

**Legislative Committee on Senior Citizens,
Veterans and Adults With Special Needs**
(Nevada Revised Statutes 218E.750)

**WORK SESSION
DOCUMENT**



June 15, 2010

Prepared by the Research Division
Legislative Counsel Bureau



WORK SESSION DOCUMENT

LEGISLATIVE COMMITTEE ON SENIOR CITIZENS, VETERANS AND ADULTS WITH SPECIAL NEEDS (*Nevada Revised Statutes 218E.750*)

June 15, 2010

The following list of recommendations was compiled by the Chair and staff of the Legislative Committee on Senior Citizens, Veterans and Adults With Special Needs (*Nevada Revised Statutes* [NRS] 218E.750). This document contains recommendations that were either submitted in writing to the Committee staff, provided through correspondence with Committee members, or presented during one of the Committee's three hearings on January 20, 2010; March 10, 2010; or April 13, 2010.

This document is designed to assist the Committee members in determining what action they may 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 2011 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 218D.160, the Committee is limited to ten bill draft requests (BDRs), including requests for resolutions. The BDRs must be submitted to the Legal Division of the Legislative Counsel Bureau on or before September 1, 2010.

The proposals 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 study, or only one main source may be listed when there were also others who contributed.

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. 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 the NRS, as part of the drafting process, amendments to other related chapters or sections of the NRS may be made to fully implement the recommendation.

RECOMMENDATIONS RELATING TO SENIOR CITIZENS

RECOMMENDATIONS RELATING TO ELDER ABUSE, EXPLOITATION, NEGLECT, OR ISOLATION

1. **Draft legislation** to require the Office of the Attorney General to organize or sponsor at least one multidisciplinary team (MDT). Currently, NRS 228.270 provides that the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General *may* organize or sponsor one or more multidisciplinary teams to review any allegations of abuse, neglect, exploitation, or isolation of an older person. Change “may organize or sponsor” to “shall support the organization of or sponsor” (submitted by Connie McMullen, Chair, Senior Services Strategic Plan Accountability Committee [SPAC]).
2. **Draft legislation** to amend NRS 228.270(2) to include “vulnerable persons” among those who may be served by a MDT (currently this subsection only pertains to older persons). This amendment would make NRS 228.270(2) consistent with NRS 200.5091 through NRS 200.50995, which refer to abuse, neglect, exploitation, or isolation of older persons and vulnerable persons (submitted by Brett Kandt, Special Deputy Attorney General, Office of the Attorney General).
3. **Draft legislation** clarifying the provisions of NRS 179A.450 to improve the usefulness of the data in the Repository for Information Concerning Crimes Against Older Persons. Make the following revisions:
 - A. Currently the Repository receives reports when arrests occur relating to crimes that involve elderly people, which may not fully reflect the purpose of NRS 179A.450. If the intent of the Legislature is to require the Repository to collect information about crimes targeting elderly people, then cross reference the definitions in NRS 200.5092 relating to elder abuse, neglect, exploitation, and isolation. This will clarify that only those crimes where older persons are targeted should be reported, not crimes that incidentally involve an older person.
 - B. Section 179A.450 of the NRS states that the Repository “must contain a complete and systematic record of all reports of crimes against older persons committed in this State.” Currently, the Repository is only receiving arrest reports from some law enforcement agencies and reports of cases that the Aging and Disability Services Division (ADSD), Nevada’s Department of Health and Human Services (DHHS), forwards to law enforcement agencies for investigation. If the definition of “reports” should also include incident reports and investigative reports in cases

- that do not involve arrests, which may give a better picture of rates of elder abuse, clarify this definition. Also, include a mandate in the NRS that law enforcement and reporting agencies forward the reports to the Repository and provide a penalty if they do not. Finally, authorize the Department of Public Safety (DPS) to adopt regulations that facilitate the collection of other types of reports of crimes against older persons through collaboration with the ADSD, offices of district attorneys, law enforcement agencies, and other relevant organizations.
- C. Provide that only reports of crimes that are reasonably believed to have been committed are to be forwarded to the Repository by the ADSD, DHHS, or law enforcement entities.
 - D. Specify which entities must report information to the Repository by replacing “any entity” in NRS 179A.450(2) with a list of the agencies listed in NRS 200.5093(1)(a). These include the local office of the ADSD, DHHS; a police department or sheriff’s office; and the county’s office for protective services, if one exists in the county where the suspected action occurred (submitted by Patrick J. Conmay, Chief, Records and Technology Division, DPS).
4. **Draft legislation** to reinstate members of the clergy and attorneys as mandatory reporters of abuse to those over age 60 in NRS 200.5093. In 2005, Section 5 of Assembly Bill 267 (Chapter 324, *Statutes of Nevada*) removed clergy and attorneys from the list of mandatory reporters of elder abuse (submitted by Barry Gold, Director of Government Relations, AARP Nevada).
 5. **Draft legislation** that requires mandatory reporters who are employees of government agencies and nonprofit organizations to report the number of senior abuse calls, cases, and investigations to a single centralized agency in the State (submitted by Lu Torres, Executive Director, and Elena Espinoza, Director of Client Services and Programs, The Rape Crisis Center [RCC]).
 6. **Draft legislation** requiring staff and personnel at long-term care facilities receiving funding from State or federal entities to complete a mandatory on-line training course. Employees and staff of these long-term care facilities would be mandated to complete a curriculum on how to respond to and act upon disclosures of abuse and sexual assault by residents of facilities (submitted by Lu Torres, Executive Director, and Elena Espinoza, Director of Client Services and Programs, RCC).
 7. **Draft legislation** requiring agencies that receive State or federal funds and work with senior citizens (including health agencies, community centers, et cetera) to participate in no less than one service provider training a year. The training must include updates on best practices regarding senior abuse and reporting, legislative updates (including mandated reporting statutes), the changing demographics in the senior citizen community in Nevada, and action steps for possible first responders should a senior

disclose instances of abuse (submitted by Lu Torres, Executive Director, and Elena Espinoza, Director of Client Services and Programs, RCC).

8. **Draft legislation** directing the State Board of Health to adopt regulations to require mandatory elder abuse training for all personnel who work directly with residents in facilities for the dependent (as defined in NRS 449.0045) and facilities for skilled nursing (as defined in NRS 449.0039), including facility owners, as a condition of licensure (submitted by Wendy Simons, Assisted Living Consultant, Reno).
9. **Write a letter** urging the DHHS to organize an advocacy response team comprised of members from the ADSD and the Bureau of Health Care Quality and Compliance (HCQC). The purpose of the team will be to respond quickly to alleged cases of extreme abuse, neglect, isolation, or exploitation of older persons in facilities for long-term care in order to protect the resident and ensure that proper investigation occurs (submitted by Wendy Simons, Assisted Living Consultant, Reno).
10. **Write a statement in the final report** encouraging communities across the State to engage in dialogue on senior abuse through their participation in education and awareness presentations offered by community-based agencies. Also encourage State of Nevada agencies to participate in and research best practices relating to senior abuse awareness and protection so that they are in alignment with the movement forward in regards to protecting citizens everywhere from harm and crime (submitted by Lu Torres, Executive Director, and Elena Espinoza, Director of Client Services and Programs, RCC).

RECOMMENDATIONS RELATING TO GUARDIANSHIPS

11. **Draft legislation** establishing an interim legislative study on the issue of guardianships for adults in order to identify and recommend improvements and reforms in the system (submitted by Herbert E. Randall, Vice President, Nevada Silver Haired Legislative Forum).
12. **Draft legislation** requiring that in order to become a guardian of any kind (public or private), a person must submit to a fingerprint background check through the Federal Bureau of Investigation (submitted by Shelly Register, Guardianship Service of Nevada).
13. **Draft legislation** that removes the authorization for videoconference appearances for guardianship hearings in NRS 159.0535 (submitted by James M. O'Reilly, Certified Elder Law Attorney).
14. **Draft legislation** requiring the ADSD, DHHS, to adopt regulations to create two standard forms relating to the guardianship process. One form advises prospective

wards of their rights regarding the proposed guardianship (such as the right to an attorney), and the other is a certificate from a physician to certify the incapacity of a person (submitted by James M. O'Reilly, Certified Elder Law Attorney).

15. **Draft legislation** amending the NRS to add violating the ethical standards adopted by the National Guardianship Association (NGA) to the list of conditions under which the guardian may be removed. Provide that a guardian may also be removed if the guardian has filed for bankruptcy within the last five years, has negligently failed to perform any duty provided by law or ordered by the court, or if the best interest of the ward would be served by the appointment of another person as guardian. Also, add provisions prohibiting a court from appointing a guardian unless there is evidence that the guardian has complied with these ethical guidelines. Currently, the following publications have been adopted by the NGA: *Standards of Practice, 2002* and *A Model Code of Ethics for Guardians, 1988* (submitted by Ginny Casazza, NCG, Casazza Professional Services, Inc.).
16. **Draft legislation** amending the NRS relating to guardianships in the following ways: provide for the sealing of guardianship records; provide a procedure for guardians to access the accounts of the ward and require financial institutions to comply with court orders relating to accounts; authorize a court to require guardianship training; revise provisions relating to the appointment of a guardian ad litem; revise provisions relating to court costs and attorney compensation; provide for the right of wards in certain cases to own a firearm; require certified guardians to agree to operate under certain standards of practice and codes of ethics; require private professional guardians to undergo a background investigation at their own cost and expense; provide for a "Guardian's Acknowledgment of Duties and Responsibilities" form; and require a guardian to file a petition with the court requesting authorization to move or place a ward into a secured residential long-term care facility (submitted by Sally Crawford Ramm, Elder Rights Attorney, ADSD, DHHS, on behalf of the Guardianship Steering Committee).
17. **Draft legislation** to amend guardianship provisions in the following ways (submitted by Susan DeBoer, Washoe County Public Guardian, and Kathleen Buchanan, Clark County Public Guardian):
 - A. According to testimony, when a person is referred to a public guardian's office, it can be difficult for the public guardian to identify whether exploitation of the person has occurred and whether a guardianship is necessary. For the purpose of investigating an alleged case of exploitation or to determine when a public guardianship is appropriate, authorize a public guardian to inspect all records pertaining to the older person, including that person's medical and financial records, even before a guardianship is established.
 - B. Provide for medical surrogate decision making. This would authorize a physician to designate a family member or other person to serve as a surrogate for the

purpose of making medical decisions in cases where a guardianship or durable power of attorney are not in place. These laws have passed in Arizona, Illinois, and Texas.

- C. According to testimony, in some cases, the courts ask public guardians to take over as guardians for a ward whose assets are depleted and the private guardian no longer wants to represent the ward. Therefore, it is proposed that a court shall not remove a private guardian if the sole reason for removal is the lack of funding to pay the guardian's fees.

RECOMMENDATIONS RELATING TO FACILITIES AND HOME CARE FOR SENIOR CITIZENS

18. **Draft legislation** amending NRS 319.147 to remove the requirement that a facility must be financed through tax credits relating to low-income housing or other public funds to be certified by the Housing Division, Department of Business and Industry, as an assisted living facility for the purpose of providing services pursuant to the provisions of the home and community-based services waiver (pursuant to NRS 422.2708) (submitted by Connie McMullen, Chair, SPAC).
19. **Draft legislation** requiring facilities for long-term care to allow residents to return to the facility after a short hospitalization, unless there are no beds available (submitted in part by Barry Gold, Director of Government Relations, AARP Nevada).
20. **Draft legislation** to improve the transparency of ownership and administration in residential facilities, the names of the actual owner and administrator, and their contact information, must be posted at the facility and included in licensing documents (submitted in part by Barry Gold, Director of Government Relations, AARP Nevada, and Carl Martinez, Chair, Nevada Commission on Aging's Legislative Subcommittee).
21. **Draft legislation** directing the Health Division, DHHS, to adopt regulations establishing a uniform assessment tool that is required to be used for each type of facility for long-term care (skilled nursing, assisted living, and group homes). The tool will assess the level of care needed for each resident, including their physical and mental capabilities and medical condition. Currently, each facility has its own assessment tool. The goal of the standardized assessment tool is to give regulators and ombudsmen the ability to judge the appropriateness of the care the resident is receiving in a more objective manner (submitted by Carl Martinez, Chair, Nevada Commission on Aging's Legislative Subcommittee).

22. **Draft legislation** requiring the Health Division, DHHS, to adopt regulations establishing a minimum staff member to resident ratio per shift for facilities for long-term care. “Staff member” could include a registered nurse, a licensed practical nurse, or a certified nursing assistant. For example, the National Citizens’ Coalition for Nursing Home Reform recommends 1 staff member for every 5 residents from 1 p.m. to 3 p.m., 1 staff member for every 10 residents from 3 p.m. to 11 p.m., and 1 staff member for every 15 residents from 11 p.m. to 7 a.m. (appropriate levels for Nevada may be different and should be determined through the regulation proposal and hearing process). Defining the appropriate levels of staffing will ensure that regulators, residents, and their families know when a facility is not maintaining a minimum staffing level (submitted by Carl Martinez, Chair, Nevada Commission on Aging’s Legislative Subcommittee).
23. **Draft legislation** to make the following changes concerning facilities for long-term-care (submitted by Sylvia Healy on behalf of Citizens for Patient Dignity):
- A. Require the adoption of regulations mandating specific nurse staffing levels in skilled nursing facilities, using Oregon’s law as a model. For example, Oregon regulations (411-086-0100) require minimum nurse staffing levels of no less than 1 registered nurse hour per resident per week, and a licensed charge nurse must be on every shift, 24 hours per day. Additionally, nursing assistant ratios are set at 1 assistant per 7 residents during the day shift, 1 assistant per 11 residents during the swing shift, and 1 assistant per 18 residents during the night shift. Also require at least one licensed physician to be physically present at each facility on every shift.
 - B. Upon entering a facility, a patient or the legal guardian of the patient must be provided a document which allows the patient or guardian to authorize the facility to perform an autopsy on the resident in the event that the resident dies. Require that an autopsy be performed on any resident for whom such an authorization has been obtained if the resident dies while residing at the facility.
 - C. Increase the frequency of facility inspections to three or four times per year for each facility and close a facility after two warnings relating to an uncorrected deficiency.
 - D. Require that each facility provide monthly trainings and debriefing meetings which include the owners, administrators, and employees to discuss any problems, develop corrective action strategies, and provide training on the topics deemed necessary.
 - E. Require that the accounting books of facilities be open to public inspection upon the request of any person or governmental entity, including State agencies, family members, and residents. Complete transparency in facility accounting, such as the amount of income a facility receives from Medicare and private insurance, is

necessary for residents to be charged fair amounts and know how much the facility is receiving for their care.

- F. Mandate facilities to contract with an outside company to install cameras in the facility and keep the recordings so that they may be referred to if incidents of patient harm occur.
24. **Draft legislation** directing DHHS to revise the State Plan for Medicaid, to the extent allowed by federal law, to include a mechanism for providing different reimbursement rates for agencies that provide care in the home. The reimbursement rates will vary depending upon what rates those entities pay their employees (submitted by Rick Cline, Volunteer Advocate and Member of People First).
25. **Write a letter** to Nevada's Congressional Delegation requesting that they amend the Medicare Adult Day Care Services Act of 2009 (H.R. 3043) to ensure appropriate funding of adult day health care services and nonemergent transportation for adult day health care services. The requester suggests the following language be inserted: "No funds shall be appropriated for the Secretary of Health and Human Services to withhold, suspend, disallow, or deny federal financial participation under Section 1903(a) of the Social Security Act for adult day health care services or medical adult day care services and nonemergent transportation for adult day care health care services as defined under a State Medicaid plan approved during or before 1994, or withdraw federal approval of any such State Plan provision. This [subsection] shall apply to Fiscal Year 2011 and each fiscal year thereafter" (submitted by Christopher Vito, M.H.A., President and Chief Executive Officer, Nevada Adult Day Healthcare Centers).
26. **Write a statement in the final report** stating the Committee's agreement that home- and community-based services should be prioritized; stable and adequate funding should be provided for services for seniors, veterans, and disabled people; it is important to protect the Tobacco Master Settlement Agreement funds; and it is important to have adequate oversight and funding for elder protective services (submitted by Barry Gold, Director of Government Relations, AARP Nevada).
27. **Write a statement in the final report** to clarify that the Program of All-Inclusive Care for the Elderly (PACE) does not fall under the jurisdiction of the State Gaming Control Board (submitted by Connie McMullen, Chair, SPAC). Staff Note: According to a recent letter from the Division of Insurance, Nevada's Department of Business and Industry, PACE falls under the jurisdiction of the federal government and does not need to be licensed by the State.

28. **Write a statement in the final report** indicating that the following are areas of concern in facilities for long-term care, and encouraging the Health Division and the ADSD, DHHS, to strengthen their oversight of the following issues (submitted by Sylvia Healy on behalf of Citizens for Patient Dignity):
- A. Although criminal background checks are currently required for employees of these facilities, they take time to conduct, and there is concern that people who are ultimately found to have criminal records have been working in a facility prior to the results being received. The results of background checks should be received prior to patient contact and should include character references and family histories to better safeguard against resident abuse.
 - B. Although there are criminal penalties for owners and administrators who condone or allow lethal overdosing and the use of unnecessary chemical restraints, cases are apparently still occurring, so improved enforcement and better oversight is needed.
 - C. Cases of patients reporting feeling threatened or fearful if they speak up about their needs are still being reported. Patient and family rights and complaint processes need to be supported so that facility employees are not able to intimidate or discourage patients from reporting deficiencies in care.
29. **Write a statement in the final report** urging DHHS to prefer home- and community-based care services when placing senior or disabled people in long-term care services. Placement in long-term care facilities or institutional settings should be the last type of service chosen (submitted by Connie McMullen, Chair, SPAC).
30. **Write a statement in the final report** acknowledging the importance of reliable transportation for Medicaid patients who need to attend adult day care centers as part of their daily medical care, and urging the Division of Health Care Financing and Policy (DHCFP), DHHS, to support those services. The DHCFP should not amend Nevada's State Plan for Medicaid in a way that would cut transportation reimbursement rates to providers of medical services who also provide nonemergency transportation services (such as certain adult day care facilities). Current proposed changes to the State Plan appear to change the reimbursement formula from per patient to per mile, and there is concern that this formula will not provide a reimbursement rate that will cover the cost of running such a transportation operation. Any revisions to the State Plan relating to transportation should maintain a reimbursement rate that covers the cost of operating reliable transportation for patients to medical appointments and adult day care services (submitted by Christopher Vito, M.H.A., President and Chief Executive Officer, Nevada Adult Day Healthcare Centers).

RECOMMENDATIONS RELATING TO VETERANS

31. **Draft legislation** in response to the following proposals developed during the Nevada Veteran Legislative Summit or submitted by Tim Tetz, Executive Director, Nevada's Office of Veterans Services (NOVS):

A. Revise the guardianship process for veterans in the following ways:

1. Provide that if a ward is a veteran who receives funds from the Veterans Administration (VA), then all of the ward's money should be handled under the guardianship provisions of Chapter 160 of NRS. Currently, some veterans have two guardianships and follow two sets of rules relating to the procedure for administering their money, because they receive some money from the VA, which is covered under Chapter 160 of NRS, and some money from Social Security or other sources, which is covered under Chapter 159 of NRS;

OR

2. Amend Chapter 159 of NRS to require that geographic proximity be a factor in the selection of a guardian, so that guardians who reside near the veteran are preferred after criteria relating to relationships and type of guardian are satisfied in NRS 159.061. Also, amend the NRS to follow federal guidelines relating to the transfer of guardianships, and remove the limit on the number of wards a guardian is allowed to serve; and
3. Revise NRS 160.120 and any other provisions relating to veteran guardianships (e.g. Chapter 159 of NRS if A(1) above is not proposed) to indicate that compensation payable to a guardian must not exceed 4 percent of the income of the ward during any year. Remove the option for guardians to petition the court for additional compensation.

B. Regarding NOVS operations and structure:

1. Appropriate funds to add two "Trinity Teams" in Nevada, one in Washoe County and one in Clark County. This requires creating and allocating funds for six new positions, two Veterans Service Officers and one Administrative Assistant per team; and
2. Provide that the Veterans Services Commission advises the governor on the appointment of the NOVS Executive and Deputy Executive Directors. The appointee must be chosen by the Governor from a list of three candidates submitted by the Nevada Veterans' Services Commission; and

- C. Standardize the definition of “veteran” in the NRS to include the character and period of service. Replace all current definitions in the NRS with the federal definition as provided in Title 38 § 101 of the *United States Code*.
 - D. Eliminate tuition for veterans who are students attending a college or university in Nevada. In 2009, active military and veterans who were stationed in Nevada were provided this benefit, but it should be extended to all veterans of the armed forces, regardless of where they were stationed. Senate Bill 318 from the 2009 Legislative Session, as introduced, is a model for this proposal.
 - E. Change the disabled veteran license plate to a universally recognized handicap parking plate with a distinctive design that includes a handicapped symbol and “DV”; remove the limitation on the number of specialty plates a veteran may have (currently they are limited to two); and revise the form of all the armed forces special license plates to allow the addition of a disabled veteran designation, which would provide all the benefits associated with the disabled veteran plate (such as free parking in certain places).
 - F. Allow a person who qualifies as both a veteran and the surviving spouse of a veteran with a permanent service-connected disability to claim both of the veterans’ exemptions from property taxes and from governmental services taxes. This would be a reintroduction of the provisions of Assembly Bill 295 from the 2009 Legislative Session.
 - G. Mandate that funeral homes report the unclaimed human remains of persons who might be veterans to the NOVS within a year after the person’s death. This will enable the NOVS staff to research the cases of people who might be veterans and collect the remains of those found to be veterans for proper burial.
 - H. Require the NOVS to provide, upon the request of the owner or operator of a cemetery in this State or a civic organization recognized by the Executive Director, a sufficient number of flags of the United States for placement on the graves of veterans interred in a veterans’ cemetery to commemorate Memorial Day, Flag Day, Independence Day, and Veterans’ Day. The flags must be of a size suitable for placement on a grave, provided without charge, and manufactured in the United States (language in Assembly Bill 134 of the 2007 Legislative Session may serve as a model).
32. **Write a statement in the final report** supporting the establishment of a Northern Nevada Veterans Home. A Capital Improvement Plan (CIP) has already been submitted to the State of Nevada to request funding for 35 percent of the home in order to meet the federal matching requirements. This statement would recognize the

importance of the home and encourage the approval of the CIP (submitted by Tim Tetz, Executive Director, NOVS).

33. **Write a statement in the final report** encouraging the Regional Transportation Commission of Washoe County to establish routes to the Reno Veterans Benefits Administration, and encouraging the Regional Transportation Commission of Southern Nevada to establish routes to the Southern Nevada Veterans Affairs Medical Center (submitted by Tim Tetz, Executive Director, NOVS).
34. **Write a statement in the final report** encouraging the standing committees with jurisdiction over issues relating to veterans services in each house of the Nevada Legislature during the 76th Legislative Session to review the work of the disabled veterans' outreach programs and local veterans employment representatives in the Department of Employment, Training and Rehabilitation to NOVS. The review should examine whether these positions are currently serving veterans in the most effective manner and consider the possibility of moving them to the NOVS (submitted by Tim Tetz, Executive Director, NOVS).

RECOMMENDATIONS RELATING TO ADULTS WITH SPECIAL NEEDS

35. **Draft legislation** to create a voluntary statewide alert system for endangered adults. The alert system would authorize law enforcement agencies, broadcast organizations, and other voluntary organizations to share descriptive information about the endangered adult (submitted by Lucy Peres, President, Nevada Silver Haired Legislative Forum).
36. **Draft legislation** requiring the Governor of Nevada to appoint a task force dedicated to identifying and addressing issues relating to persons with Alzheimer's disease and related dementias. This task force will partner with the Alzheimer's Association and other appropriate agencies and interested parties to create a Nevada State Plan for best meeting the needs of persons with Alzheimer's disease and related dementias, their families, and caregivers. The Nevada State Plan for Alzheimer's disease will include recommendations that will comprehensively address the related issues in the State of Nevada and these recommendations will be considered at the 2013 Legislative Session (submitted by Angie Pratt, Regional Director, Alzheimer's Association of Northern California and Northern Nevada, and Luis Carrillo, Regional Director, Alzheimer's Association Desert Southwest Chapter).
37. **Draft a letter** urging the DHCFP, DHHS, to pursue the following three options available under the new federal Patient Protection and Affordable Care Act (H.R. 3590) at the earliest possible date:

- A. Health Homes (Section 2703): Under this option, one central provider is responsible for coordinating a patient's care, with the goal of improving health outcomes and reducing expenditures for Medicaid enrollees with chronic conditions. This option offers a Federal Medical Assistance Percentage (FMAP) of 90 percent for two years, and funds will be available in January 2011.
- B. Community First Choice Option (Section 2401): This option offers attendant care services in the State Plan under a 1915(i) option, and may include expenditures for transition costs from an institution and for items that substitute for human assistance. It allows a 6 percent increase in FMAP for those who are Medicaid eligible and certain others who have an institutional level of care.
- C. Removal of Barriers to Providing Home- and Community-Based Services (Section 2402): This option offers: regulatory changes to ensure service systems are responsive, provide support for self direction, and improve provider coordination; expansion of services that can be provided under 1915(i) to more closely align with services that can be provided under 1915(c) Home- and Community-Based Waivers; expansion of eligibility based upon income, and an optional new Medicaid eligibility group specific to 1915(i); and a waiver of comparability, an ability to target services, no enrollment caps, and no waiver of statewideness (submitted by Paul Gowins, Chairman, Commission on Services for Persons with Disabilities).

LIST OF ATTACHMENTS

TAB 1	NRS 228.270 Powers: Investigation and prosecution of alleged crimes; organization or sponsorship of multidisciplinary teams
TAB 2	NRS 228.270 Powers: Investigation and prosecution of alleged crimes; organization or sponsorship of multidisciplinary teams NRS 200.5091 — NRS 200.50995 Abuse, Neglect, Exploitation Or Isolation Of Older Persons And Vulnerable Persons
TAB 3	NRS 179A.450 Creation; contents; submission of report to Legislature; confidentiality of data NRS 200.5093 Report of abuse, neglect, exploitation or isolation of older person; voluntary and mandatory reports; investigation; penalty
TAB 4	NRS 200.5093 Report of abuse, neglect, exploitation or isolation of older person; voluntary and mandatory reports; investigation; penalty
TAB 8	NRS 449.0039 “Facility for skilled nursing” defined NRS 449.0045 “Facility for the dependent” defined
TAB 13	NRS 159.0535 Attendance of proposed ward at hearing
TAB 14	Sample Forms Admonishment of Rights for Proposed Adult Ward Certificate of Incapacity and Regarding the Need for Guardianship
TAB 15	Letter containing recommendations and a link to National Guardianship Association publications from Ginny Casazza, Professional Services, Inc.
TAB 16	Proposed language to amend Chapter 159 of NRS
TAB 17	Summary and examples of laws from other states provided by requester
TAB 18	NRS 319.147 Certification of assisted living facilities: Requirements; regulations NRS 422.2708 Amendment of home and community-based services waiver to include as medical assistance under Medicaid funding of assisted living supportive services for senior citizens who reside in certain assisted living facilities.
TAB 23	Letter containing recommendations from Citizens for Patient Dignity Oregon Administrative Rules relating to nursing services staffing
TAB 24	Overview of Wage-Proportionate Disbursements provided by Rick Cline, Volunteer Advocate and Member of People First

- TAB 25** Letter containing recommendations submitted by Christopher A. Vito, Nevada Adult Day Care Healthcare Centers
Hyperlink to text of H.R. 3043, the Medicare Adult Day Services Act of 2009
- TAB 26** Letter containing recommendations submitted by Barry Gold, AARP Nevada
- TAB 27** Letter from the Division of Insurance, Nevada's Department of Business and Industry, regarding Program for All Inclusive Care for the Elderly
- TAB 31** NRS 159.061 Preference for parent of minor; other considerations in determining qualifications and suitability of guardian; appointment of public guardian or private fiduciary
Chapter 160 of NRS Veterans' Guardianship (Uniform Act)
United States Code Title 38 Part 1 Chapter 1 § 101
Senate Bill 318 from the 2009 Legislative Session, as introduced
Assembly Bill 295 from the 2009 Legislative Session
Assembly Bill 134 from the 2007 Legislative Session
- TAB 35** Letter containing recommendation submitted by Lucy Peres, President, Nevada Silver Haired Legislative Forum
- TAB 36** Letter containing recommendations submitted by Luis Carrillo, Regional Director, Alzheimer's Association Desert Southwest Chapter, Southern Nevada Region, and Angie Pratt, Regional Director, Alzheimer's Association of Northern California and Northern Nevada, Northern Nevada Region
- TAB 37** Letter containing recommendation submitted by Paul Gowins, Chairman, Commission on Services for Persons with Disabilities

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

1

NRS 228.270 Powers: Investigation and prosecution of alleged crimes; organization or sponsorship of multidisciplinary teams.

1. The Unit may investigate and prosecute any alleged abuse, neglect, exploitation or isolation of an older person in violation of NRS 200.5099 or 200.50995 and any failure to report such a violation pursuant to NRS 200.5093:

- (a) At the request of the district attorney of the county in which the violation occurred;
- (b) If the district attorney of the county in which the violation occurred fails, neglects or refuses to prosecute the violation; or
- (c) Jointly with the district attorney of the county in which the violation occurred.

2. The Unit may organize or sponsor one or more multidisciplinary teams to review any allegations of abuse, neglect, exploitation or isolation of an older person or the death of an older person that is alleged to be from abuse, neglect or isolation. A multidisciplinary team may include, without limitation, the following members:

- (a) A representative of the Unit;
- (b) Any law enforcement agency that is involved with the case under review;
- (c) The district attorney's office in the county where the case is under review;
- (d) The Aging and Disability Services Division of the Department of Health and Human Services or the county's office of protective services, if one exists in the county where the case is under review;
- (e) A representative of the coroner's office; and
- (f) Any other medical professional or financial professional that the Attorney General deems appropriate for the review.

3. Each organization represented on a multidisciplinary team may share with other members of the team information in its possession concerning the older person who is the subject of the review or any person who was in contact with the older person and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential.

4. The organizing or sponsoring of a multidisciplinary team pursuant to subsection 2 does not grant the Unit supervisory authority over, or restrict or impair the statutory authority of, any state or local agency responsible for the investigation or prosecution of allegations of abuse, neglect, exploitation or isolation of an older person or the death of an older person that is alleged to be the result of abuse, neglect or isolation.

(Added to NRS by 2007, 745; A 2009, 2448)

WEST PUBLISHING CO.

Asylums and Assisted Living Facilities ! 49.

Health ! 984, 987.

Negligence ! 1803.

WESTLAW Topic Nos. 43, 198H, 272.

C.J.S. Health and Environment §§ 89, 91.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

2

NRS 228.270 Powers: Investigation and prosecution of alleged crimes; organization or sponsorship of multidisciplinary teams.

1. The Unit may investigate and prosecute any alleged abuse, neglect, exploitation or isolation of an older person in violation of NRS 200.5099 or 200.50995 and any failure to report such a violation pursuant to NRS 200.5093:

- (a) At the request of the district attorney of the county in which the violation occurred;
- (b) If the district attorney of the county in which the violation occurred fails, neglects or refuses to prosecute the violation; or
- (c) Jointly with the district attorney of the county in which the violation occurred.

2. The Unit may organize or sponsor one or more multidisciplinary teams to review any allegations of abuse, neglect, exploitation or isolation of an older person or the death of an older person that is alleged to be from abuse, neglect or isolation. A multidisciplinary team may include, without limitation, the following members:

- (a) A representative of the Unit;
- (b) Any law enforcement agency that is involved with the case under review;
- (c) The district attorney's office in the county where the case is under review;
- (d) The Aging and Disability Services Division of the Department of Health and Human Services or the county's office of protective services, if one exists in the county where the case is under review;
- (e) A representative of the coroner's office; and
- (f) Any other medical professional or financial professional that the Attorney General deems appropriate for the review.

3. Each organization represented on a multidisciplinary team may share with other members of the team information in its possession concerning the older person who is the subject of the review or any person who was in contact with the older person and any other information deemed by the organization to be pertinent to the review. Any information shared by an organization with other members of a team is confidential.

4. The organizing or sponsoring of a multidisciplinary team pursuant to subsection 2 does not grant the Unit supervisory authority over, or restrict or impair the statutory authority of, any state or local agency responsible for the investigation or prosecution of allegations of abuse, neglect, exploitation or isolation of an older person or the death of an older person that is alleged to be the result of abuse, neglect or isolation.

(Added to NRS by 2007, 745; A 2009, 2448)

WEST PUBLISHING CO.

Asylums and Assisted Living Facilities ! 49.

Health ! 984, 987.

Negligence ! 1803.

WESTLAW Topic Nos. 43, 198H, 272.

C.J.S. Health and Environment §§ 89, 91.

ABUSE, NEGLECT, EXPLOITATION OR ISOLATION OF OLDER PERSONS AND VULNERABLE PERSONS**NRS CROSS REFERENCES.**

Guardians, disqualification for judicial determination of abuse, neglect or exploitation, NRS 159.059

NRS 200.5091 Policy of State. It is the policy of this State to provide for the cooperation of law enforcement officials, courts of competent jurisdiction and all appropriate state agencies providing human services in identifying the abuse, neglect, exploitation and isolation of older persons and vulnerable persons through the complete reporting of abuse, neglect, exploitation and isolation of older persons and vulnerable persons.

(Added to NRS by 1981, 1334; A 1997, 1348; 2005, 1107)

NRS 200.5092 Definitions. As used in NRS 200.5091 to 200.50995, inclusive, unless the context otherwise requires:

1. "Abuse" means willful and unjustified:
 - (a) Infliction of pain, injury or mental anguish on an older person or a vulnerable person; or
 - (b) Deprivation of food, shelter, clothing or services which are necessary to maintain the physical or mental health of an older person or a vulnerable person.
2. "Exploitation" means any act taken by a person who has the trust and confidence of an older person or a vulnerable person or any use of the power of attorney or guardianship of an older person or a vulnerable person to:
 - (a) Obtain control, through deception, intimidation or undue influence, over the older person's or vulnerable person's money, assets or property with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property; or
 - (b) Convert money, assets or property of the older person or vulnerable person with the intention of permanently depriving the older person or vulnerable person of the ownership, use, benefit or possession of his or her money, assets or property.

➤ As used in this subsection, "undue influence" does not include the normal influence that one member of a family has over another.
3. "Isolation" means willfully, maliciously and intentionally preventing an older person or a vulnerable person from having contact with another person by:
 - (a) Intentionally preventing the older person or vulnerable person from receiving visitors, mail or telephone calls, including, without limitation, communicating to a person who comes to visit the older person or vulnerable person or a person who telephones the older person or vulnerable person that the older person or vulnerable person is not present or does not want to meet with or talk to the visitor or caller knowing that the statement is false, contrary to the express wishes of the older person or vulnerable person and intended to prevent the older person or vulnerable person from having contact with the visitor; or
 - (b) Physically restraining the older person or vulnerable person to prevent the older person or vulnerable person from meeting with a person who comes to visit the older person or vulnerable person.

➤ The term does not include an act intended to protect the property or physical or mental welfare of the older person or vulnerable person or an act performed pursuant to the instructions of a physician of the older person or vulnerable person.
4. "Neglect" means the failure of:
 - (a) A person who has assumed legal responsibility or a contractual obligation for caring for an older person or a vulnerable person or who has voluntarily assumed responsibility for his or her care to provide food, shelter, clothing or services which are necessary to maintain the physical or mental health of the older person or vulnerable person; or
 - (b) An older person or a vulnerable person to provide for his or her own needs because of inability to do so.

5. "Older person" means a person who is 60 years of age or older.

6. "Protective services" means services the purpose of which is to prevent and remedy the abuse, neglect, exploitation and isolation of older persons. The services may include investigation, evaluation, counseling, arrangement and referral for other services and assistance.

7. "Vulnerable person" means a person 18 years of age or older who:

(a) Suffers from a condition of physical or mental incapacitation because of a developmental disability, organic brain damage or mental illness; or

(b) Has one or more physical or mental limitations that restrict the ability of the person to perform the normal activities of daily living.

(Added to NRS by 1981, 1334; A 1983, 1359, 1652; 1995, 2250; 1997, 1348; 1999, 3517; 2003, 491; 2005, 1108)

NRS CROSS REFERENCES.

Property includes real and personal property, NRS 193.0225

WEST PUBLISHING CO.

Larceny ! 1.

WESTLAW Topic No. 234.

C.J.S. Larceny §§ 1(1, 2), 9.

NEVADA CASES.

State of mind required for crime of abuse. Considering the definition of "abuse" in NRS 200.5092, which includes the phrase "willful and unjustified," the crime of abuse of an older person set forth in NRS 200.5099 involves willful and unjustified infliction or deprivation of harm to an older person. A willful act is an act that is done intentionally, not accidentally. *Vallery v. State*, 118 Nev. 357, 46 P.3d 66 (2002)

NRS 200.50925 "Reasonable cause to believe" and "as soon as reasonably practicable" defined. For the purposes of NRS **200.5091** to 200.50995, inclusive, a person:

1. Has "reasonable cause to believe" if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would believe, under those facts and circumstances, that an act, transaction, event, situation or condition exists, is occurring or has occurred.

2. Acts "as soon as reasonably practicable" if, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, a reasonable person would act within approximately the same period under those facts and circumstances.

(Added to NRS by 1999, 3517)

NRS 200.5093 Report of abuse, neglect, exploitation or isolation of older person; voluntary and mandatory reports; investigation; penalty. [Effective through June 30, 2010.]

1. Any person who is described in subsection 4 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated shall:

(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation or isolation of the older person to:

(1) The local office of the Aging and Disability Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging and Disability Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to

believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide personal care services in the home.

(e) Every person who maintains or is employed by an agency to provide nursing in the home.

(f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 427A.0291.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Every social worker.

(l) Any person who owns or is employed by a funeral home or mortuary.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney, the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging and Disability Services Division of the Department of Health and Human Services, must be forwarded within 30 days after the completion of the report to the:

(a) Aging and Disability Services Division;

(b) Repository for Information Concerning Crimes Against Older Persons created by NRS 179A.450; and

(c) Unit for the Investigation and Prosecution of Crimes.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if the older person is able

and willing to accept them.

9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

(Added to NRS by 1981, 1334; A 1983, 1653; 1985, 1491; 1987, 2130, 2218; 1989, 904; 1991, 135; 1993, 2226; 1995, 2250; 1997, 108, 1349, 2608, 2610, 2637, 2639; 1999, 137, 2242, 2245, 2248, 3518; 2001, 158, 161, 776; 2003, 905; 2005, 1109, 2172; 2007, 746, 1224, 1849, 3080; 2009, 2372, 2445)

WEST PUBLISHING CO.

Health ! 196, 257, 276, 984.

WESTLAW Topic Nos. 198H, 211.

C.J.S. Health and Environment § 89.

NRS 200.5093 Report of abuse, neglect, exploitation or isolation of older person; voluntary and mandatory reports; investigation; penalty. [Effective July 1, 2010.]

1. Any person who is described in subsection 4 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated shall:

(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation or isolation of the older person to:

(1) The local office of the Aging and Disability Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging and Disability Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, perfusionist, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

- (c) A coroner.
 - (d) Every person who maintains or is employed by an agency to provide personal care services in the home.
 - (e) Every person who maintains or is employed by an agency to provide nursing in the home.
 - (f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 427A.0291.
 - (g) Any employee of the Department of Health and Human Services.
 - (h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.
 - (i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.
 - (j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.
 - (k) Every social worker.
 - (l) Any person who owns or is employed by a funeral home or mortuary.
5. A report may be made by any other person.
6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney, the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.
7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging and Disability Services Division of the Department of Health and Human Services, must be forwarded within 30 days after the completion of the report to the:
- (a) Aging and Disability Services Division;
 - (b) Repository for Information Concerning Crimes Against Older Persons created by NRS 179A.450; and
 - (c) Unit for the Investigation and Prosecution of Crimes.
8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if the older person is able and willing to accept them.
9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.
10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

(Added to NRS by 1981, 1334; A 1983, 1653; 1985, 1491; 1987, 2130, 2218; 1989, 904; 1991, 135; 1993, 2226; 1995, 2250; 1997, 108, 1349, 2608, 2610, 2637, 2639; 1999, 137, 2242, 2245, 2248, 3518; 2001, 158, 161, 776; 2003, 905; 2005, 1109, 2172; 2007, 746, 1224, 1849, 3080; 2009, 2372, 2445, 2992, effective July 1, 2010)

NRS 200.50935 Report of abuse, neglect, exploitation or isolation of vulnerable person; voluntary and mandatory reports; investigation; penalty. [Effective through June 30, 2010.]

1. Any person who is described in subsection 3 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that a vulnerable person has been abused, neglected, exploited or isolated shall:
- (a) Report the abuse, neglect, exploitation or isolation of the vulnerable person to a law enforcement agency; and
 - (b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the vulnerable person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the vulnerable person involves an act or omission of a law enforcement agency, the person shall make the report to a law enforcement agency other than the one alleged to have committed the act or omission.

3. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats a vulnerable person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of a vulnerable person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide nursing in the home.

(e) Any employee of the Department of Health and Human Services.

(f) Any employee of a law enforcement agency or an adult or juvenile probation officer.

(g) Any person who maintains or is employed by a facility or establishment that provides care for vulnerable persons.

(h) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of a vulnerable person and refers them to persons and agencies where their requests and needs can be met.

(i) Every social worker.

(j) Any person who owns or is employed by a funeral home or mortuary.

4. A report may be made by any other person.

5. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a vulnerable person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the vulnerable person and submit to the appropriate local law enforcement agencies and the appropriate prosecuting attorney his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

6. A law enforcement agency which receives a report pursuant to this section shall immediately initiate an investigation of the report.

7. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

(Added to NRS by 2005, 1106; A 2007, 1851, 3081)

WEST PUBLISHING CO.

Health ! 984.

WESTLAW Topic No. 198H.

C.J.S. Health and Environment § 89.

NRS 200.50935 Report of abuse, neglect, exploitation or isolation of vulnerable person; voluntary and mandatory reports; investigation; penalty. [Effective July 1, 2010.]

1. Any person who is described in subsection 3 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that a vulnerable person has been abused, neglected, exploited or isolated shall:

(a) Report the abuse, neglect, exploitation or isolation of the vulnerable person to a law enforcement agency; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the vulnerable person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the vulnerable person involves an act or omission of a law enforcement agency, the person shall make the report to a law enforcement agency other than the one alleged to have committed the act or omission.

3. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, perfusionist, physician assistant licensed pursuant to chapter 630 or 633 of NRS, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats a vulnerable person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of a vulnerable person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide nursing in the home.

(e) Any employee of the Department of Health and Human Services.

(f) Any employee of a law enforcement agency or an adult or juvenile probation officer.

(g) Any person who maintains or is employed by a facility or establishment that provides care for vulnerable persons.

(h) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of a vulnerable person and refers them to persons and agencies where their requests and needs can be met.

(i) Every social worker.

(j) Any person who owns or is employed by a funeral home or mortuary.

4. A report may be made by any other person.

5. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that a vulnerable person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the vulnerable person and submit to the appropriate local law enforcement agencies and the appropriate prosecuting attorney his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

6. A law enforcement agency which receives a report pursuant to this section shall immediately initiate an investigation of the report.

7. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

(Added to NRS by 2005, 1106; A 2007, 1851, 3081; 2009, 2994, effective July 1, 2010)

NRS 200.5094 Reports: Manner of making; contents.

1. A person may make a report pursuant to NRS 200.5093 or 200.50935 by telephone or, in light of all the surrounding facts and circumstances which are known or which reasonably should be known to the person at the time, by any other means of oral, written or electronic communication that a reasonable person would believe, under those facts and circumstances, is a reliable and swift means of communicating information to the person who receives the report. If the report is made orally, the person who receives the report must reduce it to writing as soon as reasonably practicable.

2. The report must contain the following information, when possible:
 - (a) The name and address of the older person or vulnerable person;
 - (b) The name and address of the person responsible for his or her care, if there is one;
 - (c) The name and address, if available, of the person who is alleged to have abused, neglected, exploited or isolated the older person or vulnerable person;
 - (d) The nature and extent of the abuse, neglect, exploitation or isolation of the older person or vulnerable person;
 - (e) Any evidence of previous injuries; and
 - (f) The basis of the reporter's belief that the older person or vulnerable person has been abused, neglected, exploited or isolated.
- (Added to NRS by 1981, 1335; A 1983, 1654; 1997, 1351; 1999, 3520; 2005, 1110)

WEST PUBLISHING CO.

Health ! 984.

WESTLAW Topic No. 198H.

C.J.S. Health and Environment § 89.

NRS 200.5095 Reports and records confidential; permissible or required disclosure; penalty.

1. Reports made pursuant to NRS 200.5093, 200.50935 and 200.5094, and records and investigations relating to those reports, are confidential.
2. A person, law enforcement agency or public or private agency, institution or facility who willfully releases data or information concerning the reports and investigation of the abuse, neglect, exploitation or isolation of older persons or vulnerable persons, except:
 - (a) Pursuant to a criminal prosecution;
 - (b) Pursuant to NRS 200.50982; or
 - (c) To persons or agencies enumerated in subsection 3,is guilty of a misdemeanor.
3. Except as otherwise provided in subsection 2 and NRS 200.50982, data or information concerning the reports and investigations of the abuse, neglect, exploitation or isolation of an older person or a vulnerable person is available only to:
 - (a) A physician who is providing care to an older person or a vulnerable person who may have been abused, neglected, exploited or isolated;
 - (b) An agency responsible for or authorized to undertake the care, treatment and supervision of the older person or vulnerable person;
 - (c) A district attorney or other law enforcement official who requires the information in connection with an investigation of the abuse, neglect, exploitation or isolation of the older person or vulnerable person;
 - (d) A court which has determined, in camera, that public disclosure of such information is necessary for the determination of an issue before it;
 - (e) A person engaged in bona fide research, but the identity of the subjects of the report must remain confidential;
 - (f) A grand jury upon its determination that access to such records is necessary in the conduct of its official business;
 - (g) Any comparable authorized person or agency in another jurisdiction;
 - (h) A legal guardian of the older person or vulnerable person, if the identity of the person who was responsible for reporting the alleged abuse, neglect, exploitation or isolation of the older person or vulnerable person to the public agency is protected, and the legal guardian of the older person or vulnerable person is not the person suspected of such abuse, neglect, exploitation or isolation;
 - (i) If the older person or vulnerable person is deceased, the executor or administrator of his or her estate, if the identity of the person who was responsible for reporting the alleged abuse, neglect, exploitation or isolation of the older person or vulnerable person to the public agency is protected, and the executor or administrator is not the

person suspected of such abuse, neglect, exploitation or isolation; or

(j) The older person or vulnerable person named in the report as allegedly being abused, neglected, exploited or isolated, if that person is not legally incompetent.

4. If the person who is reported to have abused, neglected, exploited or isolated an older person or a vulnerable person is the holder of a license or certificate issued pursuant to chapters 449, 630 to 641B, inclusive, or 654 of NRS, information contained in the report must be submitted to the board that issued the license.

(Added to NRS by 1981, 1335; A 1983, 1654; 1995, 2252; 1997, 1351; 2003, 906; 2005, 1111)

WEST PUBLISHING CO.

Health ! 984.

WESTLAW Topic No. 198H.

C.J.S. Health and Environment § 89.

NRS 200.50955 Law enforcement agency: Required to act promptly in obtaining certain warrants. A law enforcement agency shall promptly seek to obtain a warrant for the arrest of any person the agency has probable cause to believe is criminally responsible for the abuse, neglect, exploitation or isolation of an older person or a vulnerable person.

(Added to NRS by 1997, 1348; A 2005, 1112)

WEST PUBLISHING CO.

Criminal Law ! 217.

WESTLAW Topic No. 110.

C.J.S. Criminal Law §§ 334-335, 337.

NRS 200.5096 Immunity from civil or criminal liability for reporting, investigating or submitting information. Immunity from civil or criminal liability extends to every person who, pursuant to NRS 200.5091 to 200.50995, inclusive, in good faith:

1. Participates in the making of a report;
2. Causes or conducts an investigation of alleged abuse, neglect, exploitation or isolation of an older person or a vulnerable person; or
3. Submits information contained in a report to a licensing board pursuant to subsection 4 of NRS 200.5095.

(Added to NRS by 1981, 1336; A 1995, 2253; 1997, 1352; 2005, 1112)

WEST PUBLISHING CO.

Health ! 768, 984.

WESTLAW Topic No. 198H.

C.J.S. Health and Environment § 89.

NRS 200.5097 Admissibility of evidence. In any proceeding resulting from a report made or action taken pursuant to NRS 200.5091 to 200.50995, inclusive, or in any other proceeding, the report or its contents or any other fact related thereto or to the condition of the older person or vulnerable person who is the subject of the report may not be excluded on the ground that the matter would otherwise be privileged against disclosure under chapter 49 of NRS.

(Added to NRS by 1981, 1336; A 2005, 1112)

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Records ! 60.

WESTLAW Topic No. 326.

C.J.S. Records §§ 99-100, 107-111.

NRS 200.5098 Duties of Aging and Disability Services Division of Department of Health and Human Services regarding older persons; organization and operation of teams for provision of assistance.

1. The Aging and Disability Services Division of the Department of Health and Human Services shall:

(a) Identify and record demographic information on the older person who is alleged to have been abused, neglected, exploited or isolated and the person who is alleged to be responsible for such abuse, neglect, exploitation or isolation.

(b) Obtain information from programs for preventing abuse of older persons, analyze and compare the programs, and make recommendations to assist the organizers of the programs in achieving the most efficient and effective service possible.

(c) Publicize the provisions of NRS 200.5091 to 200.50995, inclusive.

2. The Administrator of the Aging and Disability Services Division of the Department may organize one or more teams to assist in strategic assessment and planning of protective services, issues regarding the delivery of service, programs or individual plans for preventing, identifying, remedying or treating abuse, neglect, exploitation or isolation of older persons. Members of the team serve at the invitation of the Administrator and must be experienced in preventing, identifying, remedying or treating abuse, neglect, exploitation or isolation of older persons. The team may include representatives of other organizations concerned with education, law enforcement or physical or mental health.

3. The team may receive otherwise confidential information and records pertaining to older persons to assist in assessing and planning. The confidentiality of any information or records received must be maintained under the terms or conditions required by law. The content of any discussion regarding information or records received by the team pursuant to this subsection is not subject to discovery and a member of the team shall not testify regarding any discussion which occurred during the meeting. Any information disclosed in violation of this subsection is inadmissible in all judicial proceedings.

(Added to NRS by 1981, 1335; A 1983, 1655; 1991, 134; 1997, 1352)

NRS 200.50982 Disclosure of information concerning reports and investigations to other agencies or legal representative of older person or vulnerable person; disclosure of information concerning suspect in investigation of abuse, neglect, exploitation or isolation of older person.

1. The provisions of NRS 200.5091 to 200.50995, inclusive, do not prohibit an agency which is investigating a report of abuse, neglect, exploitation or isolation, or which provides protective services, from disclosing data or information concerning the reports and investigations of the abuse, neglect, exploitation or isolation of an older person or a vulnerable person to other federal, state or local agencies or the legal representatives of the older person or vulnerable person on whose behalf the investigation is being conducted if:

(a) The agency making the disclosure determines that the disclosure is in the best interest of the older person or vulnerable person; and

(b) Proper safeguards are taken to ensure the confidentiality of the information.

2. If the Aging and Disability Services Division of the Department of Health and Human Services is investigating a report of abuse, neglect, exploitation or isolation of an older person, a law enforcement agency shall, upon request of the Aging and Disability Services Division, provide information relating to any suspect in the investigation as soon as possible. The information must include, when possible:

(a) The records of criminal history of the suspect;

(b) Whether or not the suspect resides with or near the older person; and

(c) A summary of any events, incidents or arrests which have occurred at the residence of the suspect or the older person within the past 90 days and which involve physical violence or concerns related to public safety or the health or safety of the older person.

(Added to NRS by 1995, 2249; A 1997, 1353; 2005, 1112; 2007, 276)

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Records ! 60.
WESTLAW Topic No. 326.
C.J.S. Records §§ 99-100, 107-111.

NRS 200.50984 Inspection of records pertaining to older person on whose behalf investigation is conducted.

1. Notwithstanding any other statute to the contrary, the local office of the Aging and Disability Services Division of the Department of Health and Human Services and a county's office for protective services, if one exists in the county where a violation is alleged to have occurred, may for the purpose of investigating an alleged violation of NRS 200.5091 to 200.50995, inclusive, inspect all records pertaining to the older person on whose behalf the investigation is being conducted, including, but not limited to, that person's medical and financial records.

2. Except as otherwise provided in this subsection, if a guardian has not been appointed for the older person, the Aging and Disability Services Division or the county's office for protective services shall obtain the consent of the older person before inspecting those records. If the Aging and Disability Services Division or the county's office for protective services determines that the older person is unable to consent to the inspection, the inspection may be conducted without his or her consent. Except as otherwise provided in this subsection, if a guardian has been appointed for the older person, the Aging and Disability Services Division or the county's office for protective services shall obtain the consent of the guardian before inspecting those records. If the Aging and Disability Services Division or the county's office for protective services has reasonable cause to believe that the guardian is abusing, neglecting, exploiting or isolating the older person, the inspection may be conducted without the consent of the guardian, except that if the records to be inspected are in the personal possession of the guardian, the inspection must be approved by a court of competent jurisdiction.

(Added to NRS by 1995, 2249; A 1997, 1353, 2611, 2641; 1999, 139, 2242, 2247, 2248, 3521)

NRS 200.50986 Petition for removal of guardian of older person. The local office of the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may petition a court in accordance with NRS 159.185, 159.1853 or 159.1905 for the removal of the guardian of an older person, or the termination or modification of that guardianship, if, based on its investigation, the Aging and Disability Services Division or the county's office of protective services has reasonable cause to believe that the guardian is abusing, neglecting, exploiting or isolating the older person in violation of NRS 200.5091 to 200.50995, inclusive.

(Added to NRS by 1995, 2250; A 1997, 1354, 2612, 2641; 1999, 139, 2242, 2248, 3521; 2001, 269; 2003, 1803)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

NRS 200.5099 Penalties.

1. Except as otherwise provided in subsection 6, any person who abuses an older person or a vulnerable person is guilty:

(a) For the first offense, of a gross misdemeanor; or

(b) For any subsequent offense or if the person has been previously convicted of violating a law of any other jurisdiction that prohibits the same or similar conduct, of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 6 years, unless a more severe penalty is prescribed by law for the act or omission which brings about the abuse.

2. Except as otherwise provided in subsection 7, any person who has assumed responsibility, legally, voluntarily or pursuant to a contract, to care for an older person or a vulnerable person and who:

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(a) Neglects the older person or vulnerable person, causing the older person or vulnerable person to suffer physical pain or mental suffering;

(b) Permits or allows the older person or vulnerable person to suffer unjustifiable physical pain or mental suffering; or

(c) Permits or allows the older person or vulnerable person to be placed in a situation where the older person or vulnerable person may suffer physical pain or mental suffering as the result of abuse or neglect,

☛ is guilty of a gross misdemeanor unless a more severe penalty is prescribed by law for the act or omission which brings about the abuse or neglect.

3. Except as otherwise provided in subsection 4, any person who exploits an older person or a vulnerable person shall be punished, if the value of any money, assets and property obtained or used:

(a) Is less than \$250, for a misdemeanor by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$2,000, or by both fine and imprisonment;

(b) Is at least \$250, but less than \$5,000, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, or by a fine of not more than \$10,000, or by both fine and imprisonment; or

(c) Is \$5,000 or more, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years, or by a fine of not more than \$25,000, or by both fine and imprisonment,

☛ unless a more severe penalty is prescribed by law for the act which brought about the exploitation. The monetary value of all of the money, assets and property of the older person or vulnerable person which have been obtained or used, or both, may be combined for the purpose of imposing punishment for an offense charged pursuant to this subsection.

4. If a person exploits an older person or a vulnerable person and the monetary value of any money, assets and property obtained cannot be determined, the person shall be punished for a gross misdemeanor by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$2,000, or by both fine and imprisonment.

5. Any person who isolates an older person or a vulnerable person is guilty:

(a) For the first offense, of a gross misdemeanor; or

(b) For any subsequent offense, of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$5,000.

6. A person who violates any provision of subsection 1, if substantial bodily or mental harm or death results to the older person or vulnerable person, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years, unless a more severe penalty is prescribed by law for the act or omission which brings about the abuse.

7. A person who violates any provision of subsection 2, if substantial bodily or mental harm or death results to the older person or vulnerable person, shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 6 years, unless a more severe penalty is prescribed by law for the act or omission which brings about the abuse or neglect.

8. In addition to any other penalty imposed against a person for a violation of any provision of NRS 200.5091 to 200.50995, inclusive, the court shall order the person to pay restitution.

9. As used in this section:

(a) "Allow" means to take no action to prevent or stop the abuse or neglect of an older person or a vulnerable person if the person knows or has reason to know that the older person or vulnerable person is being abused or neglected.

(b) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care and custody of an older person or a vulnerable person.

(c) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of an older person or a vulnerable person as evidenced by an observable and substantial impairment of the ability of the older person or vulnerable person to function within his or her normal range of performance or

behavior.

(Added to NRS by 1981, 1336; A 1983, 1652, 1655; 1985, 249; 1995, 1194, 2253; 1997, 110, 1354; 2003, 2567; 2005, 1113)

NRS CROSS REFERENCES.

Hate crimes, penalties, NRS 41.690, 193.1675, 193.169, 207.185

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Assault and Battery ! 48, 100.

WESTLAW Topic No. 37.

C.J.S. Assault §§ 1-3, 73, 78-80, 98, 163.

NEVADA CASES.

State of mind required for crime of abuse. Considering the definition of "abuse" in NRS 200.5092, which includes the phrase "willful and unjustified," the crime of abuse of an older person set forth in NRS 200.5099 involves willful and unjustified infliction or deprivation of harm to an older person. A willful act is an act that is done intentionally, not accidentally. *Vallery v. State*, 118 Nev. 357, 46 P.3d 66 (2002)

Conviction for neglect, permitting a person to suffer, or permitting a person to be placed in a situation where he may suffer does not require actual knowledge of danger. A conviction pursuant to NRS 200.5099 of a person who has assumed responsibility to care for an older person for neglecting the older person, permitting or allowing the older person to suffer physical pain or mental suffering, or permitting or allowing the older person to be placed in a situation where the older person may suffer physical pain or mental suffering as the result of abuse or neglect only requires proof that the accused knew or had reason to know that the older person could suffer harm as a result of the accused's actions or failure to act. When a person who has assumed responsibility for the care of an older person has knowledge of facts and circumstances that would cause a reasonable person to believe that the older person was in a situation that might require additional care or services, the failure of the person to take steps to investigate the situation may result in criminal liability if the actions or failure to act causes the older person to suffer harm. Actual knowledge of danger to the older person is not required for a conviction of these provisions. *Vallery v. State*, 118 Nev. 357, 46 P.3d 66 (2002), cited, *Santana v. State*, 122 Nev. 1458, at 1462, 148 P.3d 741 (2006)

No error in instructions given in criminal case involving neglect of older persons. Where the defendant was convicted of three counts of neglecting older persons pursuant to NRS 200.5099, she argued that: (1) the contractual provisions of the company which operated the facilities where the neglect occurred and of which she was the sole shareholder relieved her of her responsibilities under state regulations and statutes and requested a jury instruction (see NRS 175.161) on the issue; and (2) the district court erred in refusing to provide the jury with a definition of proximate cause and criminal causation. The supreme court rejected these arguments and held that the statutes and regulations contemplate that an administrator can be held liable for harm to a resident although the administrator did not assume personal care over the individual or was not the assigned caregiver. The supreme court also examined the facts of the case, noted that an intervening cause means a superseding cause which must be unforeseeable, and concluded that there were no actions that could constitute an intervening, superseding act in this case. Thus, the supreme court concluded that the district court did not err in refusing to give the defendant's jury instructions. *Vallery v. State*, 118 Nev. 357, 46 P.3d 66 (2002), cited, *Wood v. Safeway, Inc.*, 121 Nev. 724, at 741, 121 P.3d 1026 (2005)

NRS 200.50995 Penalties for conspiracy. A person who conspires with another to commit abuse, exploitation or isolation of an older person or a vulnerable person as prohibited by NRS 200.5099 shall be punished:

1. For the first offense, for a gross misdemeanor.
2. For the second and all subsequent offenses, for a category C felony as provided in NRS 193.130.

➔ Each person found guilty of such a conspiracy is jointly and severally liable for the restitution ordered by the court pursuant to NRS 200.5099 with each other person found guilty of the conspiracy.

(Added to NRS by 1997, 1347; A 2003, 2568; 2005, 1114)

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Conspiracy ! 28(3), 51.

WESTLAW Topic No. 91.

C.J.S. Conspiracy §§ 205-210, 213, 215-225, 241-243, 247, 249-250.

C.J.S. Rico (Racketeer Influenced and Corrupt Organizations) § 12.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

3

NRS 179A.450 Creation; contents; submission of report to Legislature; confidentiality of data.

1. The Repository for Information Concerning Crimes Against Older Persons is hereby created within the Central Repository.

2. The Repository for Information Concerning Crimes Against Older Persons must contain a complete and systematic record of all reports of crimes against older persons committed in this State. The record must be prepared in a manner approved by the Director of the Department and may include, without limitation, the following information:

- (a) All incidents that are reported to any entity.
- (b) All cases that are currently under investigation and the type of such cases.
- (c) All cases that are referred for prosecution and the type of such cases.
- (d) All cases in which prosecution is declined or dismissed and any reason for such action.
- (e) All cases that are prosecuted and the final disposition of such cases.
- (f) All cases that are resolved by agencies which provide protective services and the type of such cases.

3. The Director of the Department shall compile and analyze the data collected pursuant to this section to assess the incidence of crimes against older persons.

4. On or before July 1 of each year, the Director of the Department shall prepare and submit a report to the Director of the Legislative Counsel Bureau for transmittal to the Legislature that sets forth statistical data on crimes against older persons.

5. The data acquired pursuant to this section is confidential and must be used only for the purpose of research. The data and findings generated pursuant to this section must not contain information that may reveal the identity of an individual victim of a crime.

6. As used in this section, "older person" means a person who is 60 years of age or older.
(Added to NRS by 2007, 746; A 2009, 2447)

WEST PUBLISHING CO.

Criminal Law ! 1222.1.

WESTLAW Topic No. 110.

C.J.S. Criminal Law §§ 1724, 1729-1730.

NRS 200.5093 Report of abuse, neglect, exploitation or isolation of older person; voluntary and mandatory reports; investigation; penalty. [Effective July 1, 2010.]

1. Any person who is described in subsection 4 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated shall:

(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation or isolation of the older person to:

(1) The local office of the Aging and Disability Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging and Disability Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, perfusionist, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide personal care services in the home.

(e) Every person who maintains or is employed by an agency to provide nursing in the home.

(f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 427A.0291.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Every social worker.

(l) Any person who owns or is employed by a funeral home or mortuary.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney, the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging and Disability Services Division of the Department of Health and Human Services, must be forwarded within 30 days after the completion of the report to the:

(a) Aging and Disability Services Division;

(b) Repository for Information Concerning Crimes Against Older Persons created by NRS 179A.450; and

(c) Unit for the Investigation and Prosecution of Crimes.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if the older person is able and willing to accept them.

9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

(Added to NRS by 1981, 1334; A 1983, 1653; 1985, 1491; 1987, 2130, 2218; 1989, 904; 1991, 135; 1993, 2226; 1995, 2250; 1997, 108, 1349, 2608, 2610, 2637, 2639; 1999, 137, 2242, 2245, 2248, 3518; 2001, 158, 161, 776; 2003, 905; 2005, 1109, 2172; 2007, 746, 1224, 1849, 3080; 2009, 2372, 2445, 2992, effective July 1, 2010)

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

4

NRS 200.5093 Report of abuse, neglect, exploitation or isolation of older person; voluntary and mandatory reports; investigation; penalty. [Effective July 1, 2010.]

1. Any person who is described in subsection 4 and who, in a professional or occupational capacity, knows or has reasonable cause to believe that an older person has been abused, neglected, exploited or isolated shall:

(a) Except as otherwise provided in subsection 2, report the abuse, neglect, exploitation or isolation of the older person to:

(1) The local office of the Aging and Disability Services Division of the Department of Health and Human Services;

(2) A police department or sheriff's office;

(3) The county's office for protective services, if one exists in the county where the suspected action occurred; or

(4) A toll-free telephone service designated by the Aging and Disability Services Division of the Department of Health and Human Services; and

(b) Make such a report as soon as reasonably practicable but not later than 24 hours after the person knows or has reasonable cause to believe that the older person has been abused, neglected, exploited or isolated.

2. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that the abuse, neglect, exploitation or isolation of the older person involves an act or omission of the Aging and Disability Services Division, another division of the Department of Health and Human Services or a law enforcement agency, the person shall make the report to an agency other than the one alleged to have committed the act or omission.

3. Each agency, after reducing a report to writing, shall forward a copy of the report to the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes.

4. A report must be made pursuant to subsection 1 by the following persons:

(a) Every physician, dentist, dental hygienist, chiropractor, optometrist, podiatric physician, medical examiner, resident, intern, professional or practical nurse, physician assistant licensed pursuant to chapter 630 or 633 of NRS, perfusionist, psychiatrist, psychologist, marriage and family therapist, clinical professional counselor, clinical alcohol and drug abuse counselor, alcohol and drug abuse counselor, athletic trainer, driver of an ambulance, advanced emergency medical technician or other person providing medical services licensed or certified to practice in this State, who examines, attends or treats an older person who appears to have been abused, neglected, exploited or isolated.

(b) Any personnel of a hospital or similar institution engaged in the admission, examination, care or treatment of persons or an administrator, manager or other person in charge of a hospital or similar institution upon notification of the suspected abuse, neglect, exploitation or isolation of an older person by a member of the staff of the hospital.

(c) A coroner.

(d) Every person who maintains or is employed by an agency to provide personal care services in the home.

(e) Every person who maintains or is employed by an agency to provide nursing in the home.

(f) Every person who operates, who is employed by or who contracts to provide services for an intermediary service organization as defined in NRS 427A.0291.

(g) Any employee of the Department of Health and Human Services.

(h) Any employee of a law enforcement agency or a county's office for protective services or an adult or juvenile probation officer.

(i) Any person who maintains or is employed by a facility or establishment that provides care for older persons.

(j) Any person who maintains, is employed by or serves as a volunteer for an agency or service which advises persons regarding the abuse, neglect, exploitation or isolation of an older person and refers them to persons and agencies where their requests and needs can be met.

(k) Every social worker.

(l) Any person who owns or is employed by a funeral home or mortuary.

5. A report may be made by any other person.

6. If a person who is required to make a report pursuant to subsection 1 knows or has reasonable cause to believe that an older person has died as a result of abuse, neglect or isolation, the person shall, as soon as reasonably practicable, report this belief to the appropriate medical examiner or coroner, who shall investigate the cause of death of the older person and submit to the appropriate local law enforcement agencies, the appropriate prosecuting attorney, the Aging and Disability Services Division of the Department of Health and Human Services and the Unit for the Investigation and Prosecution of Crimes his or her written findings. The written findings must include the information required pursuant to the provisions of NRS 200.5094, when possible.

7. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report to commence within 3 working days. A copy of the final report of the investigation conducted by a division, office or department, other than the Aging and Disability Services Division of the Department of Health and Human Services, must be forwarded within 30 days after the completion of the report to the:

- (a) Aging and Disability Services Division;
- (b) Repository for Information Concerning Crimes Against Older Persons created by NRS 179A.450; and
- (c) Unit for the Investigation and Prosecution of Crimes.

8. If the investigation of a report results in the belief that an older person is abused, neglected, exploited or isolated, the Aging and Disability Services Division of the Department of Health and Human Services or the county's office for protective services may provide protective services to the older person if the older person is able and willing to accept them.

9. A person who knowingly and willfully violates any of the provisions of this section is guilty of a misdemeanor.

10. As used in this section, "Unit for the Investigation and Prosecution of Crimes" means the Unit for the Investigation and Prosecution of Crimes Against Older Persons in the Office of the Attorney General created pursuant to NRS 228.265.

(Added to NRS by 1981, 1334; A 1983, 1653; 1985, 1491; 1987, 2130, 2218; 1989, 904; 1991, 135; 1993, 2226; 1995, 2250; 1997, 108, 1349, 2608, 2610, 2637, 2639; 1999, 137, 2242, 2245, 2248, 3518; 2001, 158, 161, 776; 2003, 905; 2005, 1109, 2172; 2007, 746, 1224, 1849, 3080; 2009, 2372, 2445, 2992, effective July 1, 2010)

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

8

NRS 449.0039 “Facility for skilled nursing” defined.

1. “Facility for skilled nursing” means an establishment which provides continuous skilled nursing and related care as prescribed by a physician to a patient in the facility who is not in an acute episode of illness and whose primary need is the availability of such care on a continuous basis.

2. “Facility for skilled nursing” does not include a facility which meets the requirements of a general or any other special hospital.

(Added to NRS by 1973, 1279; A 1985, 1738)—(Substituted in revision for NRS 449.018)

NRS 449.0045 “Facility for the dependent” defined. “Facility for the dependent” includes:

1. A facility for the treatment of abuse of alcohol or drugs;
2. A halfway house for recovering alcohol and drug abusers;
3. A facility for the care of adults during the day;
4. A residential facility for groups;
5. An agency to provide personal care services in the home; and
6. A facility for transitional living for released offenders.

(Added to NRS by 1985, 1735; A 2001, 2518; 2005, 2165, 2350)

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

13

NRS 159.0535 Attendance of proposed ward at hearing.

1. A proposed ward who is found in this State must attend the hearing for the appointment of a guardian unless:
 - (a) A certificate signed by a physician who is licensed to practice in this State specifically states the condition of the proposed ward, the reasons why the proposed ward is unable to appear in court and whether the proposed ward's attendance at the hearing would be detrimental to the physical health of the proposed ward; or
 - (b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed ward, the reasons why the proposed ward is unable to appear in court and whether the proposed ward's attendance at the hearing would be detrimental to the physical health of the proposed ward.
 2. A proposed ward found in this State who cannot attend the hearing for the appointment of a general or special guardian as set forth in a certificate pursuant to subsection 1 may appear by videoconference. If the proposed ward is an adult and cannot attend by videoconference, the person who signs the certificate described in subsection 1 shall:
 - (a) Inform the proposed adult ward that the petitioner is requesting that the court appoint a guardian for the proposed adult ward;
 - (b) Ask the proposed adult ward for a response to the guardianship petition;
 - (c) Inform the proposed adult ward of his or her right to counsel and ask whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding; and
 - (d) Ask the preferences of the proposed adult ward for the appointment of a particular person as the guardian of the proposed adult ward.
 3. If the proposed ward is an adult, the person who signs the certificate described in subsection 1 shall state in the certificate:
 - (a) That the proposed adult ward has been advised of his or her right to counsel and asked whether he or she wishes to be represented by counsel in the guardianship proceeding;
 - (b) The responses of the proposed adult ward to the questions asked pursuant to subsection 2; and
 - (c) Any conditions that the person believes may have limited the responses by the proposed adult ward.
 4. The court may prescribe the form in which the certificate must be filed. If the certificate consists of separate parts, each part must be signed by a person identified in subsection 1.
 5. If the proposed ward is not in this State, the proposed ward must attend the hearing only if the court determines that the attendance of the proposed ward is necessary in the interests of justice.
- (Added to NRS by 1981, 1932; A 2003, 1781; 2009, 2522)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

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Guardian and Ward ! 13(1).

WESTLAW Topic No. 196.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

14

1 James M. O'Reilly, Esq., #767
2 Certified Elder Law Attorney
3 7881 West Charleston Boulevard, Suite 240
4 Las Vegas, Nevada 89117
5 (702) 477-7517
6 Attorney for Petitioner,
7 CLIENT NAME

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 IN THE MATTER OF THE GUARDIANSHIP
12 OF THE PERSON AND ESTATE

13 -of-

CASE NO.: G
DEPT. NO.: E

14 CLIENT'S SPOUSE,

15 An adult Ward.

16 **ADMINISTRATION OF ESTATE FOR PROPOSED ADULT WARD**

17 I, _____ (print name), have advised the
18 proposed Ward of his/her right to be represented by an attorney, to appear at the court hearing in
19 person, or through counsel.

20 **I have informed the proposed Ward that CLIENT NAME is requesting appointment**
21 **as Guardian of:**

- 22 ☐ The Ward's person (i.e., healthcare decisions)
23 ☐ The Ward's estate (i.e., financial decisions)
24 ☐ The Ward's person and estate (i.e., healthcare and financial decisions)

25 **I have asked the proposed Ward for a response to the Guardianship petition. His/her**
26 **response was:**

27 ☐ The proposed Ward was unable to respond because: _____
28 _____

///

1 **I have informed the proposed Ward of his/her right to counsel and have asked the**
2 **proposed Ward if he/she wishes to be represented by counsel in the guardianship proceedings.**

- 3 ☐ He/she does wish to be represented by counsel and can afford to hire an attorney.
4 ☐ He/she does wish to be represented by counsel and cannot afford to hire an attorney.
5 ☐ He/she does not wish to be represented by counsel.

6 **I have asked the proposed Ward who he/she would prefer be appointed as his/her**
7 **guardian. He/she has indicated:**

- 8 ☐ Petitioner: _____
9 ☐ He/she does not wish to have a Guardian
10 ☐ He/she was unable to communicate his/her wishes because _____
11 _____

12 **I have informed the proposed Ward he/she has a right to appear at the hearing**
13 **regarding this petition to be held the ____ day of _____, 2010, 10 a.m., at the courthouse**
14 **located in Courtroom 9, Second Floor, 601 North Pecos Boulevard, Las Vegas, Nevada.**
15 **He/she has indicated:**

- 16 ☐ He/she wants to attend the hearing in person.
17 ☐ He/she wants to attend the hearing via videoconference.
18 ☐ He/she does not want to attend this hearing.
19 ☐ He/she was unable to communicate his/her wishes.

20 DATED this ____ day of _____, 2010.

21 _____
22 (Signature)

23 _____
24 (Printed Name)

25 _____
26 (Street Address)

27 _____
28 (City, State Zip)

(Phone Number)

James M. O'Reilly, Esq., #767
Certified Elder Law Attorney
7881 West Charleston Boulevard, Suite 240
Las Vegas, Nevada 89117
(702) 477-7517
Attorney for Petitioner,
CLIENT FULL NAME

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER OF THE GUARDIANSHIP
OF THE PERSON AND ESTATE

-of-

CASE NO.: G
DEPT. NO.: E

CLIENT'S SPOUSE,

An adult Ward.

**CERTIFICATE OF INCAPACITY AND REGARDING
THE NEED FOR GUARDIANSHIP**

In accordance with Nevada Revised Statutes 159.044(2)(j):

I, _____, M.D., am:

- ☐ A physician licensed to practice in the State of Nevada.
- ☐ A physician employed by the Department of Veterans Affairs.
- ☐ Employed by _____ (name of agency), a
governmental agency in the State of Nevada who conducts investigations.
- ☐ Employed by _____ (name of agency). The
title of my position is _____ and I qualify
to execute this Certificate for the following reasons: _____

It is my opinion that the adult patient, CLIENT'S SPOUSE, suffers from a diagnosis of:

It is my opinion that this patient (check all that apply):

- ☐ Is a danger to himself/herself, or to others
- ☐ Is **not** a danger to himself/herself, or to others
- ☐ Is able to attend the guardianship court hearing
- ☐ Would not comprehend the reason for the court hearing, nor be able to contribute to the proceedings and should be excused from attending the court hearing
- ☐ Is incapable of understanding legal proceedings and should be excused from attending the court hearing
- ☐ Attending court would be detrimental to the patient
- ☐ Is **not** capable of living independently
- ☐ Is capable of living independently without assistance
- ☐ Is capable of living independently, but only with assistance (please explain): _____

It is my opinion that this patient (check all that apply):

- ☐ Is unable to respond to a substantial and immediate risk of physical harm
- ☐ Is unable to respond to an immediate need for medical attention
- ☐ Is unable to respond to a substantial and immediate risk of financial loss
- ☐ Is or has been subject to abuse, neglect or exploitation
- ☐ Has **not** been subject to abuse, neglect or exploitation
- ☐ Other observations: _____

It is my opinion that this patient needs a guardian of:

- ☐ Person only (i.e., healthcare decisions)
- ☐ Estate only (i.e., financial decisions)
- ☐ Person and Estate (i.e., both healthcare and financial decisions)

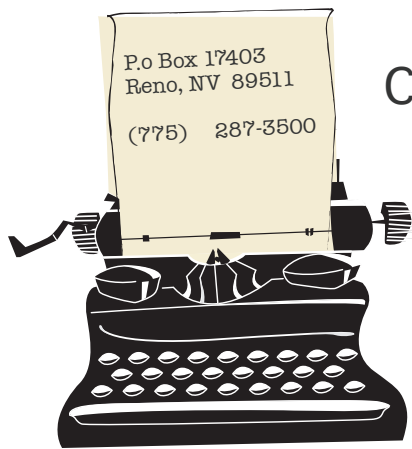
DATED this _____ day of _____, 2010.

Printed Name

Physician's Signature

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

15



Casazza Professional Services, Inc.

May 13, 2010

Legislative Committee on Senior Citizens,
Veterans and Adult with Special Needs
State of Nevada Assembly
401 South Carson Street
Carson City, Nevada 89701

Via email to: ajoiner@lcb.state.nv.us

Re: Recommendations for legislation

Madam Chairperson and honorable Committee Members,

I respectfully submit to you the attached proposed statutory language that will incorporate the use of the National Guardianship Association's Standards of Practice and its adopted Model Code of Ethics into the tools judges have when selecting and monitoring guardians. The Standards and Code, when applied by the courts, will act as a Ward's Bill of Rights extending greater protection against self-dealing by guardians than we have today. A copy of the Standards and the Code are also attached hereto. The documents' preambles briefly describe their development and research.

By statutorily requiring the judiciary to apply the Standards and the Code, we gain improvement and standardization of how we expect guardians to behave and perform their duties. We can begin to address issues of guardian behavior with a bill that has no fiscal note. The concept is simple and effective because it has clear consequences as a factor. If a guardian does not follow the Standards or Code, he does not get paid and must be removed. These consequences will be effective, especially for professional guardians. It does not remove the process of monitoring guardians out of the judi-



ciary- a complaint raised against other attempts to standardize and improve guardianship services such as licensing.

There are several guardian services related issues which are now and have been hot topics and issues needing reform for several years. These issues arise mostly out of the ethics and practices of private professional guardians. Some of the complaints are:

- Private professional guardians allegedly charge unreasonable fees
- Private professional guardians allegedly perform direct services to “run up the bill”
- Private professional guardians allegedly dump their clients on the public guardian when there is no money left
- Private professional guardians allegedly do not conserve the ward’s estate and spend down to medicaid too quickly
- Guardianships are allegedly established and fees charged for the sole reason of spending down for medicaid eligibility
- Guardians allegedly hire their friends and family to perform services for their wards
- Hospitals and other health care facilities pay guardian’s fees to facilitate guardianship to allegedly effectuate health care and discharge plans in the best interest of the hospital or facility rather than the ward’s.
- Private professional guardians allegedly use temporary guardianship process as a tool investigate whether a person has the funds to pay for a private professional guardian
- Private professional guardians allegedly receive compensation from their ward’s direct service providers and deny that it is a conflict of interest
- Private professional guardians and the judiciary allegedly allow guardian fees to deplete an estate when the estate can not bear the financial burden which necessitates a change in living circumstances and quality of life for a ward



prematurely, disrupting the ward and adversely affecting future guardianship planning for that ward.

The issues are controversial and certain parties will claim that the complaints are exaggerated, the practices are isolated to a few or that these concerns are theoretically possible under the current scheme but not current problems. I argue that they are real. However, irregardless of whether we are fixing a real problem or avoiding one in the future, it is good public policy to protect Nevadans from current or future harm and to lead the nation in creating standards and ethics for guardians. I anticipate that there will be several private professional guardians who will say that they are not doing the aforementioned bad behaviors. Some indeed are not. They will also say that as certified guardians, they already adhere to the Standards and the Code. Some do. They will argue that if the bad behavior is not happening and they already adhere to the Standards and Code, the legislation is unnecessary. However, if these statements are true then this statutory scheme would not change a thing for them and they ought not to oppose it. Please call their bluff. Even if they are all voluntarily doing the right thing today, will they be doing the right thing tomorrow.

I have been working in the guardianship profession for many years. I worked as a guardianship paralegal from 1995 to 2007. I worked for a guardianship attorneys who represented many different guardianship stakeholders including families, wards, private professional guardians, the public guardian, hospitals and facilities. In 2006, I was certified as a guardian by the Center for Guardianship Certification. I have worked as a guardian for three out of the four private professional guardianship companies currently serving Washoe County. I had an ownership interest in one of them and I am currently the CEO and an owner of another. I am intimately aware of the practices of the guardians in Washoe



County- I have been behind their closed doors and I believe that statutorily requiring the courts to ensure that guardians, especially private professional guardians, adhere to the Standards and the Code is necessary for the public good. This proposed legislation is a huge step in the right direction, but it is not a cure-all, we still need mandated court monitoring and investigation programs in the larger counties, licensing of private and public professional guardians, and comprehensive regulation of fees but these programs have deep fiscal implications which our state, counties and courts may not be prepared to face at this time.

As a Nevadan, I like that we have an independent nature as a State and I expect the State's Legislators to make their decisions based on what is good for Nevada. I also believe that making public policy that leads the nation and illustrates that Nevada is forward thinking is good for Nevada. I want to tell you about the national perspective on Nevada and guardianship reform that I have experienced. I do so to pass on the recognition you have received as well as to explain the impact of your decisions on the nation's guardianship stakeholders. As a member of the Board of Directors of the National Guardianship Association and of the Center for Guardianship Certification, I have enjoyed many opportunities to interact with and discuss guardianship issues and policies with guardianship stakeholders across the country. I have heard repeatedly how impressed many of these folks are with the forward thinking policies and programs for guardianship reform in Nevada. The accolades are given to independent leaders like Kathleen Buchanan and Susan DeBoer and to dedicated organizations such as the Nevada Guardianship Association but they also given to the Nevada State Legislature for passing good public policy into law (i.e requiring certification of private professionals and passing the Uniform Adult Guardianship and Protective Proceedings Jurisdictional Act.) Many want what we have. There are preliminary steps being taken to begin work on uniform law



codifying the NGA Standards. While this is at least a couple of years down the road as development of uniform laws is a lengthy process, Nevada does not need to wait to lead the nation, for the good of Nevadans, in forward thinking policy. Let's be first. Let's give them another reason to be impressed by statutorily requiring the judiciary to ensure that guardians adhere to the National Guardianships Association's Standards of Practice and adopted Model Code of Ethics.

Respectfully,

Ginny Casazza, NCG

NRS 159._____ Court Orders: Required findings and content.

1. The court shall not enter an order:

- a. appointing a temporary guardian
- b. appointing a permanent guardian
- c. appointing a special or limited guardian
- d. instructing a guardian
- e. approving payment of a guardian's fees or costs
- f. authorizing a guardian to act, or
- g. approving or ratifying a guardian's acts, accounting or report

unless the Court finds by clear and convincing evidence that the guardian has complied with the National Guardianship Association's *Standards of Practice 2002 Edited Edition* and *A Model Code of Ethics for Guardians, Casasanto, Simon, and Roman, 1988* adopted by the National Guardianship Association in 1991.

NRS 159.185 ~~Conditions.~~ Removal of Guardian Required. The court shall ~~may~~ remove a guardian if the court determines that:

- 1. The guardian has become mentally incompetent, unsuitable or otherwise incapable of exercising the authority and performing the duties of a guardian as provided by law;
- 2. The guardian is no longer qualified to act as a guardian pursuant to [NRS 159.059](#);
- ~~3. The guardian has filed for bankruptcy within the previous 5 years;~~
- 4. The guardian of the estate has mismanaged the estate of the ward;
- 5. The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:
 - (a) The negligence resulted in injury to the ward or the estate of the ward; or
 - (b) There was a substantial likelihood that the negligence would result in injury to the ward or the estate of the ward;
- 6. The guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury;
- ~~7. The best interests of the ward will be served by the appointment of another person as guardian; or~~
- 8. The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to [NRS 159.0595](#); or
- 9. The guardian has violated any provision of the National Guardianship Association's *Standards of Practice 2002 Edited Edition* or *A Model Code of Ethics for Guardians, Casasanto, Simon, and Roman, 1988* adopted by the National Guardianship Association in 1991.

NRS 159._____ Removal of Guardian Authorized. The court may remove a guardian if the court determines that:

1. The guardian has filed for bankruptcy within the previous 5 years;
2. The guardian has negligently failed to perform any duty as provided by law or by any order of the court regardless of injury; or
3. The best interests of the ward will be served by the appointment of another person as guardian.



National Guardianship Association

STANDARDS OF PRACTICE



Adopted 2000
Third Edition - 2007
© 2000, 2002, 2007

NATIONAL GUARDIANSHIP ASSOCIATION
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National Guardianship Association
Standards of Practice
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Preamble

Developing standards for guardians has been an ongoing challenge for the National Guardianship Association (NGA). Not only has the profession undergone rapid change since the original seven standards were written in 1991, but the basic issues have been, and remain, imprecise and difficult to define for a national, membership-based organization. A basic philosophical element complicating the process has been the need to strike a consistent balance between standards that represent an ideal and those that recognize practical limitations, whether for a family guardian or for a professional guardian.

In July of 1991, the NGA adopted a previously published Code of Ethics to guide guardians in their decision-making process. The next task of the NGA was to formulate specific standards to be applied in the day-to-day practice of guardianship. The seven original standards of practice that were written and adopted by the NGA in 1991 have now been expanded to cover more of the duties and responsibilities that face court-appointed guardians today.

The same lengthy discussions that took place in 1991 occurred again during the most recent updating of the standards. These discussions centered on the need to state what is "right" versus the need to recognize and accept the inevitability of the status quo—too many clients, not enough funding or staff. While we all agree that such restrictions are all too commonplace, we also feel that little is gained by simply accepting a substandard or unacceptable state of affairs. The NGA has, therefore, adopted standards that we feel reflect as realistically as possible the best or highest quality of practice. In many cases, best practice may go beyond what state law requires of a guardian.

In reading this document, it is important to recognize that some of the standards enunciate ideals or philosophical points, while others speak to day-to-day practical matters. Both approaches are critically important. It is not our ambition to prescribe a precise program description or management manual. Rather, we have sought to shape a mirror that practitioners and funders can use to evaluate their efforts. The standards also reflect the mandate that all guardians must perform in accordance with current state law governing guardianships and certification of guardians.

To ensure consistency in the way the standards are applied, the following constructions are used: "shall" imposes a duty, "may" creates discretionary authority or grants permission or a power, "must" creates or recognizes a condition precedent, "is entitled to" creates or recognizes a right, and "may not" imposes a prohibition and is synonymous with "shall not." The guidelines that appear in some standards are suggested ways of carrying out those standards.

This document embodies practices and standards from a number of professional sources. As such, it sometimes makes unavoidable use of legal and medical "terms of art" where they would commonly and most accurately be used by professionals who work in the particular area. In addition, the field of guardianship itself makes use of terms that vary widely from state to state. "Guardian" and "ward" are the terms used here to simplify the many references to these roles. Where points apply to professional, as opposed to family, guardians, they are indicated. "Guardian," as used in the standards, means guardian of the person, guardian of the estate, or guardian of the person and estate, depending on the standard being addressed.

In this work we have drawn on a number of collective sources. First and foremost have been NGA members who have contributed extensive time and energy and valuable input into the development of these standards. The *Model Code of Ethics for Guardians*, developed by Michael D. Casasanto, Mitchell Simon, and Judith Roman and adopted by the NGA, has formed the foundation from which the standards were developed. Other very important sources that

Standards of Practice, National Guardianship Association

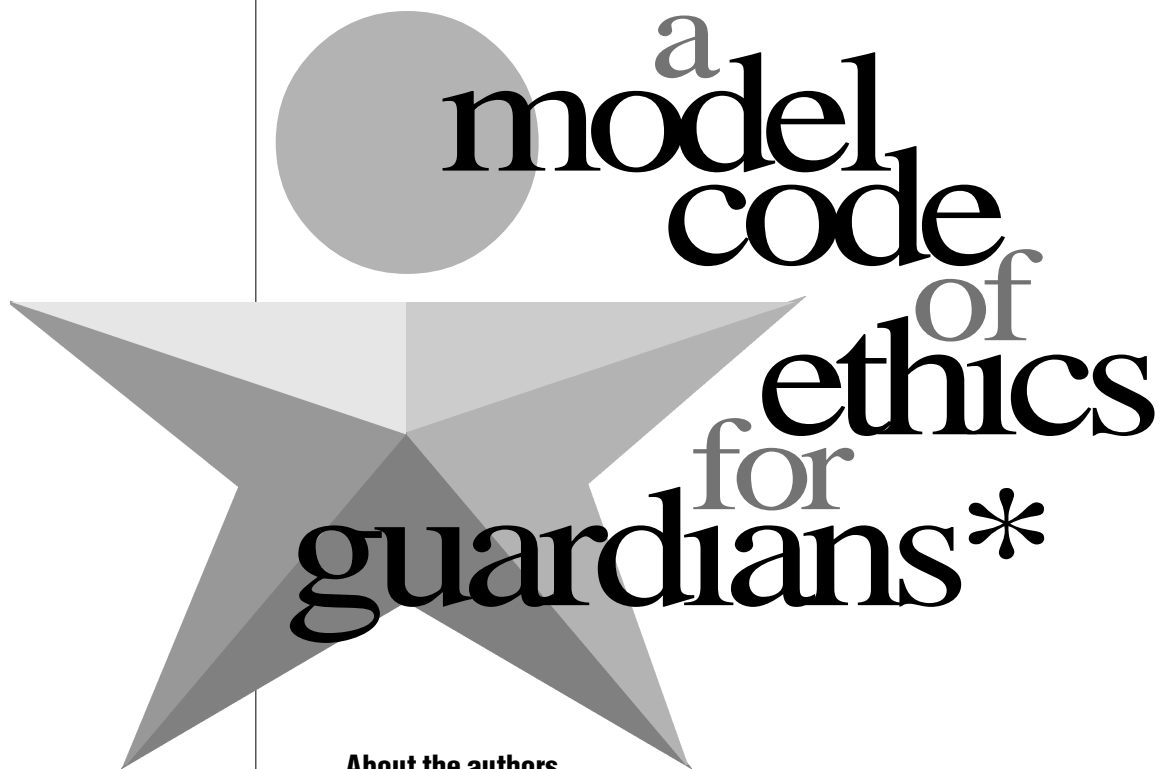
helped in the creation of our standards of practice are the U.S. Administration on Aging, the AARP, the Center for Social Gerontology, the Michigan Offices of Services for the Aging, and the state associations from Arizona, Washington, California, Illinois, Minnesota, and Michigan. We thank everyone listed above and others for their ongoing commitment to the profession of guardianship.

NOTE: The Standards of Practice were first adopted by the NGA Board of Directors and ratified by the membership in 2000.

The 2003 edition of the *NGA Standards of Practice for Guardians* incorporates language that came forth from Wingspan 2001, the National Conference on Guardianship Reform. The NGA Ethics and Standards Committee is proud to announce that the *NGA Standards of Practice for Guardians* have been acknowledged by this national group of guardianship experts and are being endorsed as the model standards to be followed by all guardians in the United States. Please be advised that any state adopting these standards should give attribution to NGA.

The 2007 Edition provides minor clarification of the language in the earlier editions without any changes in content.

Please see the NGA Website (www.guardianship.org) for the most current edition of NGA Standards of Practice.



a model code of ethics for guardians*

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L Introduction

The concept of guardianship has a very early origin. The literature from Rome at the time of Cicero notes procedures to protect the property of incompetent persons; no such provisions were made for protection of the person. Under our Anglo-Norman legal tradition, the King, acting under the doctrine of *parens patriae*, was the protector of his subjects. While guardianship in England applied both to the person and the estate, the primary purpose of the power was to prevent incompetent persons from becoming public charges or squandering their resources to the detriment of their heirs.¹

It is not surprising in light of this genesis that reform of the basic process by which guardianships are imposed has been a relatively recent development². While much scholarly and judicial time has been devoted to the debate over the procedural protections to be afforded incompetent persons prior to imposition of a guardianship, insufficient work has been done to guide the actions of guardians who are charged with the enormous responsibility of substituting their judgment for that of another human being. The purpose of the Model Code is to suggest ethical and legal standards designed to simplify and improve this decision making process.

Since the Model Code is designed to address the guardian-ward relationship, we have assumed that the underlying adjudication of incompetency is accurate and made in accordance with procedural due process³. Therefore, the question of whether a guardianship should have been imposed at all is beyond the scope of this article⁴.

We have not, however, assumed that all guardianships are necessarily limited to those functions that the individual is incapable of actually performing, since "limited guardianship" is not the norm in all states. In a survey conducted in 1984, Casasanto, Newman and Saunders found that the forty-one states responding to their survey, thirteen had no provision for limited guardianship⁶. Therefore, the Model Code provides a framework for making decisions both on behalf of individuals who are deemed incompetent under a statute providing for plenary guardianship but who clearly retain the functional ability to make certain decisions, and for individuals, with a narrowly limited guardianship. This distinction is significant since the ability of the ward to participate in a decision making process will vary depending on the situation. For example, the Model Code suggests that an ethical guardian should look more closely at, and possibly defer to, the expressed wishes of a ward with an overbroad guardianship in those areas where functional competence still exists. Based on the above, the Code, in some situations, adopts what may on first blush look like an anomalous position by mandating deference to the currently expressed wishes of a legally incompetent person. We believe, however, this is mandated by the important ethical precept that the individual's rights of self-determination should be observed whenever possible.

1. S. Brakel & R. Rock, *The Mentally Disabled and the Law* 250 (Rev. ed. 1971).

2. See, e.d., Frolik, "Plenary Guardianship: An Analysis, A Critique and a Proposal for Reform," 23 *Ariz. L. Rev.* 599 (1981). During this session of Congress, the late Congressman Claude Pepper introduced a bill seeking to establish federal procedural protections in guardianship cases. The National Guardianship Rights Act H.R. 1702, 101st Cong., 1st Sess., 135 Cong. Rec. E 1071-01 (1989).

3. For a thorough discussion of some of the procedural questions still presented by many current guardianship statutes, see, for example, Frolik, *supra* note 2, at 599; "Horstman, Protective Services for the Elderly: The Limits of *Parens Patriae*," 40 *Mo. L. Rev.* 215 (1975).

4. For a guide to assessing when an individual needs a guardian, see, for example, Casasanto, Covert, Saunders & Simon, "Individual Functional Assessment: An Instruction Manual," 11 *Mental and Physical Disability L. Rep.* 670 (1987).

5. Frolik, *supra* note 2; Casasanto, Newman, Saunders, *Limited Guardianship: A State Survey (1984)* (Copies available from the New Hampshire Office of Public Guardian, 6 White Street, Concord, NH 03301).

6. Casasanto, Newman, Saunders, *supra* note 4.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

16

BDR #____

Revises provisions governing guardianship.

Section 1. Chapter 159 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4, inclusive, of this act

Section 2. *The court may, at any time during the guardianship and upon a motion showing need for confidentiality, order all or a portion of the guardianship records sealed. For the purposes of this section, guardianship records shall include all documents filed with the court in the guardianship matter and all records held in the possession of the guardian.*

Section 3. *A guardian shall present a court certified copy of the Order appointing the Guardian and Letters of Guardianship to any bank or other financial institution holding accounts or assets in the name of the Ward prior to accessing the accounts or asset. Presentation of the Order and Letters must be accepted by the bank or other financial institution as proof of guardianship, and the bank or other financial institution shall allow the guardian access to the accounts or assets of the ward, pursuant to any limitations contained in the Order. A bank or other financial institution may not request a copy of the competency evaluation of a Ward or other confidential information regarding the medical condition or placement of the Ward, or a copy of the inventory or accounting of the Ward's estate, unless the bank or financial institution is a party to the guardianship.*

Section 4. *The court may require the guardian to attend guardianship training, if available.*

Section 5. NRS 159.0455 is hereby amended to read as follows:

NRS 159.0455 1. On or after the date of the filing of a petition to appoint a guardian, *if the ward has not requested, been appointed or retained legal counsel*:

~~(a)-1]~~ the court may appoint a person to represent the ward or proposed ward as a guardian ad litem. ~~[- and~~

~~(b)-1]~~ 2. The guardian ad litem must represent the ward or proposed ward as a guardian ad litem until relieved of that duty by court order. *If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests.*

3. *The guardian ad litem shall be an attorney, social worker, medical professional or other related degreed individual approved by the court. A guardian ad litem who is not an attorney shall undergo a background investigation at their own cost and expense and shall present the background investigation findings to the court. A guardian ad litem shall not be a party, relative*

of a party, or representative of a party to the proceedings.

[2] 4. *The guardian ad litem shall report to the court any findings of any investigation by the guardian ad litem and shall advocate for what is in the best interests of the ward taking into consideration the ward's preferences, needs, and financial status. ~~[Upon the appointment of the guardian ad litem,]~~ The court ~~[shall]~~ *may* set forth in the order of appointment ~~[the]~~ **additional** duties of the guardian ad litem. **A GAL has none of the rights or duties of a guardian.***

[3] 5. *The guardian ad litem is entitled to reasonable compensation **and expenses.** Unless the court determines the inability of the proposed ward or ward to pay or the court shifts the responsibility of payment to a third party, guardian ad litem compensation and expenses must be paid from the estate of the ward or proposed ward. ~~[If the court finds that a person has unnecessarily or unreasonably caused the appointment of a guardian ad litem, the court may order the person to pay to the estate of the ward or proposed ward all or part of the expenses associated with the appointment of the guardian ad litem.]~~ **In evaluating the ability of a proposed ward or ward to pay such compensation and expenses, the court shall consider:***

- (a) The nature, extent and liquidity of the proposed ward's or ward's known assets;*
- (b) The known disposable net income of the proposed ward or ward;*
- (c) Any foreseeable expenses for the proposed ward or ward; and*
- (d) Any other factors that are relevant.*

The needs of the proposed ward or ward take priority over payment of guardian ad litem compensation. The court shall issue an order or finding of the proposed ward's or ward's inability to pay.

6. *A guardian ad litem shall not disclose information or participate in the disclosure of information relating to an appointed case to any person who is not a party to the case, except as necessary to perform the guardian ad litem duties or as may be specifically ordered by the court.*

7. *As used in this section, a related degreed individual refers to an individual who has a bachelors or higher degree in a field approved by the court.*

Section 6. NRS 159.0485 is hereby amended to read as follows:

NRS 159.0485 1. At the first hearing for the appointment of a guardian for a proposed adult ward, the court shall advise the proposed adult ward who is in attendance at the hearing or who is appearing by videoconference at the hearing of his or her right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding. If the proposed adult ward is not in attendance at the hearing because the proposed adult ward has been excused pursuant to NRS 159.0535 and is not appearing by videoconference at the hearing, the person who signs the certificate pursuant to NRS 159.0535 to excuse the proposed adult ward from attending the hearing shall advise the proposed adult ward of his or her right to counsel and determine whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding.

2. If an adult ward or proposed adult ward is unable to retain legal counsel and requests the appointment of counsel, at any stage in a guardianship proceeding and whether or not the adult ward or proposed adult ward lacks or appears to lack capacity, the court shall, at or before the time of the next hearing, appoint an attorney who works for legal aid services, if available, or a private attorney to represent the adult ward or proposed adult ward. The appointed attorney must represent the adult ward or proposed adult ward until relieved of the duty by court order.

3. Subject to the discretion and approval of the court, the attorney for the adult ward or proposed adult ward is entitled to reasonable compensation which must be paid from the estate of the adult ward or proposed adult ward. If the court finds that a person has unnecessarily or unreasonably caused the appointment of an attorney, the court may order the person to pay to the estate of the adult ward or proposed adult ward all or part of the expenses associated with the appointment of the attorney. *Unless the court determines the inability of the proposed ward or ward to pay or the court shifts the responsibility of payment to a third party, attorney compensation and expenses must be paid from the estate of the ward. In evaluating the ability of a proposed ward or ward to pay such compensation and expenses, the court shall consider:*

- (a) The nature, extent and liquidity of the proposed ward's or ward's known assets;*
- (b) The known disposable net income of the proposed ward or ward;*
- (c) Any foreseeable expenses for the proposed ward or ward; and*
- (d) Any other factors that are relevant.*

The needs of the proposed ward or ward take priority over payment of attorney compensation. The court shall issue an order or finding of the proposed ward's or ward's inability to pay.

Section 7. NRS 159.0535 is hereby amended to read as follows:

NRS 159.0535 1. A proposed ward who is found in this State must attend the hearing for the appointment of a guardian unless:

(a) A certificate signed by a physician who is licensed to practice in this State specifically states the condition of the proposed ward, the reasons why the proposed ward is unable to appear in court and whether the proposed ward's attendance at the hearing would be detrimental to the physical or mental health of the proposed ward; or

(b) A certificate signed by any other person the court finds qualified to execute a certificate states the condition of the proposed ward, the reasons why the proposed ward is unable to appear in court and whether the proposed ward's attendance at the hearing would be detrimental to the physical health of the proposed ward.

2. A proposed ward found in this State who cannot attend the hearing for the appointment of a general or special guardian as set forth in a certificate pursuant to subsection 1 may appear by videoconference. If the proposed ward is an adult and cannot attend by videoconference, the person who signs the certificate described in subsection 1 or another party the court finds qualified shall:

- (a) Inform the proposed adult ward that the petitioner is requesting that the court appoint a guardian for the proposed adult ward;
- (b) Ask the proposed adult ward for a response to the guardianship petition;
- (c) Inform the proposed adult ward of his or her right to counsel and ask whether the proposed adult ward wishes to be represented by counsel in the guardianship proceeding; and
- (d) Ask the preferences of the proposed adult ward for the appointment of a particular person as the guardian of the proposed adult ward.

3. If the proposed ward is an adult, the person who ~~[signs the certificate described in subsection 1]~~ informed the ward of the ward's rights pursuant to subsection 2 shall state in ~~[the]~~ a certificate:

- (a) That the proposed adult ward has been advised of his or her right to counsel and asked whether he or she wishes to be represented by counsel in the guardianship proceeding;
- (b) The responses of the proposed adult ward to the questions asked pursuant to subsection 2; and
- (c) Any conditions that the person believes may have limited the responses by the proposed adult ward.

4. The court may prescribe the form in which the certificate required in subsection 1 and 2 must be filed. If the certificate consists of separate parts, each part must be signed by a person identified in subsection 1 or 2.

5. If the proposed ward is not in this State, the proposed ward must attend the hearing only if the court determines that the attendance of the proposed ward is necessary in the interests of justice.

Section 8. NRS 159.0593 is hereby amended to read as follows:

159.0593 1. If the court orders a general guardian appointed for a proposed ward, the court shall determine~~[, by clear and convincing evidence,]~~ whether the proposed ward presents a risk to self or others if the proposed ward owns or purchases a firearm ~~[is a person with a mental defect who is prohibited from possessing a firearm pursuant to 18 U.S.C. § 922(d)(4) or (g)(4)]~~. The court may request an evaluation be made by a doctor, psychiatrist, or psychologist licensed to practice in the State of Nevada be submitted to the court to assist in making such determination. If a court makes a finding pursuant to this section that the proposed ward ~~[is a person with a mental defect]~~ presents a risk to self or others if the proposed ward owns or purchases a firearm, the court shall ~~[include the finding in the]~~ issue an order ~~[appointing the guardian]~~ so stating the finding and cause a record of the order to be transmitted to the Central Repository for Nevada Records of Criminal History, along with a statement indicating that the record is being transmitted for inclusion in each appropriate database of the National Instant Criminal Background Check System.

2. As used in this section~~[-]~~:

~~(a)~~ "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

~~[(b) "Person with a mental defect" means a person who, as a result of marked subnormal intelligence, mental illness, incompetence, condition or disease, is:~~

~~(1) A danger to himself or others; or~~

~~(2) Lacks the capacity to contract or manage his own affairs.]~~

Section 9. NRS 159.0595 is hereby amended to read as follows:

NRS 159.0595 1. A private professional guardian, if a person, must be qualified to serve as a guardian pursuant to NRS 159.059 and must be a certified guardian.

2. A private professional guardian, if an entity, must be qualified to serve as a guardian pursuant to NRS 159.059 and must have a certified guardian involved in the day-to-day operation or management of the entity.

3. As used in this section:

(a) "Certified guardian" means a person who is certified by the Center for Guardianship Certification or any successor organization, *and who agrees to operate pursuant to the National Guardianship Association Standards of Practice and Code of Ethics.*

(b) "Entity" includes, without limitation, a corporation, whether or not for profit, a limited-liability company and a partnership.

(c) "Person" means a natural person.

4. A private professional guardian who is not an attorney shall undergo a background investigation at their own cost and expense and shall present the background investigation findings to the court upon request.

Section 10. NRS 159.073 is hereby amended to read as follows:

NRS 159.073 Every guardian shall, before entering upon his or her duties as guardian and before letters of guardianship may issue:

1. Take and subscribe the official oath which must:

(a) Be endorsed on the letters of guardianship; and

(b) State that the guardian will well and faithfully perform the duties of guardian according to law.

2. File in the proceeding the appropriate documents which include, without limitation, the full legal name of the guardian and the residence and post office addresses of the guardian.

3. Make and file in the proceeding a verified Guardian's acknowledgement of duties and responsibilities. The acknowledgement shall contain:

(a) An overview of the Guardian's duties, functions and responsibilities, including the duty to act in the best interest of the Ward at all times, to protect the Ward's interests above the Guardian's interests, and to protect the Ward from any foreseeable harm caused by any third party.

(b) The rules and statutes governing management of the Ward's assets and income.

(c) A listing of what actions by the Guardian require obtaining prior Court authorization or confirmation.

(d) The need for accurate record keeping, and for filing inventories, accountings and reports with the Court.

(e) A signature paragraph substantially in the following form:

I certify that I have read and reviewed the Guardian's Acknowledgment of Duties and Responsibilities, and that I understand the terms and conditions under which the Guardianship is to be managed. I agree to comply with the rules and duties of a guardian as set forth in the laws of the State of Nevada. I understand that failure to comply with the Guardianship statutes, or with any Order made by the Court, may result in my removal as Guardian and that I may be subject to such penalties as the Court may impose.

The court may prescribe the form of and additional information to be included in the acknowledgement. The court may exempt public guardians and private professional guardians, as defined under NRS 159.0595, from filing an acknowledgement in each case, but may require a public guardian or private professional guardian to file a general acknowledgement to cover all her cases.

Section 11. NRS 159.079 is hereby amended to read as follows:

159.079 1. Except as otherwise ordered by the court, a guardian of the person has the care, custody and control of the person of the ward, and has the authority and, subject to subsection 2, shall perform the duties necessary for the proper care, maintenance, education and support of the ward, including, without limitation, the following:

(a) Supplying the ward with food, clothing, shelter and all incidental necessities, including locating an appropriate residence for the ward.

(b) Authorizing medical, surgical, dental, psychiatric, psychological, hygienic or other remedial care and treatment for the ward.

(c) Seeing that the ward is properly trained and educated and that the ward has the opportunity to learn a trade, occupation or profession.

2. In the performance of the duties enumerated in subsection 1 by a guardian of the person, due regard must be given to the extent of the estate of the ward. A guardian of the person is not required to incur expenses on behalf of the ward except to the extent that the estate of the ward is sufficient to reimburse the guardian.

3. A guardian of the person is the ward's personal representative for purposes of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any applicable regulations. The guardian of the person has authority to obtain information from any government agency, medical

provider, business, creditor or third party who may have information pertaining to the ward's health care or health insurance.

4. ~~[A]~~ ***Except as otherwise provided in subsection 7, a*** guardian of the person may establish and change the residence of the ward at any place within this State without the permission of the court. The guardian shall select the least restrictive appropriate residence which is available and necessary to meet the needs of the ward and which is financially feasible.

5. A guardian of the person shall petition the court for an order authorizing the guardian to change the residence of the ward to a location outside of this State. The guardian must show that the placement outside of this State is in the best interest of the ward or that there is no appropriate residence available for the ward in this State. The court shall retain jurisdiction over the guardianship unless the guardian files for termination of the guardianship pursuant to NRS 159.1905 or 159.191 or the jurisdiction of the guardianship is transferred to the other state.

6. This section does not relieve a parent or other person of any duty required by law to provide for the care, support and maintenance of any dependent.

7. A guardian shall file a petition with the court requesting authorization to move or place a ward into a secured residential long-term care facility unless:

(a) The court has previously granted the guardian authority to move the ward to such a facility based on findings made when the court appointed the general or special guardian; or

(b) The transfer is made pursuant to a written recommendation by a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker, or an employee of a county or state office for protective services.

8. As used in this section, "protective services" has the meaning ascribed to it in NRS 200.5092.

Section 12. NRS 159.095 is hereby amended to read as follows:

NRS 159.095 ~~[1.]~~ A guardian of the estate shall appear for and represent the ward in all actions, suits or proceedings to which the ward is a party~~[-, unless a guardian ad litem is appointed in the action, suit or proceeding. If a guardian ad litem is appointed in the action, suit or proceeding, the guardian of the estate shall notify the court that the guardian ad litem has been appointed in the action, suit or proceeding.]~~ **unless the court finds the guardian has a conflict of interest with the ward's claim in the proceeding.**

~~2.]~~ Upon final resolution of the action, suit or proceeding, the guardian of the estate shall notify the court of the outcome of the action, suit or proceeding.

Section 13. NRS 159.113 is hereby amended to read as follows:

159.113 1. Before taking any of the following actions, the guardian of the estate shall petition the court for an order authorizing the guardian to:

- (a) Invest the property of the ward pursuant to NRS 159.117.
- (b) Continue the business of the ward pursuant to NRS 159.119.
- (c) Borrow money for the ward pursuant to NRS 159.121.
- (d) Except as otherwise provided in NRS 159.079, enter into contracts for the ward or complete the performance of contracts of the ward pursuant to NRS 159.123.
- (e) Make gifts from the ward's estate or make expenditures for the ward's relatives pursuant to NRS 159.125.
- (f) Sell, lease or place in trust any property of the ward pursuant to NRS 159.127.
- (g) Exchange or partition the ward's property pursuant to NRS 159.175.
- (h) Release the power of the ward as trustee, personal representative or custodian for a minor or guardian.
- (i) Exercise or release the power of the ward as a donee of a power of appointment.
- (j) Exercise the right of the ward to take under or against a will.
- (k) Transfer to a trust created by the ward any property unintentionally omitted from the trust.
- (l) Submit a revocable trust to the jurisdiction of the court if:
 - (1) The ward or the spouse of the ward, or both, are the grantors and sole beneficiaries of the income of the trust; or
 - (2) The trust was created by the court.
- (m) Pay any claim by the Department of Health and Human Services to recover benefits for Medicaid correctly paid to or on behalf of the ward.
- (n) Transfer money in a minor ward's blocked account to the Nevada Higher Education Prepaid Tuition Trust Fund created pursuant to NRS 353B.140.

~~[(o) Except as otherwise provided in subsection 6, move the ward into a secured residential long-term care facility.]~~

2. Before taking any of the following actions, unless the guardian has been otherwise ordered by the court to petition the court for permission to take specified actions or make specified decisions in addition to those described in subsection 1, the guardian may petition the court for an order authorizing the guardian to:

- (a) Obtain advice, instructions and approval of any other proposed act of the guardian relating to the ward's property.

- (b) Take any other action which the guardian deems would be in the best interests of the ward.

3. The petition must be signed by the guardian and contain:

- (a) The name, age, residence and address of the ward.
- (b) A concise statement as to the condition of the ward's estate.
- (c) A concise statement as to the advantage to the ward of or the necessity for the proposed action.

- (d) The terms and conditions of any proposed sale, lease, partition, trust, exchange or

investment, and a specific description of any property involved.

4. Any of the matters set forth in subsection 1 may be consolidated in one petition, and the court may enter one order authorizing or directing the guardian to do one or more of those acts.

5. A petition filed pursuant to paragraphs (b) and (d) of subsection 1 may be consolidated in and filed with the petition for the appointment of the guardian, and if the guardian is appointed, the court may enter additional orders authorizing the guardian to continue the business of the ward, enter contracts for the ward or complete contracts of the ward.

~~[6. Without filing a petition pursuant to paragraph (e) of subsection 1, a guardian may move a ward into a secured residential long-term care facility if:~~

~~(a) The court has previously granted the guardian authority to move the ward to such a facility based on findings made when the court appointed the general or special guardian; or~~

~~(b) The transfer is made pursuant to a written recommendation by a licensed physician, a physician employed by the Department of Veterans Affairs, a licensed social worker or an employee of a county's office for protective services.~~

~~7. As used in this section, "protective services" has the meaning ascribed to it in NRS 200.5092.]~~

Section 14. NRS 159.185 is hereby amended to read as follows:

NRS 159.185 **1.** The court may remove a guardian if the court determines that:

~~[1.]~~ **(a)** The guardian has become mentally incompetent, unsuitable or otherwise incapable of exercising the authority and performing the duties of a guardian as provided by law;

~~[2.]~~ **(b)** The guardian is no longer qualified to act as a guardian pursuant to NRS 159.059;

~~[3.]~~ **(c)** The guardian has filed for bankruptcy within the previous 5 years;

~~[4.]~~ **(d)** The guardian of the estate has mismanaged the estate of the ward;

~~[5.]~~ **(e)** The guardian has negligently failed to perform any duty as provided by law or by any order of the court and:

~~[a]~~ **1)** The negligence resulted in injury to the ward or the estate of the ward; or

~~[b]~~ **2)** There was a substantial likelihood that the negligence would result in injury to the ward or the estate of the ward;

~~[6.]~~ **(f)** The guardian has intentionally failed to perform any duty as provided by law or by any lawful order of the court, regardless of injury;

~~[7.]~~ **(g)** The best interests of the ward will be served by the appointment of another person as guardian; or

~~[8.]~~ **(h)** The guardian is a private professional guardian who is no longer qualified as a private professional guardian pursuant to NRS 159.0595.

2. A guardian shall not be removed if the sole reason for removal is the lack of funding to pay the guardian's fees.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

17

[Summary and examples of laws from other states provided by requester]

Who Should Decide

When a medical decision needs to be made for an incompetent patient, physicians should first inquire whether the patient had directly expressed wishes in a written document, such as a living will or a durable power of attorney for health care. If the patient has not left such a document, a surrogate should be appointed. Many states have codified protocols for identifying surrogates in the absence of any prior designation. In general, these statutes indicate that the family of the patient should be responsible for medical decisions. “Family” is generally understood to be the person’s closest biological or legally recognized relations.¹ Many states have established a hierarchy for identifying a surrogate decision maker in the absence of a documented advance directive. The order of priority for appointing a surrogate is often listed as legal guardian of the patient first, then a spouse, adult children of the patient, a parent of the patient, an adult sibling, and finally a close friend of the patient. In this report, family includes whoever is closely associated with the patient. For instance, unmarried living partners and close friends should be considered as appropriate decision makers in addition to spouses, children, parents, or siblings. Recognizing this extended concept of “family” is increasingly important as alternatives to marriage and the nuclear family unit become more common.¹ In the case where there is no person who is closely associated with the patient, but there are persons who both care about and have some relevant knowledge of the patient, these persons should participate in the decision-making process, and in some situations, may be appropriate surrogates.

The family’s default authority to make medical decisions for an incompetent patient rests on a number of bases. It is often claimed that families have an intimate knowledge of the patient’s values and can best make the same medical care decisions that the patient would have made. In addition, because an individual’s values are developed primarily in the family, family members are most familiar with the patient’s entire life context. Moreover, family members are generally the most concerned with the patient’s welfare for it is the family who has traditionally provided for the patient’s comfort, care, and best interests. Finally, participation “in an intimate association is one important way in which individuals find or construct meaning in their lives.”¹

While it is common to assume that family members are best suited to determine what the patient would have decided, there is significant evidence indicating a lack of concordance between patients’ treatment preferences and family members’ prediction of those preferences.⁹ Such information has caused many to question the moral authority of the family to make decisions.

However, most of these studies offer no alternative “default surrogate” that fares any better at predicting patient choices.¹⁰ Furthermore, the moral importance of the family as a social unit in which values and preferences are fostered and realized is consistently promoted and, in this case, codified into most regulations that designate a procedure for designating surrogacy.

Arizona Revised Statutes §36-3231 Surrogate decision makers; priorities; limitations

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A. If an adult patient is unable to make or communicate health care treatment decisions, a health care provider shall make a reasonable effort to locate and shall follow a health care directive. A health care provider shall also make a reasonable effort to consult with a surrogate. If the patient has a health care power of attorney that meets the requirements of section 36-3221, the patient's designated agent shall act as the patient's surrogate. However, if the court appoints a guardian for the express purpose of making health care treatment decisions, that guardian shall act as the patient's surrogate. If neither of these situations applies, the health care provider shall make reasonable efforts to contact the following individual or individuals in the indicated order of priority, who are available and willing to serve as the surrogate, who then have the authority to make health care decisions for the patient and who shall follow the patient's wishes if they are known:

1. The patient's spouse, unless the patient and spouse are legally separated.
2. An adult child of the patient. If the patient has more than one adult child, the health care provider shall seek the consent of a majority of the adult children who are reasonably available for consultation.
3. A parent of the patient.
4. If the patient is unmarried, the patient's domestic partner if no other person has assumed any financial responsibility for the patient.
5. A brother or sister of the patient.
6. A close friend of the patient. For the purposes of this paragraph, "close friend" means an adult who has exhibited special care and concern for the patient, who is familiar with the patient's health care views and desires and who is willing and able to become involved in the patient's health care and to act in the patient's best interest.

B. If the health care provider cannot locate any of the people listed in subsection A of this section, the patient's attending physician may make health care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision. For the purposes of this subsection, "institutional ethics

committee" means a standing committee of a licensed health care institution appointed or elected to render advice concerning ethical issues involving medical treatment.

C. A person who makes a good faith medical decision pursuant to this section is immune from liability to the same extent and under the same conditions as prescribed in section 36-3205.

D. A surrogate who is not the patient's agent or guardian shall not make decisions to withdraw the artificial administration of food or fluid.

E. A surrogate may make decisions about mental health care treatment on behalf of a patient if the patient is found incapable. However, a surrogate who is not the patient's agent or guardian shall not make decisions to admit the patient to a level one behavioral health facility licensed by the department of health services, except as provided in subsection F of this section or section 14-5312.01, 14-5312.02 or 36-3281.

F. If the admitting officer for a mental health care provider has reasonable cause to believe after examination that the patient is incapable as defined in section 36-3281, subsection D and is likely to suffer serious physical harm or serious illness or to inflict serious physical harm on another person without immediate hospitalization, the patient may be admitted for inpatient treatment in a level one behavioral health facility based on informed consent given by any surrogate identified in subsection A of this section. The patient shall be discharged if a petition for court ordered evaluation or for temporary guardianship requesting authority for the guardian to consent to admission to a level one behavioral health facility has not been filed within forty-eight hours of admission or on the following court day if the forty-eight hours expires on a weekend or holiday. The discharge requirement prescribed in this section does not apply if the patient has given informed consent to voluntary treatment or if a mental health care provider is prohibited from discharging the patient under federal law.

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TEXAS

HEALTH AND SAFETY CODE

CHAPTER 313. CONSENT TO MEDICAL TREATMENT ACT

§ 313.001. Short Title

This chapter may be cited as the Consent to Medical Treatment Act.

Added by Acts 1993, 73rd Leg., ch. 407, § 1, eff. Sept. 1, 1993.

§ 313.002. Definitions

In this chapter:

- (1) "Adult" means a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.
- (2) "Attending physician" means the physician with primary responsibility for a patient's treatment and care.
- (3) "Decision-making capacity" means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment and the ability to reach an informed decision in the matter.
- (4) "Hospital" means a facility licensed under Chapter 241.
- (5) "Incapacitated" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to any proposed treatment decision.
- (6) "Medical treatment" means a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.
- (7) "Nursing home" means a facility licensed under Chapter 242.
- (8) "Patient" means a person who is admitted to a hospital or residing in a nursing home.
- (9) "Physician" means:
 - (A) a physician licensed by the Texas State Board of Medical Examiners; or
 - (B) a physician with proper credentials who holds a commission in a branch of the armed services of the United States and who is serving on active duty in this state.
- (10) "Surrogate decision-maker" means an individual with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, § 1, eff. Sept. 1, 1993.

§ 313.003. Exceptions and Application

(a) This chapter does not apply to:

- (1) a decision to withhold or withdraw life-sustaining treatment from qualified terminal or irreversible patients under Subchapter B, Chapter 166;

(2) a health care decision made under a medical power of attorney under Subchapter D, Chapter 166, or under Chapter XII, Texas Probate Code;

(3) consent to medical treatment of minors under Chapter 32, Family Code;

(4) consent for emergency care under Chapter 773;

(5) hospital patient transfers under Chapter 241; or

(6) a patient's legal guardian who has the authority to make a decision regarding the patient's medical treatment.

(b) This chapter does not authorize a decision to withhold or withdraw life-sustaining treatment.

Added by Acts 1993, 73rd Leg., ch. 407, § 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 450, § 2.01, eff. Sept. 1, 1999.

§ 313.004. Consent for Medical Treatment

(a) If an adult patient in a hospital or nursing home is comatose, incapacitated, or otherwise mentally or physically incapable of communication, an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient may consent to medical treatment on behalf of the patient:

(1) the patient's spouse;

(2) an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;

(3) a majority of the patient's reasonably available adult children;

(4) the patient's parents; or

(5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

(b) Any dispute as to the right of a party to act as a surrogate decision-maker may be resolved only by a court of record having jurisdiction under Chapter V, Texas Probate Code.

(c) Any medical treatment consented to under Subsection (a) must be based on knowledge of what the patient would desire, if known.

(d) Notwithstanding any other provision of this chapter, a surrogate decision-maker may not consent to:

(1) voluntary inpatient mental health services;

(2) electro-convulsive treatment; or

(3) the appointment of another surrogate decision-maker.

Added by Acts 1993, 73rd Leg., ch. 407, § 1, eff. Sept. 1, 1993.

§ 313.005. Prerequisites for Consent

(a) If an adult patient in a hospital or nursing home is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician shall describe the:

- (1) patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and
- (2) proposed medical treatment in the patient's medical record.

(b) The attending physician shall make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision-makers. Efforts to contact those persons shall be recorded in detail in the patient's medical record.

(c) If a surrogate decision-maker consents to medical treatment on behalf of the patient, the attending physician shall record the date and time of the consent and sign the patient's medical record. The surrogate decision-maker shall countersign the patient's medical record or execute an informed consent form.

(d) A surrogate decision-maker's consent to medical treatment that is not made in person shall be reduced to writing in the patient's medical record, signed by the hospital or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

Added by Acts 1993, 73rd Leg., ch. 407, § 1, eff. Sept. 1, 1993.

§ 313.006. Liability for Medical Treatment Costs

Liability for the cost of medical treatment provided as a result of consent to medical treatment by a surrogate decision-maker is the same as the liability for that cost if the medical treatment were provided as a result of the patient's own consent to the treatment.

Added by Acts 1993, 73rd Leg., ch. 407, § 1, eff. Sept. 1, 1993.

§ 313.007. Limitation on Liability

(a) A surrogate decision-maker is not subject to criminal or civil liability for consenting to medical care under this chapter if the consent is made in good faith.

(b) An attending physician, hospital, or nursing home or a person acting as an agent for or under the control of the physician, hospital, or nursing home is not subject to criminal or civil liability and has not engaged in unprofessional conduct if the medical treatment consented to under this chapter:

- (1) is done in good faith under the consent to medical treatment; and
- (2) does not constitute a failure to exercise due care in the provision of the medical treatment.

Added by Acts 1993, 73rd Leg., ch. 407, § 1, eff. Sept. 1, 1993.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

18

NRS 319.147 Certification of assisted living facilities: Requirements; regulations.

1. The Division shall certify an assisted living facility for the purpose of providing services pursuant to the provisions of the home and community-based services waiver which are amended pursuant to NRS 422.2708 if the facility:

- (a) Provides assisted living supportive services to senior citizens of low or moderate income;
- (b) Provides or arranges for the provision of case management services for its residents;
- (c) Guarantees affordable housing for a period of at least 15 years after the facility is certified;
- (d) Is financed through tax credits relating to low-income housing or other public funds; and
- (e) Satisfies any other requirements set forth by the Division in any regulations adopted by the Division.

2. The Division shall adopt regulations concerning the certification of assisted living facilities pursuant to this section.

3. As used in this section:

- (a) "Assisted living facility" has the meaning ascribed to it in paragraph (a) of subsection 3 of NRS 422.2708.
- (b) "Assisted living supportive services" has the meaning ascribed to it in paragraph (b) of subsection 3 of NRS 422.2708.

(Added to NRS by 2005, 922)

ADMINISTRATIVE REGULATIONS.

Certification of assisted living facilities, NAC 319.251-319.265

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Asylums ! 3.

WESTLAW Topic No. 43.

C.J.S. Asylums and Institutional Care Facilities § 5.

C.J.S. Public and Private Institutional Care Facilities §§ 4-5, 8-10.

NRS 422.2708 Amendment of home and community-based services waiver to include as medical assistance under Medicaid funding of assisted living supportive services for senior citizens who reside in certain assisted living facilities.

1. The Department shall apply to the Secretary of Health and Human Services to amend its home and community-based services waiver granted pursuant to 42 U.S.C. § 1396n. The waiver must be amended, in addition to providing coverage for any home and community-based services which the waiver covers on June 4, 2005, to authorize the Department to include as medical assistance under Medicaid the funding of assisted living supportive services for senior citizens who reside in assisted living facilities which are certified by the Housing Division of the Department of Business and Industry pursuant to NRS 319.147.

2. The Department shall:

- (a) Cooperate with the Federal Government in amending the waiver pursuant to this section;
- (b) If the Federal Government approves the amendments to the waiver, adopt regulations necessary to carry out the provisions of this section, including, without limitation, the criteria to be used in determining eligibility for the assisted living supportive services funded pursuant to subsection 1; and
- (c) Implement the amendments to the waiver only to the extent that the amendments are approved by the Federal Government.

3. As used in this section:

- (a) "Assisted living facility" means a residential facility for groups that:
 - (1) Satisfies the requirements set forth in subsection 7 of NRS 449.037; and
 - (2) Has staff at the facility available 24 hours a day, 7 days a week, to provide scheduled assisted living supportive services and assisted living supportive services that are required in an emergency in a manner that promotes maximum dignity and independence of residents of the facility.
- (b) "Assisted living supportive services" means services which are provided at an assisted living facility to residents of the assisted living facility, including, without limitation:

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- (1) Personal care services;
 - (2) Homemaker services;
 - (3) Chore services;
 - (4) Attendant care;
 - (5) Companion services;
 - (6) Medication oversight;
 - (7) Therapeutic, social and recreational programming; and
 - (8) Services which ensure that the residents of the facility are safe, secure and adequately supervised.
- (Added to NRS by 2005, 922)

ADMINISTRATIVE REGULATIONS.

Certification of assisted living facilities, NAC 319.251-319.265

WEST PUBLISHING CO.

Health ! 472.

WESTLAW Topic No. 198H.

C.J.S. Social Security and Public Welfare §§ 256-259.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

23

CITIZENS FOR PATIENT DIGNITY
Proposals for New Laws to be Considered for Drafting
During the 2011 Legislative Session

This is not an issue that can wait. We anticipate more suffering and more unnecessary deaths if we do not take action now. It could be you or me or our mothers.

Legislation has done little to curb elder neglect in nursing homes in Nevada. Arkansas passed the most effective reform to date: a 1999 law requiring that a coroner investigate every nursing home death. County coroner Mark Malcolm offered the bill and testified he found 21 nursing home deaths where the causes were unacceptable. And THAT was within the first six months of the passage of the law.

Rep. Henry Waxman of California has a nursing home bill he sponsored requiring each patient have at least 4 hours of care per day. Florida has funded a similar law requiring nursing homes to provide a minimum of 2.9 hours of care to each patient per day in order to carry out an appropriate standard of care. We must pass our own mandated staffing law to follow Oregon. We have enclosed a copy of the Oregon law to make it extremely easy for Nevada to follow suit. When this is implemented into law, many of the other problems will disappear, such as not having time to properly care for patient needs like changing diapers, feeding, bathing, bathroom needs, giving medication and more.

Why should some nursing homes be allowed to continuously be short-staffed, therefore putting more money into the owners' pocket when the patients are spending \$4,000 to \$6,000 a month for care they are not receiving? The good nursing homes tell us they are never short of help because they call for temporary help from agencies who supply personnel when needed. This allows the homes to properly care for patient needs. All staffing would be equal when we can pass the mandated staffing law. It is the #1 change we need to see happen in Nevada. It is shameful that nursing homes are understaffed given that the majorities are for profit. Patients are dying from preventable causes like dehydration, malnutrition, infections from bed sores and neglect. Employees tell us they over worked, underpaid and understaffed. Tell us, how much longer do our legislators plan to heed the same nursing home excuses before they help us fix the problems with mandated staffing.

The investigating arm of Congress said their accountability office released data that showed 300,000 nursing home residents live in facilities where they are at great risk of harm due to woefully deficient care. Who wouldn't want to fix this problem now while we have the opportunity to improve senior's lives in their last years? There are way too many reports of physical and sexual abuse which makes us know that working cameras need to be incorporated into all nursing homes. Owners and administrators need to improve their hiring practices and background checks.

There are no other businesses in existence today that are allowed to operate so poorly; especially those involving human beings. Why should we allow it in the nursing home industry? Confined terrorists get better oversight.

Let's do more than keep track of reporting elder abuse cases, doing research, providing statistics that are never acted upon, and over all, wasting taxpayer money to no avail. In the meantime, nursing home populations suffer.

We know there is a horrific pattern of neglect, abuse and death from the overuse of drugs. We can make a difference if legislation will pass the necessary laws. That's all they have to do. We know the old saying that it is easier to do nothing than to shake the status quo. If we do not admit and face this crisis, and continue to ignore it, nothing will be accomplished. Legislators are elected to solve problems for their constituents; to make life better. The question is, are they making life better for the elderly? Millions of dollars and advocacy are given to children's causes. Do we really want to be put out on the ice floe after 65?

Let's tell the nursing home lobbyists they are not in control, this is not a money issue. It's a moral issue. Lobbyists know money talks. But, it is past time to put money above human life in the nursing home situation.

We were extremely disappointed we did not have any major changes made in the 2009 legislative session. President Obama is doing his share to improve the medical system, and it is our turn to do our share to change things in Nevada. Let's get Nevada up to the top 10 so that we can honestly encourage seniors to move to, and retire in Las Vegas. We want to make Las Vegas senior's last years as free of fear, suffering and horror as possible.

Obviously, we can't do it without your help. Please, listen and believe; what we have told you is a reality, but it is not a show.

CITIZENS FOR PATIENT DIGNITY

**DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES DIVISION
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 86**

**NURSING FACILITIES/LICENSING –
ADMINISTRATION AND SERVICES**

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(g) The plan shall include an assessment of the resident's potential for discharge and the facility's efforts to work toward discharge;

(h) The plan shall be available to and followed by all staff involved with care of the resident.

(3) Documentation:

(a) The care plan shall be written in ink and made a part of the resident's clinical record;

(b) Participation in development of the care plan by interdisciplinary staff will be clearly documented.

Stat. Auth.: [ORS 410.070, 410.090 & 441.055](#)

Stats. Implemented: [ORS 441.055 & 441.615](#)

411-086-0100 Nursing Services: Staffing

(Amended 8/28/2008)

(1) STAFFING PLAN.

(a) The facility must have and implement a written plan that:

(A) Ensures staffing sufficient to meet the minimum staffing requirements described in sections (3), (4) and (5) of this rule;

(B) Ensures staffing sufficient to meet the needs of each resident; and

(C) Identifies procedures to obtain required staff when absences occur.

(b) The facility must maintain a written, weekly staffing schedule showing the number and category of staff assigned to each shift and the person to be called in the event of any absence.

(2) DAILY STAFF PUBLIC POSTING.

(a) The facility must have the number of on-duty nursing staff publicly posted 24 hours each day using form [SDS 0717](#).

(A) The posted report must be prominently displayed in a public area, readily accessible to residents and visitors, as described in [OAR 411-085-0030\(1\)\(b\)](#).

(B) The posted report must be at least 8.5 x 14 inches and printed in a minimum font size of 16.

(C) The staffing information must be an accurate reflection of the actual staff working each shift.

(b) The posted staffing report must include:

(A) Facility name;

(B) Current date;

(C) Current resident census per shift;

(D) The total number and actual hours worked by registered nurses (RNs), licensed practical nurses (LPNs) and nursing assistants (CNAs and NAs) directly responsible for resident services per shift; and

(E) The minimum staffing standard, nursing assistant to resident ratio, referenced at section (5)(c) of this rule.

(c) The facility must, upon oral or written request, make direct care staffing data available to the public for review at a cost not to exceed the community standard.

(d) The facility must maintain the posted nurse staffing data for a minimum of 18 months.

(3) MINIMUM STAFFING, GENERALLY. Resident service needs must be the primary consideration in determining the number and categories of nursing personnel needed. Nursing staff must be sufficient in quantity and quality to provide nursing services for each resident as needed, including

restorative services that enable each resident to achieve and maintain the highest practicable degree of function, self-care and independence, as determined by the resident's care plan. Such staffing must be provided even though it exceeds other requirements specified by this rule or specified in any waiver.

(4) MINIMUM LICENSED NURSE STAFFING.

(a) Licensed nurse hours must include no less than one RN hour per resident per week.

(b) When a RN serves as the administrator in the temporary absence of the administrator, the RN's hours must not be used to meet minimum nursing hours.

(c) In facilities with 41 or more beds, the hours of a licensed nurse who serves as facility administrator must not be included in any licensed nurse coverage required by this rule.

(d) The licensed nurse serving as a charge nurse must not be counted toward the minimum staffing requirement under section (5)(c) of this rule.

(e) The facility must have a licensed charge nurse on each shift, 24 hours per day.

(A) A RN must serve as the licensed charge nurse for no less than eight consecutive hours between the start of day shift and the end of evening shift, seven days a week.

(B) The Director of Nursing Services may serve as the charge nurse only when the facility has 60 or fewer residents.

(C) Section (4)(e) of this rule may be waived by the Seniors and People with Disabilities Division (SPD). The request for waiver must comply with [OAR 411-085-0040](#) and must be reviewed annually. This waiver shall be considered by SPD if the facility certifies that:

(i) It has been unable to recruit appropriate personnel despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities);

(ii) The waiver must not endanger the health or safety of residents; and

(iii) A RN or physician is available and obligated to immediately respond to telephone calls from the facility.

(5) MINIMUM CERTIFIED NURSING ASSISTANT STAFFING.

(a) The facility must determine the specific time frame for beginning and ending each consecutive eight-hour shift using one of the following options:

(A) Option 1.

(i) Day shift from 5:30 a.m. to 1:30 p.m.

(ii) Swing shift from 1:30 p.m. to 9:30 p.m.

(iii) Night shift from 9:30 p.m. to 5:30 a.m.

(B) Option 2.

(i) Day shift from 6 a.m. to 2 p.m.

(ii) Swing shift from 2 p.m. to 10 p.m.

(iii) Night shift from 10 p.m. to 6 a.m.

(C) Option 3.

(i) Day shift from 6:30 a.m. to 2:30 p.m.

(ii) Swing shift from 2:30 p.m. to 10:30 p.m.

(iii) Night shift from 10:30 p.m. to 6:30 a.m.

(D) Option 4.

(i) Day shift from 7 a.m. to 3 p.m.

(ii) Swing shift from 3 p.m. to 11 p.m.

(iii) Night shift from 11 p.m. to 7 a.m.

(b) Each resident must have assigned and be informed of the nursing assistant responsible for his or her care and services on each shift. The numbers listed in this rule represent the minimum staffing requirement. The numbers do not represent sufficient nursing staff. The number of staff necessary to meet the needs of each resident determines sufficient nursing staff.

(c) The number of residents per nursing assistant must not exceed the ratios:

(A) Beginning March 1, 2008:

(i) DAY SHIFT: 1 nursing assistant per 8 residents.

(ii) SWING SHIFT: 1 nursing assistant per 12 residents.

(iii) NIGHT SHIFT: 1 nursing assistant per 20 residents.

(B) Beginning April 1, 2009:

(i) DAY SHIFT: 1 nursing assistant per 7 residents.

(ii) SWING SHIFT: 1 nursing assistant per 11 residents.

(iii) NIGHT SHIFT: 1 nursing assistant per 18 residents.

(d) Each facility must submit a quarterly staffing report to SPD, using a SPD approved method and format. The report must provide an accurate daily account of resident census and nursing assistant staffing levels for each shift.

(A) The facility must submit the report to SPD no later than the end of the month immediately following the end of each calendar quarter. (Example: For the calendar quarter ending March 31, the report must be received no later than April 30.)

(B) The report must specify the shifts in which the minimum staffing standards, as set forth in section (5)(c) of this rule, were not met.

(C) The facility must provide documents to support the quarterly staffing report, including payroll records, upon request of SPD.

(e) This rule does not prohibit nursing assistants from providing services to a resident to whom they are not assigned.

(f) The facility must ensure that nursing assistants only perform those tasks for which they are competent and qualified to perform and that are permitted by [ORS chapter 678](#) and [OAR 851-063-0030](#).

(g) Nursing assistants with a restricted duty status may be counted toward meeting the minimum staffing ratio, as set forth in section (5)(c) of this rule, if the nursing assistant is able to perform 90 percent of the authorized duties and responsibilities, with or without accommodation, required by a certified nursing assistant as determined by the Oregon State Board of Nursing ([OAR 851-063-0030\(1\)\(a\)\(A\) through OAR 851-063-0030\(1\)\(g\)\(H\)](#)).

(h) The facility must ensure that nursing assistants are not assigned more residents than the number for which they can meet the individual service needs.

(i) The facility must have a minimum of two nursing staff on duty within the facility at all times.

(j) Nursing staff must be present at all times, in each detached building, distinct and segregated area, including those separated by closed doors, and on each level or floor where residents are housed.

(k) Nursing assistants do not include dining assistants.

(l) Effective September 1, 2008, nursing assistants serving as restorative aides must not be counted toward the minimum staffing requirement under section (5)(c) of this rule.

(m) A facility cannot employ any person as a nursing assistant for longer than four months from the date of hire, without an Oregon State Board of Nursing issued CNA 1 certification.

(n) The facility must ensure no more than 25 percent of the nursing assistants assigned to residents per shift, pursuant to section (5)(c) of this rule, are uncertified nursing assistants.

(6) CERTIFIED MEDICATION AIDES.

(a) The facility must ensure that all nursing assistants administering non-injectable medications are certified as nursing assistants and as medication aides. Documentation of these two certifications must be maintained in the facility.

(b) The certified medication aide assigned to administer medications must not be counted toward meeting the minimum staffing requirements for direct service of residents, referenced at section (5)(c) of this rule.

Stat. Auth.: [ORS 410.070, 410.090, 441.055, 441.073 & 441.615](#)

Stats. Implemented: [ORS 410.070, 410.090, 441.055, 441.073 & 441.615](#)

411-086-0110 Nursing Services: Resident Care

(Adopted 10/1/1990)

(1) Nursing Services Generally. Nursing services staff shall provide and document nursing services for each resident. Nursing staff shall provide services to attain and maintain the highest practicable physical, mental and psychosocial well-being, independence, self-direction, and self-care of each resident, including:

(a) Good grooming and cleanliness of body, skin, nails, hair, eyes, ears, and face, including removal or shaving of hair in accordance with resident wishes, and prompt assistance with toileting needs and care for incontinence;

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

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Overview of Wage-Proportionate Disbursements

[Summary Provided by Rick Cline, Volunteer Advocate and Member of People First]

What are Wage-Proportionate Disbursements?

Instead of offering only one payment rate, (disbursements), to all home care provider agencies, (no matter what their quality of services or wages they pay), Wage-Proportionate Disbursements would set three or four different disbursement rates that are applied according to the wages companies actually pay their caregivers. (See ... Example/Suggestion.)

- Medicaid administration will maintain the right to adjust the rates and category margins, (monthly or quarterly), in order to keep in balance with their established budget for home care services.
- Medicaid administrators must structure the disbursement rate categories in a way conducive to higher wages. Minimally, a spread of \$2 or \$3 between the high and low disbursement rate categories is required to effectively encourage wage protection/increase.
- Provider agencies would bill for the actual service hours they provide within each new rate category, not merely averaging the wages they pay out.

What effects and benefits will it achieve?

Wage-Proportionate Disbursements will encourage participation in the caregiving field, (which is facing an imminent shortfall* of workers). It will give some protection to caregivers should further cutbacks be imposed. This ultimately helps the recipient of home care services with greater availability and overall quality of caregivers.

It will do these things by encouraging higher wages and discouraging further cutbacks from falling completely upon the caregivers...it will accomplish this while keeping in balance with the current budget limitations for the services.

- Companies with business models that offer higher wages will be encouraged to continue with that model.
- Some companies will choose to continue with their same lower wage structure and receive the lower disbursements... Because, in many instances the gross profit margin remains higher.
- Virtually all of the home care provider companies will look at their bottom line and consider raising wages.
- If there are further cutbacks, fewer companies will pass along the entire loss onto their caregivers.

Why protect caregiver wages with Wage-Proportionate Disbursements?

- It is crucial to maintain quality caregiver availability for Nevada's people who must have caregiver services in order to remain outside of institutions.
- There is an accelerating increase in the need for home care and a shrinking pool of available home caregivers. This caregiver shortage must be addressed.*
- The caregiver position requires significant responsibilities, often including life preserving tasks. The current average wage for this vital position is under \$10 per hour.
- Almost all the previous \$1.50 cutback of disbursements, (June 09), for home care was passed directly onto the individual caregiver employees.

Example/Suggestion for Disbursement Rate Categories...

- Companies paying their caregivers \$12.25 or more would receive \$1 increase in their disbursement to \$18.02.
- Companies paying \$10.50 - \$12.24 per hour, would remain at the current disbursement level of \$17.02 per hour. (Similarly, those doing case management services would continue at their current rate of \$18.52 if their wage/benefit falls within this category.)
- Companies paying \$9.00 - \$10.49 per hour would suffer a one dollar cut in their disbursement... \$16.02 per hour.
- Companies paying minimum wage, \$7.55 up to \$8.99 per hour would receive the lowest disbursement... \$15.02 per hour.

Other Factors Must Be Included...

- Companies providing a qualified health plan in behalf of an employee are granted \$1.00 per hour toward their rate category determinations, (applying similar standards as the Nevada minimum wage law).
- Should include significant penalties for incorrect filing by any provider agency.
- In order to encourage new company startups, (perhaps for a six-month period), and tiny companies, (perhaps those having five or less employees) would be granted an additional \$1.00 toward their rate category determination.
- An approximation of the existing number of hours that would fall within each of the proposed category disbursement rates is necessary to establish a reasonable baseline. (The rate categories would be adjusted after the first month to bring in balance with the targeted budget for the services.)
- Also, requires adding the three or four new unit rates and code numbers to billing forms.

Why do this extra work?

- It will do much to alleviate, (in a cost-effective manner), a serious caregiver availability and quality problem that is threatening increased, inappropriate institutionalization in our State.
- People with disabilities endorse Wage-Proportionate Disbursements saying, *“We want to encourage the people who take care of us with fair wages. Then, many more will stick with their job as a career and provide us with better care. We are **not** asking you to pay more to the home care businesses. You can encourage...these businesses to pay more to the people who take care of us.”*

* Census Bureau statistics show there will be a 7% shift of the baby boomers into the very old population demographic. This means a major decrease in the population groups available to provide this type of services. And, at the same time, there will be an equally major increase in the numbers of very old people who will require at-home services to remain outside of institutions.

Notes/Comments

- The suggested threshold for the highest disbursement rate is \$12.25, rather high. So that... it is predictable that with such initial rate margins, the initial payouts from Medicaid for the services will generate an overall cut back. (This is because more agencies will experience a cutback that will receive the higher rate.) This buffer will allow Medicaid to initiate and safely maintain control of their payouts at the \$17.02 average hourly payout. They would then be required to adjust the rates the following month to appropriately balance out their previously gained revenues.
- To minimize the shock of rate changes for home care providers, and to better encourage higher wages, the highest disbursement rate's qualifying amount, (the threshold of the next lower rate), should be the primary adjustment factor Medicaid uses to balance the overall payout with their targeted budget.
- Medicaid would only need to adjust that factor on a regular basis to maintain the \$17.02 per hour average payout for the services .
- Wage-Proportionate Disbursements for homecare service providers must maintain an adequate range between its rate categories in order to be effective. Minimally, a \$2 spread is needed to have any beneficial effect. A \$3 spread would better protect wages and more effectively encourage participation in the care giving field by more qualified workers.
- The legislation language must include a binding purpose statement. It should require Medicaid administrators to make its adjustments in a way that not only agrees with the budget target but, it must also include that whenever they adjust the rate categories, they do it in a manner most conducive to protecting the caregivers' wages.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

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Nevada Adult Day Healthcare Centers

"We Strive to Maintain the Independence of our Elderly & Disabled Citizens"

Date: May 2, 2010

To: **Legislative Committee on Senior Citizens, Veterans and
Adults with Special Needs - Assemblywoman , Chair**

From: Christopher A. Vito, MHA

Subject: Bill Language for the Labor-HHS Appropriations Bill

For your kind consideration, attached to this memorandum is bill language to be inserted to the State Labor-Health & Human Services Appropriations Bill.

It specifically cites Section 1903(a) of the Social Security Act to insure appropriate funding of adult day health care services and non-emergent transportation for adult day health care services.

But before you consider incorporating such language into law, I would like you to know that Adult Day Health Care Services (ADHC - the Medical Model) endorses and practices **Preventive Care**. I would also like to present factual data on the basis that ADHC is:

1. **Cost effective:** Based on the 2010 Cost of Care Data from Genworth Financial and other experts, the annual cost of Nursing Home is 400%, Assisted Living 200%, Home Health 280% **more** than ADHC services. Without daily health monitoring and preventive care in the ADHC, an elderly or disabled person can potentially be admitted to inpatient hospitalization which can easily be 5000% more per day than ADHC services.
2. **Clinically Effective:** ADHC (Medical Model) monitors the Clients' health, activity and medications daily - which improves or maintains their level of functioning and decrease their decline in functioning due to disease and/or the aging process.
3. States throughout the country have recognized the value and effectiveness of ADHC. To date, 78 State Legislators in 26 States and just last week Dina Titus' Office in Washington, DC called to announce their sponsorship of the **Medicare Adult Day Care Services Act of 2009**. Legislators throughout the country have recognized that ADHC is a very cost-effective, suitable and helpful alternative level of care.

Also attached are data and statements that will support the 3 vital points above. Ms. Joiner and Ms. Benum of the Nevada Legislative Counsel Bureau have copies of the supporting data.

Lastly, I would like you to consider to "SHARE THE CARE". When Americans don't have the patience to care for their elderly or disabled loved one, they expect the State (Medicaid) to care for them. I would like to propose having the State take care of their loved one during the day (ADHC) and have the family member take responsibility in taking care of them during the evening; "SHARE THE CARE".



Nevada Adult Day Healthcare Centers

"We Strive to Maintain the Independence of our Elderly & Disabled Citizens"

**Kindly consider inserting the following
in the appropriate section of the
Labor-HHS Appropriations Bill:**

"No funds shall be appropriated for the Secretary of Health and Human Services to withhold, suspend, disallow, or deny federal financial participation under section 1903(a) of the Social Security Act for adult day health care services or medical adult day care services and non-emergent transportation for adult day care health care services as defined under a State Medicaid plan approved during or before 1994, or withdraw federal approval of any such State Plan provision. This [subsection] shall apply to fiscal year 2011 and each fiscal year thereafter."



Nevada Adult Day Healthcare Centers

"We Strive to Maintain the Independence of our Elderly & Disabled Citizens"

Adult Day Healthcare Services are:

1. **COST-EFFECTIVE:**

- a. Based on the 2010 Cost of Care - Long Term Care Survey by Genworth Financial, if the option of adult day healthcare services (ADHC) were eliminated, the cost of alternative levels of care (i.e. Nursing Home, Home Health, Assisted Living) can range from 200%-400% **more** to the State of Nevada Medicaid Program. Please see below.

	California	Arizona	Oregon	NEVADA
Nursing Home	\$87,345	\$79,840	\$83,950	\$76,833
Home Health	\$46,904	\$45,760	\$46,904	\$47,476
Assisted Living	\$42,000	\$36,600	\$44,040	\$33,000
Adult Day Healthcare	\$20,020	\$20,150	\$25,215	\$16,900

<<< Annual Cost >>>

(http://www.genworth.com/content/products/long_term_care/long_term_care/cost_of_care.html)

- Without the Daily Monitoring & Preventive Care in ADHC, the cost of inpatient hospitalization to the State of Nevada Medicaid will certainly be exponential.
- b. Rick Zawadski, PhD, nationally recognized for his role in designing and studying cost-effective models of long-term care wrote an article in June 5, 2009, *"Don't Mess With Success"* which describes the unintended consequence of cutting community-based long-term programs like Adult Day Healthcare Services. See attached.
- c. Data that supports Adult Day Healthcare Services is cost-effective is supported by:
- American Association of Homes and Services for the Aging; Washington, DC
 - & AARP Washington, DC
 - UC San Francisco Institute for Health & Aging
 - University of Massachusetts Boston Gerontology Institute
 - National Adult Day Care Services Association
- d. "THE NEED" for Adult Day Healthcare Centers in Nevada:
- The Robert Wood Johnson Foundation appointed Wake Forest University to perform a National Adult Day Care Study in 2003. Please see diagram below:



Nevada Adult Day Healthcare Centers

"We Strive to Maintain the Independence of our Elderly & Disabled Citizens"

Wake Forest University ADHC Study for the State of Nevada in "2003"	Current Status of ADHC in the State of Nevada 2010
Need for ADHC Centers in Nevada = 49 Centers	Need for ADHC in Nevada = 49+ because of the growing elderly population since 2003.
Percentage of Need Met = 11%	Percentage of Need Met = <11%
Need for New ADHC in Clark County = 33	Current Number of ADHC in Clark County = 7
Need for New ADHC in Washoe County = 7	Current Number of ADHC in Washoe County = 1
100% of ADHC operate at a Deficit due to low reimbursement. This means that the life expectancy of an ADHC business is 2 years or less.	No accurate number of Centers who have opened then closed.
According to the Division of Health Care Financing, the number of Medicaid Beneficiaries using ADHC in 2003 = 100 Clients	Nevada Adult Day Healthcare Centers alone have enrolled over 800 Clients to date, since 2004.

2. CLINICALLY EFFECTIVE:

- a. ADHCs have a professional staff of RNs, LPNs, PT-OT-ST, Physicians, Dentist, Podiatrist, Psychiatrist, Registered Dietician, Music & Art Therapists, Imaging & Lab Services. The published studies below justify ADHCs clinical effectiveness.
 - i. **Nina M. Silverstein, PhD** – College of Public & Community Service and the Gerontology Institute; University of Massachusetts Boston. "A Study of Adult Day Health Services in Massachusetts". Adult Day Healthcare Centers' ability to care for physical & cognitive impairments are gaining more attention because the baby boomers are entering "late-life" stages.
 - ii. **Nora Gibson, MSW**; ElderHealth Northwest. Positive impact on Clients state of mind. Improvements in Clients memory and behavior.
 - iii. **Francis G. Caro, PhD** – Gerontology Institute, University of Massachusetts Boston. Transportation: A Crucial Issue for Adult Day Care. "Without adequate transportation services there would be no adult day care program".
 - iv. **Amy L. Stern, PhD** – Gerontology Institute, University of Massachusetts Boston. Consumers Perspective on Quality Adult Day Care
 - v. Administrator & Director of Nurses of Nevada Adult Day Healthcare Centers, **Cristina Vito, RN** has compiled a sample size of 100 Clients with various physical, mental and emotional ailments. Based on her findings, undoubtedly - there are improvement in their physical ability, cognition and emotional outlook on life. Data was gathered through Client Charts, very similar to Hospital Charts.



Nevada Adult Day Healthcare Centers

"We Strive to Maintain the Independence of our Elderly & Disabled Citizens"

3. Medicare Adult Day Care Services Act of 2009:

- a. **Issue:** A recent New England Journal of Medicine article reported that 20% of Medicare beneficiaries who were discharged from the hospital were readmitted within 30 days, and that 12% of those readmissions were preventable. The number of older adults in the United States is dramatically growing and this population, including the 78 million aging baby boomers, will *require more cost-effective, quality-oriented community-based options*. In other words, experts believe ADHC is an ideal alternative level of care that can save Medicare money!
- b. **Solution:** The **Medicare Adult Day Services Act of 2009** (introduced by Representative Linda Sanchez (CA-39)) allows Medicare beneficiaries to use adult day service programs that are certified, licensed, or accredited under an approved accreditation agency to provide post-acute services under Medicare. Medicare adult day care agencies would be required to provide the same services, and follow the same strict regulations under the prospective payment system and conditions of participation as Medicare-certified home health agencies. This will insure quality of care. We hope it will deter fraud and abuse.
- c. Attached is the current list of Legislators who are Co-Sponsors to HR3043, the Medicare Adult Day Services Act of 2009 as of April 2010. The number of Legislators and States co-sponsoring this Bill are growing.

I will be more than happy to discuss these justifications further if you wish. In addition, I do have a plan to discourage fraud and abuse of ADHC Medicaid Benefits. The State of California had so much Medicaid fraud that they put a moratorium on licensing anymore ADHC.

Full Text of HR 3043 is at <http://www.govtrack.us/congress/bill.xpd?bill=h111-3043>

Co-Sponsors for HR3043, the Medicare Adult Day Services Act of 2009

There are currently 72 co-sponsors, representing 27 states, for the Medicare Adult Day Services Act of 2009 (HR3043) (as of 4/19/10), which was introduced by Rep. Linda Sánchez (D-CA 39th) on 6/25/09.

Co-sponsors (listed alphabetically by state, in numerical district order):

1. Rep. Marion Berry (D-AR 1st)
2. Rep. Ann Kirkpatrick (D-AZ 1st)
3. Rep. Ed Pastor (D-AZ 4th)
4. Rep. Raul Grijalva (D-AZ 7th)
5. Rep. Lynn Woolsey (D-CA 6th)
6. Rep. Pete Stark (D-CA 13th)
7. Rep. Zoe Lofgren (D-CA 16th)
8. Rep. Sam Farr (D-CA 17th)
9. Rep. Lois Capps (D-CA 23rd)
10. Rep. Howard Berman (D-CA 28th)
11. Rep. Judy Chu (D-CA 32nd)
12. Rep. Lucille Roybal-Allard (D-CA 34th)
13. Rep. Maxine Waters (D-CA 35th)
14. Rep. Grace Napolitano (D-CA 38th)
15. Rep. Loretta Sanchez (D-CA 47th)
16. Rep. Bob Filner (D-CA 51st)
17. Rep. Dianna DeGette (D-CO 1st)
18. Rep. Eleanor Holmes Norton (D-DC)
19. Rep. Alcee Hastings (D-FL 23rd)
20. Rep. Henry (Hank) Johnson (D-GA 4th)
21. Rep. John Lewis (D-GA 5th)
22. Rep. Madeleine Bordallo (D-GU)
23. Rep. Leonard Boswell (D-IA 3rd)
24. Rep. Jesse Jackson Jr. (D-IL 2nd)
25. Rep. Luis Guterres (D-IL 4th)
26. Rep. Danny Davis (D-IL 7th)
27. Rep. Andre Carson (D-IN 7th)
28. Rep. Dennis Moore (D-KS 3rd)
29. Rep. John Olver (D-MA 1st)
30. Rep. James McGovern (D-MA 3rd)
31. Rep. Barney Frank (D-MA 4th)
32. Rep. Edward Markey (D-MA 7th)
33. Rep. Michael Michaud (D-ME 2nd)
34. Rep. Collin Peterson (D-MN 7th)
35. Rep. Russ Carnahan (D-MO 3rd)
36. Rep. Emanuel Cleaver II (D-MO 5th)
37. Rep. Larry Kissell (D-NC 8th)
38. Rep. Steven Rothman (D-NJ 9th)
39. Rep. Donald Payne (D-NJ 10th)
40. Rep. Rush Holt (D-NJ 12th)
41. Rep. Albio Sires (D-NJ 13th)
42. Rep. Tim Bishop (D-NY 1st)
43. Rep. Steve Israel (D-NY 2nd)
44. Rep. Carolyn McCarthy (D-NY 4th)
45. Rep. Greg Meeks (D-NY 6th)
46. Rep. Yvette Clarke (D-NY 11th)
47. Rep. Nydia Velazquez (D-NY 12th)
48. Rep. Carolyn Maloney (D-NY 14th)
49. Rep. Eliot Engel (D-NY 17th)
50. Rep. Paul Tonko (D-NY 21st)
51. Rep. Maurice Hinchey (D-NY 22nd)
52. Rep. Dan Maffei (D-NY 25th)
53. Rep. Eric Massa (D-NY 29th)
54. Rep. Dennis Kucinich (D-OH 10th)
55. Rep. John Boccieri (D-OH 16th)
56. Rep. Tim Ryan (D-OH 17th)
57. Rep. Earl Blumenauer (D-OR 3rd)
58. Rep. Joe Sestak (D-PA 7th)
59. Rep. Patrick Kennedy (D-RI 1st)
60. Rep. James Langevin (D-RI 2nd)
61. Rep. Steve Cohen (D-TN 9th)
62. Rep. Al Green (D-TX 9th)
63. Rep. Ron Paul (R-TX 14th)
64. Rep. Ruben Hinojosa (D-TX 15th)
65. Rep. Sheila Jackson Lee (D-TX 18th)
66. Rep. Charles Gonzalez (D-TX 20th)
67. Rep. Lloyd Doggett (D-TX 25th)
68. Rep. Gene Green (D-TX 29th)
69. Rep. James Moran (D-VA 8th)
70. Rep. Peter Welch (D-VT At-Large)
71. Rep. Jim McDermott (D-WA 7th)
72. Rep. Gwen Moore (D-WI 4th)

For information on co-sponsoring, please contact Rep. Sánchez's Legislative Director, celeste.drake@mail.house.gov, (202) 225-6676.

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

26

**AARP Nevada Recommendations to the Legislative Committee on Senior Citizens,
Veterans and Adults with Special Needs.**

May 14, 2010

Chairman McClain,

AARP Nevada appreciates the efforts of the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs, and is pleased to be able to provide recommendations for the Committee to consider for their legislative focus.

1. Stable and adequate funding for services.

Funding for services for seniors and the disabled is on a continual see-saw related to tobacco settlement sweeps, general fund transfers, and federal matching funds. Nevada needs to create stable base priority funding amounts for the services that are desperately needed across our state. They are truly the “essential services” as described by the Aging and Disability Services Division as what will be funded in Nevada. Continually cutting the tobacco settlement Independent Living Grants to transfer money back to the general fund causes harm to not just to the consumers who rely on the services, but will put the programs and small businesses that provide the services in jeopardy. Constantly funding and then cutting Medicaid HCBS slots, or optional Medicaid services creates problems for families, and does not allow the state to adequately plan or provide for the actual needs in the community. Waiting lists for services at times seems to be a function of funding strategy instead of serving the community.

2. Home and Community Based Services prioritization.

It is proven in Nevada that providing HCBS (Home and Community Based Services) is fiscally prudent and increases quality of life. The Medicaid costs for the CHIP services vs nursing homes shows you can take care of 4 people in the community for the cost of one nursing home client. States across the country have looked at Medicaid rebalancing as a way to stabilize or slow their rapidly growing Medicaid budgets, as well as providing the services families really want. Nevada must address this institutional bias that exists in our state.

3. Protect Tobacco Master Settlement Agreement funds.

Nevada continues to turn to the tobacco settlement revenue to help fill the budget shortfall. These reductions in program funding combined with decreasing revenues from the settlement threaten the Independent Living Grants and other programs it funds. We have already cut the ILG's by 20% and Mike Willden at a presentation today said they expect the revenue to come in at 10% lower than anticipated. There have also been discussions of moving the ILG program funding to a more stable source, like the general fund, but with the tremendous shortfalls we are experiencing now is not the time to consider this. Nevada needs to recognize that the Independent Living Grants are the backbone of community provided services across the state; that help provide independence and dignity to Nevada seniors and their families. They keep people out of institutions and this saves the state in future costs. These programs when reduced and/or threatened not only harm the consumers but also hurt the local businesses that provide the services and jobs in their communities.

4. Strengthen the elder abuse statute.

The elder abuse statute was weakened when clergy and attorneys were removed from the list of mandatory reporters for elder abuse. The reasoning for excluding them is flawed, as there is a separate statute that covers client privilege or confidentiality relating to their professions. This creates a wide open hole in the statute that must be addressed. Advocates for seniors have been very concerned over this since it happened, and have spoken out for these two groups to be added back into the statute.

5. Nursing Homes refusing to accept their patients following hospitalization.

Nursing homes have used emergency rooms and short hospitalizations to “get rid” of patients that have behavioral issues and they don’t want to care for. There is no policy of how long they have to hold a bed – Medicaid will not pay two providers for services at the same time. This creates hardships for families and patients as these are commonly the patients that are forced to go to nursing homes out of state. This ends up costing the state much more as Nevada continues to pay for their care in an out of state facility. This practice must be stopped, and nursing homes must be required to take back their patients unless they are at capacity. Nursing homes are not operating at capacity and continue to complain about their revenue streams, yet they are refusing to accept their own patients when they are ready for discharge from the hospital. The Hospital Association has voiced that this is a problem for them, and the advocacy network is also concerned with this issue.

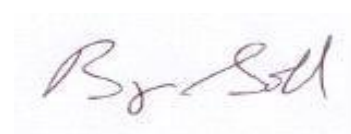
6. Transparency of ownership and administration of residential facilities.

There has been an increase in the practice of having operating companies and surrogate administrators in residential facilities making it difficult to find out who actually owns them or is responsible for the care. Administrators of record may not be located at the facility making it difficult to know who is ultimately responsible for problems and who receives sanctions. This is making the oversight and regulation process more difficult and easier for facilities to “get away” with serious problems without significant penalties to those who should be truly responsible. The transparency needs to be readily available and the administrator issue needs to be addressed.

7. Adequate transition oversight and funding for elder protective services.

The Elder Protective Services program is being transferred from Clark County to the State of Nevada Aging and Disability Services Division for non-Medicaid clients in Clark County. There was not adequate funding from the Legislature for the program to be run by the state, and they have been forced to dismantle the Homemaker program to find social worker slots and funding. While a comprehensive program is in place for the transfer, the Legislature and community needs to be fully aware of this switch and any procedures that may be different. All stakeholders need to be actively involved including the Clark County Commissioners, police departments in all jurisdictions, social service and referral agencies, and other community partners. Elder protective services is too important of a safety net to suffer from “searching for funding sources” and seniors will not be protected from abuse and neglect as a result.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Barry Gold", is written over a faint, light blue rectangular background.

Barry Gold
Director of Government Relations
AARP Nevada

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

27



DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INSURANCE

788 Fairview Drive, Suite 300
Carson City, Nevada 89701-5491
(775) 687-4270 • Fax (775) 687-3937
Website: doi.state.nv.us
E-mail: insinfo@doi.state.nv.us

April 29, 2010

Ms. Christine C. Moore, RN
Health Care Coordinator III – Nurse
Aging and Disability Services Division

Via E-mail: ccmoore@adsd.nv.gov

**RE: Assignment 10-007
Program for All Inclusive Care for the Elderly (PACE)**

Dear Ms. Moore:

Thank you for providing the e-mails with questions regarding licensing requirements for the PACE program.

After having reviewed the e-mails, researched the PACE programs throughout the country, studying Assembly Bill (AB) 263 of the 2009 Session of the Legislature, reviewed the qualifications and inspection documents used by Centers for Medicare & Medicaid Services (CMS) in the authorizing process, corresponded with PACE consultants nationally, and studied Nevada Revised Statutes regarding organizations providing similar medical services, we have made the following determination:

PACE is a federal program authorized, administered and overseen by the Centers for Medicare & Medicaid Services (CMS). As such, nothing will be gained by requiring licensure of PACE by the State of Nevada, Department of Business & Industry, Division of Insurance. In the event the program were to close, the participants would return to the Medicare and/or Medicaid Fee for Service programs.

ANALYSIS

The PACE program was established as a capitated benefit program authorized by the federal Balanced Budget Act of 1997. The program features a comprehensive service delivery program integrated with Medicare and Medicaid financing. The purpose of the program is to allow fragile

Christine C. Moore, RN
April 29, 2010
Page 2

elderly citizens to continue living at home while receiving services rather than be institutionalized. The use of capitated financing allows providers to deliver all services needed rather than be limited to those reimbursable under the Medicare and Medicaid Fee for Service programs.

The program is now operational in at least 23 states and is growing. States have considered licensure requirements, but I have found none that are licensed by the insurance regulators.

To be authorized, the PACE administrator and their providers are scrutinized by CMS in the licensure process. This process involves on-site inspections before and after licensure, financial reporting and oversight, risk management programs designed to ensure a safe environment for the patients and employees, and detailed documentation of the services and processes provided.

CONCLUSION

Since the PACE program is authorized, administered, and regulated by the Centers for Medicare & Medicaid Services and is federally funded, PACE is not required to be licensed by the Division of Insurance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cliff King', with a large, stylized loop at the end.

CLIFF KING, CPCU, ARM
Chief Insurance Examiner
Life & Health Section

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

31

NRS 159.061 Preference for parent of minor; other considerations in determining qualifications and suitability of guardian; appointment of public guardian or private fiduciary.

1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. The appointment of a parent as a guardian of the person must not conflict with a valid order for custody of the minor. In determining whether the parents of a minor, or either parent, is qualified and suitable, the court shall consider, without limitation:

- (a) Which parent has physical custody of the minor;
- (b) The ability of the parents or parent to provide for the basic needs of the child, including, without limitation, food, shelter, clothing and medical care;
- (c) Whether the parents or parent has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months, except the use of marijuana in accordance with the provisions of chapter 453A of NRS; and
- (d) Whether the parents or parent has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the exploitation of a child.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian for an incompetent, a person of limited capacity or minor the qualified person who is most suitable and is willing to serve.

3. In determining who is most suitable, the court shall give consideration, among other factors, to:

- (a) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.
- (b) Any nomination of a guardian for an incompetent, minor or person of limited capacity contained in a will or other written instrument executed by a parent or spouse of the proposed ward.
- (c) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.
- (d) The relationship by blood, adoption or marriage of the proposed guardian to the proposed ward. In considering preferences of appointment, the court may consider relatives of the half blood equally with those of the whole blood. The court may consider relatives in the following order of preference:

- (1) Spouse.
- (2) Adult child.
- (3) Parent.
- (4) Adult sibling.
- (5) Grandparent or adult grandchild.
- (6) Uncle, aunt, adult niece or adult nephew.

(e) Any recommendation made by a master of the court or special master pursuant to NRS 159.0615.

(f) Any request for the appointment of any other interested person that the court deems appropriate.

4. If the court finds that there is no suitable person to appoint as guardian pursuant to subsection 3, the court may appoint as guardian:

- (a) The public guardian of the county where the ward resides, if:
 - (1) There is a public guardian in the county where the ward resides; and
 - (2) The proposed ward qualifies for a public guardian pursuant to chapter 253 of NRS;
 - (b) A private fiduciary who may obtain a bond in this State and who is a resident of this State, if the court finds that the interests of the ward will be served appropriately by the appointment of a private fiduciary; or
 - (c) A private professional guardian who meets the requirements of NRS 159.0595.
- (Added to NRS by 1969, 416; A 1981, 1936; 1997, 1344; 1999, 142; 2001, 3072; 2003, 1783; 2005, 817)

REVISER'S NOTE.

Ch. 322, Stats. 2003, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to any proceeding or matter commenced or undertaken on or after October 1, 2003."

WEST PUBLISHING CO.

Guardian and Ward ! 10.
WESTLAW Topic No. 196.

NEVADA CASES.

Divorced person may be appointed guardian of minor. The fact that the father is a divorced person is not an insuperable objection to his appointment as guardian of a minor under the standards prescribed by sec. 1, ch. 4, Stats. 1923 (cf. NRS 159.061), governing such appointments. *In re Bryan*, 48 Nev. 352, 232 Pac. 776 (1925)

Custody of children of divorced parents should be awarded to fit parent as against nonparent. In a habeas corpus proceeding between divorced parents, where the trial court awarded custody of the son to the father and of the daughters to the maternal grandparents, the appellate court awarded custody of the daughters also to the father because the grandparents were not parties and, pursuant to NRS 125.140 (cf. NRS 125.480) and the provisions of former NRS 159.050 (cf. NRS 159.061) on custody and guardianship, custody should be awarded to a fit parent as against a nonparent. *McGlone v. McGlone*, 86 Nev. 14, 464 P.2d 27 (1970), cited, *Cooley v. Cooley*, 86 Nev. 220, at 223, 467 P.2d 103 (1970) (dissenting opinion), *Hesse v. Ashurst*, 86 Nev. 326, at 330, 468 P.2d 343 (1970), *McGee v. Sheriff, Clark County*, 86 Nev. 421, at 425, 470 P.2d 132 (1970), *Lantis v. Lantis*, 86 Nev. 885, at 889, 478 P.2d 163 (1970), *Johnson v. Johnson*, 87 Nev. 244, at 248, 484 P.2d 1072 (1971), *Cole v. Dawson*, 89 Nev. 14, at 16, 504 P.2d 1314 (1973), *Norris v. Graville*, 95 Nev. 71, at 73, 589 P.2d 1024 (1979), *Litz v. Bennum*, 111 Nev. 35, at 38, 888 P.2d 438 (1995), *Locklin v. Duka*, 112 Nev. 1489, at 1495, 929 P.2d 930 (1996), *Hudson v. Jones*, 122 Nev. 708, at 711, 138 P.3d 429 (2006), see also *In re Guardianship & Estate of D.R.G.*, 119 Nev. 32, at 37, 62 P.3d 1127 (2003)

Court erred in dismissing without evidentiary hearing petition of stepfather for appointment as guardian for minor residing with him. Where a stepfather's petition for appointment as guardian for a minor residing with him after divorce from the minor's mother was summarily dismissed and custody restored to the mother without adjudication although the stepfather offered to prove the mother had voluntarily relinquished custody, had not communicated with the minor since the divorce and the minor's best interests would be served by his appointment, the case was reversed on appeal and remanded for an evidentiary hearing because it was error for the district court to dismiss the petition without admitting any evidence. Although preference for the appointment of a parent as guardian has been established in NRS 159.061, the court must consider the particular facts of each case and base its determination on the minor's best interests. *Fisher v. Fisher*, 99 Nev. 762, 670 P.2d 572 (1983), cited, *Litz v. Bennum*, 111 Nev. 35, at 38, 888 P.2d 438 (1995), *In re Guardianship & Estate of D.R.G.*, 119 Nev. 32, at 38, 62 P.3d 1127 (2003)

Preference of placing child with parent is rebuttable presumption. A mother voluntarily consented to place her infant child under the temporary guardianship of the child's grandparents while the mother was briefly incarcerated. After completing her sentence, the mother remarried and established a stable home environment during which time the child frequently visited the mother but remained under the guardianship of the grandparents. The mother petitioned the court for reunification with the child and dissolution of the guardianship. The district court denied the petition and awarded primary physical custody of the child to the grandparents, finding that, although it was generally preferred to place the child with a parent, such parental preference was only one consideration in the analysis of determining custody based on the best interest of the child and that it was in the best interest of the child to remain with the grandparents. The Supreme Court held that the district court erred in denying the petition of the mother and awarded primary physical custody of the child to the grandparents because: (1) the policy set forth in NRS 159.061 that it is preferred to place a child with a parent is rebuttable presumption that must be overcome either by showing that the parent is unfit or that some other extraordinary circumstance exists; (2) the best interest of the child is usually served if the child is placed with a fit parent; and (3) in this case, there was no evidence that the mother was unfit or that an extraordinary circumstance existed. *Litz v. Bennum*, 111 Nev. 35, 888 P.2d 438 (1995), cited, *Locklin v. Duka*, 112 Nev. 1489, at 1494, 929 P.2d 930 (1996), *In re Guardianship & Estate of D.R.G.*, 119 Nev. 32, at 37, 62 P.3d 1127 (2003), distinguished, *Hudson v. Jones*, 122 Nev. 708, at 712, 138 P.3d 429 (2006)

District court did not err in appointing maternal aunt as guardian of child instead of child's biological father. Where a child's biological father alleged that the district court had erred in appointing the child's maternal aunt as guardian by failing to observe the parental preference of NRS 159.061, the Supreme Court concluded that the decision of the district court was not erroneous. Although NRS 159.061(1) contains a parental preference, that preference may be rebutted if a parent is not both "qualified and suitable" to serve as guardian at the time the hearing is held to determine guardianship. In this specific case, the child in question had special needs because the child suffered from both cerebral palsy and cystic fibrosis. At the time of the guardianship hearing, the biological father had not demonstrated an ability to adequately adhere to the child's treatment protocol and had, in the past, neglected to give the child all of the required medications. Furthermore, in the time leading up to the guardianship hearing, the biological father had not spent much time with the child. The district court concluded finally, and the Supreme Court agreed, that the issue of guardianship could be revisited if the biological father took steps to become a more qualified and suitable guardian. *In re Guardianship & Estate of D.R.G.*, 119 Nev. 32, 62 P.3d 1127 (2003)

ATTORNEY GENERAL'S OPINIONS.

Regulation requiring attendance of doctor in foster home may be disregarded where inconsistent with child's religious beliefs. Where a foster child is over 14 years of age and the foster home mother and children are Christian Scientists, the State Welfare Department (now the Division of Child and Family Services of the Department of Health and Human Services) may disregard the regulation requiring attendance of a doctor in a foster home when the foster child is ill to determine the existence of a communicable disease, because NRS 159.061 allows children 14 years of age or over to select their guardians, NCL § 1030 (cf. NRS 62E.130), provides that foster children be placed in homes holding the same religious belief as the parents of the children and NCL § 5276 (cf. NRS 439.530) provides that there will be no interference with treatment by prayer. (See also NRS 422A.135 and 424.020.) AGO 602 (4-10-1948)

CHAPTER 160 - VETERANS' GUARDIANSHIP (UNIFORM ACT)

CROSS REFERENCES

Mental illness, veterans with, transfer from state to Department of Veterans Affairs facility, NRS 433A.420
Office of Veterans' Services, appointment as guardian of estate, NRS 417.110, 417.120

REVISER'S NOTE.

Nevada's Uniform Veterans' Guardianship Act (NCL §§ 9458-9468) was enacted in 1929, following its adoption by the National Conference of Commissioners on Uniform State Laws in 1928. In 1942 the National Conference approved the revised Uniform Veterans' Guardianship Act, which has been adopted in 27 jurisdictions, but not in Nevada. Since enactment in Nevada in 1929 there have been several changes in terminology and authority of federal agencies and officers administering veterans' affairs. The agency administering federal law is the Department of Veterans Affairs, now an executive department in the executive branch of the Federal Government. The executive head of that agency is a statutory officer of the United States designated the Secretary of Veterans Affairs. The Department of Veterans Affairs is the legal successor to the Veterans' Administration, the Veterans Bureau, the Pension Bureau and National Home for Disabled Volunteer Soldiers. The Director of the Veterans Bureau has been succeeded by the Secretary of Veterans Affairs.

Without making substantive changes, the reviser replaced "Veterans' Administration" and "Administrator" in revised chapter 160 with "Department of Veterans Affairs" and "Secretary" which changes reflect present-day terminology.

WEST PUBLISHING CO.

Guardian and Ward ! 9 1/2.
Mental Health ! 104.
WESTLAW Topic Nos. 196, 257A.
C.J.S. Guardian and Ward §§ 9, 10.
C.J.S. Mental Health §§ 111-115.

NRS 160.010 Short title. This chapter may be cited as the Uniform Veterans' Guardianship Act.
[18:28:1929; NCL § 9565]

NRS 160.020 Definitions. As used in this chapter:

1. "Benefits" means all money payable by the United States through the Department of Veterans Affairs.
 2. "Department of Veterans Affairs" means the Department of Veterans Affairs, its predecessors or successors.
 3. "Estate" and "income" include only money received by the guardian from the Department of Veterans Affairs and all earnings, interest and profits derived therefrom.
 4. "Guardian" means any person acting as a fiduciary for a ward.
 5. "Secretary" means the Secretary of Veterans Affairs of the United States or the Secretary's successor.
 6. "Ward" means a beneficiary of the Department of Veterans Affairs.
- [1:28:1929; NCL § 9548]—(NRS A 1985, 508; 1995, 1078)

NRS 160.030 Applicability. Whenever, pursuant to any law of the United States or regulation of the Department of Veterans Affairs, the Secretary requires the appointment of a guardian for a ward before the payment of benefits, the appointment must be made in the manner provided in this chapter.

[2:28:1929; NCL § 9549]—(NRS A 1995, 1078)

WEST PUBLISHING CO.

Guardian and Ward ! 13(1).

Mental Health ! 120.

WESTLAW Topic Nos. 196, 257A.

C.J.S. Guardian and Ward §§ 11, 20.

C.J.S. Mental Health §§ 108, 110, 130-140.

NRS 160.040 Limitation on number of wards; exceptions.

1. Except as otherwise provided in this section, it is unlawful for any person to accept appointment as guardian of any ward if the proposed guardian is at that time acting as guardian for five wards. In any case, upon presentation of a petition by an attorney of the Department of Veterans Affairs pursuant to this section alleging that a guardian is acting in a fiduciary capacity for more than five wards and requesting his or her discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting from the guardian and shall discharge the guardian in the case.

2. The limitations of this section do not apply where the guardian is a bank or trust company acting for the wards' estates only.

3. An individual may be guardian of more than five wards if they are all members of the same family.

4. The limitations of this section do not apply to the Executive Director for Veterans' Services or to a public guardian.

[3:28:1929; NCL § 9550]—(NRS A 1961, 32; 1977, 488; 1995, 1078; 1999, 2477)

WEST PUBLISHING CO.

Guardian and Ward ! 10.

Mental Health ! 116.

WESTLAW Topic Nos. 196, 257A.

C.J.S. Guardian and Ward §§ 16-19.

C.J.S. Mental Health §§ 123-129.

NRS 160.050 Appointment of guardian.

1. A petition for the appointment of a guardian may be filed in any court of competent jurisdiction by or on behalf of any person who under existing law is entitled to priority of appointment. If there is no person so entitled or if the person so entitled neglects or refuses to file such a petition within 30 days after the mailing of notice by the Department of Veterans Affairs to the last known address of such person indicating the necessity for the same, a petition for such appointment may be filed in any court of competent jurisdiction by or on behalf of any responsible person residing in this State.

2. The petition for appointment must set forth the name, age and place of residence of the ward, the names and places of residence of the nearest relatives, if known, and the fact that the ward is entitled to receive money payable by or through the Department of Veterans Affairs, and must set forth the amount of money then due and the amount of probable future payments.

3. The petition must also set forth the name and address of the person or institution, if any, having actual custody of the ward.

4. In case of a mentally incompetent ward the petition must show that such ward has been rated incompetent on examination by the Department of Veterans Affairs in accordance with the laws and regulations governing the Department of Veterans Affairs.

[4:28:1929; NCL § 9551]—(NRS A 1995, 1079)

WEST PUBLISHING CO.

Guardian and Ward ! 13(1).

Mental Health ! 120.
WESTLAW Topic Nos. 196, 257A.
C.J.S. Guardian and Ward §§ 11, 20.
C.J.S. Mental Health §§ 108, 110, 130-140.

NRS 160.060 Evidence of necessity for guardian for minor. If a petition is filed for the appointment of a guardian of a minor ward, a certificate of the Secretary or a representative of the Secretary, setting forth the age of such minor as shown by the records of the Department of Veterans Affairs and the fact that the appointment of a guardian is a condition precedent to the payment of any money due the minor by the Department of Veterans Affairs, constitutes prima facie evidence of the necessity for such appointment.

[5:28:1929; NCL § 9552]—(NRS A 1995, 1079)

WEST PUBLISHING CO.

Guardian and Ward ! 13(4).
WESTLAW Topic No. 196.
C.J.S. Guardian and Ward § 26.

NRS 160.070 Evidence of necessity for guardian for incompetent. If a petition is filed for the appointment of a guardian of a mentally incompetent ward, a certificate of the Secretary or a representative of the Secretary, setting forth the fact that such person has been rated incompetent by the Department of Veterans Affairs on examination in accordance with the laws and regulations governing the Department of Veterans Affairs and that the appointment of a guardian is a condition precedent to the payment of any money due such person by the Department of Veterans Affairs, constitutes prima facie evidence of the necessity for such appointment.

[6:28:1929; NCL § 9553]—(NRS A 1995, 1079)

WEST PUBLISHING CO.

Mental Health ! 8, 135.
WESTLAW Topic No. 257A.
C.J.S. Mental Health §§ 21, 130-140.

NRS 160.080 Notice. Upon the filing of a petition for the appointment of a guardian under the provisions of this chapter, the court shall cause such notice to be given as provided by law.

[7:28:1929; NCL § 9554]

WEST PUBLISHING CO.

Guardian and Ward ! 13(3).
Mental Health ! 128.
WESTLAW Topic Nos. 196, 257A.
C.J.S. Guardian and Ward §§ 21-25.
C.J.S. Mental Health §§ 130-140.

NRS 160.090 Bond.

1. Before making an appointment under the provisions of this chapter, the court shall establish to its satisfaction that the person whose appointment as guardian is sought is a fit and proper person to be appointed.

2. Upon the appointment being made, the guardian shall, except as otherwise provided in this section, execute and file a bond to be approved by the court in an amount not less than the value of the personal property of the estate plus the anticipated annual income. Thereafter, the amount of the bond must be equal to the total value of the personal estate plus the annual income. The bond must be in the form and be conditioned as required of guardians appointed pursuant to the provisions of chapter 159 of NRS. The premiums on all such bonds must be paid from the

estate.

3. If a banking corporation as defined in NRS 657.016, or a trust company, as defined by NRS 669.070, doing business in this state is appointed guardian of the estate of a ward, no bond is required of the guardian unless the court by specific order requires a bond. If the Executive Director for Veterans' Services is appointed guardian, no bond is required.

4. If the court orders that the estate and income, or a part thereof, be deposited in a banking corporation, as defined in NRS 657.016, or trust company, as defined by NRS 669.070, doing business in this state and that such estate and income, or any part thereof, must not be withdrawn without authorization of the court, then the amount of the guardian's bond must be reduced in an amount equal to the amount of the estate and income on deposit with the banking corporation, and the surety on the bonds must be exonerated from any loss to the estate in connection with the deposit.

5. Where a bond is tendered by a guardian with personal sureties, the sureties shall file with the court a certificate under oath which describes the property owned, both real and personal, and contains a statement that they are each worth the sum named in the bond as the penalty thereof over and above all their debts and liabilities and exclusive of property exempt from execution.

[8:28:1929; NCL § 9555]—(NRS A 1959, 65; 1969, 1190; 1971, 1010; 1977, 640; 1999, 2478)

WEST PUBLISHING CO.

Guardian and Ward ! 15.

Mental Health ! 166.

WESTLAW Topic Nos. 196, 257A.

C.J.S. Guardian and Ward §§ 31-33.

C.J.S. Mental Health § 141.

NRS 160.100 Accounts.

1. Every guardian who receives on account of a ward of the guardian any money from the Department of Veterans Affairs shall file with the court annually, on the anniversary date of the appointment, in addition to such other accounts as may be required by the court, a full, true and accurate account under oath of all money so received by the guardian and of all disbursements thereof, and showing the balance thereof in the hands of the guardian at the date of such account and how invested.

2. A certified copy of each of such accounts filed with the court must be sent by the guardian to the office of the Department of Veterans Affairs having jurisdiction over the area in which the court is located. The court shall fix a time and place for the hearing on such account not less than 15 days or more than 30 days after the date of filing the account, and notice thereof must be given by the court to the concerned office of the Department of Veterans Affairs not less than 15 days before the date fixed for the hearing.

3. Notice of such hearing must in like manner be given to the guardian.

[9:28:1929; NCL § 9556]—(NRS A 1995, 1080)

NRS 160.110 Penalty for failure to account. If any guardian fails to file any account of the money received by the guardian from the Department of Veterans Affairs on account of a ward of the guardian within 30 days after such account is required by either the court or the Department of Veterans Affairs, or fails to furnish the Department of Veterans Affairs with a copy of the accounts of the guardian as required by this chapter, such failure constitutes grounds for removal.

[10:28:1929; NCL § 9557]—(NRS A 1995, 1080)

WEST PUBLISHING CO.

Guardian and Ward ! 25, 137.

Mental Health ! 175, 291, 292.

WESTLAW Topic Nos. 196, 257A.

C.J.S. Guardian and Ward §§ 41-52, 196.

C.J.S. Mental Health §§ 148-156, 183-202.

NRS 160.120 Compensation of guardian. Compensation payable to a guardian must not exceed 5 percent of the income of the ward during any year. In the event of extraordinary services rendered by any guardian, the court may, upon petition and after hearing thereon, authorize additional compensation therefor payable from the estate of the ward. Notice of such petition and hearing must be given to the proper office of the Department of Veterans Affairs in the manner provided in NRS 160.100. No compensation may be allowed on the corpus of an estate received from a preceding guardian. The guardian may be allowed from the estate of the ward of the guardian reasonable premiums paid by him or her to any corporate surety upon his or her bond.

[11:28:1929; NCL § 9558]—(NRS A 1995, 1080)

WEST PUBLISHING CO.

Guardian and Ward ! 150.

Mental Health ! 181.

WESTLAW Topic Nos. 196, 257A.

C.J.S. Guardian and Ward §§ 162, 163.

C.J.S. Mental Health § 158.

NRS 160.130 Investments. Every guardian shall invest the funds of the estate in such manner or in such securities, in which the guardian has no interest, as allowed by law or approved by the court.

[12:28:1929; NCL § 9559]

WEST PUBLISHING CO.

Guardian and Ward ! 53.

Mental Health ! 227.

WESTLAW Topic Nos. 196, 257A.

C.J.S. Guardian and Ward §§ 88-90.

C.J.S. Mental Health §§ 167-178.

NRS 160.140 Maintenance and support. A guardian shall not apply any portion of the estate of a ward of the guardian for the support and maintenance of any person other than the ward, except upon order of the court after a hearing, notice of which has been given to the proper office of the Department of Veterans Affairs in the manner provided in NRS 160.100.

[13:28:1929; NCL § 9560]—(NRS A 1995, 1080)

WEST PUBLISHING CO.

Guardian and Ward ! 30(3).

Mental Health ! 246.

WESTLAW Topic Nos. 196, 257A.

C.J.S. Guardian and Ward § 63.

NRS 160.150 Copies of public records to be furnished. When a copy of any public record is required by the Department of Veterans Affairs to be used in determining the eligibility of any person to participate in benefits made available by the Department of Veterans Affairs, the official charged with the custody of such public record shall without charge provide the applicant for such benefits or any person acting on behalf of the applicant or the representative of the Department of Veterans Affairs with a certified copy of such record.

[14:28:1929; NCL § 9561]—(NRS A 1995, 1081)

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Records ! 15.
WESTLAW Topic No. 326.
C.J.S. Records §§ 38, 40.

ATTORNEY GENERAL'S OPINIONS.

Statute should be liberally construed as directing all public records be furnished to Veterans' Administration free of charge. NCL § 9561 (cf. NRS 160.150) should be liberally construed as directing that all public records be furnished to veterans' administration (now department of veterans affairs) free of charge, and not merely those records pertaining to matters of guardianship. AGO 371 (9-27-1946)

NRS 160.160 Commitment to Department of Veterans Affairs or other federal agency.

1. In any proceeding under the laws of this State for involuntary court-ordered admission of a person alleged to be mentally ill or otherwise in need of confinement in a hospital or other institution for his or her care, the court may order the admission of that person to the Department of Veterans Affairs or another agency of the Federal Government, whenever:

(a) It is determined, after such adjudication of the status of that person as may be required by chapter 433A of NRS, that involuntary court-ordered admission to a hospital for mental disease or another institution is necessary for safekeeping or treatment; and

(b) It appears that the person is eligible for care or treatment by the Department of Veterans Affairs or any other agency that has facilities available and that the person is eligible for care or treatment therein.

2. The person whose involuntary court-ordered admission is sought must be personally served with notice of the pending proceeding in the manner provided by chapter 433A of NRS. This chapter does not affect that person's right to appear and be heard in the proceedings.

[15:28:1929; NCL § 9562]—(NRS A 1957, 660; 1975, 1632; 1985, 2274; 1995, 1081)

NRS CROSS REFERENCES.

Mental health of adults, NRS ch. 433A

WEST PUBLISHING CO.

Armed Services ! 107.
Mental Health ! 36.
WESTLAW Topic Nos. 34, 257A.
C.J.S. Armed Services §§ 257, 264, 267.
C.J.S. Mental Health § 49.

NRS 160.161 Regulations of Department of Veterans Affairs or other federal agency; powers of officer; jurisdiction of court.

1. Upon commitment, a person is subject to the rules and regulations of the Department of Veterans Affairs or other agency when admitted to any facility operated by any such agency within or without this state.

2. The chief officer of any facility of the Department of Veterans Affairs or institution operated by any other agency of the United States to which the person is so committed is, with respect to that person, vested with the same powers as the Director and the Medical Director of Northern Nevada Adult Mental Health Services with respect to retention of custody, transfer, parole or discharge.

3. The committing court shall retain jurisdiction:

(a) To inquire, at any time, into the mental condition of persons so committed.

(b) To determine the necessity for the continuance of the person's restraint.

(Added to NRS by 1957, 660; A 1973, 92, 1218; 1995, 1081; 2001, 1116)

NRS 160.162 Transfer of person from Northern Nevada Adult Mental Health Services to Department of Veterans Affairs or other federal agency.

1. Upon receipt of a certificate of the Department of Veterans Affairs or another agency of the United States that facilities are available for the care or treatment of any person previously committed to the custody of Northern

Nevada Adult Mental Health Services and that the person is eligible for care or treatment, the Director of Northern Nevada Adult Mental Health Services may cause the transfer of the person to the Department of Veterans Affairs or other agency of the United States for care or treatment.

2. The committing court must be notified by the Director of Northern Nevada Adult Mental Health Services upon effecting such a transfer.

3. No person may be transferred to the Department of Veterans Affairs or such other agency of the United States if the person is confined pursuant to a conviction of a felony or misdemeanor or if the person has been acquitted of the charge solely on the ground of insanity, unless before the transfer the court originally committing the person enters an order for the transfer after appropriate motion and hearing.

4. Any person transferred as provided in this section shall be deemed to be committed to the Department of Veterans Affairs or other agency of the United States pursuant to the original commitment.

(Added to NRS by 1957, 661; A 1973, 92, 1219; 1995, 1081; 2001, 1116)

NRS CROSS REFERENCES.

Duties of medical director upon transfer from state facility, NRS 433A.420

NRS 160.170 Discharge of guardian. When a minor ward for whom a guardian has been appointed under the provisions of this chapter or other laws of this state attains his or her majority, and if incompetent is declared competent by the Department of Veterans Affairs and the court, and when any incompetent ward, not a minor, is declared competent by the Department of Veterans Affairs and the court, the guardian must, upon making a satisfactory accounting, be discharged upon a petition filed for that purpose.

[16:28:1929; NCL § 9563]—(NRS A 1995, 1082)

WEST PUBLISHING CO.

Guardian and Ward ! 23, 177.

Mental Health ! 169 et seq., 190.

WESTLAW Topic Nos. 196, 257A.

C.J.S. Guardian and Ward §§ 48-50, 207-209.

C.J.S. Mental Health §§ 160-163.

NRS 160.180 Liberal construction. This chapter must be construed liberally to secure the beneficial intents and purposes thereof and applies only to beneficiaries of the Department of Veterans Affairs.

[17:28:1929; NCL § 9564]—(NRS A 1995, 1082)

NRS 160.190 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[19:28:1929; NCL § 9566]

WEST PUBLISHING CO.

Mental Health ! 102.

WESTLAW Topic No. 257A.

C.J.S. Mental Health §§ 108 et seq.

U.S. Code

TITLE 38 PART I CHAPTER 1 § 101

§ 101. Definitions

For the purposes of this title—

(1) The terms “Secretary” and “Department” mean the Secretary of Veterans Affairs and the Department of Veterans Affairs, respectively.

(2) The term “veteran” means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(3) The term “surviving spouse” means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death, and who lived with the veteran continuously from the date of marriage to the date of the veteran’s death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.

Additional text relating to this definition can be found online at

http://www.law.cornell.edu/uscode/uscode38/usc_sec_38_00000101----000-.html

SENATE BILL NO. 318—SENATORS COPENING AND PARKS

MARCH 16, 2009

Referred to Committee on Health and Education

SUMMARY—Provides that tuition at all campuses of the Nevada System of Higher Education must be free for certain veterans. (BDR 34-744)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to the Nevada System of Higher Education; providing that tuition at all campuses of the Nevada System of Higher Education must be free for certain veterans of the Armed Forces of the United States; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law authorizes the Board of Regents of the University of Nevada to fix
2 a tuition charge for students at all campuses of the Nevada System of Higher
3 Education but requires that tuition be free for: (1) all students whose families have
4 been bona fide residents of Nevada for at least 12 months before matriculation; (2)
5 all students who themselves have been bona fide residents of Nevada for at least 12
6 months before matriculation; (3) public school teachers; (4) full-time teachers in
7 private schools who satisfy certain criteria; (5) employees of the System; and (6)
8 members of the Armed Forces of the United States. (NRS 396.540) This bill
9 provides that tuition must also be free for veterans of the Armed Forces of the
10 United States who were discharged or released therefrom under conditions other
11 than dishonorable and who are bona fide residents of the State of Nevada.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 396.540 is hereby amended to read as follows:
2 396.540 1. For the purposes of this section:
3 (a) "Bona fide resident" shall be construed in accordance with
4 the provisions of NRS 10.155 and policies established by the Board
5 of Regents, to the extent that those policies do not conflict with any



* S B 3 1 8 *

1 statute. The qualification “bona fide” is intended to ~~assure~~ ensure
2 that the residence is genuine and established for purposes other than
3 the avoidance of tuition.

4 (b) “Matriculation” has the meaning ascribed to it in regulations
5 adopted by the Board of Regents.

6 (c) “Tuition charge” means a charge assessed against students
7 who are not residents of Nevada and which is in addition to
8 registration fees or other fees assessed against students who are
9 residents of Nevada.

10 2. The Board of Regents may fix a tuition charge for students
11 at all campuses of the System, but tuition must be free to:

12 (a) All students whose families have been bona fide residents of
13 the State of Nevada for at least 12 months ~~prior to~~ before the
14 matriculation of the student at a university, state college or
15 community college within the System;

16 (b) All students whose families reside outside of the State of
17 Nevada, providing such students have themselves been bona fide
18 residents of the State of Nevada for at least 12 months before their
19 matriculation at a university, state college or community college
20 within the System;

21 (c) All public school teachers who are employed full-time by
22 school districts in the State of Nevada;

23 (d) All full-time teachers in private elementary, secondary and
24 postsecondary educational institutions in the State of Nevada whose
25 curricula meet the requirements of chapter 394 of NRS;

26 (e) Employees of the System who take classes other than during
27 their regular working hours; ~~and~~

28 (f) Members of the Armed Forces of the United States ~~[-]~~; and

29 (g) *Veterans of the Armed Forces of the United States who*
30 *were discharged or released therefrom under conditions other*
31 *than dishonorable and who are bona fide residents of the State of*
32 *Nevada.*

33 3. The Board of Regents may grant tuitions free each semester
34 to other worthwhile and deserving students from other states and
35 foreign countries, in a number not to exceed a number equal to 3
36 percent of the total matriculated enrollment of students for the last
37 preceding fall semester.

38 **Sec. 2.** This act becomes effective on July 1, 2009.



ASSEMBLY BILL NO. 295—ASSEMBLYMEN SETTELMAYER, MCCLAIN, CHRISTENSEN; ANDERSON, BOBZIEN, CARPENTER, COBB, CONKLIN, GANSERT, GOEDHART, GOICOECHEA, GRADY, GUSTAVSON, HAMBRICK, HARDY, HORNE, KIHUEN, KIRKPATRICK, KOIVISTO, MANENDO, MORTENSON, OCEGUERA, SEGERBLOM, SPIEGEL, STEWART AND WOODBURY

MARCH 11, 2009

JOINT SPONSORS: SENATORS AMODEI, CEGAVSKE, HARDY, LEE, PARKS AND WOODHOUSE

Referred to Committee on Taxation

SUMMARY—Allows a person who qualifies as both a veteran and the surviving spouse of a veteran to claim both veterans' exemptions from property taxes and governmental services taxes. (BDR 32-572)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to taxation; allowing a person who qualifies as both a veteran and the surviving spouse of a veteran to claim both veterans' exemptions from property taxes and governmental services taxes; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides an exemption from property taxes for a veteran who
2 served on active duty under certain circumstances. (NRS 361.090) Existing law
3 also provides an exemption from property taxes for a veteran with a permanent
4 service-connected disability, or the surviving spouse of such a veteran, and
5 prohibits a person who claims this exemption from obtaining the other property tax
6 exemption for veterans. (NRS 361.091) **Section 1** of this bill allows a person who
7 qualifies as both a veteran and the surviving spouse of a veteran with a permanent
8 service-connected disability to claim both of the veterans' exemptions from
9 property taxes.



Existing law provides similar veterans' exemptions from governmental services taxes. (NRS 371.103, 371.104) **Section 2** of this bill allows a person who qualifies as both a veteran and the surviving spouse of a veteran with a permanent service-connected disability to claim both of these veterans' exemptions from governmental services taxes.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 361.091 is hereby amended to read as follows:

361.091 1. A bona fide resident of the State of Nevada who has incurred a permanent service-connected disability and has been honorably discharged from the Armed Forces of the United States, or his surviving spouse, is entitled to an exemption.

2. The amount of exemption is based on the total percentage of permanent service-connected disability. The maximum allowable exemption for total permanent disability is the first \$20,000 assessed valuation. A person with a permanent service-connected disability of:

(a) Eighty to 99 percent, inclusive, is entitled to an exemption of \$15,000 assessed value.

(b) Sixty to 79 percent, inclusive, is entitled to an exemption of \$10,000 assessed value.

➤ For the purposes of this section, any property in which an applicant has any interest is deemed to be the property of the applicant.

3. The exemption may be allowed only to a claimant who has filed an affidavit with his claim for exemption on real property pursuant to NRS 361.155. The affidavit may be made at any time by a person claiming an exemption from taxation on personal property.

4. The affidavit must be made before the county assessor or a notary public and be filed with the county assessor. It must state that the affiant is a bona fide resident of the State of Nevada, that he meets all the other requirements of subsection 1 and that the exemption is not claimed in any other county within this State. After the filing of the original affidavit, the county assessor shall mail a form for:

(a) The renewal of the exemption; and

(b) The designation of any amount to be credited to the Gift Account for Veterans' Homes established pursuant to NRS 417.145, ➤ to the person each year following a year in which the exemption was allowed for that person. The form must be designed to facilitate its return by mail by the person claiming the exemption.



* A B 2 9 5 *

5. Before allowing any exemption pursuant to the provisions of this section, the county assessor shall require proof of the applicant's status, and for that purpose shall require him to produce an original or certified copy of:

(a) An honorable discharge or other document of honorable separation from the Armed Forces of the United States which indicates the total percentage of his permanent service-connected disability;

(b) A certificate of satisfactory service which indicates the total percentage of his permanent service-connected disability; or

(c) A certificate from the Department of Veterans Affairs or any other military document which shows that he has incurred a permanent service-connected disability and which indicates the total percentage of that disability, together with a certificate of honorable discharge or satisfactory service.

6. A surviving spouse claiming an exemption pursuant to this section must file with the county assessor an affidavit declaring that:

(a) The surviving spouse was married to and living with the veteran who incurred a permanent service-connected disability for the 5 years preceding his death;

(b) The veteran was eligible for the exemption at the time of his death or would have been eligible if he had been a resident of the State of Nevada;

(c) The surviving spouse has not remarried; and

(d) The surviving spouse is a bona fide resident of the State of Nevada.

➔ The affidavit required by this subsection is in addition to the certification required pursuant to subsections 4 and 5. After the filing of the original affidavit required by this subsection, the county assessor shall mail a form for renewal of the exemption to the person each year following a year in which the exemption was allowed for that person. The form must be designed to facilitate its return by mail by the person claiming the exemption.

7. If a veteran or the surviving spouse of a veteran submits, as proof of disability, documentation that indicates a percentage of permanent service-connected disability for more than one permanent service-connected disability, the amount of the exemption must be based on the total of those combined percentages, not to exceed 100 percent.

8. If a tax exemption is allowed under this section ~~[-the claimant]~~ *to a person who qualifies for the exemption:*

(a) As a veteran with a permanent service-connected disability, that person is not entitled to an exemption under NRS 361.090.

(b) Solely as the surviving spouse of a veteran with a permanent service-connected disability, the allowance of a tax



exemption under this section does not affect the eligibility of that person for a tax exemption under NRS 361.090.

9. If any person files a false affidavit or produces false proof to the county assessor or a notary public and, as a result of the false affidavit or false proof, the person is allowed a tax exemption to which he is not entitled, he is guilty of a gross misdemeanor.

10. Beginning with the 2005-2006 Fiscal Year, the monetary amounts in subsection 2 must be adjusted for each fiscal year by adding to the amount the product of the amount multiplied by the percentage increase in the Consumer Price Index (All Items) from July 2003 to the July preceding the fiscal year for which the adjustment is calculated. The Department shall provide to each county assessor the adjusted amount, in writing, on or before September 30 of each year.

Sec. 2. NRS 371.104 is hereby amended to read as follows:

371.104 1. A bona fide resident of the State of Nevada who has incurred a permanent service-connected disability and has been honorably discharged from the Armed Forces of the United States, or his surviving spouse, is entitled to a veteran's exemption from the payment of governmental services taxes on vehicles of the following determined valuations:

(a) If he has a disability of 100 percent, the first \$20,000 of determined valuation.

(b) If he has a disability of 80 to 99 percent, inclusive, the first \$15,000 of determined valuation.

(c) If he has a disability of 60 to 79 percent, inclusive, the first \$10,000 of determined valuation.

2. For the purpose of this section, the first \$20,000 of determined valuation of vehicles in which an applicant has any interest shall be deemed to belong entirely to that person.

3. A person claiming the exemption shall file annually with the Department in the county where the exemption is claimed an affidavit declaring that he is a bona fide resident of the State of Nevada who meets all the other requirements of subsection 1 and that the exemption is claimed in no other county within this State. After the filing of the original affidavit, the county assessor shall mail a form for:

(a) The renewal of the exemption; and

(b) The designation of any amount to be credited to the Gift Account for Veterans' Homes established pursuant to NRS 417.145, to the person each year following a year in which the exemption was allowed for that person. The form must be designed to facilitate its return by mail by the person claiming the exemption.



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4. Before allowing any exemption pursuant to the provisions of this section, the Department shall require proof of the applicant's status, and for that purpose shall require production of:

(a) A certificate from the Department of Veterans Affairs that the veteran has incurred a permanent service-connected disability, which shows the percentage of that disability; and

(b) Any one of the following:

(1) An honorable discharge;

(2) A certificate of satisfactory service; or

(3) A certified copy of either of these documents.

5. A surviving spouse claiming an exemption pursuant to this section must file with the Department in the county where the exemption is claimed an affidavit declaring that:

(a) The surviving spouse was married to and living with the veteran with a disability for the 5 years preceding his death;

(b) The veteran with a disability was eligible for the exemption at the time of his death; and

(c) The surviving spouse has not remarried.

➔ The affidavit required by this subsection is in addition to the certification required pursuant to subsections 3 and 4. After the filing of the original affidavit required by this subsection, the county assessor shall mail a form for renewal of the exemption to the person each year following a year in which the exemption was allowed for that person. The form must be designed to facilitate its return by mail by the person claiming the exemption.

6. If a tax exemption is allowed under this section ~~[the claimant]~~ *to a person who qualifies for the tax exemption:*

(a) As a veteran with a permanent service-connected disability, that person is not entitled to an exemption under NRS 371.103.

(b) Solely as the surviving spouse of a veteran with a permanent service-connected disability, the allowance of a tax exemption under this section does not affect the eligibility of that person for a tax exemption under NRS 371.103.

7. If any person makes a false affidavit or produces false proof to the Department, and as a result of the false affidavit or false proof the person is allowed a tax exemption to which he is not entitled, he is guilty of a gross misdemeanor.

8. Beginning with the 2005-2006 Fiscal Year, the monetary amounts in subsections 1 and 2 must be adjusted for each fiscal year by adding to each amount the product of the amount multiplied by the percentage increase in the Consumer Price Index (All Items) from December 2003 to the December preceding the fiscal year for which the adjustment is calculated.



- 1 **Sec. 3.** This act becomes effective:
2 1. Upon passage and approval for the purpose of filing claims
3 for tax exemptions and performing any preparatory administrative
4 tasks that are necessary to carry out the provisions of this act; and
5 2. On July 1, 2009, for all other purposes.



ASSEMBLY BILL NO. 134—ASSEMBLYMEN WOMACK, MANENDO, MCCLAIN, LESLIE, ANDERSON, ALLEN, ARBERRY, ATKINSON, BEERS, BOBZIEN, BUCKLEY, CARPENTER, CHRISTENSEN, CLABORN, COBB, CONKLIN, DENIS, GERHARDT, GOICOECHEA, HARDY, HOGAN, HORNE, KIHUEN, KIRKPATRICK, KOIVISTO, MUNFORD, OCEGUERA, OHRENSCHALL, PARKS, PARNELL, PIERCE, SEGERBLOM, SETTELMAYER, SMITH AND STEWART

FEBRUARY 21, 2007

JOINT SPONSORS: SENATORS CARE, TITUS, NOLAN, COFFIN, HECK, LEE, RHOADS, WIENER AND WOODHOUSE

Referred to Committee on Government Affairs

SUMMARY—Expands the duties of the Executive Director for Veterans' Services. (BDR 37-846)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to veterans; requiring the Executive Director for Veterans' Services to prepare, maintain and make available for public inspection a register that includes the names of the veterans interred in each cemetery in this State; requiring the Executive Director to provide flags of the United States to certain persons and civic organizations for placement on the graves of veterans on certain holidays; requiring the Executive Director to provide a flag of the United States to each resident of a veterans' home in this State to commemorate certain holidays; and providing other matters properly relating thereto.



* A B 1 3 4 *

Legislative Counsel's Digest:

1 The Office of Veterans' Services provides various services to persons serving
2 in the Armed Forces of the United States and veterans and their families. (Chapter
3 417 of NRS) **Section 2** of this bill requires the Executive Director for Veterans'
4 Services to prepare, maintain and make available for public inspection a register
5 that includes the names of the veterans interred in the cemeteries in this State.
6 **Section 3** of this bill requires the Executive Director to provide, without charge,
7 flags of the United States to certain persons and civic organizations for placement
8 on the graves of veterans on certain holidays. This bill also requires the Executive
9 Director each year to provide a flag of the United States to each resident of a
10 veterans' home in this State to commemorate certain holidays.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 417 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2.** *The Executive Director shall prepare, maintain and*
4 *make available for public inspection a register that includes the*
5 *names of the veterans interred in the veterans' cemetery in*
6 *northern Nevada, the veterans' cemetery in southern Nevada and*
7 *all other public and private cemeteries in this State. The register*
8 *must include the number of veterans interred in each cemetery in*
9 *this State and, if known, the date of interment of each veteran.*

10 **Sec. 3.** 1. *The Executive Director shall, upon the request of*
11 *the owner or operator of a cemetery in this State or a civic*
12 *organization recognized by the Executive Director, provide a*
13 *sufficient number of flags of the United States for placement on*
14 *the graves of veterans interred in the cemetery to commemorate*
15 *Memorial Day, Flag Day, Independence Day and Veterans' Day.*
16 *The flags must be of a size suitable for placement on a grave and*
17 *provided without charge.*

18 2. *Each year, on or before Memorial Day, Flag Day,*
19 *Independence Day and Veterans' Day, the Executive Director*
20 *shall, without charge, provide to each resident of a veterans' home*
21 *in this State a flag of the United States of an appropriate size for*
22 *use in commemorating those holidays.*

23 3. *The flags the Executive Director is required to provide*
24 *pursuant to this section must be manufactured in the United*
25 *States.*



**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

35

State of Nevada
NEVADA SILVER HAired LEGISLATIVE FORUM

(Nevada Revised Statutes 427A.320 through 427A.400)



Grant Sawyer State Office Building
555 East Washington Avenue, Room 4400
Las Vegas, Nevada 89101-1049
(702) 486-3966
Mary Shope, Coordinator



Lucy Peres, President
Herbert E. Randall, Ed. D., Vice President

Harriet Trudell, Secretary
Joann M. Bongiorno, Treasurer

May 21, 2010

The Honorable Kathy McClain
Nevada State Assemblywoman
Chair, Legislative Commission on Senior Citizens, Veterans and
Adults with Special Needs
401 South Carson Street
Carson City, NV 89701-4747

**RE: 2011 LEGISLATIVE SESSION BILL DRAFT REQUEST FOR AN
ENDANGERED PERSONS STATEWIDE ALERT SYSTEM**

Dear Chairwoman McClain and Members of the Legislative Committee:

Thank you for the opportunity to provide recommendations for the Committee's consideration for bill draft requests for the 2011 Legislative Session.

As you know, the Nevada Silver Haired Legislative Forum (NSHLF) was created to identify and act upon issues of importance to aging persons. During the current interim period, the NSHLF discussed and reviewed many senior issues. At its meeting on May 18, 2010, the NSHLF unanimously supported the creation of an endangered persons statewide alert system as its primary recommendation for adoption in 2011 Session of the Nevada Legislature.

Adults with dementia-related diseases often become confused, disoriented, and wander away from their usual residences, so it is imperative that they are found quickly and returned home to their caregivers. Silver Alert currently exists in 28 states under a variety of names.¹ The National Silver Alert Act is pending in Congress.²

¹ "Silver Alert Initiatives in the States - Protecting Seniors with Cognitive Impairments", National Association of State Units on Aging (NASUA), 03/22/2010.

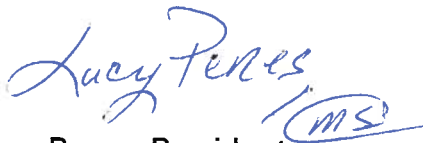
² H.R. 632, <http://thomas.loc.gov>, THOMAS Legislative Database, Library of Congress.

Legislative Commission on Senior Citizens, Veterans and Adults with Special Needs
2011 Legislative Session Bill Draft Request
Endangered Persons Statewide Alert System
May 21, 2010
Page -2-

The NSHLF recommends that criteria for the implementation of a voluntary endangered persons statewide alert system be outlined in the proposed legislation for Nevada. Additionally, such an alert system would authorize law enforcement agencies, broadcast organizations, and other voluntary organizations to share descriptive information about the impaired adult.

We encourage your support for this valuable legislation and offer any assistance to the Committee as you work through the recommendation process.

Sincerely yours,



Lucy Peres, President
Nevada Silver Haired Legislative Forum

LP:ms

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

36



May 3, 2010

The Honorable Kathy McClain, Chair
Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs
State of Nevada
401 South Carson Street
Carson City, Nevada 89701-4747

Attention: Amber J. Joiner, Research Analyst

Assemblywoman McClain:

Thank you for the opportunity to submit recommendations to be considered for legislation during the final meeting of the Legislative Committee on Senior Citizens, Veterans and Adults with Special Needs.

The Alzheimer's Association of Southern Nevada (Desert Southwest Chapter) and Northern Nevada (Northern California and Northern Nevada Chapter) respectfully requests that the Committee recommend that Nevada's Seventy-fifth Legislature include a resolution for appointing a Nevada State Blue Ribbon Task Force dedicated to addressing Alzheimer's disease and related dementias. This Blue Ribbon Task Force will partner with the Alzheimer's Association and other appropriate agencies and interested parties to create a Nevada State Plan for best meeting the needs of persons with Alzheimer's disease and related dementias, their families and caregivers. The Nevada State Plan for Alzheimer's disease will include recommendations which will comprehensively address the related issues in the State of Nevada and these recommendations will be considered at the 2013 legislative session.

The Alzheimer's Association recently convened a retreat in northern Nevada which included the Regional Directors and participants from the Alzheimer's Association, state employees, representatives of private and non-profit agencies, and other interested parties and caregivers. The purpose of the retreat was to share ideas and concerns about the impact of Alzheimer's disease in our communities. The southern Nevada region is planning to have a similar retreat to include local stakeholders within the next few months.

The State of Nevada currently has 29,000 families affected by Alzheimer's disease and related dementias and that number is projected to triple by 2025. We recommend that the Blue Ribbon Task Force consider the public health crisis of Alzheimer's disease and related dementias in Nevada and respond with a strategic plan that will comprehensively serve families, professionals, and persons with Alzheimer's disease and related dementias in the next fifteen years.

Currently, twenty-nine states have addressed the issue by creating state plans; several states have already begun implementation of these plans.

Thank you for considering this important request. For any other information you may need, please contact Luis Carrillo, Regional Director of the Alzheimer's Association of Southern Nevada at 702-248-2770 or Angie Pratt, Regional Director of the Alzheimer's Association of Northern Nevada at 775-786-8061.

Sincerely,

Luis Carrillo
Regional Director, Alzheimer's Association Desert Southwest Chapter
Southern Nevada Region
5190 South Valley View Boulevard, Suite 101
Las Vegas, Nevada 89118

Angie Pratt
Regional Director, Alzheimer's Association of Northern California and Northern Nevada
Northern Nevada Region
1301 Cordone Avenue, Suite 180
Reno, Nevada 89502

**ADDITIONAL INFORMATION RELATING TO
WORK SESSION ITEM**

37



Commission on Services for Persons with Disabilities

3416 Goni Road, Building D, No. 132 • Carson City, NV 89706

775/ 687-4210 (Voice/Relay) • 775/ 687-4264 (Fax)

Commission Members

Chair:

Paul Gowins

Vice Chair:

Korri Ward

Mary Bryant

Cheryl Dinnell

Bill Heavilin

Gary Olsen

Jim Osti

Brian Patchett

Jodi Sabal

Jon Sasser

Karen Taycher

May 18, 2010

TO: Kathy McClain, Chairwoman
Legislative Committee on Seniors, Veterans and Adults with
Disabilities

FROM: Paul Gowins, Chairman

RE: Recommended resolution for the 2011 legislative session

As a statutorily-created advisory body, one of our functions is to advise policymakers on issues related to people with disabilities. It is our hope that the following recommendation will help health care policy in Nevada to move forward, while also addressing some of the difficult fiscal challenges you will face in the 2011 legislative session.

We urge you to pass a resolution recommending that the Division of Health Care Financing and Policy pursue, in their FY 2012-13 budget, the following three options available under the new federal Affordable Care Act:

Health Homes (Section 2703)

Under this option, one central provider is responsible for coordinating a patient's care, with the goal of improving health outcomes and reducing expenditures for Medicaid enrollees with chronic conditions. This option offers 90% FMAP for two years and funds will be available in January, 2011.

Community First Choice Option (Section 2401)

This option offers Attendant Care Services in the State Plan under a 1915 (i) option, and may include expenditures for transition costs from an institution and for items that substitute for human assistance. It allows a 6% increase in FMAP for those who are Medicaid eligible and certain others who have an institutional level of care.

Removal of Barriers to Providing Home and Community-Based Services (Section 2402)

This option offers:

- Regulatory changes to ensure service systems are responsive, provide support for self direction, and improve provider coordination.
- Expansion of services that can be provided under 1915(i) to more closely align with services that can be provided under 1915(c) Home and Community Based Waivers.
- Expansion of eligibility based upon income, and an optional new Medicaid eligibility group specific to 1915(i).
- A waiver of comparability, an ability to target services, no enrollment caps, and no waiver of statewideness.

Taken together, these state Medicaid options can help ensure improved health care quality for vulnerable Nevadans, while also taking advantage of the enhanced federal funding that is available.

Thank you for your advocacy on behalf of Nevadans with disabilities.

[LCB Staff Note: The full text of H.R. 3590 may be found online at <http://www.gpo.gov/fdsys/search/pagedetails.action?granuleId=&packageId=BILLS-111hr3590ENR>]