MEMBERS PRESENT: Chairman Bennett, Mr. Brady, Mr. Chaney, Mrs. Cavnar, Mr. Craddock, Mr. Getto, Mr. Glover

GUESTS PRESENT: Mr. Prengaman, Assemblyman
Dr. Jess La Monda, Human Resources: MN/MR
Charles Wolff, Department of Prisons
Mike McDema, Department of Prisons
M. D. Templeton, Bureau of Health Facilities
Dr. William L. Thomason, Nev. Division of Health
Donald Klasic, Attorney General of Nevada
Ted Oleson, Jr., American Civil Liberties Union
Frank Holzhauer, Human Resources
Lloyd Mann, Assemblyman
Pat Gothberg, Nevada Nurses Association
John McSweeny, Administrator, Div. of Aging Service

Chairman Bennett convened the meeting at 5:00 P.M.

AB 414

Assemblyman Prengaman introduced AB 414 stating this was an agency request of Mental Health and Retardation. He read from a letter from Jack Middleton, explaining the purpose and intent of the bill. (EXHIBIT # 1)

Mr. Jess LaMonda answered questions from the Committee.

Mr. Craddock questioned Section 4 that provides for disposal of property of clients of facilities of Mental Hygiene and Retardation, he found no notification of benefactor or next of kin or guardian, prior to disposition. He asked if Mr. LaMonda's agency had any objections to an amendment that would specify notification of clients representative prior to disposal of property.

Mr. LaMonde stated there was no problem with the suggested amendment. They did at present time notify, as a matter of routine, concerned persons of property dispositions.

Mr. Craddock said if an amendment could be drafted that assured due diligence in notification of clients' representatives, he would be supportive of AB 414.

Mr. Getto questioned manner of selection of guardians for persons with no known relatives. Mr. LaMonde spoke of present and proposed statutes applicable to this situation. Mr. Getto added he thought the bill needed additional clarification.

AB 431

Assemblyman Mann, a sponsor of the measure, spoke in its favor. The problem with investigation of large institutions is the coordination factor in terms of accomplishing desired goals. The desire of persons working in this area is to consolidate and use existing departments whenever possible, for information and checks on the system. This bill will aid in accomplishment of that goal. It will allow the state health officer to periodically examine the condition of the prison concerning those factors relating to health. Recommendations for improvement would be reported to the Board. A dietian has been recommended by the Governor and this is the type of action that would be monitored by the health officer. There is a fiscal impact of less than $2000. It is the intent to let the agency absorb this cost because it is not great. In both bills AB 431 and AB 434, all compromises have been worked out with the Administration. Mr. Wolff, Department of Prisons, also has worked on, and approved these measures.

Mr. Wolff, Department of Prisons, said the health department had an additional position in their budget for a dietian. There was no fiscal impact on his Department.

Mr. Glover, referencing line 8 of bill, dealing with diet, asked if this would mandate special diets for particular groups and was informed this was already mandated.

Mr. Wolff said diets ordered by medical staff was handled through their service operation. Other menus are evaluated by the health department to insure nutritional adequacy is maintained. Special diets for vegetarians and for religious compliances is already mandated and being handled within the system.

Mr Mann said the courts over the past few years had mandated a number of things that had not yet been put into statutes but were being done. These bills will bring the statutes into line with the practices mandated. The State really does not have a choice in this. It did not have to be put into the statutes if the State wished to operate under the court mandate. Statutes would restrict frivolous actions.

Mr. Craddock questioned the rational of language in lines 3 and 4 and was told that the intent was to require two written reports per year; this did not restrict the number or the frequency of examinations by health officer.

Mrs. Cavnar asked if the statement, the "administration" included the Department of Prisons. She was informed "administration" included the Governor, The Department of Prisons, The Department of Health".

Mr. Getto said a "(d)" section should be added that specified a good healthy work program. The Committee agreed.

Mr. Mann stated a work program was the subject of other proposed legislation.

Mr. Brady asked that, under paragraph 2, "did the 'board' have to follow the recommendations of the health officers.

Mr. Mann said the Board, because it was the supreme power outside the legislature and could not be forced to do anything but they were obligated to consider the recommendations.

Mr. Wolff added it was their (the Boards) obligation to correct deficiencies found by the health officers.

Mr. Mann said many of the things now being recommended were things that were being done. These things needed to be put into policy and statutes to insure uniform compliance.

AB 434

Mr. Mann said the Committee was short the fiscal note. This bill has to go to Ways and Means. Mr. Wolff has a breakdown on the cost. He stated this deals with the fact that 75% of the prisoners have a problem in the area of substance abuse. Services required by this bill are now being provided under a federal grant. The State of Nevada should recognize that this is a substantial problem and undertake the responsibility when the grant expires in a year. The State would be picking up a year and 3 days when the federal grant expires. Another grant is possible, but the program is too important to abandon. The State should make available the funds and take an active part in solving this problem.

Chairman Bennett asked just what was involved in this program of rehabilitation.

Mr. Wolff stated they had found through experience that an "in-house"program was not very effective. The major impact of any program in an institution is an educational one. Through the educational process, there would be a counselor at each institution, a program director. The heavy work is between these persons in the transition into community based programs, so the prisoners can get help when they are released. This is where most failures in rehabilitation occur.

Mrs. Cavnar asked if there were any statistic on the success rate of rehabilitation, because of these programs. Mr. Wolff stated there were no definite statistices because different programs evaluate differently. Exercise of a greatdeal of effort in properly getting the persons into the community, the success rate is much higher. Identification of needed programs is begun approximately 90 days prior to release from prison.

Mr. Mann said industry records indicate a very high success rate where community program participation was effected.

Mr. Mann added the state had never had the money to statistically analyze the success rates of these programs. Federal grants are recent.

Mr. Craddock asked approximately how much this program was going to cost. He was told, by Mr. Wolff, the coming biennium would cost about $53,000 and the second year, cost of the program would be about $187,000.

SB 78

Dr. William L Thomason, supported by Mr. David Templeton of the Nevada Division of Health stated they were responsible for licensing all health care facilities. SB 78 asks for the deletion of the word "and", line 3 and the substitution of the word "or" so that facilities that did not furnish laundry services could be licensed. The bill, SB 78 adds "mentally retarted" to group care facilities that must be licensed.

Dr. Thomason said certain facilities avoided licensing by not providing laundry service.

Mr. Craddock said from the language it appeared if laundry and no other service were provided, it would require a license. He was told that under a legal interpretation, a facility would have to provide food, shelter and laundry and the personal care or services in order for it to meet entirely the terms of the definition. A facility has avoided being licensed by not furnishing laundry. This aspect of the language was discussed at length.

Mrs. Cavnar said they all agreed with the intent of the bill but questioned the actual wording. She was informed that if any one of the first three items listed, plus the personal care or services, the facility would be subject to licensing.

Mr. Craddock stated food, shelter and personal care would definitely have to be provided.

Mr. Brady suggested bracketing out laundry. The Committee agreed with this suggestion.

Pat Gothberg, Nevada Nurses Association stated that organization supported the bill. She was informed there were facilities, not concerned in this bill, that provided services to the mentally ill.

SB 79

Dr. Thomason spoke in favor of this bill also. The purpose of the bill is to add to definitions on those health and care facilities which were licensed under Chapter 449, home health health agencies. He present a document relating to the funding of home health agencies under Title 18, or medicare. (EXHIBIT # 2)

Dr. Thomason added, in 1973 home health agencies were approved for reimbursement under Title 18. At that time the licensure of these agencies was conducted under emergency provisions of regulations adopted by the state board of health. The definition of home health agencies should now be added to the State statutes. They have been licensing these agencies since 1973.

Mrs. Cavnar said she felt "physical therapy should be included in this measure. She was informed physical therapy would be included under "medical services", line 11.

Mr. Brady asked if an individual working alone had, also, to be licensed. The answer was "yes". The Committee discussed the wording of this bill at length.

SB 81

Dr. Thomason spoke in favor of this bill. He presented to the Committee a document from the Deputy Attorney General. (EXHIBIT #3)

The witness said SB 81 was introduced to repeal Section 200 of Chapter 449, which renders all the records kept by the Bureau of Health Facilities as confidential. Several sister agencies, who really need this information, have been frustrated by the fact that this information was not made available to them. The Bureau wishes to go on record requesting to repeal this section and open files to concerned entities. The bill was amended because it was felt that exposing these files to just anyone was too broad. The information is limited to those agencies which need the information. During Senate hearing a request was made to seek advice as to impact of removal of Section 200,Chapter 449 on remainder of Chapter. Document presented to Committee is discussion from Attorney General's Office. The agencies furnished this information would be expected to treat this data as confidential. The information referenced is the reports made by health division as a result of licensure survey into a facility. These reports may contain patient records and that is part of the reason why they have remained confidential.

Mr. John McSweeny, Administrator for Division of Aging Services, stated the reason this came out was the last legislature gave the Aging Service the authority to investigate nursing home complaints. and rightly so. Monies are provided to each state for "Nursing home on Busman. There is only one nursing home in state on this Busman plan. Present statute is an unbearable barrier to required investigation.

SB 118

Don Klasic, Deputy Attorney General, stated SB 118 was prepared by his office. It amends NRS 428.1070; Chapter 428 provides for situations where county commissioners pay the hospital bills of indigent persons. NRS 428.1070 provides certain relative of these

indigents are able to pay such bills, the county shall seek reimbursement from the relatives. It also provides if these people fail to pay the county commissioners can advise the Attorney General to bring a legal action to collect the money. They propose to have bill amended to remove the word "Attorney General" and substitute"district attorney". This is now the practice. The attorney general has had only two requests to prosecute under this provision and each time,upon suggestion, the district attorney has handled matter. It is simpler to handle these cases on the county level, and much less expensive.

Chairman Bennett asked if one brother would be responsible for paying hospital bills incurred by another. He was told that if one were an indigent this would be the case. Mr. Bennett and several other members of the Committee disagreed with the concept. The Committee was in formed that this was the law now and the present bill did not change anything in that respect. Only, instead of the attorney general's office being responsible, it would be the responsibility of the district attorney.

The Committee said relationship in this bill should be limited to parents and children. Mr. Getto was concerned about changing the responsibility - taking it away from the attorney general.

Mr. Klasic stated the district attorney would be obligated to perform these duties and this area would not be without proper legal recourse. The District Attorney for Clark County represented to him that there would be no objections to this bill. There is no fiscal obligation to the counties. He did not understand why there was a fiscal note on the bill.

Mr. Getto stated there were instances when the district attornies became lax in their duties. He was of the opinion they worked better when there was some control.

Mr. Brady commented that the money that paid hospital costs of indigents was a reserve fund of the county. The district attorney should be the one that pursues measures to reimburse county for money spent in this manner.

Mr. Craddock felt it was the states responsibility to care for the indigent based on Title 19 funds and ad valorem taxes.

Mr. Klasic reiterated that from a standpoint of time and money, it was much more feasible for the county rather than state to handle these matters.

Mrs. Cavnar asked if the attorney general office would be opposed to removal of "brothers and sisters" from the obligatory parties.

Mr. Klasic said he was not opposed. Mr. Brady said he was opposed. The Committee continued to discuss the measure.

Mr. Chaney was of the opinion payments of this nature should be on a voluntary basis, and not compelled by statute.

Mr. Craddock was of the opinion the Committee should obtain legal advice on this matter.

The meeting was adjourned at 6:30 P.M.

Respectfully submitted:

M Robertson

MARJORIE D. ROBERTSON, Secretary

STATE OF NEVADA
DIVISION OF MENTAL HYGIENE
AND MENTAL RETARDATION
4600 KIETZKE LANE, SUITE 108
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MIKE O'CALLAGHAN
Governor

CHARLES R. DICKSON, PH.D.
Administrator
MENTAL HYGIENE AND
MENTAL RETARDATION

JACK MIDDLETON
Associate Administrator for
Mental Retardation

March 1, 1979

The Honorable Marion Bennett, Chairman
Assembly Health and Welfare Committee
Nevada State Legislature
Carson City, Nevada

Re: AB 414

Dear Marion:

Assembly Bill 414 has two major purposes: (1) it is identical to NRS 433A.700 through .730 which provides a mechanism for the safekeeping of money and personal property of clients served by the Division's mental health facilities. By moving this statute from NRS433A (mental health programs) to NRS433 (mental hygiene and mental retardation) it would provide the same mechanism to mental retardation facilities as well; and (2) it increases the maximum allowable in individual credits in the account from $150 to $300. This increase is thought to be reasonable and appropriate considering that Division clients are allowed and encouraged to purchase clothing and other personal property (i.e., games, radios, stereos, records, etc., in addition to items from the canteen).

On behalf of the Division of Mental Hygiene and Mental Retardation, I urge you and the Assembly Health and Welfare Committee members to favorable consider this bill. Thank you for your attention to this request.

Sincerely,

Jack Middleton/ja

Jack Middleton
Associate Administrator
for Mental Retardation

JM:ja

EXHIBIT # 1

200. HOME HEALTH AGENCY

A home health agency is a public agency or private organization, or a subdivision of such an agency or organization, which meets the following requirements:

A. It is primarily engaged in providing skilled nursing services and other therapeutic services, such as physical, speech, or occupational therapy, medical social services, and home health aide services. A public or voluntary nonprofit health agency may qualify by--

1. furnishing both skilled nursing and at least one other therapeutic service directly to patients, or

2. furnishing directly either skilled nursing services or at least one other therapeutic service and having arrangements with another public or voluntary nonprofit agency to furnish the services which it does not provide directly.

A proprietary agency can qualify only by providing directly both skilled nursing services and at least one other therapeutic service.

B. It has policies established by a professional group associated with the agency or organization (including at least one physician and at least one registered professional nurse) to govern the services, and provides for supervision of such services by a physician or a registered professional nurse.

C. It maintains clinical records on all patients.

D. It is licensed in accordance with State or local law or is approved by the State or local licensing agency as meeting the licensing standards (where State or local law provides for the licensing of such agencies or organizations).

E. It meets other conditions found by the Secretary of Health, Education, and Welfare to be necessary for health and safety.

A private organization which is not exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954 (sometimes referred to as a "proprietary" organization) must be licensed pursuant to State law. If the State has no licensing law for such organizations, a proprietary agency cannot participate in the health insurance program.

For services under hospital insurance, the term "home health agency" does not include any agency or organization which is primarily for the care and treatment of mental disease. There is no such restriction under supplementary medical insurance.

STATE OF NEVADA
CAPITOL COMPLEX
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DEPARTMENT OF HUMAN RESOURCES
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CARSON CITY, NEVADA 89710
TELEPHONE (702) 885-4730

RICHARD H. BRYAN
ATTORNEY GENERAL

CATHY VALENTA-WEISE
DEPUTY ATTORNEY GENERAL

February 15, 1979

William L. Thomason, D.D.S.
Administrator
Bureau of Health Facilities
Department of Human Resources
505 East King Street
Carson City, Nevada 89710

Re: Effect of repeal of NRS 449.200
as proposed by S.B. 81

Dear Dr. Thomason:

By memorandum dated February 6, 1979, you requested a discussion of the effect of the repeal of NRS 449.200 on the remaining provisions of NRS 449.001 to 449.240, inclusive.

It should be noted that the subject request necessarily requires a broad application and overview of the effects of statutory repeal on remaining statutory provisions. Abstract questions of confidentiality of information, the public's right to know versus the individual's, licensee's or applicant's right to privacy in the context of division administration, are extremely far-reaching; consequently, this discussion does not purport to answer all the questions nor resolve all the issues which may arise in the conduct of division business as a result of the repeal of confidentiality provisions. It is hoped, however, that the following analysis will provide a needed basis from which to anticipate issues concerning confidentiality of information gathered in the course of division licensing as a result of the repeal of NRS 449.200.

EXHIBIT C

EXHIBIT 3

DISCUSSION

NRS 449.001 to 449.240, inclusive, constitute the legal authorization and jurisdiction for the Bureau of Health Facilities of the Health Division of the Department of Human Resources to license the health and care facilities which are enumerated therein. What is required of an applicant in order to qualify for a license, and what is required of a licensee in order to maintain a license is left largely to the discretion of the health division in promulgating standards, rules and regulations to be met by the applicant as licensee. NRS 449.037 and 449.040.

The information obtained by the division in the application process, NRS 449.040, the investigation into the premises, facilities, qualifications of personnel, methods of operation, and policies and purposes of any person proposing to engage in the operation of a health and care facility (NRS 449.150 and 449.230) and corresponding records have been rendered confidential by reason of NRS 449.200. A limited disclosure to the State Comprehensive Health Planning Agency which assesses need for health facilities and services or in a proceeding involving the granting or revocation of a license or accreditation of a hospital is authorized, however, under NRS 449.200. The purposes for these limited exceptions to confidentiality are to permit hospital accreditation, to determine need which constitutes a condition precedent to licensing, NRS 439.160(5), and for utilization in proceedings involving the denial, suspension or revocation of a license, NRS 449.160 and 449.170.

The repeal of NRS 449.200 would have the effect of opening the division records and information contained therein to the public. Nevada has enacted NRS 239.010 which declares that "[a]ll public books and public records...the contents of which are not otherwise declared by law to be confidential, shall be open at all times during office hours to inspection by any person...." The common law rule is more restrictive than NRS 239.010, requiring a showing of interest by the public before inspection is required. Mulford v. Davey, 64 Nev. 506, 186 P.2d 360 (1947). Therefore, the public records of the division, those kept by the public agency in the course of ordinary public business conducted from day to day, Attorney General Opinion No. 234 (June 3, 1965), would be subject to inspection by reason of NRS 239.010.

EXHIBIT C

EXHIBIT 3

The effect of the repeal of the confidentiality provisions would apply prospectively only, to information gathered following the effective date of the repeal. The repeal of the confidentiality provisions cannot destroy the vested right to confidentiality which records and information released or gathered by reason of the provisions of NRS 449.200 enjoyed. See e.g. Robinson v. Imperial Silver Mining Co., 5 Nev. 44 (1869); Capron v. Strout, 11 Nev. 304 (1876). Furthermore, enactments of the Legislature will be given prospective application only by the courts unless it is clearly the intention of the Legislature that retrospective application is intended. Harrison v. Rice, 89 Nev. 180, 184, 510 P.2d 633 (1973), Rice v. Wadkins, 92 Nev. 631, 632, 555 P.2d 1232.

There is a compelling argument to be made for the continued application of confidentiality to the information and records gathered during the time NRS 449.200 was in effect and in the course of administering the provisions of NRS 449.001 to 449.240, inclusive, following the repeal of NRS 449.200. That argument extends to those individuals and entities who by reason of the existence of the confidentiality provisions released information of a personal, private or exclusive business nature in good faith reliance that it would not thereafter be released to members of the public. That information which enabled the division to enforce the provisions of the Nevada Revised Statutes, Chapter 449, and the regulations promulgated thereunder may be, if released, seriously damaging to the reputation of the individuals or entities, highly damaging to the competitive interests of the various business entities engaged in the establishment of a health and care facility or personally embarrassing, humiliating or shameful to patients, clients or employees of the respective health and care facilities. The private interests in protecting such information which might have been covered by other common law or statutory provisions protecting its public dissemination, far outweigh the retroactive effects of a repealing statute which opens the released information to the public.

As a result of the "opening" of the division's files, it is foreseeable that information made confidential by other statutory provisions, see e.g. NRS 433.474, confidentiality of Mental Hygiene--Mental Retardation patient information and records, NRS 441.210 -- confidentiality of

EXHIBIT 3

veneral disease records, NRS 442.260 -- confidentiality of abortion records, NRS 453.296 -- confidentiality of medical and research records for controlled substances, NRS 453.720 -- confidentiality of treatment records of addicts, NRS 458.055 and 458.280 -- confidentiality of alcohol and drug abuse records, NRS 615.290 -- confidentiality of vocational rehabilitation records, or subject to certain privileges, see e.g. NRS 49.225 and 49.265 -- confidentiality of certain medical information, may be withheld from the division in administering the licensing provisions. This information if then released to the division would no longer receive the protection of the confidentiality provisions applicable in the first instance or the currently existing confidentiality provisions of NRS 449.200.

In conclusion, the proposed repeal of NRS 449.200 would not open records or information now made confidential by reason of the statute, since the repeal would apply prospectively only and to information or records gathered subsequent to the repeal of the statute. Upon the effective date of the repeal of NRS 449.200, the information or records gathered by the division in the course of administering NRS 449.001 to 449.240, inclusive, would be governed by the public records provisions of NRS 239.010 and subject only to the confidentiality, or privilege, if any, which might follow the information or records upon release to the division. A determination of the existence of any privilege or protection of confidentiality must then be made on a case by case basis.

Sincerely,

RICHARD H. BRYAN
Attorney General

By Cathy Valenta-Weise
CATHY VALENTA-WEISE
Deputy Attorney General

CV-W:ema

EXHIBIT C