



NEVADA LEGISLATURE
SUBCOMMITTEE TO CONDUCT A
STUDY OF POSTACUTE CARE
(Assembly Bill 242 [Chapter 306, Statutes of Nevada 2015])

SUMMARY MINUTES AND ACTION REPORT

The fourth meeting of the Nevada Legislature's Subcommittee to Conduct a Study of Postacute Care was held on Wednesday, July 6, 2016, at 8:30 a.m. in Room 2135 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. The "Summary Minutes and Action Report," the "Meeting Notice and Agenda," and other meeting materials are available on the Nevada Legislature's website at <http://www.leg.state.nv.us/interim/78th2015/committee/>. In addition, copies of the audio or video record are available through the Legislative Counsel Bureau's Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835) and may be available online at <http://www.leg.state.nv.us/Granicus/>.

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Assemblywoman Robin L. Titus, M.D., Chair

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Senator Joseph (Joe) P. Hardy, M.D., Vice Chair

Senator Joyce Woodhouse

COMMITTEE MEMBER ABSENT:

Assemblywoman Teresa Benitez-Thompson

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Marsheilah D. Lyons, Chief Principal Research Analyst, Research Division

James W. Penrose, Senior Principal Deputy Legislative Counsel, Legal Division

Mandi Davis, Program Analyst, Fiscal Analysis Division

Gayle Nadeau, Senior Research Secretary, Research Division

Items taken out of sequence during the meeting have been placed in agenda order.

AGENDA ITEM I—OPENING REMARKS

Chair Titus offered introductory remarks and provided an overview of Assembly Bill 242 (*Assembly Bill 242, Chapter 306, Statutes of Nevada 2015*) in accordance with the purview of the Subcommittee to Conduct a Study of Postacute Care (SCSPC).

AGENDA ITEM II—PUBLIC COMMENT

Susan Hirsch, Nevada Senior Services, Las Vegas, Nevada, read a June 30, 2016, letter to the SCSPC from the Adult Day Services Association of Nevada requesting support for adult day care centers in the State of Nevada when considering postacute care funding proposals before the 2017 Legislature. ([Agenda Item II A](#))

Katiushka Posada, Baby Boomers Activities Club, Las Vegas, read a June 29, 2016, letter from BrightPath Adult Day Services regarding closure of the business after 15 years due to inadequate funding. Ms. Posada, a director of an adult day care center, requested an increase in reimbursement rates for adult day care services in the State. ([Agenda Item II B](#))

Barry Gold, Director, Government Relations, American Association of Retired Persons (AARP) Nevada, stated AARP of Nevada does not support or oppose the State's potential change to managed care services but is concerned that the quality of and access to care is maintained through transparency. He said AARP urges the State to establish a legislative oversight committee to monitor possible implementation of managed care and long-term care in Nevada.

Barbara Paulsen, Nevadans for the Common Good, Las Vegas, supports accountability and legislative oversight of any managed care implementation in the State. She urged careful consideration of all options to ensure that the best method of managed care is available in Nevada. Ms. Paulsen opined that provider reimbursement rates have not been increased in Nevada since 2002, which has had a noticeable impact on access to care, quality of care, and the ability of vulnerable populations to maintain their independence. ([Agenda Item II C](#))

Helen Foley, Lobbyist, representing the Residential Care Home Community Alliance of Nevada, Inc. (RCHCAN), and the Assisted Living Association of Nevada, requested that the minimum staffing ratios in recommendation four, item "i," of the "Work Session Document" (WSD) be deleted. She opined that issues might arise if the staffing ratios remain by potentially jeopardizing this recommendation. Ms. Foley said RCHCAN acknowledges there are numerous safety checks in place with annual inspections and with the proposal to expand the authority of the State's ombudsmen to advocate for residents of various supportive living facilities. She also requested that identifying residential care facilities as "residential" be reinstated in *Nevada Revised Statutes* (NRS) 278 ("Planning and Zoning") for purposes of

building and zoning codes; and therefore, allowing R13 sprinklers rather than requiring commercial sprinklers in residential care facilities.

AGENDA ITEM III—APPROVAL OF MINUTES OF THE MEETING HELD ON APRIL 6, 2016, IN CARSON CITY, NEVADA

MOTION: Senator Hardy moved to approve the “Summary Minutes and Action Report” of the April 6, 2016, meeting held in Carson City, Nevada. The motion was seconded by Senator Woodhouse and passed. Assemblywoman Benitez-Thompson was absent.

AGENDA ITEM IV—WORK SESSION—DISCUSSION AND POSSIBLE ACTION ON RECOMMENDATIONS RELATING TO:

- A. Proposals Relating to Funding for Postacute Care*
- B. Proposals Relating to Quality of Postacute Care*
- C. Proposals Regarding Alternatives to Institutionalized Care*

Marsheilah D. Lyons, previously identified, provided explanatory remarks about the contents of the WSD and the decision options for the SCSPC when considering the recommendations in the WSD. ([Agenda Item IV A-1](#))

A. Proposals Relating to Funding for Postacute Care

Recommendation No. 1 — Submit a bill draft request (BDR) related to the Medicaid waiver programs and the cost of coverage for personal care services.

Ms. Lyons noted a request was also made to include adult day care facilities in the BDR for this recommendation. She referenced the Personal Care Association of Nevada (PCAN) exhibit in the WSD (Agenda Item IV A-1 – page 6), which requests an increase in the hourly rate for personal care from \$17 per hour to \$21 per hour.

Discussion ensued between Senator Hardy, Chair Titus, and Ms. Lyons regarding ensuring the SCSPC’s intent is clearly delineated in the BDR.

MOTION: Senator Hardy moved that the BDR include the intent of the SCSPC by having the Division of Health Care Financing and Policy (DHCFP) work with the personal care industry to review the Medicaid waiver programs and reimbursement rates for services related to personal care provided in personal residences, assisted living facilities, or residential facilities for groups, including adding adult day care services. The motion was seconded by Senator Woodhouse and passed. Assemblywoman Benitez-Thompson was absent.

Recommendation No. 2 — Submit a BDR that requires Medicaid reimbursement rates to be consistent for equivalent services provided in similar settings.

Ms. Lyons called attention to a letter from Marta Jensen, Acting Administrator, DHCFP, Department of Health and Human Services (DHHS), on page 20 of the WSD, noting that not all personal care settings have equivalent Medicaid services, and therefore, consistent rates may not be possible.

Discussion ensued among Senator Hardy, Chair Titus, and Jennifer Frischmann, Chief, Long-Term Support Services (LTSS), Nevada Medicaid, DHCFP, DHHS, regarding LTSS offering an educational component to provide an understanding of similar services and ensuring reimbursement rates are equivalent for “like” services.

MOTION: Senator Hardy moved that the DHCFP work with the personal care industry in a flexible and efficient manner to ensure that Medicaid reimbursement rates are consistent for equivalent services provided in similar settings. The motion was seconded by Senator Woodhouse and passed. Assemblywoman Benitez-Thompson was absent.

Recommendation No. 3 — Send a letter to the Governor of the State of Nevada, the Director of DHHS, and the Chairs of the Senate Committee on Finance and Assembly Committee on Ways and Means during the 2017 Legislative Session recommending and expressing support for: (1) rate methodology for postacute care facilities and personal care services; (2) an appropriation for sufficient Medicaid reimbursement rates in the Governor’s recommended budget and the legislatively approved budget; and (3) reimbursement rates indexed to increase with inflation in future biennia.

Ms. Lyons referenced a request to add adult day care facilities in the letter, which are included in the definition of postacute care facilities. She noted the communication could also clarify for the parties receiving the letter which facilities the SCSPC is addressing.

Senator Hardy stressed it is vital that the letter be drafted to note the urgency of the issues identified by the SCSPC and sent expeditiously so that funding for these issues can be included in the Governor’s budget that will be presented to the 2017 Legislature.

Chair Titus and Senator Woodhouse voiced their support for the critical nature of this recommendation, especially ensuring the letter is received by the Governor as soon as possible. Senator Woodhouse pointed out the issues this recommendation addresses have come before the legislature from many stakeholders, and it is crucial that it be addressed during the 2017 Legislative Session.

MOTION: Senator Woodhouse moved to approve Recommendation No. 3 and to have the letter drafted and mailed with the utmost of urgency. The motion was seconded by Senator Hardy and passed. Assemblywoman Benitez-Thompson was absent.

B. Proposals Relating to Quality of Postacute Care

Recommendation No. 4 — Submit a BDR to establish consistent standards for all facilities providing 24-hour, long-term care for individuals who need supervision, assistance with personal care, and medication management.

Ms. Lyons noted that the proponent for this recommendation asked that the requirement for minimum staffing ratios not be considered and also to remove the requirement related to residential sprinklers. She mentioned the matrix on page 22 of the WSD ([Agenda Item IV A-1](#)) outlining the current standards for the different areas outlined in the recommendation.

Senator Hardy opined drafting the BDR for this recommendation would most likely be arduous in addressing the inconsistencies among the various essential standards noted in it; therefore, he recommended keeping the BDR focused on the intent of the SCSPC to have the issues listed in items a, b, c, d, and e be the focus of the BDR. Senator Hardy concurred with not including items i (minimum staffing ratios) and k (residential sprinklers). He pointed out that the BDR should not preclude the regulations from being changed relative to designating a residential facility versus a commercial facility, even before the 2017 Legislature convenes. (Agenda Item IV A-1 – page 3)

Senator Woodhouse suggested sending a letter to the responsible division or divisions and applicable stakeholders regarding the essential standards in items f, g, h, and j noting in the letter it is the intent of the SCSPC that these essential standards are important to pursue. (Agenda Item IV A-1– page 3)

MOTION: Senator Hardy moved to approve a BDR that addresses establishing essential standards for consistency among all facilities providing 24-hour, long-term care for individuals who need supervision, and assistance with personal care and medication management as listed in items a through e in the recommendation. His motion included sending a letter to applicable stakeholders and administrators in State agencies expressing the intent that the SCSPC is interested in resolving the issues identified in items f, g, h, and j of this recommendation. The motion was seconded by Senator Woodhouse and passed. Assemblywoman Benitez-Thompson was absent.

Recommendation No. 5 — Draft a BDR expanding the authority of the long-term care ombudsmen authorizing them to advocate for residents in various living arrangements and facility types as listed in this recommendation.

Ms. Lyons noted that State General Funds partially support funding the State's long-term care ombudsmen with the majority of funding provided by the federal government. Therefore, she pointed out, expanding their authority would require an additional appropriation to hire more long-term care ombudsmen to work in facility types that are not required to be reviewed by the federal government. Ms. Lyons referenced the current ombudsman program budgeted costs on

page 43 of Agenda Item IV A-1 and an estimate to expand the role of the long-term care ombudsmen ([Agenda Item IV A-2](#)).

MOTION: Senator Hardy moved to approve the authority and funding for this recommendation and to send a letter to the Governor of the State of Nevada informing him of this decision by the SCSPC. The motion was seconded by Senator Woodhouse and passed. Assemblywoman Benitez-Thompson was absent.

C. Proposals Regarding Alternatives to Institutionalized Care

Recommendation No. 6 — Submit a BDR to authorize certain employees or members of the staff who are unlicensed assistive personnel (UAP) to complete basic the Centers for Medicare and Medicaid Services (CMS) training in defined vital signs for certain residents.

Ms. Lyons directed attention to pages 45 through 52 in Agenda Item IV A-1 noting the proposed regulatory changes by the Bureau of Health Care Quality and Compliance (BHCQC), Division of Public and Behavioral Health (DPBH), DHHS, as they relate to waived blood glucose testing, would need to be adopted in order for such authorization to be allowed.

Kyle Devine, M.S.W., Chief, BHCQC, DPBH, DHHS, explained the federal requirements for the CMS Clinical Laboratory Improvement Amendments (CLIA) and clarified some of the confusion about the CLIA “waived test” and how blood glucose testing might be implemented in the State of Nevada.

A lengthy discussion ensued among Senator Hardy, Chair Titus, and Mr. Devine regarding: (1) checking with other states for models already in place that allow blood glucose testing by UAPs; (2) whether a CLIA certificate of waiver would allow trained UAP to do a blood glucose test to determine an individual’s insulin level living in a care facility and the prerogative of the Nevada Legislature in this regard; (3) the biennial \$150 fee for a CLIA waiver; (4) the proposed changes by BHCQC to applicable sections of the NRS and the Nevada Administrative Code and the current status of the proposed changes; (5) clarification of the intended wording on page 50 of Agenda Item IV A-1 relative to “The resident himself or herself with assistance”; (6) the intent of the proposed regulation changes as they would apply to a BDR for this recommendation; (7) cautionary remarks by Mr. Devine regarding instances in exempt, licensed laboratory facilities where single-use injectable devices were used on multiple individuals and the need for oversight; and (8) the administration of insulin doses.

MOTION: Senator Hardy moved for a BDR that authorizes UAPs to complete the CMS training in defined vital signs for certain residents, including taking a resident’s temperature, blood pressure, pulse, apical heart rate, respirations, oxygen saturation, and finger-stick glucose, and adding to those functions the administration of insulin and assisting with the administration of insulin. Additionally, ensure that staff of the following facilities and agencies receive the same authority as proposed for UAPs: (1) residential facility for groups (NRS 449.017); (2) agency to provide personal care services in the home (NRS 449.0021); (3) intermediary

service organization (NRS 449.4304); and (4) facility for the care of adults during the day (NRS 449.004).

Senator Hardy further moved that it is the SCSPC's intent to: (1) support the BHCQC's, DPBH, DHHS, proposed regulatory changes that would only cover the finger-stick glucose testing—not the administration of insulin; and (2) encourage the BHCQC to work toward including the administration of and the regulatory changes to include the administration of insulin and assisting with the administration of insulin as it develops its proposed regulation changes. The motion was seconded by Senator Woodhouse and passed. Assemblywoman Benitez-Thompson was absent.

Recommendation No. 7 — Include two policy statements in the SCSPC report regarding its support for enabling senior adults and individuals with disabilities to remain in their homes or in community-based settings and to encourage the DHHS to establish a “no wrong door” philosophy as it relates to members of the public accessing information about postacute care services and supports.

Ms. Lyons added that the AARP of Nevada recommended including support for appropriate funding to clear waiting lists for individuals needing home- and community-based services.

Chair Titus commented that the crucial information she gained from the testimonies provided at the SCSPC's meetings was the number of resources the State of Nevada already provides in the areas related to the issues on the meetings' agendas. She opined it is vital that individuals calling for help are directed to the agency or agencies that offer the needed services. Subsequently, Chair Titus expressed her encouragement to the various departments, divisions, and State agencies to offer shared learning among all employees of these units so when callers need assistance they will be directed to the best resource, if the unit they called initially is not that resource.

MOTION: Senator Hardy moved to include two policy statements in the SCSPC's final report regarding its support for enabling senior adults and individuals with disabilities to remain in their homes or in community-based settings and to encourage the DHHS to establish a “no wrong door” philosophy as it relates to members of the public accessing information about postacute care services and supports. The motion was seconded by Senator Woodhouse and passed. Assemblywoman Benitez-Thompson was absent.

AGENDA ITEM V—PUBLIC COMMENT

Connie McMullen, Lobbyist, PCAN, requested that the personal care industry be contacted to participate in discussions about the Medicaid waiver program prior to finalization of the BDR for Recommendation No. 1, and preferably before the budget of the Governor of the State of Nevada is released. Ms. McMullen also requested that the reimbursement rates for all personal care providers be reviewed on an annual basis.

AGENDA ITEM VI—ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 10:13 a.m.

Respectfully submitted,

Gayle Nadeau
Senior Research Secretary

Marsheilah D. Lyons
Chief Principal Research Analyst

APPROVED BY:

Assemblywoman Robin L. Titus, M.D., Chair

Date: _____

MEETING MATERIALS

| AGENDA ITEM | WITNESS/ENTITY | DESCRIPTION |
|---|---|---|
| <u>Agenda Item II A</u> | Susan Hirsch, Nevada Senior Services, Las Vegas, Nevada | Letter to the Subcommittee to Conduct a Study of Postacute Care (SCSPC) from the Adult Day Services Association of Nevada |
| <u>Agenda Item II B</u> | Katiushka Posada, Baby Boomers Activities Club, Las Vegas | Email letter from BrightPath Adult Day Services |
| <u>Agenda Item II C</u> | Barbara Paulsen, Nevadans for the Common Good, Las Vegas | Letter to the SCSPC from Ms. Paulsen |
| <u>Agenda Item IV A-1</u> | Marsheilah D. Lyons, Chief Principal Research Analyst, Research Division, Legislative Counsel Bureau | “Work Session Document,” which includes exhibits |
| <u>Agenda Item IV A-2</u> | Jill R. Berntson, Deputy Administrator, Aging and Disability Services Division, Department of Health and Human Services | Table showing a rough draft estimate on expanding the role of the Long-Term Care Ombudsman in the State of Nevada |

The “Summary Minutes and Action Report” are supplied as an informational service. Copies of all meeting materials are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the Library at www.leg.state.nv.us/lcb/research/library/feedbackmail.cfm or (775) 684-6827.