



**NEVADA LEGISLATURE
LEGISLATIVE COMMISSION'S COMMITTEE
TO STUDY GROUP HOMES
(Assembly Bill 294, Chapter 298, *Statutes of Nevada 2009*)**

SUMMARY MINUTES AND ACTION REPORT

The third meeting and work session of the Legislative Commission's Committee to Study Group Homes was held on Wednesday, June 9, 2010, at 1 p.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 2135 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. A copy of this set of "Summary Minutes and Action Report," including the "Meeting Notice and Agenda" ([Exhibit A](#)) and other substantive exhibits, is available on the Nevada Legislature's website at <http://www.leg.state.nv.us/interim/75th2009/committee/>. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's (LCB's) Publications Office (e-mail: publications@lcb.state.nv.us; telephone: 775/684-6835).

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

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

COMMITTEE MEMBER ABSENT:

Assemblyman Ty Cobb

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

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

OPENING REMARKS

- Chair Kirkpatrick offered opening remarks about the Committee's goal to ensure that residents of group homes are treated as any other member of society and that the neighbors of group homes welcome the residents living in these facilities.

APPROVAL OF MINUTES OF THE MARCH 24, 2010, MEETING IN LAS VEGAS, NEVADA

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

SENATOR BREEDEN MOVED TO APPROVE THE "SUMMARY MINUTES AND ACTION REPORT" OF THE MARCH 24, 2010, MEETING HELD IN LAS VEGAS, NEVADA. THE MOTION WAS SECONDED BY SENATOR COPENING AND PASSED UNANIMOUSLY. SENATOR PARKS AND ASSEMBLYMAN COBB WERE ABSENT FOR THE VOTE.

PRESENTATION CONCERNING THE CITY OF LAS VEGAS' RESPONSIBILITIES AND DUTIES PERTAINING TO GROUP HOMES

- Ted Olivas, Director, Office of Administrative Services, City of Las Vegas, explained that a number of staff members representing several departments from the City of Las Vegas who work with group home issues were present, and he referenced three documents submitted by the city regarding its responsibilities and duties pertaining to group homes. (Please see [Exhibit B](#), [Exhibit C](#), and [Exhibit D](#).)
- James B. Lewis, Deputy City Attorney, Office of the City Attorney, City of Las Vegas, provided extensive testimony regarding the City of Las Vegas' responsibilities and duties pertaining to group homes. Mr. Lewis discussed the information provided in his memorandum to the Committee ([Exhibit B](#)) relative to the following three areas: (1) the recent history of the city's practices regarding residential facilities for groups; (2) the proposed changes to the Las Vegas Municipal Code dealing with residential facilities for groups and, more specifically, those facilities for the disabled; and (3) the practical effects of the proposed amendments to the ordinances related to residential facilities for groups.

In discussing the history of issues regarding residential facilities for groups, Mr. Lewis explained that in December 2008 the city learned that the State's group home regulatory statute was invalidated by the United States District Court for the District of Nevada. This situation led the City of Las Vegas management to direct staff to research the law, specifically the federal antidiscrimination laws, and develop amendments to the city's code that would adhere to federal antidiscrimination laws and the holding of the United States District Court for the District of Nevada in *Nevada Fair Housing Center, Inc., v. Clark County*. Mr. Lewis reported that, as a result of this research, the City of

Las Vegas now identifies residential facilities for groups as “community residences,” which are homes where five to ten disabled individuals and up to two caregivers may reside. The community residence definition replaces the State’s definitions for group homes and also streamlines the city’s new ordinances to make them easier to interpret. He explained that community residences are governed under a conditional use permit in all residential zoning districts, which means they are permitted as a matter of law without additional public hearing scrutiny as long as the residence complies with zoning conditions.

Mr. Lewis explained that the first major change in the city’s code was to the definition of “family.” He said the city defines family as: (1) any number of related individuals in a single-family dwelling up to the city’s housing code maximum of seven people in a studio, nine people in a one-bedroom residence, with the number allowed increasing by two people for each additional bedroom; and (2) four or fewer unrelated, disabled or nondisabled individuals. He stated that the courts are fairly clear that unrelated persons may be treated differently than related persons for the purposes of populating a single-family residence.

Discussion ensued among Senator Copenig, Assemblyman Mortenson, and Mr. Lewis regarding the number of related and unrelated individuals allowed to reside in a single-family dwelling.

- Senator Copenig asked for clarification on Mr. Lewis’ remarks that only up to four unrelated individuals may live in a single-family dwelling because of her concern that foster parents would, therefore, be limited to a maximum of four foster children.
- Mr. Mortenson requested an explanation on why ten related persons would be allowed in a single-family residence but only four unrelated persons would be allowed.
- In response to Senator Copenig and Mr. Mortenson’s questions, Mr. Lewis explained that in the case of foster children, even though they are unrelated, the city’s new definition for a related family includes the term “legal status.” This means a foster child has a legal status with Clark County and the State of Nevada and is, therefore, considered a “blood child” of the foster parents for purposes of the law. He next explained that different legal concepts define how a “family” is determined for purposes of antidiscrimination laws, which assert that municipalities and states cannot discriminate against a traditional, nondisabled family and a disabled family but will allow municipalities and states to put restrictions on how many unrelated individuals may reside in single-family neighborhoods to avoid unsettling situations such as those that could occur in college towns.

Continuing his testimony, Mr. Lewis explained that the City of Las Vegas has established a 660-foot separation requirement from property line to property line to prevent clustering of homes. Lastly, Mr. Lewis noted that the city is deleting the term “group residential care facility” from its business licensing chapter because persons

who rent homes to the nondisabled are not required to have a business license, and therefore, it would be discriminatory to require a business license of someone renting a home to the disabled.

There was a discussion between Senator Breeden and Mr. Lewis regarding why the City of Las Vegas will no longer require a business license for group residential care facilities with Mr. Lewis further explaining that it would be discriminatory to require a license of one facility operator renting to the disabled but not of another who is renting to the nondisabled. Mr. Lewis also referred Senator Breeden to Question Nos. 4 and 5 of his memorandum ([Exhibit B](#)) under the subtitle “Practical Effect of Proposed Amendments,” which address this issue.

Chair Kirkpatrick and Mr. Lewis discussed Chair Kirkpatrick’s concern that if the State requires a license to operate group home facilities, the local municipalities are verifying that operators of a group home have their State paperwork.

- Chair Kirkpatrick asked the Bureau of Health Care Quality and Compliance (BHCQC), Health Division, Department of Health and Human Services (DHHS), to clarify some of the testimony of Mr. Lewis regarding business licensing.
- Luana J. Ritch, Ph.D., Interim Chief, BHCQC, Health Division, DHHS, testified that the BHCQC’s licensing process relies on local municipalities to set the standards for a community residence, and facilities must meet local requirements in order for the BHCQC to license them. Dr. Ritch stated the BHCQC confirms that the residence meets the local requirements and then applies the BHCQC’s licensure standards as set forth in statute for the type of facility and the levels and types of care that are being provided in that facility.

Discussion ensued between Chair Kirkpatrick and Dr. Ritch regarding: (1) licensure protocols of the State for group homes relative to those of local governments; (2) collaboration between the State and local governments in assuring each entity handles its respective responsibilities relative to group homes; and (3) the process to remove residents from a group home should a license be suspended.

There was a discussion between Chair Kirkpatrick and Mr. Lewis pertaining to the Chair’s question regarding which unit a person would contact at the City of Las Vegas if there is a problem with a group home, with Mr. Lewis responding that the city’s code enforcement division will be responsible to enforce the city’s proposed rules for residential facilities for groups.

- Concluding his testimony, Mr. Lewis offered the assistance of the City of Las Vegas and requested the Committee consider during the 2011 Legislative Session a bill draft request (BDR) that creates a narrow definition for a group residential care facility so it excludes nondisabled individuals.

PUBLIC COMMENT

- Iris Gross, resident, North Las Vegas, asked for clarification on the distinction between private homes in residential neighborhoods that are rented and do not need a business license and group homes in residential neighborhoods that receive government subsidies yet are not required to have a business license.
- Brenda J. Erdoes, Legislative Counsel, Legal Division, LCB, clarified that the Fair Housing Amendments Act (FHAA) of 1998 does not allow discrimination against people with disabilities, and if a person with a disability is able to reside in a residential neighborhood because there is a group home there that is “government subsidized” then it would be discriminatory, and prohibited by the courts, to require a business license for the group home and not a rented private home in the neighborhood.

There was a brief discussion between Chair Kirkpatrick and Ms. Gross regarding Ms. Gross’ clarifying comment that she was referring to nondisabled individuals who live in group homes in residential neighborhoods and receive government subsidies for housing, and if licensing were required, Ms. Gross opined, funds would be generated for local governments in the State.

- Eric James, Fresh Start Family Services, sought clarification on his understanding of the testimony of Mr. Lewis, previously identified, regarding the City of Las Vegas limiting a community residence to no more than ten people even with a conditional use permit.

A brief discussion ensued between Chair Kirkpatrick and Mr. James regarding the number of individuals who may live in a community residence as defined by the City of Las Vegas in its proposed new ordinances related to residential facilities for groups. They also discussed the issue of conformity of definitions between the State and local municipalities.

- Edward Dichter, Community Development, City of Henderson, reported that the City of Henderson has capped to six the number of unrelated individuals who may live in a group home. He expressed support for not requiring a business license for a group home in a residential neighborhood that limits the number of unrelated occupants to four or less. Finally, Mr. Dichter shared that building codes, relative to the size of a residence, could limit the number of individuals allowed to live in a community residence or group home.

WORK SESSION—DISCUSSION AND POSSIBLE ACTION ON ISSUES IDENTIFIED AT THE JANUARY 27, 2010, AND THE MARCH 24, 2010, MEETINGS

- *Definitions of Various Types of Group Homes*
- *Licensing Requirements for Group Homes*
- *Communication and Coordination Between Various State and Local Entities*
- *Distance Requirements for and Elimination of Oversaturation of Group Homes*
- *Quality Assurance for Residents of Group Homes*
- *Life Safety and Public Safety Issues for Residents and Neighbors of Group Homes and Public Safety Personnel*
- *Training for Caregivers at Group Homes*
- *Protection for Residents and Owners of Group Homes*
- *Land Use Regulations for Group Homes*
- *Oversight of Nonprofit Group Homes*
- *Conflicts of Interest Between Residents of Group Homes and Facility Representatives Managing Residents' Funds*
- *Compliance of Group Homes With Covenants, Conditions, and Restrictions of Homeowners' Associations*
- *Reimbursement Rates for Operators of Group Homes*
- *Consistency Between State Law and Local Codes*
- *Notification of Neighbors of Group Homes*
- *Any Other Issues Raised by Committee Members, Governmental Officials, or the Public Pertaining to the Licensing, Siting, or Safety of Group Homes*

Note: A "Work Session Document" was not produced for the Committee's work session; rather, the above list of issues were compiled by staff for discussion and possible action as identified from the January 27, 2010, and the March 24, 2010, meetings.

- Chair Kirkpatrick opened the work session by noting the following goals for the Committee to keep in mind: (1) adhering to legal requirements to ensure that residents in a group home have health and safety protections; (2) mandating accountability at the State and local level; (3) streamlining residents back into the community; and (4) ensuring that the residents who live within the neighborhoods where group homes exist also have quality of life protections.

RECOMMENDATION NO. 1 — Penalties for Unlicensed Group Homes

- Chair Kirkpatrick brought forward the issue of unlicensed group homes and proposed that substantial fines be imposed for operators of unlicensed facilities. The fines would

start at \$10,000, and the consequences to violators would be clearly addressed in *Nevada Revised Statutes* (NRS). Chair Kirkpatrick inquired of Marla McDade Williams, Deputy Administrator, Health Division, DHHS, whether \$10,000 is a sufficient fine to recoup the cost of investigating and handling subsequent actions related to unlicensed group home violations.

- Ms. Williams responded that \$10,000 would cover the initial outlay; however, she suggested that \$10,000 could serve as the minimum, and if expenses exceed that amount, the difference would be added to the base amount.
- Chair Kirkpatrick proposed the following three-tier fine structure for operators of unlicensed group homes and asserted it needs to be clear in statute that the first offense is the minimum fine: (1) \$10,000 minimum plus any additional costs the State may incur for a first offense; (2) \$25,000 for a second offense; and (3) \$50,000 for a third or subsequent offense. Additionally, Chair Kirkpatrick voiced concern about the length of time it takes to resolve an unlicensed group home violation once it is identified, suggesting some type of immediate monetary consequence needs to be put in statute to compel the relocation of the residents from an unlicensed to a licensed home in a timely manner.
- Ms. Williams offered the Health Division's assistance to work with the LCB's legal staff to craft language for a BDR on the issue of unlicensed group homes that will address the Committee's concerns. Ms. Williams then explained the current process of identifying an unlicensed group home and the actions taken once such identification is made.
- Senator Copenig inquired about what is currently in NRS and the proposed change in order to clarify what the proposed BDR would address relative to unlicensed group homes.
- Ms. Williams responded that she did not have a copy of the statutes with her, but there are statutes that address fines between \$1,000 and \$10,000 for an unlicensed operation of a residential facility for groups. She further noted that for subsequent offenses the fine increases. Ms. Williams suggested that where the statutes list a range, amend the statutes to remove the range and instead state the fine for each offense (e.g., an increasing amount for offenses subsequent to a first offense).
- Senator Breeden opined that if an owner-operator is fined a third offense, and perhaps after a designated time frame, the owner-operator could never be licensed again in Nevada.
- Brenda J. Erdoes, previously identified, responded that the courts are strict on a "lifetime ban" because of a property right interest in the licensure. Ms. Erdoes offered, however, that it may be possible to address Senator Breeden's concern without violating the property right interest issue.

- Senator Parks asked if there are bonding requirements at the State or local level for group care facilities.
- Ms. Williams responded it was her understanding that residential facilities for groups for the elderly and homes for individual residential care for the elderly are required to post surety bonds to protect the interest of the residents in those facilities. She did not know if the requirement extends to skilled nursing homes.
- Senator Copening asked Chair Kirkpatrick whether it was her intent for the fines to be assessed on unlicensed facilities and that those facilities would be required to become licensed once the State learns of such status.
- Chair Kirkpatrick replied she understands unlicensed facilities are required to become licensed, but there is a significant expense to the State to enforce the law since it typically learns of unlicensed facilities after an unfortunate event has occurred. She opined offenses can be tracked that occur in licensed homes, but the licensed operators who are taking great care of their residents should not be required to be assessed increased fees to cover staff time to address the unlicensed operators.
- Senator Copening concurred with the Chair regarding the licensed operators but expressed concern about allowing unlicensed operators to have three offenses of operating illegally. She opined that those operators should not be given a second chance if they failed to become licensed after their first offense.

Discussion ensued between Chair Kirkpatrick and Senator Copening regarding the violations and fine scenarios for unlicensed facilities.

- Following the discussion, Senator Copening asserted that she would support a three-tier fine structure for operators of unlicensed group homes. She proposed, however, that at the time of the first violation discovery and subsequent fine assessment, the offenders should not be allowed to operate and also be given a specific period of time to become a licensed facility.
- Chair Kirkpatrick responded that she has discussed with Ms. Williams the matter of removing residents from unlicensed facilities to prevent the operators from continuing to collect fees while the violation and fine assessment progresses through the courts.
- Ms. Williams acknowledged the Chair's explanation and added that an unlicensed operator is directed to become licensed or remove the residents in the operator's facility until licensing is obtained.
- Ms. Erdoes reported that the statute under discussion is NRS 449.2496 ("Penalties for unlicensed operation or maintenance of home"). She read the following extract from this statute and said it is most likely the portion the Committee is proposing to amend:

A person who operates or maintains a home for individual residential care without a license issued by the Health Division . . . is liable for a civil penalty, to be recovered by the Attorney General in the name of the Health Division, for the first offense of \$10,000 and for a second or subsequent offense of not less than \$10,000 nor more than \$20,000.

There was a brief discussion between Chair Kirkpatrick and Ms. Erdoes regarding having sufficient input from the Committee to draft a BDR on the issue of unlicensed group homes and assigning a representative from the Committee to work with LCB legal staff on any questions that may arise during the drafting process.

- Senator Breeden expressed support for a BDR that would require a three-tiered penalty for operating an unlicensed group home. She reiterated Chair Kirkpatrick's suggestion for the fine structure to be set as follows: (1) \$10,000 minimum plus any additional costs the State may incur, for a first offense; (2) \$25,000 for a second offense; and (3) \$50,000 for a third or subsequent offense. However, she requested that if operators are assessed a third fine that they would have their license revoked and would be barred from operating any type of group home in the State of Nevada.
- Ms. Erdoes stipulated that the members of the LCB Legal Division will determine through their research whether the statute can legally be amended to the extent that Senator Breeden proposed.
- Chair Kirkpatrick asked for the recommendation to include a requirement that once an unlicensed facility is identified residents in the facility are to be removed until such time the facility becomes licensed.
- Senator Breeden concurred with the Chair's request and directed a question to Ms. Williams to confirm the support of the Health Division on this matter.
- Ms. Williams reaffirmed that the Health Division would work with LCB legal staff on issues pertaining to the drafting of a BDR regarding unlicensed group homes.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR BREEDEN MOVED TO DRAFT LEGISLATION TO REQUIRE A PENALTY FOR OPERATING AN UNLICENSED GROUP HOME. THE PENALTY WOULD BE \$10,000 FOR A FIRST OFFENSE (PLUS ANY ADDITIONAL COSTS THE STATE MAY INCUR); \$25,000 FOR A SECOND OFFENSE; AND \$50,000 FOR A THIRD OR SUBSEQUENT OFFENSE. ADDITIONALLY, ONCE AN UNLICENSED FACILITY IS DISCOVERED, ACTION WOULD BE TAKEN TO REMOVE THE RESIDENTS UNTIL SUCH TIME THE FACILITY BECOMES LICENSED. AFTER A THIRD OR SUBSEQUENT OFFENSE, ANY FURTHER LICENSING REQUESTS WOULD BE DENIED. THE MOTION WAS

SECONDED BY SENATOR COPENING AND PASSED UNANIMOUSLY.
ASSEMBLYMAN COBB WAS ABSENT FOR THE VOTE.

Subsequent to the discussion and action under Recommendation No. 1, and prior to the dialogue and action under Recommendation No. 2, the Committee engaged in discussions regarding the following: (1) juvenile homes; (2) business licenses for nonprofits operating a group home; and (3) group homes located within a homeowners' association.

Juvenile Homes

- Senator Breeden suggested a BDR to address the need for additional training of staff working in juvenile homes because of information about this matter mentioned by various municipalities' code enforcement staff.
- Chair Kirkpatrick expressed concern that certain types of juvenile homes are protected under different laws but noted her support for a BDR that addresses training and qualifications for caregivers in juvenile homes. Chair Kirkpatrick asked for direction from the Committee's LCB legal staff.
- Ms. Erdoes opined that requirements for additional training could be crafted, and she noted under "Dillon's Law," the Legislature has the authority to direct local governments to require additional training. However, the statute could specify that the requirements are more of a "partnership" rather than a "directive."
- Chair Kirkpatrick asked if infractions would follow an operator of a juvenile home who moves to another neighborhood or if the violations remain with the property.
- Ms. Erdoes stated LCB legal staff can work with local governments as well as the Health Division to research this issue.
- Senator Breeden asked if reports to the Legislature of infractions could be required to ensure accountability.
- Ms. Erdoes said that reports to the Legislature of infractions in juvenile homes could be legislated as a requirement.
- Chair Kirkpatrick expressed support for a BDR requiring additional training and a reporting mechanism to the Legislature, perhaps on an annual basis, of infractions that occur in juvenile homes.
- Senator Copening asked who would provide the training for the staff working in juvenile homes.

- Chair Kirkpatrick responded it was her understanding that training requirements already are in place.
- Ms. Erdoes clarified that LCB legal staff would examine the programs that already exist for the various types of juvenile facilities or homes to ensure training requirements are applicable to each regulatory body.
- Senator Copening suggested that a decision on a BDR addressing training and reporting infractions in juvenile homes be tabled until the Committee has discussed other BDR options since it is limited to five, with four remaining.

Business Licenses for Nonprofits Operating a Group Home

- Senator Copening raised the issue of nonprofits not being required to have a business license to operate a group home. However, she opined, group home facilities need to be accountable and held to the same standards as those currently required to have a business license.
- Chair Kirkpatrick asked Ms. Williams to clarify if all group home facilities—whether nonprofit or for-profit—are required to be licensed by the State of Nevada.
- Ms. Williams responded that the Health Division is required to license facilities that provide care for persons who are elderly or disabled; she listed the different types of facilities. She further stated that none of the facilities, whether for-profit or nonprofit, are exempt from the State’s licensing requirement if they offer services as noted in statute that require them to be licensed. Ms. Williams explained that even if a local government exempts a facility from having a business license, if the facility meets the requirement for licensing by the State, it still must have a State license. She pointed out if a nonprofit is not required to have a business license by a local government, the State requests confirmation that a license is not required and also that the facility has met the local government’s zoning requirements before the State will issue a facility license.
- Senator Copening shared that she was now comfortable with the issue of nonprofits not being required to have a business license from local governments since they are subject to the same standards by the State of Nevada.

Group Homes Located Within a Homeowners’ Association

- Senator Copening drew attention to the issue of enabling municipalities to list on their application for a group home a question asking if the applicant’s group home will be located in a homeowners’ association (HOA). If so, include a subsequent question asking if the home is compliant with the association’s governing documents and have the applicant list the documents to affirm the home will be in compliance. The intent of gathering this information at the beginning of the application process would be to avoid

a later conflict between the group home and the association's Covenants, Conditions, and Restrictions (CC&Rs).

- Ms. Erdoes submitted that requiring local governments to include such questioning on applications for group homes that will be located in an HOA may be in violation of the FHAA.
- Senator Copenig said it was her understanding that Chapter 116 of NRS ("Common-Interest Ownership [Uniform Act]") addresses the parameters of what an HOA can list in its CC&Rs, and therefore, an HOA could disallow group homes in common-interest communities.
- Ms. Erdoes clarified there is language in Chapter 116 of NRS that allows common-interest communities and HOAs to place restrictions in their CC&Rs. However, she was of the opinion that they cannot violate the FHAA.

There was further discussion between Senator Copenig and Ms. Erdoes regarding what Chapter 116 of NRS encompasses.

RECOMMENDATION NO. 2 — Conflicts of Interest Between Residents of Group Homes and Facility Representatives Managing Residents' Funds

- Senator Breeden expressed concern about the role of administrators of group homes and conflicts of interest between their residents and the administrators or facility representatives managing the residents' funds. She explained that some administrators have "power of attorney" over some of their residents and collect their funds and keep those funds in one account. Senator Breeden stated the residents' funds should be maintained in separate accounts for accountability in tracking each individual's money.
- Senator Copenig agreed that there should be a separation of funds, and a BDR would be appropriate to resolve this issue.
- Chair Kirkpatrick asked for clarification on whether the legal and financial affairs of a resident would be addressed in the BDR, because in the event of a death, she wanted to know how the resident's burial would be handled and how possessions would be distributed.
- Ms. Williams responded that she would like to review the Health Division's regulations regarding an administrator or caretaker holding power of attorney for a resident. It was her understanding that the issue is not addressed in statutes, but it may be addressed in the regulations.
- Chair Kirkpatrick opined that ensuring accountability will protect the residents in group homes, and she suggested a third party be designated to hold power of attorney for legal and financial matters pertaining to residents in group homes.

- Senator Breeden asked whether the BDR would differentiate between a child and an adult.
- Chair Kirkpatrick responded that it was her understanding that comingling of funds in the foster care system is strictly prohibited; however, Senator Breeden's question would be examined by LCB legal staff.
- Senator Copening requested that a group home administrator or staff representative be prohibited from being designated as the beneficiary of a resident's life insurance or will.
- Chair Kirkpatrick concurred with Senator Copening's request but added the stipulation that there should be a beneficiary named so the resident's remains and possessions can be handled.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR BREEDEN MOVED TO DRAFT LEGISLATION TO REQUIRE THAT A THIRD PARTY HOLD POWER OF ATTORNEY FOR LEGAL AND FINANCIAL MATTERS FOR EACH CLIENT WITHIN A GROUP HOME AND TO PROHIBIT THE ADMINISTRATOR AND/OR OWNER OF A GROUP HOME FROM BEING THE BENEFICIARY OF A CLIENT'S LIFE INSURANCE OR WILL. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY. ASSEMBLYMAN COBB WAS ABSENT FOR THE VOTE.

RECOMMENDATION NO. 3 — Referral Issues for Residents Referred to Licensed Group Home Facilities Within the State

- Chair Kirkpatrick submitted the issue of holding referral agencies to a higher standard to ensure that individuals needing to live in a group home are referred by a licensed referral agency to a licensed facility that will provide the safest environment and offer services that will be most beneficial to the client's needs. Chair Kirkpatrick suggested there be a referral form for all residents being referred to a licensed facility within the State and that the form be kept in the residents' files at the facility, which would follow each resident if moving to another facility.
- Ms. Williams explained that the BHCQC within the Health Division licenses referral agencies, and they have a specific set of rules they must follow when working with someone to make a referral. However, if someone is being released from a hospital, the employee processing the discharge plan is not licensed by the State to make referrals. Ms. Williams opined the Health Division would support developing a system where there is consistency to hold someone responsible for the referral, but she reiterated, it is not always a licensed referral agency making the referral.

- Chair Kirkpatrick stated she supports a BDR to ensure that proper referrals are being made not only by licensed referral agencies but also by hospitals so that the client is being referred to a licensed facility.
- Ms. Williams was of the opinion that the Health Division could work toward holding the licensed referral agencies responsible for making referrals only to licensed facilities. She explained that the Division reviews discharge plans for patients and makes decisions about whether or not those referrals are appropriate and meet the licensure conditions of the facility. Ms. Williams concluded that it would be helpful to have specific statutory language to ensure that patients are only discharged to a licensed facility.
- Ms. Erdoes clarified that, rather than amending NRS 449.0305 (“Businesses that provide referrals to residential facilities for groups: License required; standards and regulations; provision of referrals; prohibited acts; civil penalties”), a separate statute is probably what the Committee is seeking that would address referrals, tracking them, and also what the standards are for the referral agencies.
- Chair Kirkpatrick stated that qualifications and standards should be specified in statute of what is expected of the referral agencies for placing clients in group homes to ensure that placements are based on the category of needs relative to the facility’s services.
- Ms. Williams reiterated that the BHCQC licenses and regulates referral agencies. She emphasized that if more public awareness could be promoted about this then when injustices occur, an individual can lodge a complaint with the BHCQC and an investigation into the matter will be initiated. And, if it is found the referral agency is unlicensed, the BHCQC will hold the agency accountable and require it to become licensed.
- Chair Kirkpatrick said there needs to be an avenue to have discussions with the public about the issue of referral agencies and offered the following suggestions to begin a community outreach program on this matter: (1) hospitals could communicate the issue through their monthly health care services; (2) local governments could provide information at their offices dealing with social services; and (3) senior citizen centers could offer a vehicle for discussion on the topic.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR COPENING MOVED TO DRAFT LEGISLATION TO REQUIRE A REFERRAL FORM FOR ALL RESIDENTS BEING REFERRED TO A LICENSED FACILITY WITHIN THE STATE AND REQUIRE THAT THE FORM BE KEPT IN THE RESIDENTS’ FILES AT THE FACILITY WHERE THEY RESIDE. ADDITIONALLY, REQUIRE A PUBLIC OUTREACH PROGRAM TO EDUCATE THE PUBLIC ABOUT REFERRALS AND PROVIDE AN AVENUE FOR DISCUSSIONS INVOLVING THE

QUALIFICATIONS AND STANDARDS REQUIRED OF LICENSED REFERRAL AGENCIES TO ENSURE THEY ARE HELD ACCOUNTABLE. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY. ASSEMBLYMAN COBB WAS ABSENT FOR THE VOTE.

RECOMMENDATION NO. 4 — Clarify Definitions Between State and Local Governments Relative to Group Home Facilities

- Chair Kirkpatrick put forward the issue of clarifying definitions between State and local governments relative to group home facilities.
- Senator Breeden called attention to discussions from the first two meetings of the Group Homes Committee regarding the need to ensure that definitions for group home facilities are consistent among local governments and the State of Nevada. She pointed out that the City of Las Vegas testified earlier in the meeting that it is proposing to redefine the city's group home terms. Therefore, Senator Breeden opined it would simplify the process for those looking to place loved ones in a specific type of facility if all the terms were consistent throughout the State.
- Ms. Erdoes stated there is an NRS statute that provides local governments the authority to include in their ordinances a stipulation to conform to some basic requirements. So, for the group homes issue, a statute could be drafted that would specify and mandate consistent definitions for group homes relative to zoning and business license ordinances.
- Ms. Williams declared that to her knowledge the existing definitions in NRS would probably be moved forward and certainly could be used as a starting point. Ms. Williams opined the task would be a lot of work, but she confirmed the Health Division would fully cooperate in any directive from the State. She also noted that should the definitions change, the Division would update its regulations to comply with whatever the statute decrees.
- Chair Kirkpatrick suggested establishing a collaborative working group among the local governments and the State to clarify and reach agreement on consistent definitions. For clarification, Chair Kirkpatrick stated that the definitions to be agreed upon would relate to the type of facility, not the single-family definition.
- Senator Breeden proposed a BDR to create in NRS consistent language for the types of facilities within the State of Nevada but to exclude single-family residences.
- Ms. Erdoes asked for clarification of Senator Breeden's motion relative to the kinds of definitions for the purposes of licensing to be clarified in statute, such as how many people could reside in a particular type of residence and with related or unrelated individuals.

- Senator Breeden confirmed Ms. Erdoes' assessment and added that her intent is to ensure the State's definitions are consistent with all the local governments' definitions in the State of Nevada.
- Ms. Erdoes asked if Senator Breeden meant for business licenses, which Senator Breeden confirmed.
- Chair Kirkpatrick inquired, for further clarification, whether the goal is to ensure that the definition references will be for the same type of facility, such as a definition for a "transitional home" or a definition for a "community residence" will be the same at the State level and throughout all local jurisdictions in the State. Chair Kirkpatrick referenced the list of definitions ([Exhibit E](#)) for selected health-related facilities regulated by the Health Division within the DHHS that was distributed at the Committee's January 27, 2010, meeting because, she stated, in one jurisdiction or entity the definitions meant different things for various categories, and the task to make all the definitions consistent would be formidable.
- Senator Breeden acknowledged Chair Kirkpatrick's concern but expressed support for establishing a collaborative team of local governments and the State to reach consensus on consistent definitions for categories of group homes that would be used by the State and local governments.
- Senator Copening stated that drafting a BDR with the goal to establish consistent definitions throughout the State would result in a mandate that local municipalities follow. Therefore, a collaborative working group would need to reach consensus on the definitions that would be specified in NRS. She opined the process will be challenging for municipalities that have already drafted their definitions to work best for their localities.
- Senator Breeden concurred and stressed that consistency is much simpler for everyone to understand and to ensure that those individuals being placed in group homes will reside in the appropriate facility for their needs.
- Ms. Erdoes asked for clarification on what time frame the Committee envisions to draft into the BDR for the local governments to commence the conforming changes, because currently, their ordinances could have potential conflicts and it would be counterproductive to invalidate their definitions before they have time to comply with those established from the consensus of the working group and mandated in NRS.
- Chair Kirkpatrick shared that she envisions a couple years would be needed but called on the local municipalities represented at the meeting to offer their input on a preferred time frame.
- James B. Lewis, previously identified, said if new definitions are established that require all the municipalities to use for the different types of group homes that the

State currently licenses and then must be adopted by each municipality, it will be a lengthy process to work with the Committee and legislators to determine if the definitions are reasonable interpretations of some of the federal antidiscrimination laws and how those definitions would then apply to the local municipalities. Mr. Lewis requested sufficient time to deliberate with legislators and others on the matter, because he opined, the application of those definitions will result in a State land use regulatory program.

- Chair Kirkpatrick asserted a time frame is necessary, but the Committee does not want to mandate an unreasonable limit.
- Cadence Matijevich, Special Events Program Manager, Office of the City Manager, City of Reno, testified it was her understanding that the City of Reno already attempted to match its group home definitions in the city's ordinances to the State's definitions. Ms. Matijevich asked for clarification, however, regarding if the Committee's goal is to match definitions or match land use requirements.
- Chair Kirkpatrick responded that the Committee is seeking consistency in the definitions for categories of group homes. She emphasized the issue is not about land use; land use, she declared, is a local government matter.
- Joseph Henry, Senior Code Enforcement Officer, City of Reno, confirmed that the city updated its group homes ordinance during 2009 to be consistent with the State's definitions for group homes.
- Chair Kirkpatrick asked if the City of Sparks and Douglas and Washoe Counties have updated their group home definitions to match the State's definitions.
- Mr. Henry responded that he could answer only for the City of Reno.
- Senator Copening suggested the State's current definitions may be adequate, but the problem may be local governments' have defined group homes, assisted living facilities, et cetera, differently, and therefore, the State's definitions may need to be redefined to become consistent with the municipalities' definitions.
- Chair Kirkpatrick opined that the State's definitions are adequate, but the local governments tend to use different definitions for reasons that best fit their governmental agencies. She reiterated that a sufficient amount of time should be allowed for the municipalities to adopt definitions that would be used consistently throughout the State, and if necessary, take the focus off the time frame by allowing flexibility on the matter as the next legislative session unfolds and more understanding of what will be involved for local governments to adopt and implement consistent definitions into their ordinances.

- Edward Dichter, previously identified, stated he testified at the Committee's March 24, 2010, meeting that the cities of Henderson, Las Vegas, and North Las Vegas had almost identical standards and definitions, and most of the definitions mirrored the State's definitions. However, as a result of the previous testimony from Mr. Lewis with the City of Las Vegas and the proposed changes to its codes relative to group homes, Mr. Dichter said the question now is whether the State's definitions are adequate and if the standards need to change.
- Chair Kirkpatrick said she continues to support setting a longer time frame in the initial process of reaching consensus and implementing consistent definitions that would be mandated in statute and used by the State and local municipalities, but later the process can be shortened or extended if necessary.
- Senator Copening recognized the research the City of Las Vegas conducted relative to statutory matters pertaining to residential facilities for groups and federal antidiscrimination laws. She opined it would behoove the State to better understand the legal ramifications that the City of Las Vegas has identified. Senator Copening declared the process of mandating consistent definitions should begin by bringing representatives of the municipalities and the State together to learn where the discrepancies are and understand the local municipalities' reasons for the definitions that differ from the State's so consensus can be reached on the best language for the definitions. She suggested a time frame would then be designated to require that the definitions be implemented by Nevada's local governments.
- Chair Kirkpatrick offered it is important to show good faith to the courts that the State is working toward resolving its group home issues, and submitting a BDR on listing in statute definitions that will be mandated for consistent use throughout the State, provides an avenue for the State to begin discussions and reach consensus with local municipalities on the matter.
- Mr. Lewis pointed out if the task is to match categories of group homes to definitions or purposes of a group home category, it should not be too difficult. He said, however, if the issue pertains to a land use program and having consistent definitions across all the counties and municipalities in the State, as he and the City of Reno questioned earlier in the meeting, Mr. Lewis requested flexibility to discuss the matter prior to reaching resolution on it.
- Senator Copening said she was not addressing land use. She clarified her intent was to ensure consistency of definitions for categories of group homes to avoid having a conflict between the State and municipalities' definitions that, if variations exist for various categories, could result in a previously licensed facility being in violation of the State's licensing requirements.
- Chair Kirkpatrick surmised that a group home is licensed by the State based on the type of facility the licensee is planning to operate, but the local government license is based

on the land use requirements for the particular municipality. Chair Kirkpatrick opined the discussions to reach consensus on the definitions will be arduous but the definitions could be narrowed to as few as five, and therefore, simplify the process.

- Senator Copenig suggested placing a one-year timeline in the BDR for the State and local governments to reach consensus on consistent definitions for group home categories, but if during the 2011-2012 Interim it is determined that one year is not sufficient, the timeline would be amended during the 2013 Legislative Session.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR BREEDEN MOVED TO DRAFT LEGISLATION TO FORM A WORKING GROUP CONSISTING OF REPRESENTATIVES OF THE LEGISLATIVE COMMITTEE TO STUDY GROUP HOMES (ASSEMBLY BILL 294, CHAPTER 298, *STATUTES OF NEVADA 2009*) AND LOCAL GOVERNMENTS. THE WORKING GROUP IS CHARGED WITH DEVELOPING A LIST OF DEFINITIONS FOR GROUP HOME FACILITIES THAT WILL BE CONSISTENT IN *NEVADA REVISED STATUTES* AND USED BY LOCAL GOVERNMENTS. AN INTERIM TIMELINE OF ONE YEAR WILL BE ALLOTTED FOR THE WORKING GROUP TO REACH CONSENSUS ON THE LIST OF DEFINITIONS; THE TIMELINE MAY BE ADJUSTED BY THE ENSUING LEGISLATURE IF MORE THAN ONE YEAR BECOMES NECESSARY FOR THE WORKING GROUP TO ACCOMPLISH ITS TASK. ADDITIONALLY, IT WILL BE MANDATED IN STATUTE THAT LOCAL GOVERNMENTS ARE REQUIRED TO USE THE DEFINITIONS DEVELOPED BY THE WORKING GROUP AND CODIFIED IN *NEVADA REVISED STATUTES*. THE MOTION WAS SECONDED BY SENATOR COPENING AND PASSED UNANIMOUSLY. ASSEMBLYMAN COBB WAS ABSENT FOR THE VOTE.

RECOMMENDATION NO. 5 — Reporting Infractions at Homes for Juveniles and Requiring Training for Personnel at Homes for Juveniles Where Infractions Have Occurred

- Chair Kirkpatrick was of the opinion that it is important to address juvenile homes during the 2011 Legislative Session relative to training for staff and reporting infractions that occur in juvenile homes, as discussed earlier in the meeting.
- The Committee **APPROVED THE FOLLOWING ACTION:**

SENATOR BREEDEN MOVED TO DRAFT LEGISLATION TO ESTABLISH A MECHANISM TO TRACK INFRACTIONS AT HOMES FOR JUVENILES AND TO REPORT THOSE INFRACTIONS TO THE LEGISLATURE ON AN ANNUAL BASIS. ADDITIONALLY,

SENATOR BREEDEN MOVED TO REQUIRE TRAINING FOR PERSONNEL AT HOMES FOR JUVENILES THAT HAVE HAD INFRACTIONS. THE MOTION WAS SECONDED BY SENATOR PARKS AND PASSED UNANIMOUSLY. ASSEMBLYMAN COBB WAS ABSENT FOR THE VOTE.

PUBLIC COMMENT

- Iris Gross, previously identified, asked if the other issues listed under the work session portion of the meeting's agenda that did not result in a BDR would be addressed.
- Chair Kirkpatrick explained the intent to include the list of issues on the agenda under the work session was to notify the public that any of the matters listed could be discussed. She further explained that each legislator has the opportunity to submit individual BDRs, and members of the public may contact a legislator, or their legislative representative, and asked that a BDR be submitted on the public member's behalf.
- Ms. Gross called attention to some of the issues concerning her that were listed on the agenda under the work session portion of the meeting but did not result in a BDR. In particular, she referred to the issue of HOAs not being able to include in their CC&Rs a restriction on residents from operating a business in their common-interest community because of antidiscrimination laws.
- Brenda J. Erdoes, previously identified, clarified that the courts have ruled that HOAs cannot discriminate against group homes and that there are other related legal encumbrances based on the FHAA. Therefore, Ms. Erdoes stated, as a lawyer, she cannot advise the Legislature to pass something that very likely will be struck down in court.

A brief discussion followed between Ms. Gross and Ms. Erdoes regarding the concerns of residents in common-interest communities versus the FHAA.

- Chair Kirkpatrick expounded on the five BDRs the Committee took action on noting how each will have a positive impact toward resolving the problems in the State relative to group homes, and within all of the five recommendations, the interests of residents living in gated communities or other communities are represented.

ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 4:40 p.m.

Respectfully submitted,

Gayle Nadeau
Principal Research Secretary

Michelle L. Van Geel
Principal Research Analyst

APPROVED BY:

Assemblywoman Marilyn Kirkpatrick, Chair

Date: _____

LIST OF EXHIBITS

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

[Exhibit B](#) is a memorandum dated June 9, 2010, to the Legislative Commission’s Committee to Study Group Homes from James B. Lewis, Deputy City Attorney, Office of the City Attorney, City of Las Vegas, provided by Mr. Lewis.

[Exhibit C](#) is a map prepared by the Department of Information Technologies, City of Las Vegas, on June 1, 2010, titled “Group Care, Halfway House, and Transitional Living Facilities,” provided by James B. Lewis, Deputy City Attorney, Office of the City Attorney, City of Las Vegas.

[Exhibit D](#) is a document titled “Bill No. 2010-22,” regarding an ordinance to update the City of Las Vegas’ zoning and licensing regulations that apply to community residences, provided by James B. Lewis, Deputy City Attorney, Office of the City Attorney, City of Las Vegas.

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

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