

MINUTES OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE  
TO REVIEW REGULATIONS

JANUARY 13, 2011

The meeting of the Legislative Commission's Subcommittee to Review Regulation was called to order by Chair Marcus L. Conklin at 9:13 a.m. on January 13, 2011, at the Legislative Building, Room 2134, 401 South Carson Street, Carson City, Nevada and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The Agenda is included as [Exhibit A](#) and the Attendance Roster is included as [Exhibit B](#). All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMISSION MEMBERS PRESENT (CARSON CITY):**

Assemblyman Marcus L. Conklin, Assembly District No. 37  
Senator Mike McGinness, Central Nevada Senatorial District

**COMMISSION MEMBERS PRESENT (LAS VEGAS):**

Senator Allison Copening, Clark County Senatorial District No. 6  
Assemblywoman Marilyn Kirkpatrick, Clark County Assembly District No. 1  
Senator John J. Lee, Clark County Senatorial District No. 1  
Assemblyman Lynn D. Stewart, Clark County Assembly District No. 22

**STAFF MEMBERS PRESENT:**

Brenda Erdoes, Legislative Counsel  
Risa B. Lang, Chief Deputy Legislative Counsel  
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau  
Olivia Lodato, Secretary, Legal Division, Legislative Counsel Bureau

**OTHER PRESENT:**

Michael J. Willden, Director, Department of Health and Human Services  
Marla McDade Williams, Deputy Administrator, Nevada State Health Division

Chair Conklin called the meeting to review regulations to order. He requested a roll call.

Ms. Kirkpatrick requested a five minute recess.

Chair Conklin called the meeting back to order and requested a roll call of the members present.

Ms. Clark called the roll and reported all members were present.

Chair Conklin requested approval of the previous minutes from the July 21, 2010 and October 15, 2010 meetings.

MR. STEWART MOVED TO APPROVE THE MINUTES FROM THE JULY 21, 2010, AND OCTOBER 15, 2010, MEETINGS OF THE SUBCOMMITTEE TO REVIEW REGULATIONS.

MS. KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion on Agenda Item III, a review of administrative regulations. He listed each regulation by number. If a member wanted a regulation held for further discussion, they must indicate so. Everything remaining on the agenda would be approved with one motion. Chair Conklin listed R087-08, R198-09, R062-10, R101-10, R115-10, R119-10 and R129-10 for approval.

Ms. Kirkpatrick requested R060-10 be held for discussion.

Chair Conklin asked for a motion of approval of the other items.

SENATOR MCGINNESS MOVED TO APPROVE R087-08, R198-09, R062-10, R101-10, R115-10, R119-10, AND R129-10.

MS. KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Conklin opened discussion on R060-10, State Board of Health. He asked Mr. Willden to testify on the regulation.

Ms. Kirkpatrick asked Mr. Willden to explain the situation and the letter received by members of the Committee.

Michael J. Willden, Director, Department of Health and Human Services, said the Deputy Administrator of the Health Division, Marla McDade Williams was also available to testify.

Mr. Willden said during the 2009 Session there were a number of pieces of legislation dealing with patient safety, public safety, public health issues and the inspection of the various facilities they regulated. He said in the 2009 session there were 11 or 12 new staff added to the Bureau of Health Care Quality and Compliance. The staff was provided to help with the frequency of inspections particularly around hospitals, ambulatory surgery centers, and physician's offices. He said they were directed to analyze their fees and that the fees, not the general fund, needed to support the activities of the Bureau. He said the revenue stream was not supporting the positions they had to do the inspections. He said 11 or 12 positions were vacant at this time. Mr. Willden said if the cash flow situation was not resolved today, he would have to layoff about 12 more staff on Monday, January 17, 2011. He said they were not generating enough fees from the current fee structure and the process would not support the inspectors. Mr. Willden referred to his letter to the Subcommittee, [Exhibit C](#), referring to the fee structure. He said without more funds they will have about a 50 percent work force remaining and would not be able to meet the requirements for inspections in some cases.

Chair Conklin requested the letter, [Exhibit C](#), be entered into the record.

Mr. Stewart was on the subcommittee as a replacement for Mr. Carpenter. He offered comments from Mr. Carpenter. He was concerned about the fee increase for the rural hospitals from \$1,500 to \$9,500. He said the Legislature had given an unfunded mandate to the Department of Health and Human Services. He said he was aware of the fine line or profit margin under which many health care facilities were operating. He said the increases were huge for them. He asked if the regulation was passed today, could they make adjustments later during the Session. He asked if the fees were reduced, could the 13 inspectors be retained.

Mr. Willden said adjustments could be made as they go forward. The intent of the Department of Health was to have each industry's workload be responsible for their costs. He said they would continue to reevaluate the costs. He added the legislation could be readdressed and inspection times could be modified. He said the facilities needed regular inspections. The financial issues were getting through FY11 and opening FY12, which required a reserve balance to open the year. He said they needed cash flow to operate for the next year.

Mr. Stewart asked if the Legislature went from a one-year to a two-year requirement, would it reduce the amount of funds needed and allow the 13 inspectors to retain their jobs.

Mr. Willden replied he could not give Mr. Stewart an estimate or answer at this time. He said the cash flow analysis showed they were short approximately \$1.3 million through the end of this year. The law could not be changed any sooner than July 1, 2011. He said the layoffs were this year's problem.

Senator Copening asked Mr. Willden to clarify the urgency in passing the regulation at this meeting. She asked if it did not pass today, did it not go into the Governor's budget and were the layoffs imminent.

Mr. Willden replied she was correct. He had met with the Chief of Staff and various members of Governor Sandoval's administration and it was made clear to him resolutions were required this week. He was directed to downsize the work force and make adjustments as needed if the regulation was not passed.

Ms. Kirkpatrick had asked for justification at the October meeting specifically outlining what it took to put everything in place. She said a huge concern was the fee increases and how many hours were required. She spoke with someone from the Department today who was going to supply information for the Legislature.

Senator McGinness said everyone had concerns about the increased fees. He said public safety was driving the regulations. He asked what would occur and what schedules would occur for the inspections if the regulation was not passed.

Mr. Willden said the Hepatitis C situation three years ago related to an ambulatory surgery center in Las Vegas and caused serious damage. The regulation was trying to protect the public patient safety issues. He said periodic inspections protected the public and were considered appropriate and needed. The inspections helped give the industry credibility as well as assure the health

of the public. He said each of the facilities had a different priority in the inspection process. He added there were federal rules also. Nursing homes were a top priority for the federal government. He said the Department tried to react as soon as possible to complaints that were more severe. He said each type of facility had to have the work performed prioritized. He said ambulatory surgery centers and hospitals would suffer if the regulation was not passed.

Chair Conklin said when something bad happened, it affected the entire industry. The Hepatitis C crisis probably limited the number of people who went for regular checkups in facilities designed for early detection of certain types of illnesses. He said it was not good for the health care industry, the State, or the constituents, and residents. He asked if there were additional questions.

Senator Lee asked Mr. Willden what had happened prior to the endoscopy problem. He asked if there were earlier disasters that were ignored or quietly handled by the department. He asked if the earlier inspections proved they were doing a good job.

Mr. Willden replied prior to the Hepatitis C event, the focus was on nursing facilities. It became clear during the investigation that hospitals and ambulatory care centers or doctor's offices were not inspected most of the time. The Bureau always had resource issues and it was always an issue of prioritizing the work load. He said since the Hepatitis C problem, many bills were passed and revised for the Department. He did not think it was a one instance type of occurrence. He said they still found patient safety issues almost every time they were out in the field. He did not know what amount of time between inspections was needed to guarantee some level of safety that was acceptable to everyone.

Mr. Stewart wanted to make it clear if they do not pass the regulation today, the Legislation from the 2009 session would not be fulfilled.

Mr. Willden replied he was correct.

Mr. Stewart asked if the 11 vacant positions would be restored.

Mr. Willden replied the Department would have to monitor the cash flow. His intent would be to add back the vacant positions and avoid further layoffs.

Mr. Stewart asked if he retained the 13 positions would he be able to fulfill the legislative mandate for inspections.

Mr. Willden said he could not guarantee that, but it was their intent to try to comply with the mandate. He said they would still be down approximately 20 percent of the work force even with the actions taken today.

Senator Lee said it was not possible to predict what effect the increases would cause. He did not understand why some of the rates were extremely high. He added patient safety was the overall purpose of the legislation. He asked if the companies would be charged the new fees immediately, or would it go into a budget process with no changes to the businesses. He said he did not want to vote for a fee without definition of when the inspections would occur.

Mr. Willden said it was budget decisions made in the 2009 Legislative Session. There was an expected additional work load given to the Bureau of Health Care and Compliance. The new staff provided to the Bureau was to be funded through a fee structure they had been working on for the past year. He said they could not wait until July for the revenue stream to begin to fund the 13 new positions. He said the regulations were effective with the calendar year 2011 fees.

Senator McGinness emphasized it was not being driven by the Governor's budget, but rather by the 2009 Nevada Legislature. The legislation was passed and this was the regulation to make the legislation work.

Mr. Willden replied Senator McGinness was correct. It was not the Governor's Budget, rather the one year process they had been in since the 2009 Legislature. He said Governor Sandoval understood they were trying to implement what came out of the 2009 Session. He said he could not continue to allow deficit spending in the budget account. He needed resolution today.

Senator McGinness said the regulations needed to be in place in order to request the money in the next budget being built.

Mr. Willden said the budget was built based upon the assumption that the regulations being discussed were in place. That was how the 2012 and 2013 budget was built. He added if necessary he would work with Director Clinger to revise the budget down to some lower level. He said it would not support the two dozen staff needed for the current proposal.

Chair Conklin asked for a motion on the regulation.

SENATOR MCGINNESS MOVED TO APPROVE R060-10, STATE BOARD OF HEALTH.

MS. KIRKPATRICK SECONDED THE MOTION.

Chair Conklin asked if there was any further discussion on the proposed motion.

Mr. Steward said he wanted to meet during the legislative session to review the increased fees.

Chair Conklin said it was his intention to follow-up the meeting with a letter to the Legislative Commission requesting the Legislative Auditor look at the fees and make certain the money was justified.

Ms. Kirkpatrick said it was important for the Legislature to know how many inspections were performed between now and the legislative session. She said they needed to do a better job of communication and progress reports.

Chair Conklin said she could get progress reports from the Division as to how the money was spent and what kind of audits were performed.

Mr. Willden said he welcomed the audit and would provide any information they required or requested.

THE MOTION CARRIED.

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Chair Conklin asked if there was any public comment. As there was no further business, he adjourned the meeting at 9:58 p.m.

Submitted by:

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Olivia Lodato, Interim Secretary

APPROVED:

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Marcus L. Conklin, Chair

DATE: \_\_\_\_\_



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**EXHIBITS**

**Committee Name: Legislative Commission's Subcommittee**

**To Review Regulations**

**Date: January, 13, 2011**

**Time of Meeting: 9:13 a.m.**

	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Michael J. Willden	Letter regarding R060-10
	D		