MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-Eighth Session
February 4, 2015

The Senate Committee on Health and Human Services was called to order by Chair Joe P. Hardy at 3:29 p.m. on Wednesday, February 4, 2015, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Joe P. Hardy, Chair
Senator Ben Kieckhefer, Vice Chair
Senator Mark Lipparelli
Senator Joyce Woodhouse

COMMITTEE MEMBERS ABSENT:

Senator Debbie Smith (Excused)

GUEST LEGISLATORS PRESENT:

Senator Patricia Spearman, Senatorial District No. 1

STAFF MEMBERS PRESENT:

Marsheilah Lyons, Policy Analyst
Eric Robbins, Counsel
Debra Carmichael, Committee Secretary

OTHERS PRESENT:

Tracey D. Green, M.D., Chief Medical Officer, Division of Public and Behavioral Health, Department of Health and Human Services
Kim Frakes, L.S.C.W., Executive Director, Board of Examiners for Social Workers
Helen Foley, Nevada Association of Marriage and Family Therapists

Amy Roukie
Marissa Brown, MHA, BSA, RN, Workforce and Clinical Services Director Nevada Hospital Association
Lesley Dickson, M.D., Executive Director, Nevada Psychiatric Association
Judy Phoenix, Ph.D., Nevada Psychological Association
Stacy Woodbury, Executive Director, Nevada State Medical Association
Anis Abi-Karam, Ph.D., President and Clinical Director, Human Behavior Institute
Joan Hall, President, Nevada Rural Hospital Partners
Daniel Mathis, President, Nevada Health Care Association
Ellen Richardson-Adams, M.Ed., Agency Manager, Southern Nevada Adult Mental Health Services, Division of Public and Behavioral Health, Department of Health and Human Services
Vanessa Spinazola, American Civil Liberties Union of Nevada

Chair Hardy:
I have given the Committee members a copy of the "Senate Committee on Health and Human Services Rules for the 2015 Session" (Exhibit C).

SENATOR KIECKHEFER MOVED TO ADOPT THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES RULES FOR THE 2015 SESSION.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Marsheilah Lyons (Policy Analyst**):**
Before you is a copy of the "Committee Policy Brief Senate Committee on Health and Human Services, 2015 Nevada Legislature" (Exhibit D). This document includes information about: the history of this Committee; the number of measures considered during the 2013 Legislative Session; legislative subjects that fall within its jurisdiction; potential issues the Committee may consider during the 2015 Legislative Session; the schedule for implementation of the 120-day session; contact information for persons representing State agencies and nonprofit organizations who may appear before the Committee, and a list of commonly used health and human services related acronyms.

During the 2013 Legislative Session, 81 bills, 51 Senate bills and 30 Assembly bills, were referred to the Committee on Health and Human Services. A similar number of bills are expected for the 2015 Legislative Session.

"Senate Standing Rule No. 40" outlines jurisdiction for each standing committee. This Committee has jurisdiction over legislation affecting: public welfare; mental health; and public health and safety. Exceptions include programs listed on pages D3-D4 of Exhibit D.

The *Summary of Legislation 2013* provides summaries of the measures passed in the last Session and is available from the Legislative Counsel Bureau's (LCB) Publications Office.

Some of the issues that may be considered during this Session are described on pages D4-D7 of Exhibit D.

Chair Hardy:
I will open the hearing on Senate Bill (S.B.) 7.

SENATE BILL 7: Revises provisions governing the admission of persons with certain mental conditions to and the release of such persons from certain facilities. (BDR 39-64)

Ms. Lyons:
According to the information provided to the Legislative Committee on Health Care, crisis prevention services such as screening and early intervention are inadequate in rural and urban areas of the State. Emergency rooms (ERs) serve as entrances in the mental health system because of the limited services. Nevada requires that allegedly mentally ill persons be screened to determine that there is no physical condition warranting their behavior or symptoms. In an effort to meet this requirement, emergency transporters and law enforcement officials have routinely transported these individuals to hospital emergency departments for medical clearances. These individuals are being considered for involuntary commitment. Due to a variety of factors including a lack of resources for outpatient mental health care, this has frequently contributed to overcrowding in emergency rooms, particularly in southern Nevada. Testimony noted that at least 57 percent of patients on a "Legal 2000," which is a term used for involuntary commitment, do not meet the criteria for acute inpatient admission to a psychiatric unit. Limited authority to decertify these patients

contributes to ER overcrowding. Testimony presented to the Legislative Committee on Health Care indicated the medical clearance structure in *Nevada Revised Statutes* should be amended to provide for the assessment and decertification of a patient in the ER. Testimony stressed the patient will still need to be discharged from the hospital by the ER doctor.

Tracey D. Green, M.D. (Chief Medical Officer, Division of Public and Behavioral Health, Department of Health and Human Services):

Over the last decade, Nevada has experienced overcrowding in ERs with individuals with mental illness. I will be describing the term "legal hold." Often, individuals can wait days to receive evaluation and treatment. Emergency room physicians have to evaluate large volumes of patients with mental illness while also being responsible for individuals with life-threatening medical conditions. Recently, the ER numbers of patients waiting has improved. This is predominantly due to the increase in the number of available inpatient beds. The process of evaluating a patient on a "legal hold" still remains an issue. In the current system when an individual is found to be at risk to themselves or others, either suicidal or homicidal, those individuals listed in section 1 of S.B. 7 can initiate a petition or certification for a legal hold for the safety of the patient. This is often clinically referred to as initiating a Legal 2000. The patient is transferred to a local ER where medical clearance can be received. The medical clearance can occur in any outpatient environment as well. The ER has the responsibility to determine if the patient needs to be admitted for acute psychiatric care, acute medical care or no longer meets the criteria for a legal hold and can be decertified.

The law is clear on who can certify a Legal 2000 but stands silent on the process for decertifying. The law states that only a physician can discharge a patient from the ER. A mobile crisis team comprised of psychologists and social workers from either the Division of Public and Behavioral Health, Medicaid-managed care or the private sector go to the ER and provide evaluations of a patient who is on a "legal hold." These teams must consult with the ER doctor to discharge the patient.

Senate Bill 7 adds physician assistant to the list of individuals who can certify a patient. It also expands the list of individuals who can complete and sign a certificate to include psychologists, social workers and registered nurses or an accredited agent of the Department. These individuals must state that they have personally observed or examined the patient and have concluded that the

patient does not have a mental illness. Senate Bill 7 does not eliminate the need for the ER physician to discharge the individual.

Senator Kieckhefer:
What are the training requirements for a physician assistant?

Dr. Green:
Physician assistants attend a 4-year school that is similar to medical school. They undergo 2 years of didactic classroom activity and then an internship process. In Nevada, they are supervised by a physician and are licensed by the Board of Medical Examiners.

Chair Hardy:
Touro University Nevada has the only physician assistant program in the State. In order to get into the program a person is required to have a 4-year undergraduate degree and then a 28-month practical internship where a physician assistant works with a physician in the desired field. The type of physician assistant we are talking about would be working for and under the auspices of a psychiatrist as opposed to a physician assistant working for a surgeon and certifying a patient as fine. It needs to be determined how that language would be inserted into the bill. Is that correct, Dr. Green?

Dr. Green:
That is correct.

Chair Hardy:
Some psychologists do not do clinical observations. It must be determined how to define clinical credentials for a psychologist as well as a social worker. Most registered nurses probably have not had the training or feel comfortable with decertifying a patient. Some have suggested having an advanced practice registered nurse or someone with a Ph.D. in psychiatry to decertify a patient. Dr. Green, could you please look at how to define credentials?

Dr. Green:
I will address the specialty training required for a psychologist, the number of years of training a nurse practitioner and ways to evaluate a physician assistant who works under the direction of a psychiatrist and present it back to you.

Kim Frakes (Executive Director, Board of Examiners for Social Workers):
The Board of Examiners for Social Workers supports S.B. 7. However, I would like clarification on who can decertify. The bill uses language such as examining the individual and determining that the person no longer has mental illness. That language begins to cross over into the area of diagnosing. Diagnosing is a caveat exclusively for a clinical social worker. My recommendation would be to change social worker to clinical social worker.

Helen Foley (Nevada Association of Marriage and Family Therapists):
Many of our members were disturbed by the language used in section 2 of the bill that says that he or she has personally observed and examined the person and that he or she has concluded that the person is not a person with a mental illness. In many situations, that person will always have a mental illness. With the appropriate drugs and therapy, those people can live regular lives and not be a danger to themselves or others.

Chair Hardy:
Our Counsel is going to address that issue.

Eric Robbins (Counsel):
A person with mental illness is defined as someone who is a danger to oneself or others.

Ms. Foley:
The statement in the bill is not clear to the average person who reads it. I would recommend changing it. Marriage and family therapists (MFTs) are included in the list at the beginning of the bill but not throughout the bill. Many rural counties have very few psychologists but have many marriage and family therapists. Many times MFTs provide the same type of services as clinical social workers; they diagnose and treat mental disorders. Marriage and family therapists do have comparable educations. I encourage you to include them in the section 3, subsections 1, 2 and 3. Marriage and family therapists are not in the hospital setting very often but if they are, they should be included.

Chair Hardy:
Are MFTs credentialed in any hospitals?

Ms. Foley:
I am not sure. They may be credentialed in some of the rural areas.

Chair Hardy:
Research needs to be done to determine if MFTs are credentialed in Nevada hospitals.

Ms. Foley:
If they became credentialed, it would be nice if they could do this as well.

Chair Hardy:
There are no specialty medical staffs in the rural areas. We have an obligation to consider a community standard for the rural areas instead of a State standard. Would a population-cap concept work?

Mr. Robbins:
Yes, in this case a population-cap concept would work.

Chair Hardy:
Hospitals in the rural areas have bylaws that would make it more difficult for us to say something and not do it.

Ms. Foley:
Marriage and family therapists could be covered by the statement "or accredited agent of the department." If they work for the department in a State facility, they could be covered but they would not be specifically named as MFTs.

Chair Hardy:
Can you provide it in writing?

Ms. Foley:
Yes, I can provide it in writing.

Amy Roukie:
I support S.B. 7. As a former operator of several crisis service centers and behavioral health centers located around the State, I have significant experience in dealing with behavioral health clientele in acute and alternative settings. Challenges in dealing with this population are great; this bill intends to aid in reducing the barriers to effectively moving these patients between levels of

care. Expanding the list of clinicians who can decertify the patients from a Legal 2000 allows for a more expeditious process, saving time and money for the individuals and the systems of care. The language as it stands requires a psychiatrist or medical doctor to decertify the hold by personally examining the individual. The cost and availability of this level of practitioner is limited and creates a bottleneck in systems of care, especially in ERs.

Marissa Brown, MHA, BSN, RN (Workforce and Clinical Services Director, Nevada Hospital Association):
The Nevada Hospital Association recommends the regulatory language in S.B. 7 be expanded to those who have training and expertise in psychiatric care. The Hospital Association recommends an amendment to section 2 of S.B. 7 to further clarify registered nurse to advanced practice registered nurse with psychiatric training. I have provided my written testimony, "S.B. 7 Testimony before The Senate Committee on Health and Human Services" (Exhibit E).

Lesley Dickson, M.D. (Executive Director, Nevada Psychiatric Association):
My comments are a compilation of input from a large number of psychiatrists in the State who do this work regularly. The Nevada Psychiatric Association supports sections 1 and 4 of S.B. 7 that adds physician assistant to the list of professionals. The Psychiatric Association does not support changes in section 2, which would add physician assistants, social workers, registered nurses or accredited agents of the department to those who may complete a certificate as outlined in our letter, "Letter of Concern regarding Senate Bill 7" (Exhibit F).

Judy Phoenix, Ph.D. (Nevada Psychological Association):
I have submitted a letter on behalf of the Nevada Psychological Association, "Letter of Concern regarding S.B. 7" (Exhibit G). We are in agreement with sections 1 and 4. However, the Psychological Association has serious concerns about the level of training for the people listed in section 2 of S.B. 7. The questions about training have been sufficiently answered. In section 2, our concerns can be addressed by listing the people as licensed mental health professionals in addition to listing the physician assistants and practical nurses with psychiatric training. To be called a psychologist, one has to be licensed in the State, and those licenses are clinical licenses. If people are going to be listed, they need to be licensed. Some of the people listed in section 1, subsection 1, have been left out of section 3, subsection 1, and should be included. Section 3 includes not being related by blood or marriage.

Chair Hardy:
How do you feel about the rural areas?

Dr. Phoenix:
You have to allow the staff in the rural areas to make evaluations. Preferably, they would be well-trained mental health professionals.

Stacy Woodbury (Executive Director, Nevada State Medical Association):
The Nevada State Medical Association agrees with the remarks of Dr. Dickson. I request you look at the educational qualifications of the professionals on the list and the issue of shared liability Dr. Dickson mentioned at the end of her presentation. Someone who decertifies an individual will be liable in addition to the discharging physician once the patient is released.

Senator Spearman:
How do we deal with the scenario of an unqualified person decertifying a patient and the worst happens to the patient? How do we deal with liability, legal action and lawsuits in this bill?

Ms. Woodbury:
Physicians are required to carry medical malpractice insurance. It is a policy call on your part as to who would be allowed to make these decisions. The testimonies given prior to mine indicate there is a tremendous amount of information to consider.

Chair Hardy:
Those people in opposition want the Committee to be very careful and I would suggest they put it in writing as to what we should do.

Anis Abi-Karam, Ph.D. (President and Clinical Director, Human Behavior Institute):
In 1987, I began the first utilization management (UM) company called the Human Behavior Institute (HBI) in the State. Utilization management means evaluating patients who are in the ER and deciding the level of care and placement for them. Initially, UM was done telephonically but now HBI has a team of clinicians located in southern Nevada. The team consists of nurses, family therapists and clinical social workers. I developed criteria for inpatient stays and discharges. Human Behavior Institute became the only nationally accredited private agency in the State. Since 1987, my agency has evaluated

over 40,000 patients who were admitted to ERs. Out of the 40,000 patients evaluated, 16,000 were adults and 24,000 were children and adolescents. Of the adults seen, 40 percent were admitted, and of the children and adolescents seen, 27 percent were admitted to psychiatric facilities. That translates to 32 percent of the total number of patients. That means 27,120 patients were discharged and triaged to outpatient facilities. For 27 years, we have had an agreement with the ERs to evaluate 200 patients, which translates to less than 1 percent. That means the ER physicians have accepted the recommendation to decertify and transfer the patient to outpatient or psychiatric facilities. We have had no deaths, problems or conflicts with the ER physicians decertifying patients.

I estimate in 2015, that 1,500 patients will be evaluated monthly in the southern Nevada ERs. If you take the number of patients and divide it by the number of minutes for a psychiatrist to evaluate a patient and write a report, there are not enough psychiatrists in the whole State who can see them. For 1 year, we advertised nationally for psychiatrists to come to Nevada. We are willing to pay them 50 percent more in salary than any state in which we are operating. Unfortunately, we did not have many applicants and discovered Nevada was rated last for attracting psychiatrists. At this time, we do not have enough professionals to see the patients.

I do support S.B. 7, as it is important not to restrict the type of clinician who can evaluate and decertify patients in the ER.

Joan Hall (President, Nevada Rural Hospital Partners):
Because expert people are not available in the rural areas, we are using telemedicine. If a rural area ER physician is uncomfortable with decertifying a patient, a consultation by telemedicine with a psychiatrist or psychologist is available. The patient would be held until a consultation is scheduled.

Chair Hardy:
Does section 2 of the bill cover telemedicine?

Mr. Robbins:
I will research that and get back to you.

Chair Hardy:
I will close the hearing on S.B. 7. I will now open the hearing on S.B. 15. Senate Bill No. 221 of the 77th Session included this provision. Due to the nature of that bill, it was vetoed by Governor Sandoval on June 13, 2013. Senate Bill 15 deals with the California Supreme Court decision*, Tarasoff v. Regents of University of California,* 17 Cal.3d 425, 551 P.2d 334 (1976). This decision requires a mental health care professional to notify a person threatened with imminent serious physical harm or death, and if the person is a minor to notify the parent or guardian; if a patient has the intent and ability to carry out the threat, the closest law enforcement agency must be notified also. This bill also provides that a mental health professional who exercises due diligence in determining whether to communicate such a threat is not subject to civil or criminal liability.

SENATE BILL 15: Requires a mental health professional to notify certain persons of explicit threats communicated by a patient in certain circumstances. (BDR 54-3)

Dr. Dickson:
In 1968, on the campus of the University of California, Berkley a young man became upset upon being spurned by a young woman. He began to stalk her and developed a wish for revenge. The young man underwent a severe emotional crisis. During the summer of 1969, the young man improved, but sought psychological assistance at the suggestion of a friend. The young man confided to the psychologist his intent to kill the young woman. The psychologist requested the campus police detain the young man because the psychologist wrote he was suffering from acute and severe paranoid schizophrenia. The psychologist recommended the young man be civilly committed as a dangerous person. The young man was detained, but shortly released, as he appeared rational. The psychologist's supervisor ordered that the young man not be subject to further detention. Several months later in October 1969, the young man carried out the plan he had confided to his psychologist, stabbing and killing the young woman. Tatiana Tarasoff was the name of the victim. The Tarasoff family sued the psychologist and others at the University. The California Supreme Court found that a mental health professional has a duty not only to the patient, but also to individuals who are specifically being threatened by the patient. This decision has since been adopted by most states. However, Nevada has not adopted this "duty to warn" language.

The Nevada Psychiatric Association supports S.B. 15, but suggests some modifications. "Letter of Support for Senate Bill 15" (Exhibit H), suggests adding the requirement and protection for mental health professionals working in government agencies such as Veterans Affairs hospitals. The phrase regarding social worker in section 1, subsection 4, paragraph (c), subparagraph (1), "or a related field," is too vague, and in section 1, subsection 4, paragraph (c), subparagraph (3), "is employed by the Division of Public and Behavioral Health of the Department of Health and Human Services," suggests that only these employees need operate under these requirements. The Psychiatric Association suggests a discussion and consideration of adding language which includes "duty to protect." This is when the admission of a patient to a psychiatric facility, followed by treatment, leads to significant improvement with the resolution of threatening language and behavior. This, coupled with the patient's denial of further dangerous intent, might negate the need to warn a previously identified potential victim.

Chair Hardy:
Will you provide us with the "duty to protect" language in writing?

Dr. Dickson:
Yes, I will put it in writing.

Ms. Woodbury:
The Nevada State Medical Association supports the bill.

Ms. Foley:
The Nevada Association of Marriage and Family Therapists supports S.B. 15. It would be advantageous to use the list of mental health professionals from S.B. 7 in this bill as it addresses psychiatric nursing. However, it does not include physician assistant.

Chair Hardy:
Could you put that in writing?

Ms. Foley:
Yes, I can put it in writing.

Ms. Frakes:
The Board of Examiners for Social Workers supports S.B. 15. The language for social workers, "holds a master's degree in social work or related field," may be applicable. We still do have a few licensed advanced social workers, a grandfathered level of licensure, which is no longer offered. Social workers practice in a variety of different fields, not only in the Division of Public and Behavioral Health of the Department of Health and Human Services.

Chair Hardy:
Could you put that in writing?

Ms. Frakes:
Yes, I will put that in writing.

Daniel Mathis (President, Nevada Health Care Association):
The Nevada Health Care Association supports S.B. 15.

Ms. Hall:
The Nevada Rural Hospital Partners support S.B. 15.

Dr. Phoenix:
The Nevada Psychological Association supports this bill. The Psychological Association suggests wording that guides the professional to limit information disclosure to what is pertinent to the imminent threat. The concern is that a patient's diagnoses or other personal details should remain confidential information unless it is directly relevant to the nature of the imminent harm. Please refer to "Letter of Support regarding S.B. 15" (Exhibit I). I would like substance abuse counselors and licensed clinical substance abuse counselors to be added to the list of professionals.

Chair Hardy:
Could you put that in writing?

Dr. Phoenix:
Yes, I will put that in writing.

Chair Hardy:
I will close the hearing on S.B. 15 and open the hearing on S.B. 35.

SENATE BILL 35: Ratifies and enacts the Interstate Compact on Mental Health. (BDR 39-330)

Ellen Richardson-Adams, M.Ed., (Agency Manager, Southern Nevada Adult Mental Health Services, Division of Public and Behavioral Health, Department of Health and Human Services):
Senate Bill 35 allows Nevada to participate as an interstate compact member with 45 other states for inpatient treatment. This bill will allow Nevada to engage with other states that have adopted this interstate compact. We can reconnect patients from other states with their communities, families and support networks with smooth procedures for transition based on national standards. The major provisions of the bill are shown in my written testimony, "Legislative Testimony S.B. 35 Interstate Compact" (Exhibit J).

Vanessa Spinazola (American Civil Liberties Union of Nevada):
The ACLU of Nevada supports S.B. 35; please refer to my letter of support, "Support for Senate Bill 35, Joining and Codifying the Interstate Compact on Mental Health" (Exhibit K).

Chair Hardy:
I received a letter from the National Alliance on Mental Illness, "RE: SB 7, SB 15 and SB 35" (Exhibit L) supporting S.B. 7, S.B. 15 and S.B. 35. I close the hearing on S.B. 35. Having no further business on the agenda, I adjourn the meeting at 5:02 p.m.

RESPECTFULLY SUBMITTED:

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Debra Carmichael,
Committee Secretary

APPROVED BY:

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Senator Joe P. Hardy, Chair

DATE:______________________________

EXHIBIT SUMMARY				
Bill	**Exhibit**		**Witness or Agency**	**Description**
	A	1		Agenda
	B	5		Attendance Roster
	C	2	Senator Joe P. Hardy	Committee Rules for the 2015 Session
	D	23	Marsheilah Lyons	Committee Policy Brief
S.B. 7	E	2	Marissa Brown	Written testimony
S.B. 7	F	2	Lesley Dickson	Letter of Concern
S.B. 7	G	2	Judy Phoenix	Letter of Concern
S.B.15	H	1	Lesley Dickson	Letter of Support
S.B.15	I	1	Nevada Psychological Association	Letter of Support
S.B. 35	J	2	Ellen Richardson-Adams	Written Testimony
S.B. 35	K	1	Vanessa Spinazola	Letter of Support
S.B.7, S.B. 15, S.B. 35	L	1	National Alliance on Mental Illness	Letter