

Nevada's AB 128 (As Amended): Financial Impact on State and Local Governments

by Thomas F. Coleman, J.D.
and Nora J. Baladerian, Ph.D.

This is the second of several reviews of the amended version of AB 128 – a Nevada bill to create a medical decision making tool for use by people with intellectual disabilities. In the bill, a person has an intellectual disability if the condition occurred during the developmental stage and the person has an IQ of 70 or less.

Spectrum Institute submitted several reviews of the original version of AB 128, including a legal analysis, a clinical analysis, a response to testimony at the first committee hearing, and an analysis of potential liability to medical providers. Most of those concerns continue to apply to the amended version of AB 128.

We were surprised to see the fiscal impact summary in the cover page to the bill state that AB 128 will have no effect on local government and no effect on state government. Quite to the contrary, the bill may have significant effects on medical practices in both county and state medical facilities, as well as having a potential impact on budgets at both levels of government.

The State of Nevada operates the Rawson-Neal Psychiatric Hospital. The University Medical Center is also run by the State of Nevada. The power of attorney form created by AB 128 clearly will have an impact on the medical practices at these facilities.

Medical services are also provided at facilities operated by local government agencies. For example, Nevada County Behavioral Health operates a county clinic that provides medication services and psychotherapy.

Washington County Sheriff's Office has a medical unit that provides 24-hour health care for inmates. Presumably, other local jails provide medical care too.

Medical and psychiatric providers currently have a "bright line" for obtaining informed consent for medical treatment. Either the patient has the capacity to give such consent or, if there is a doubt, the provider can require a medical-only guardianship, even if just a temporary guardianship. Informed consent is then obtained from the court-appointed guardian.

AB 128 removes the "bright line" for county and state medical providers. They will have to operate in gray areas – areas for which they may not have sufficient training to determine if the patient had capacity to understand the contract when it was signed or whether the patient has capacity to give informed consent when

the procedure is being contemplated. New training programs will need to be instituted to train medical personnel on these issues. Such training costs money.

A 15-minute medical procedure may take 45 minutes if an AB 128 form is presented to a state or county funded medical provider. To reduce potential liability for accepting a document that the patient did not understand when it was signed, or for doing a procedure for which the patient may lack capacity to give informed consent, the medical provider will need to spend additional time with such a patient. Time is money.

The cost of additional time will be billed to the entity paying the medical bill for such a patient. Many patients are indigent. As a result, their medical services may be subsidized by Medicaid, or the Health Care Assistance Program, both of which involve the state budget.

At the local level, some patients receive reimbursement from social services programs, like in Clark County which gives medical bill assistance to indigents.

There are also potential liability costs to state and local governments if and when lawsuits are filed by surviving family members when a patient dies due to a procedure for which the provider relied on an AB 128 form for informed consent. When the provider is a facility operated by a state or local government, it will be their budget that is adversely affected by such a lawsuit.

There would be no cost of legal defense and no potential of an award of damages, if a provider relies on consent from a medical-only guardian. With an AB 128 form, failure to get joint informed consent, or to honor the wishes of a patient who resists a procedure, could result in costs to state and local agencies.

Effect on Local Government: YES
Effect on the State: YES

Attorney Thomas F. Coleman is the Executive Director of the Disability and Guardianship Project. Dr. Nora J. Baladerian is the Executive Director of the Disability and Abuse Project. Both projects re functions of Spectrum Institute.



www.spectruminstitute.org