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**BILL: SB 207     Changes Concerning Conveyances of Property**

**NEVADA STATE WELFARE DIVISION**

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Good morning Chairman Amodei and members of the Judiciary Committee. I am Charles Hilsabeck, Deputy Attorney General, counsel for the Nevada State Welfare Division. With me at the table is Nancy Ford, Welfare Administrator. We are here to voice our concerns with SB 207. Specifically, the additional language to Chapter 111 of NRS, which creates a new type of conveyance of real property by deed that does not become effective until the death of the grantor.

This bill allows family members to pass title of property without the necessity of costly probate procedures and benefits most of Nevada's population. However, in its current form SB 207 creates concerns with the interpretation of this bill. We would like to simply list these concerns and receive clarification today.

**Background**

The Medicaid Estate Recovery Program (MER) operates with state authority from NRS 422.2934, NRS 422.29355, NRS 150.220, NRS 422.054, NRS 150.220 and NRS. 108.850, et. seq. Also, in 1993, state recovery programs became federally mandated. In the last biennium the MER program recovered \$2.3 million dollars. As required, recovered funds are split with the federal government first, and then between the state and counties proportionate to assistance provided. The actual distribution is handled by

the Department of Health Care, Financing and Policy. The lack of Medicaid recovery would not only affect state funding but county funding as well, not to mention the reduction in funds sent to the federal government. Passage of this bill in its present form would make it possible to completely avoid the operation of the State's Medicaid Recovery Program. This could place the State of Nevada out of compliance with federal requirements and potentially jeopardize the State's Medicaid funding.

### Concerns

While the bill specifically authorizes liens prior to the death of the owner or grantor, an argument pursuant to several doctrines of statutory construction could be made that after death liens, such as the liens employed by the Medicaid Estate Recovery Program, administered by the Welfare Division, are prohibited.

1. Under the doctrine of "*inclusio unis est exclusio alterius*," or "the inclusion of one is the exclusion of the other," the inclusion of pre-death liens could be interpreted as the exclusion of post-death liens.
2. Under the doctrine of statutory construction that later enacted statutes prevail over earlier enacted statutes, the earlier passed statutes in Chapter 422 and 108, specifically NRS 422.054, .2935, .29355, and 108.850, *et. seq.*, might be interpreted to be superceded by SB 207.

The Welfare Division would like to suggest a subsection 5 be added to section 1 of the bill to provide language to the effect: "Nothing in this section shall be construed to affect, limit or prevent the recovery of Medicaid benefits pursuant to NRS 422.2935 or actions taken in furtherance of that recovery."

With this additional language, the Welfare Division is in support of SB 207.

We would be pleased to answer any questions the committee may have.