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Senate Committee on Commerce and Labor
Via email: SenCL@asm.state.nv.us

RE: Division of Insurance Testimony on SB 387

Chair Pazina and Members of the Senate Committee on Commerce and Labor:

The Nevada Division of Insurance of the Department of Business and Industry is here today to testify neutral on Senate Bill 387.

Senate Bill 387 mandates that certain policies of health insurance provide coverage for certain screening or diagnostic services for lung cancer. 42 U.S.C. § 18022(b) requires that applicable health plans provide an essential health benefits package including ten categories of services; 42 U.S.C. § 18022(b)(1)(I) stipulates that one of those categories is "preventive and wellness services and chronic disease management." 45 CFR § 147.130(a)(i) interprets this provision to mean "a group health plan, or a health insurance issuer offering group or individual health insurance coverage, must provide coverage for and must not impose any cost-sharing requirements (such as copayment, coinsurance or a deductible) for evidence-based items or services that have in effect a rating of A or B in the current recommendations of the United States Preventive Services Task Force." (USPSTF)

The screening in question has a current grade B recommendation from the United States Preventive Services Task Force. The Division of Insurance evaluates Senate Bill 387 as not triggering federal defrayal provisions as currently constituted.

Braidwood Management, Inc. et al. v. Robert F. Kennedy, Jr. et al., formerly docketed as *Braidwood Management, Inc. et al. v. Xavier Becerra et al.* and colloquially known as *Braidwood*, is a lawsuit filed in federal court and originally heard by Judge Reed O'Connor. The *Braidwood* plaintiff, attempting to overturn

the requirement that pre-exposure prophylaxis (PrEP) be covered as a preventive service, successfully argued before Juge O'Connor that the coverage delegation to USPSTF is unconstitutional on the basis that the USPSTF role violates the Appointments and Vesting clauses of the US Constitution. That decision was appealed to the 5th Circuit Court of Appeals which issued a stay of Judge O'Connor's ruling. The case has since been appealed to the United Stated Supreme Court, which granted certiorari but has not yet heard the appeal.

Disposition of Braidwood at the US Supreme Court is an unknown factor. Should the Court uphold Judge O'Connor's ruling and remove the 5th Circuit's say, the provisions of 45 CFR § 147.130(a)(i) will likely be invalid as to recommendations of the USPSTF. That may result in a variety of previously covered preventive and wellness services no longer being considered Essential Health Benefits pursuant to 42 U.S.C. § 18022. If that occurs, it is likely that the benefit mandate in Senate Bill 387 will be considered a state mandate in excess of the Essential Health Benefits package and subject to federal defrayal.

As always, the Division is available for any questions the Committee may have.

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