency within the appointment process.

Discussion ensued regarding the public process, administrative support to the panels, and changing the appointment process of a screening.

- Chair Leslie stated that legal counsel had advised only three votes were required on recommendations since there was a quorum and only a majority vote of those present was required.

Discussion continued regarding what portions of the recommendations could be included in a compromise version of the recommendations, including the submission of appointees by medical societies.

- Senator Horsford reiterated that the appointment process should be open, with primary consideration given to qualifications.
- Assemblyman Hardy suggested voting on whether or not to include a screening panel.
- The Committee **TOOK THE FOLLOWING ACTION:**

SENATOR HORSFORD MOVED TO INTRODUCE A BDR WITH LANGUAGE FROM RECOMMENDATION NO. 26, AND ADD THAT SCREENING PANELS WOULD RECEIVE APPOINTEE NOMINATIONS SUBMITTED FROM MEDICAL SOCIETIES, ASSOCIATIONS, AND THE NEVADA SCHOOL OF MEDICINE AND OTHER APPROPRIATE ENTITIES. ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION. NO VOTE WAS TAKEN AND THE MOTION WAS SUBSEQUENTLY WITHDRAWN.

Discussion and clarification of the motion followed, in particular that names would be provided to the screening panel from professional associations, medical schools, and self-nominations.

- Assemblywoman Gerhardt suggested that some appointee names should come from both houses of the Legislature.

Discussion ensued regarding which legislative committees would provide this information and the complications that could occur including the legality of legislators providing names for an executive board position.

- The Committee **TOOK THE FOLLOWING ACTION:**

SENATOR HORSFORD WITHDREW HIS MOTION AND ASSEMBLYWOMAN GERHARDT WITHDREW THE SECOND TO THE MOTION AFTER DISCUSSION REGARDING THE LEGAL ISSUES AND ADMINISTRATIVE BURDEN.

- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO APPROVE RECOMMENDATION NO. 25 INCORPORATING THE PROVISIONS FROM RECOMMENDATION NO. 27(B) WITH THE NOMINATIONS PRESENTED TO THE LCHC BEFORE GOING TO THE GOVERNOR; MAKING THE PROCESS ALL INCLUSIVE; AND LIMITING THE PROCESS TO THE BOARD OF

MEDICAL EXAMINERS, THE STATE BOARD OF OSTEOPATHIC MEDICINE, AND THE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS. SENATOR HORSFORD SECONDED THE MOTION WHICH PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

- Senator Horsford suggested that at least three names be submitted for every vacancy.
- Ms. Partida suggested time restraints and appointment safeguards so that the process is not prolonged.

Discussion ensued regarding time limits. It was recommended that within 30 days after a vacancy, applications would be forwarded to the LCHC and it would act within 60 days after receipt of an application.

COMPOSITION OF BOARDS

RECOMMENDATION NO. 28—Draft legislation to revise the membership of all health care professional licensing boards to require that a majority of members be public members.

- a. Include the limitation that a public member may not be the spouse or the parent or child, by blood, marriage or adoption, of a person licensed in any state to practice any related profession; see for example, NRS 630.060(3)(b) relating to the Board of Medical Examiners.**
- b. The incumbent board members would be replaced with public members as their terms expire until the majority of the board is composed of public members.**
- c. In some cases where existing boards are composed of several different licensees (e.g., the Board of Dental Examiners of Nevada is composed of six dentists and three dental hygienists), the number of nonpublic positions on the board must be reduced proportionally to maintain existing ratios to the extent possible. (Discussed April 21, 2008.)**

OR

RECOMMENDATION NO. 29—Draft legislation to revise the membership of all health care professional licensing boards to increase the number of public members serving on each board. The incumbent board members would be replaced with public members as their terms expire until the board is composed of the requisite number of public members. (See Tab 9 of [Exhibit H](#).)

- Recommendation Nos. 28 and 29 were withdrawn by Chair Leslie.

BOARD AUTHORITY

RECOMMENDATION NO. 30—Draft legislation that authorizes health care professional licensing boards to temporarily suspend a practitioner’s license until final resolution of a complaint when the Board determines there is an immediate danger to the public. The bill would further require a hearing to be conducted within a specified time (possibly 45 days). (*Discussed April 21, 2008.*) (See Tab 9 of [Exhibit H.](#))

- Ms. Partida stated that this recommendation was requested specifically to be added in statute.
- The Committee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN HARDY MOVED TO APPROVE RECOMMENDATION NO. 30 AND TO INCLUDE THE BOARD OF MEDICAL EXAMINERS, THE STATE BOARD OF OSTEOPATHIC MEDICINE, AND THE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS. SENATOR HECK SECONDED THE MOTION, WHICH PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

- Senator Heck commented that this regulation should be used judiciously and discriminately because the reporting of a license suspension is conducted nationally.

RECOMMENDATION NO. 31—Provide that the removal of a board member does not require impeachment, including: (*Submitted by Chair Leslie, June 17, 2008.*)

- a. Draft legislation amending the term of each member of a health care professional licensing board so that he serves at the pleasure of the Governor; or**
 - b. Draft a resolution to propose an amendment to the Nevada Constitution to provide for removal of appointed public officers in a manner specified by the Legislature. This is patterned after Article 7, Section 4, of the Nevada Constitution, which provides for the removal from office “of other civil officers.”**
- Senator Horsford recommended an additional option that would expand the expiration of terms for the existing BME.
 - Assemblyman Hardy stated it would be a risk of losing institutional knowledge.
 - Chair Leslie said that she supported sunseting the Board to restore public trust and she stated she would take it up individually along with Senator Horsford.
 - The Committee took no action of Recommendation No. 31.

RECOMMENDATION NO. 32—Draft legislation that establishes grounds for a health care professional licensing board to suspend or revoke a professional license held by the

owner or another principal of a health care facility that has responsibility in the creation of a public health threat or is currently being investigated, under certain circumstances. This provision is similar to the provisions of NRS 449.160. *(Submitted by Senator Heck, June 17, 2008.)*

- Senator Heck explained the origin of the recommendation.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO APPROVE RECOMMENDATION NO. 32.
IT WAS SECONDED BY ASSEMBLYWOMAN GERHARD AND PASSED.
VICE CHAIR WASHINGTON WAS NOT PRESENT FOR THE VOTE.

STANDARDIZATION OF CERTAIN BOARD FUNCTIONS

RECOMMENDATION NO. 33—Draft legislation to expand the role of the Office for Consumer Health Assistance (NRS 223.500 through 223.580) or create an ombudsman position to assist in the filing of a complaint against a health care facility or health care professional with the appropriate licensing agency or professional licensing board. *(Submitted by the SNHD, April 21, 2008.)* Note: No action was taken on Recommendation No. 33.

Estimated Biennium Cost: No estimate available at this time.

- Chair Leslie requested that Recommendation Nos. 33, 34, 35, 36, 37, and 38 be discussed concurrently.

RECOMMENDATION NO. 34—Draft legislation to create a two-tiered approach for filing complaints against a health care professional. Tier one consists of individuals submitting complaints and tier two consists of complaints filed by another health care agency (such as the BLC or a statutorily recognized health authority).

Tier two complaints would authorize the board or agency receiving the complaint to use the findings of the complainant to expedite the investigative process. *(Discussed April 21, 2008.)*

- The Committee took no action on Recommendation No. 34

RECOMMENDATION NO. 35—Draft legislation to provide for a standardized and streamlined process for filing a complaint with a health care professional licensing board including, without limitation, a single form that must be used by all boards. *(Submitted by the Health Division, DHHS, April 21, 2008.)*

- The Committee took no action on Recommendation No. 35

RECOMMENDATION NO. 36—Draft legislation that requires all members of health care professional licensing boards be provided a copy of the conflict of interest provisions of Chapter 281A of NRS, “Ethics in Government” and require the signature of each board member acknowledging receipt of the conflict of interest provisions. *(Discussed May 6, 2008.)* (See Tab 10 of [Exhibit H](#).)

- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HORSFORD MOVED TO APPROVE THAT ALL LICENSING BOARDS BE PROVIDED A COPY OF THE CONFLICT OF INTEREST PROVISIONS OF CHAPTER 218A OF NRS. THE MOTION WAS SECONDED BY SENATOR HECK AND PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

RECOMMENDATION NO. 37—Draft legislation to require all health care professional licensing boards to retain every complaint that is filed with the board, including, without limitation, complaints that receive no action.

- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO ADOPT RECOMMENDATION NO. 37 TO INCLUDE A TIME FRAME FOR A RECORD RETENTION OF TEN YEARS. THE MOTION WAS SECONDED BY ASSEMBLYMAN HARDY AND PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

RECOMMENDATION NO. 38—ESTABLISH AN INTERIM LEGISLATIVE STUDY TO:

- a. Determine the feasibility and efficiency of creating a central office to provide administrative support for all of the health care professional licensing boards.
- b. Determine the benefit of combining the Board of Medical Examiners and the State Board of Osteopathic Medicine or combining other boards that regulate similar licensed health care professionals.
- c. Review the licensing chapters of the NRS related to health care licensing boards with the intent of expanding Chapters 622 and 622A of NRS, “General Provisions Concerning Regulatory Bodies” and “Administrative Procedure Before Certain Regulatory Bodies,” respectively, to contain all the statutes that are common to the various health care professional licensing boards, standardizing the provisions if appropriate by selecting the best version, and leaving only those provisions that are in fact unique to a specific board in the board’s separate chapter. *(Discussed April 21, 2008.)*

d. Standardize and streamline the health care boards' complaint process.

(Submitted by Larry Matheis, Executive Director, Nevada State Medical Association, April 10, 2008.)

- Senator Heck inquired about funding and administrative support and recommended a streamlined uniform process for complaints, investigations, and all due process procedures for all of the boards. He noted attempts had been made in the 2005 Session to establish an interim study and suggested the LCHC review that legislation to alleviate the issues seen over the past year.
- Senator Horsford suggested creating a LCHC subcommittee to work on this plan prior to the 2009 Session.
- Chair Leslie asked about the feasibility of creating a subcommittee.
- Ms. Lyons responded that BDRs must be submitted by September 1, 2008, for all interim statutory committees. She also noted the budget would only allow for one more meeting. Ms. Lyons suggested forming a work group rather than a subcommittee.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO ESTABLISH A WORK GROUP WITH A MEMBER FROM EACH HOUSE TO HOLD INFORMAL MEETINGS AND TO INCLUDE A STATEMENT IN THE FINAL REPORT ON RECOMMENDATION NO. 38. THE MOTION WAS SECONDED BY ASSEMBLYMAN HARDY AND PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

Discussion followed regarding consideration of physicians not able to fully practice in the State and options for visiting physicians who are trained and certified to provide service in areas that are sending patients to other states for care.

- Chair Leslie offered to use one of her BDRs and individually address this item.

RECOMMENDATIONS CONCERNING WHISTLEBLOWER PROTECTIONS

RECOMMENDATION NO. 39—Draft legislation to provide statutory protections for a nurse who: (a) reports concerns about patients being exposed to substantial risk of harm due to failure of a facility or practitioner to conform to minimum professional standards, regulations, or accreditation standards; (b) is requested to engage in conduct that would violate the nurse's duty to protect patients from actual or potential harm as defined in Chapter 632 of NRS, "Nursing," and Chapter 632 of the *Nevada Administrative Code* (NAC), "Nursing"; (c) refuses to engage in conduct that would violate the provisions of Chapter 632 of NRS or Chapter 632 of NAC or that would make the nurse reportable to

the State Board of Nursing; (d) reports the actions of another nurse who engages in conduct subject to mandatory reporting to the State Board of Nursing as defined in Chapter 632 of NRS and Chapter 632 of NAC; or (e) reports staffing concerns or situations that reasonably could contribute to patient harm. *(Submitted by the Nevada Nurses Association, May 6, 2008.)* (See Tab 11 of [Exhibit H](#).)

- 1) The bill would apply the protections to reporting both internally and externally (i.e. within the facility, to legal, governmental, or legislative bodies).
 - 2) The bill would further provide an enforcement mechanism to provide a clear and direct recourse to those who experience workplace sanctions after having reported an unsafe health care practice, including civil action to include at least double compensation for damages resulting from lost wages, compensation for legal representation, and additional punitive damages.
 - 3) Additionally, the bill would create a presumption that any disciplinary action taken against a nurse within 60 days of that nurse reporting conduct specified in the statute was taken in retaliation against the nurse having made such a report.
- Neena Laxalt, Lobbyist, Nevada Nurses Association, testified that the association supported stronger whistleblower protections and stated that a survey requested by the LCHC was being distributed. She said that information would be provided as soon as it was available.
 - The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HORSFORD MOVED TO APPROVE RECOMMENDATION NO. 39 TO REQUEST A BILL DRAFT THAT WOULD PROVIDE STATUTORY PROTECTION FOR THE HEALTH CARE PROFESSIONAL LICENSING BOARDS. THE MOTION WAS SECONDED BY ASSEMBLYMAN HARDY, WHICH PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

**RECOMMENDATIONS FROM THE SUBCOMMITTEE OF THE
LEGISLATIVE COMMITTEE ON HEALTH CARE TO
REVIEW THE LAWS AND REGULATIONS GOVERNING THE
PROVIDERS OF HEALTH CARE, THE USE OF LASERS AND
INTENSE PULSED LIGHT THERAPY, AND THE USE OF
INJECTIONS OF COSMETIC SUBSTANCES
(SENATE BILL 4, CHAPTER 4,
STATUTES OF NEVADA 2007, 23RD SESSION)**

RECOMMENDATION NO. 40—Draft legislation to modify the requirement that an applicant for a license to practice medicine must prove to the Board of Medical

Examiners he is a citizen or lawfully entitled to remain and work in the United States by creating an exception for applicants who are trying to enter the J-1 Visa Waiver program. This bill would allow an application for a license to be processed; however, the applicant would not be permitted to begin the practice of medicine until the J-1 Visa Waiver has been issued. *(Submitted by the Subcommittee to Review the Laws and Regulations Governing Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic Substances [Senate Bill 4, Chapter 4, Statutes of Nevada 2007, 23rd Special Session].)* (See Tab 12 of [Exhibit H.](#))

- Senator Carlton explained the background for Recommendation No. 40. She stated the intent was to create an exception for J-1 Wavier applicants to expedite the application process.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO APPROVE RECOMMENDATION NO. 40. THE MOTION WAS SECONDED BY ASSEMBLYMAN HARDY, WHICH PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

RECOMMENDATION NO. 42—Draft legislation to allow physicians who have recently completed a residency program to be provisionally licensed upon receipt of satisfactory fingerprint reports, pending completion of the remainder of the board application process, including completion of certain examinations or board certifications. *(Submitted by the Subcommittee to Review the Laws and Regulations Governing Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic Substances [Senate Bill 4, Chapter 4, Statutes of Nevada 2007, 23rd Special Session].)* (See Tab 12 of [Exhibit H.](#))

- Assemblyman Hardy stated this recommendation would provide for increased retention of physicians in Nevada.
- The Committee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN HARDY MOVED TO APPROVE RECOMMENDATION NO. 42. THE MOTION WAS SECONDED BY ASSEMBLYWOMAN GERHARDT, WHICH PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

RECOMMENDATION NO. 43—Draft legislation to make it easier for professionals licensed in other states to become licensed in Nevada if certain criteria are met. *(Submitted by the Subcommittee to Review the Laws and Regulations Governing Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic Substances [Senate Bill 4, Chapter 4, Statutes of Nevada 2007, 23rd Special Session].)* (See Tab 12 of [Exhibit H.](#))

- Senator Carlton explained that the recommendation clarified the credentialing procedure which would ease the licensing requirements for physicians coming from other states to practice in Nevada.
- Assemblyman Hardy compared the licensing process proposed in the recommendation to the current procedure and discussed how it would work. He noted it would remove unneeded barriers.
- Senator Heck opined that credentialing needed to be more extensively vetted, due to less stringent licensure requirements in other states. He agreed there was a need to expand credentialing options, but noted it should include strict vetting.

Discussion ensued regarding the bill draft language.

- Senator Carlton stated the intent of the recommendation was to reward health care professionals who wanted to relocate here.
- Assemblyman Hardy commented that all applicants should be given consideration, not just those in practice for certain periods of time. He stated that the legislation should include physicians (including psychologists and psychiatrists) and osteopaths.
- Senator Horsford asked for clarification regarding the requirements for these physicians to meet Nevada's standards.
- Assemblyman Hardy responded that these practitioners are considered to have proven themselves by their time in practice in other states.
- Senator Horsford commented he could not support this motion without more information.
- Chair Leslie stated she would support the recommendation based on testimony heard during the LCHC meetings.
- The Committee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN HARDY MOVED TO ADOPT RECOMMENDATION NO. 43 WHICH WAS SECONDED BY ASSEMBLYWOMAN GERHARDT. THE MOTION PASSED WITH SENATOR HORSFORD VOTING NAY AND VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

RECOMMENDATION NO. 44—Draft legislation to specify that supervision of physician assistants can be done through telecommunications and remote file review. *(Submitted by the Subcommittee to Review the Laws and Regulations Governing Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic*

Substances [Senate Bill 4, Chapter 4, Statutes of Nevada 2007, 23rd Special Session].)
(See Tab 12 of [Exhibit H.](#))

- Chair Leslie noted that the BME had sent a response to the LCHC stating that statutory regulation was unnecessary. She said the BME asserted that this issue was covered in Chapter 630, “Physicians, Physician Assistants and Practitioners of Respiratory Care,” of the *Nevada Administrative Code*.

Discussion ensued regarding the history of the recommendation and the review process between a physician and physician assistant (PA) and the general supervision of PAs by physicians.

- Senator Horsford asked about remote supervision when physician care is being provided by a PA in a rural area.
- Senator Heck responded that this recommendation would create legislation which would clarify how often a physician would be required to travel to a remote area for a site visit to supervise a PA.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR HECK MOVED TO DRAFT LEGISLATION TO ALLOW REMOTE SUPERVISION OF PHYSICIAN ASSISTANTS. ASSEMBLYMAN HARDY SECONDED THE MOTION, WHICH PASSED WITH SENATOR HORSFORD ABSTAINING AND VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

RECOMMENDATION NO. 45—Draft legislation to allow professional licensing boards to hire counsel outside the Office of the Attorney General when appropriate. *(Submitted by the Subcommittee to Review the Laws and Regulations Governing Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic Substances [Senate Bill 4, Chapter 4, Statutes of Nevada 2007, 23rd Special Session].)*
(See Tab 12 of [Exhibit H.](#))

- Senator Carlton explained that not all the boards have the ability to hire their own attorney. She noted that high turnovers, time constraints, and billing issues made the option to hire outside counsel more desirable to some boards.
- Chair Leslie clarified that this legislation would apply to all professional health care licensing boards.
- The Committee **APPROVED THE FOLLOWING ACTION:**

ASSEMBLYMAN HARDY MOVED TO APPROVE RECOMMENDATION NO. 45. THE MOTION WAS SECONDED BY SENATOR HECK AND

PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

RECOMMENDATION NO. 46—Draft legislation to provide professional licensing boards with the authority to investigate and refer unlawful professional practice to authorities for penalties. *(Submitted by the Subcommittee to Review the Laws and Regulations Governing Providers of Health Care, the Use of Lasers and Intense Pulsed Light Therapy, and the Use of Injections of Cosmetic Substances [Senate Bill 4, Chapter 4, Statutes of Nevada 2007, 23rd Special Session].)* (See Tab 12 of [Exhibit H](#).)

- Senator Carlton explained the motivation behind this recommendation, which she stated is to authorize boards to take action against misrepresented practice and to refer any actions to the Office of the Attorney General.
- Chair Leslie commented that the recommendation still needed work and asked if Senator Carlton would be willing to request a bill draft.
- Senator Carlton agreed and noted the BDR would be modeled after the dental board language.

Responding to Ms. Partida’s request for clarification regarding which boards would be included and if penalties would be civil or criminal, the Committee agreed that this legislation would duplicate the model of the dental board.

- The Committee **APPROVED THE FOLLOWING ACTION:**

A MOTION WAS MADE BY SENATOR HECK AND SECONDED BY ASSEMBLYMAN HARDY TO APPROVE SENATOR CARLTON MOVING FORWARD WITH RECOMMENDATION NO. 46 AND USING THE STATE DENTAL BOARD AS A MODEL FOR DRAFTING LEGISLATION. THE MOTION PASSED WITH VICE CHAIR WASHINGTON NOT PRESENT FOR THE VOTE.

- Keith Lee, previously identified, testified that the recommendation did not accurately represent what had been previously discussed. He stated that the legislation should give the BME jurisdiction over a physician committing fraud.

RECOMMENDATIONS CONCERNING THE LEGISLATIVE COMMITTEE ON HEALTH CARE

RECOMMENDATION NO. 47—Draft legislation to repeal or amend NRS 439b.225, which requires the LCHC to review each regulation that a licensing board proposes or adopts which relates to standards for licensing or registration or to the renewal of a license or certificate of registration issued to a person or facility regulated by the board.

- Chair Leslie provided background information for this recommendation. She asked for discussion on changing the language from including “must review” to “may review.” She stated that she was not in favor of repealing the statute.
- Assemblyman Hardy suggested a consent agenda be used in the future to save time.
- Chair Leslie withdrew support for this recommendation.

The Committee took no action on Recommendation No. 47.

PUBLIC TESTIMONY

There was no additional public testimony.

- Chair Leslie thanked the members of the LCHC and staff for their contributions to the Committee over the interim.

ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 5:34 p.m.

Respectfully submitted,

Sally Trotter
Senior Research Secretary

Marsheilah D. Lyons
Principal Research Analyst

APPROVED BY:

Assemblywoman Sheila Leslie, Chair

Date: _____

LIST OF EXHIBITS

[Exhibit A](#) is the “Meeting Notice and Agenda” provided by Marsheilah D. Lyons, Principal Research Analyst, Research Division, Legislative Counsel Bureau (LCB).

[Exhibit B](#) is a handout provided by Richard Whitley, M.S., Administrator, Health Division, Department of Health and Human Services, Department of Health and Human Services (DHHS), titled “State of Nevada Health Division, Recommendations Concerning the Hepatitis C Investigation,” dated July 25, 2008.

[Exhibit C](#) is a document presented by Lawrence K. Sands, D.O., M.P.H., Chief Health Officer, Southern Nevada Health District, titled “Southern Nevada Health District Policy Recommendations,” dated July 29, 2008.

[Exhibit D](#) is a Microsoft PowerPoint presentation provided by Shannon E. West, M.S.W., Regional Homeless Services Coordinator, Southern Nevada Regional Planning Coalition, titled, “Update and Recommendations to the Legislative Committee on Health Care from the Southern Nevada Mental Health Design Work Group,” dated July 29, 2008.

[Exhibit E](#) is a spreadsheet offered by Charles Duarte, Administrator, Division of Health Care Financing and Policy, DHHS, titled “Presentation Regarding the Impact of Recently Enacted Federal Regulation on the Medicaid Program in Nevada,” dated Tuesday, July 29, 2008.

[Exhibit F](#) is a document provided by Sara Partida, Senior Deputy Legislative Counsel, Legal Division, LCB, titled “Consideration of Regulations Proposed or Adopted by Certain Licensing Boards Pursuant to NRS 439B.225,” dated July 29, 2008.

[Exhibit G](#) is a memorandum dated July 29, 2008, to Assemblywoman Sheila Leslie, Chair, Legislative Committee on Health Care, titled Health Work Force Data Collection, from Caroline Ford, Assistant Dean/Director, Center for Education and Health Services Outreach, University of Nevada, School of Medicine.

[Exhibit H](#) is the “Work Session Document” provided by Marsheilah D. Lyons, Principal Research Analyst, Research Division, LCB, dated July 29, 2008.

[Exhibit I](#) is the “Consent Calendar for Work Session” submitted by Sarah Lutter, Senior Research Analyst, Research Division, LCB, dated July 29, 2008.

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.