MEETING MINUTES

Name of Organization:	Nevada Commission on Aging: Policy Subcommittee (Nevada Revised Statute [NRS] 427A.034)
Date and Time of Meeting:	July 8, 2021 | 1:00 pm (VIRTUAL via Teams)

1. **ROLL CALL**
   Mr. Duarte called the meeting to order at 1:02PM.

   Members Present:
   Charles Duarte
   Barry Gold
   Donna Clontz

   Members Absent:
   Connie McMullen

   Presenters:
   Dena Schmidt, Administrator, ADSD
   Meredith Levine, Policy Director, Guinn Center
   Sheri Rasmussen, Social Services Program Specialist 3, DWSS

   Staff:
   Laryna Lewis, Administrative Assistant 3, ADSD
   Kelly Osteen, Administrative Assistant 3, ADSD
   Miles Terrasas, Executive Assistant, ADSD
   Jennifer Richards, Chief Elder and Disability Rights Attorney, ADSD

2. **PUBLIC COMMENT**
   No public comment.

3. **Approval of Minutes of the March 31, 2021 Meeting**

   Donna Clontz moved to approve. Barry Gold seconded the motion. The motion passed unanimously.

4. Presentation regarding issues affecting personal care workforce including Home and Community Based Services Medicaid rates.

Ms. Levine presented on the Personal Care Aide Workforce in Nevada. (See Attachment A). Ms. Levine stated COVID showed the dangers of congregate care and how important it is for HCBS. After surveying the senior population about 90% prefers aging in place.

With respect to rates, there is a process under Assembly Bill 108 of the 2017 session which does require quadrennial rate reviews in Medicaid. Based on info received for personal care services, the rate reimbursement review took place in the second quarter of calendar year 2019. That rate recommendation is still under review. There is no requirement that any recommendations be implemented but certainly something the Director would advise.

She continued with Senate Bill 340, which at the discretion of the Director of DHHS, or by petition of 50 home care employees to establish a home care employment standards board that would review wages, employment conditions, and so forth.

Mr. Duarte stated regarding administrative overhead, because of the business cost such as insurance, training, etc., looking at the Medicaid rate and the average median wage, the overhead is about 37% and that seems high for a health care organization running a 37% overhead rate. Did the GUINN center look at the average of what the average overhead percentage might be?

In response to Mr. Duarte's questions, Ms. Levine responded one, they did confer with the Personal Care Aide Association of Nevada and what they reported is that from salary to the Medicaid reimbursement rate is that it does get eaten up from overhead and that they have zero profit on Medicaid clients. Massachusetts has a different system of care; it's completely self-directed and what they have is a pass through wage. The amount was $16.52 for the reimbursement rate and less than $2 per hour for overhead. She continued she doesn't want to say that the overhead in Nevada is too high but for other states it is different and lower because of their structured care being different and because Nevada is one of the lowest states in self directing care in terms of numbers of interest. For the states that have a more robust self-directing care it might just working a little bit differently. It difficult to say it's too high but something to consider in terms of those breakdowns from the agencies.

Mr. Duarte asked in terms of the revenue mix, did the center look at sources of revenue and what percentages on average were made up of self-paid versus Medicaid?

In response to Mr. Duarte's question, Ms. Levine stated the breakdown was:
58% Medicaid
22.8% Other
7.1% Private Health,
5.9% Other Government,
3.6% Out of pocket,
2.6% Medicare

The issue is to be cautious around Medicare because they only provide post-acute services.

Mr. Duarte asked if she is aware of any agencies performing skilled by unskilled services under NRS 629.091 which has to do with the ability of personal care attendants to perform certain trained activities which are medical in nature. Supports that a CNA or Home Health Aide might provide can sometimes be provided by a PCA who has been trained under the supervision of a physician. The most common are things having to do with toileting and wasn't sure if that is still an activity that is being performed at the PCA agency level. A lot of those services are for clients with severe diminishment of ADL capacity. Was that investigated?

In response to Mr. Duarte's question, Ms. Levine referenced the first page of the PowerPoint which has the breakdown. The list was pulled from either the Medicaid State Plan or from the waivers so those

would be approved activities. Her understanding is those are considered non-medical supports. She added toileting is on that list of Activities of Daily Living that the attendants do perform. In terms of any medical training, because there is a set of training standards that must be met; including around sixteen competency areas, which some of them involve lifesaving skills, or things of that nature. There does seem to be a demarcation between what is permitted and what is considered medical. The Guinn Center heard from PCA's that they on occasion, do take someone's temperature, but seems to be an understanding of demarcation there.

Mr. Gold referenced the bill in the 2021 session that sets up the PCA Board and will unionize the personal care marketplace. What effect do you think that piece of legislation will have short term and long term in terms of the personal care market in Nevada?

Ms. Levine responded first; it depends on how it is set up. If it's set up at the discretion of the Director, it will be more Medicaid oriented. If it is petitioned through home care employee's than she could see it moving in a different direction. She doesn't interpret it as a necessary pathway to unionization. The more direct path to unionization should that occur would be under the American Rescue Plan that may allow collective bargaining. The way she interprets the bills is an oversight board and maybe another call additional research into the matter.

Ms. Coulombe commented they do have a form on the skilled by unskilled from that is required to be filled out by a physician and can share that with the committee. Mr. Duarte stated it would be interesting to see what skilled activities are being conducted. He mentioned digital stimulation for a quadriplegic clients which is an important aspect for toileting.

5. Presentation regarding increasing the Spousal Impoverishment amount.

Ms. Rasmussen stated the Division of Welfare and Supportive Services (DWSS) is looking to increase the spousal impoverishment income standard. Currently to do so, there is a minimum and a maximum and they always use the minimum unless there was a court order in place allowing for the maximum for the at-home spouse not to become impoverished. For whatever reason, they didn't do the income increase at the same time so they are trying to do that now. Doing the increase, allows them to automatically give the at home spouse the maximum limit in order for that at home spouse to not be impoverished. Currently the change to the plan would allow the at home spouse to keep the federal maximum which is $3,259.50 per month and the minimum is $2,155 per month. The purpose is to eliminate the need for the attorney and the court intervention to do that spousal division and it automatically increases per year when the federal maximum increase happens. It will not only eliminate the attorney and court process which costs clients $3k-$5k to have that done; it also eliminates the needs for DWSS to send that information to the Deputy Attorney General's office to do a legal evaluation and to ensure that court order is correct. It also allows the DWSS to make the eligibility determination more quickly and that gets the facilities paid more quickly when the other interventions are not needed.

Skilled Nursing Facilities sometimes must wait months to bill for the services until the eligibility is established. The DWSS Institutional Waiver Unit conducted a review to help determine if it would have an impact to cases. After review of the 365 intake cases and did not fine one due to spousal impoverishment. Their conclusion is they don't believe this will have any fiscal impact and the Division of Health Care Financing and Policy (DHCFP) is currently reviewing that. To keep the cost from the clients from having the attorney and court process, and for the sake of the facilities, it's a good idea considering they do not have to go through the legislature to do it. She added to move this initiative forward, they would have to do a public workshop and public hearing and concluded it is with DHCFP who are currently doing an analysis and deferred to Ms. Coulombe if she had anything additional to add.

Ms. Coulombe stated they do have it and will be reviewing it the following week due to the spending plan deadline for the Rates Unit. It should be straightforward to have the Rates Unit confirm the fiscal impact.

Mr. Duarte stated he thinks this would be great to accomplish this administratively and at some point get a report back on the progress.

Ms. Coulombe added Medicaid has the SPA pages which have been identified for further review. They would also do their due diligence to present changes to the informal public workshop before it is taken to the adoption. CMS would then have a minimum of 90 days to review it. With older SPA pages, CMS has been open to collaboration to review the draft prior to the start of the 90 day time frame.

Mr. Gold stated he sits on the Supreme Court Guardianship Commission and most of what they talk about comes from the attorney and court perspective. If there's anything that relates to this that can be brought to the Guardianship Commission from the patient perspective would be a valuable thing to do. Ms. Rasmussen responded and stated she will be in contact with Barry to stay connected with any information that may be valuable.

In response to Mr. Duarte's question, Ms. Richards stated she can speak as a former attorney at the Legal Aid representing individuals in guardianship. There were many cases with thousands and they were paying a lawyer every dime they had to do a guardianship just to get the spousal impoverishment so it would make a huge difference. Some lawyers who do not practice in this area doing divorces of spouses so that they could facilitate getting access. The going rate for guardianship petition can be a $5,000 retainer.

Ms. Schmidt added on behalf of our Waiver recipients specifically, and our facility is getting people enrolled quicker. To Sheri's point, sometimes providers must wait months to be paid which becomes an administrative burden.

6. Nurse to Resident Rations in Skilled Nursing Facilities

Mr. Shubert presented on Nurse Staffing Ratios. (See Attachment B)

Mr. Gold stated during the Pandemic AARP has their Nursing Home Dashboard. They were able to look at staffing levels; whether they were short staffed, amount of PPE, deaths, staff and patient infection rates and was a good advocacy tool. He added Nevada did much better than other states. 18-22% of deaths in state were in long term facilities and other states it was 50%. AARP looked at staffing ratios more than they ever had before. AARP didn't initiate any legislation but were involved when it was available in other states. It was focused more on hour per resident rather than the number of staff per residents. Are there any regulations about using registry nurses and do they use registry nurses in long term care facilities?

Mr. Shubert replied they do use them, not as much as hospitals. During the pandemic, all facilities were looking at utilization of registry nurses. It presents the same issues that it does in hospitals. The registry staff are not familiar with the residents as the employed staff are. Mr. Gold asked if it would be worthwhile to ask for future regulation as opposed to statute to look at a ratio for registry staff? Mr. Shubert responded the challenge with setting that ratio with registry staff is the long term care facilities use them as a necessity and it can be costly to use registry nurses than to employee staff and have them provide services.

Mrs. Clontz asked if there were any past discussions or draft recommendations to help make a recommendation to the COA? Ms. Schmidt responded not from the COA, she does remember our Advocacy Attorney being involved in the 2015 session when they tried to pass the ratios and there was a lot of push back. From the agency perspective it's a big concern when you see 75% don't meet the staffing levels whether it's a hospital, nursing facility or an assisted living. Regarding the Desert Regional Center Intermediate Care Facility that falls under the ADSD, we take the acuity of every individual and that determines the staff level. The recommendation to the COA doesn't have to be

detailed other than is this something we should be moving forward and discussing and supporting some concept.

Mr. Gold agreed with Dena's comments. The ratios can be met but the acuity can be missing. Mr. Duarte added the complexities of dealing with acuity levels is something he hasn't thought of in this process and it's all good information. He asked how often do facilities have to go through the self-assessment to determine whether their staffing levels meets the acuity of the residents? Mr. Shubert responded at least annually is what the regulation requires and anytime there is a significant change in the way they are performing services or providing services or the case mix of their residents.

Mr. Duarte added the data presented from the PMC study, it doesn't seem to be a lot of ramifications or concerns amongst skilled nursing facilities across the nation when they do not meet CMS requirements. 75% of them not meeting that requirement at any given time it's clear that it doesn't sound like a big concern to them.

Mr. Gold asked when there are major deficiencies found in surveys or strong incident reports, some might go back to lack of staffing, when issues arise, is it 10% or 60% because of staffing? That would helpful moving forward. Mr. Shubert replied they can provide them some data regarding citations that would indicate how often. They will also look at a citation about staffing when they are making those major citations.

Mr. Duarte added that Medicaid would have some concerns if they are paying 60% of those beds and the staffing requirement increase, they will be at the brunt of the compliance.

7. Review of the 2021 Legislative Session

Ms. Schmidt presented an overview of the 2021 Legislative Session. (See Attachment C)

Ms. Schmidt reported ADSD met with Beth Slamowitz, the states pharmacist to assist in the implementation and discussion around pharmacy transparency and is providing information on how we can best utilize the Senior & Disability Rx Program to wrap around other efforts at the Department level when it comes to prescription costs. Looking forward to some of her recommendations and examples of what other states have done to reduce the cost of diabetes drugs which may be the focus and will have to be done through the regulation process which is a public process.

Mr. Duarte asked if they considered using federally qualified health centers' 340B program as a way of reducing costs for clients? Ms. Schmidt responded that is a concept she had brought up.

AB344 – ADSD teamed the legislators up with Jeff Klein. Our team is looking at grant funding opportunities and ARP funding to develop and continue these services due to the success of the hospital to home program. The team is moving forward to figure it out between our PAC and CBC units.

Mr. Duarte added he will be meeting with Jane Gruner and Jeff Klein to talk about sustainable funding sources for Hospital-2-Home and might be bringing ideas back to the subcommittee.

Mr. Gold added several states are using the funding to increase pay for the personal care assistants but the concern is it's not sustainable funding.

SB179 - The implementation date had to be moved out to avoid a fiscal note.

Mr. Gold
AB76 – enables veterans administration opening their own adult day care.
AB177 = allows how you take your medicine printed in a different language.
AB216 – care planning and assessment at a younger age

AB217- training for caregivers
SB5 – audio only telehealth bill. The data dashboard and how telehealth is being used.

Mr. Duarte thanked Dena and staff and staff at Medicaid for AB216 and expressed the importance of an early diagnosis.

Mr. Gold asked if ADSD or DPBH will be involved in the SB341 disparities bill?

Ms. Schmidt states all divisions will be working with the implementation to address disparity issues within our populations. She added the bill that didn't receive much attention was the language access bill which requires divisions to report language accessibility and barriers, etc.

8. Review, discuss and approve tentative agenda for the next meeting (For Possible Action)
- **Chuck Duarte, Chair**

Mr. Duarte asked for policy priorities from committee members.

The committee concluded with the following priorities:
- Spousal impoverishment
- MOST Teams/APS team prevalence of dementia clients they encounter. The need to fund county outreach workers. Some wrap around support program.
- State supplemental program for aged and blind but none for individuals with disabilities. This allows individuals to live in a group setting. It wasn't included in the state plan years ago. There may be an opportunity to bring in more federal dollars to provide for residential settings.
- State guardianship model. The need for the model to be addressed to make it consistent statewide.
- Elder Abuse fatality review teams. Determine the root cause of deaths.
- APS being able to get search warrants issued.

Mr. Duarte stated the next meeting will include an agenda item where we have discussion around policy initiatives that have been presented on and come to a consensus to vote items to move forward for review by the full commission. He added to consider using the interim committees such as the Silver Haired Legislative Forum to move initiatives forward.

9. Next Meeting Date – Tentative Meeting Date, October 2021

10. PUBLIC COMMENT

Ms. Schmidt stated there are six openings on the Commission on Aging and to help spread the word by informing interested individuals to apply on the governor's website.

11. ADJOURNMENT – The meeting adjourned at 2:48pm.

Attachments:

A: Guinn Center Presentation: The Personal Care Aide Workforce in Nevada

B: Nurse Staffing Ratios

C: ADSD 2021 Legislative Session Overview