STATE OF NEVADA
PUBLIC EMPLOYEES' BENEFITS PROGRAM BOARD
LEGISLATIVE UPDATE TELECONFERENCE

The Richard H. Bryan Building
901 South Stewart Street Suite 1002
Carson City, Nevada 89701

ACTION MINUTES (Subject to Board Approval)

March 9, 2017

MEMBERS PRESENT IN CARSON CITY:	Mr. Patrick Cates, Board Chair Mr. Don Bailey, Vice-Chair Ms. Ana Andrews, Member
MEMBERS PRESENT VIA TELEPHONE:	Mr. Chris Cochran, Member (joined at 2:15 p.m.) Ms. Rosalie Garcia, Member Ms. Leah Lamborn, Member Mr. Tom Verducci, Member Ms. Christine Zack, Member
MEMBERS EXCUSED:	Mr. James Wells, Member
FOR THE BOARD:	Mr. Dennis Belcourt, Deputy Attorney General
FOR STAFF:	Mr. Damon Haycock, Executive Officer Ms. Laura Rich, Operations Officer Ms. Celestena Glover, Chief Financial Officer Ms. Nancy Spinelli, Quality Control Officer Ms. Kari Pedroza, Executive Assistant Ms. Laura Landry, Administrative Assistant

1. Open Meeting; Roll Call

   Chair Cates opened the meeting at 2:01 p.m. He requested the members on the phone to please keep their phones muted until they wanted to speak and to identify themselves each time they spoke.

2. Public Comment

   Chair Cates stated there would be another public comment under Agenda Item 3 as it was an action item.

   There was no public comment until Item 2. The written public comment submitted for this meeting will follow these action minutes.

3. **Action Item-**

Discussion and possible action regarding 2017 Legislative Bills that may impact the Public Employees' Benefits Program, including the following:

* **Assembly Bills**

* **Senate Bills**

* **Bill Draft Requests**

Executive Officer Haycock went over the 2017 Legislative Bills tracking list and described the potential impact to PEBP for each item listed. He requested direction from the Board on what position they would like to take on each of the proposed legislative items (i.e. support, neutral or opposed).

Board Action on Assembly Bill 249 and Senate Bill 233 -

MOTION:	Move that the PEBP Board oppose both AB 249 and SB 233.
BY:	Member Lamborn
SECOND:	Member Verducci
DISCUSSION:	The Board Members discussed whether they could change their position at a later time and Executive Officer Haycock confirmed that the position would be presented and as amendments come in, that position could be amended.
VOTE:	The motion carried with Members Bailey and Cochran opposed.

Executive Officer Haycock confirmed he would present the Board's opposed position, at Legislative Committee Meetings, to these two bills but would also share that the Board was not opposed to the entirety of the bills and that we would be more than willing to work with the sponsors to help revise and amend the language to ensure that we protect the safety of our participants and the solvency of our health plan.

Board Action on Senate Bill 80 –

DISCUSSION:	Chair Cates informed the members that language will be included in BDR 18-979, at the time the text was not available online. The BDR includes two changes to SB80, it does not seek to combine the two programs (Public Employees' Benefits Program and Public Employees' Deferred Compensation Program) and it changes the composition of the PEBP board by removing the local government representative and replacing it with a second NSHE representative. Chair Cates states that since there was no specific language for BDR 18-979, he did not want to ask the Board to vote on taking a position on SB80.

Board Action was not taken on SB80.

Board Action on Senate Bill 139 -

DISCUSSION:	The Board Members discussed waiting to take a position on this bill until more information became available regarding the intent.

Board Action was not taken on SB139.

Board Action on Bill Draft Request 40-809 -

MOTION:	Move that the PEBP Board oppose BDR 40-809.
BY:	Member Verducci
SECOND:	Member Cochran
VOTE:	Unanimous; the motion carried.

4. Public Comment

   - Terri Laird – Executive Director of RPEN

5. Adjournment

   Chair Cates adjourned the meeting at 3:30 p.m.

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Supplemental Material
Public Comments

March 4, 2017

TO: Public Employee Benefits Plan (PEBP) Board

FROM: Senator (Professor) Douglas A. Unger, At Large Representative, Executive Committee, Faculty Senate, University of Nevada, Las Vegas

RE: Statement Submitted for the Record: Opposition to proposed "Senate Bill No. 80 – Committee on Government Affairs" (On Behalf of Department of Administration)

To be added to the record as Public Comment for the March 9, 2017 meeting of the Public Employee Benefits Plan Board:

Professor Douglas A. Unger, Senator and At Large Representative, Executive Committee, Faculty Senate, University of Nevada, Las Vegas, states:

The Public Employee Benefits Plan Board may discuss on March, 9, 2017 the proposed Senate Bill No. 80 that is currently before the Committee on Government Affairs of the Nevada State Legislature. As a designated representative of the faculty at the University of Nevada, Las Vegas, and after consultation with leaders and representatives of other Nevada State Employee organizations and interest groups, please consider and accept this **strong statement in opposition to proposed bill SB 80**, and **SB 80's potential serious negative consequences to employees of the state of Nevada and all Nevada citizens**, for the following reasons:

1. **SB 80 intends to dissolve the Public Employee Benefits Program Board and PEBP** as it is currently constituted, changing it from a 9 member body with authority over health and other benefits for state employees into an Advisory Board only, and, in the process, **transfer all executive power and control over all contracts, all setting of rates, all administration of benefits, and even all investment of its funds, to the exclusive power and control of one sole individual—titled "the Administrator"** of the Employee Benefits Division of the Department of Administration. "The Administrator" may then collect for and disburse and carry out administration of all health care benefits services and deferred compensation retirement services, including investments of public funds, **without sufficient public review or scrutiny, and without being subject to any due diligence.** (See Sections 5-7. 14, 19, 20, 24-37, 40, 49 and 50 of the SU 80 proposed draft bill).

2. This concentration of so much fiscal power and authority into the hands and discretion of one individual, "the Administrator", over approximately *$140 million dollars per year* in state funds**, puts at risk the state employee benefits system to a vastly increased potential for poor use or misuse of funds,** the allocation of contracts to providers based on cronyism and insider deals hidden from public view**, and even possibly including serious risk of fraud and criminal activity, as has historically been the case in the state of Nevada** with health benefits funds (see Nevada State Attorney General's archive, ag.nv.gov, 1997-98, L & H Administrators cases, including nonpayment of 75,000 health

care claims for state employees; and criminal prosecutions resulting therefrom). (And see Section 24, 2, a-h of draft of SU 80 bill proposed). Note: **the reason the 9-member Public Employee Benefits Program Board was created** and given authority in the first place **in 1999 was in response to misuse, abuse and criminal activity with state funds, costing** the citizens of Nevada **tens of millions of extra budget dollars to compensate for in the aftermath. The PEBP was created**, in part, **to assure the Legislature of Nevada**, state employees, and the citizens of Nevada **that** such criminal, damaging, **irresponsible administration of state funds meant for employee benefits could never, ever happen again**. **SB 80 would increase the risk** that such misuse and even possible criminal activity will happen again, as the bill relies solely and exclusively on the honesty and integrity of one person**—** "the Administrator"**—**and **without recourse to appeal of decisions** to higher authority.

3. Furthermore, **SB 80 would remove from the PEBP board the responsibility for** appointing any employees or outside contractors to monitor ***quality control*** **of health care and other benefits** (see Section 22, 1, of proposed draft bill) and put that responsibility entirely in the hands of "the Administrator". Thus: "the Administrator" could contract with a health insurance provider or healthcare administration company of poor quality and high price, without sufficient external review other than a review which "the Administrator" would contract for on its own, **thus health care quality becomes a matter of self-review only.** Neither would the Administrator be subject to any demands resulting from public scrutiny or the reporting by state employees in determining quality.

4. Also: dissolving the PEBP Board and turning it into an Advisory Board to the Division of Department Administration removes all PEBP Board control or consent over employment of the proposed Administrator. "**The Administrator" would, in effect, be a Governor's appointee only, without any public review, interview process, nor external review of the qualifications** of such an all-powerful Administrator. Even though, in Section 20, 1, SB 80 suggests certain minimum qualifications for this position, Section 20, 1 b of **the draft bill provides for the possibility that the Director of the Department of Administration could, in essence, choose almost anyone at all, qualified or not**, by "equivalent combination of education and experience" to be "determined by the Director" possibly without sufficient external review as to qualifications.

5. **Even more potentially risky to state of Nevada employees** are Sections 29 & 30 of the draft of SB 80, which assigns **"exclusive control of the administration and investment of the Retirees' Fund" (Sec. 29, 3) to "the Administrator,"** without provisions for adequate financial counsel, advice, or public scrutiny. Also, Section 42 of the draft of **SB 80 adds possible injury to insult by assigning the Deferred Compensation retirement investment program of Nevada state employees (401 (a), 401 (k), 403 (b), 457 or 3121 plans, or a possible alternative FICA plan) to the exclusive control of "the Administrator,"** who is to appoint**—**again without adequate quality control over the choice of employee**—**a designated "Chief" in place of the existing Deferred Compensation Committee. **Thus "the Administrator" and "the Chief" would be solely and exclusively responsible for choosing any investment plan it wishes, prudent or not,** and thus **could potentially open up the state of Nevada Deferred Compensation**

retiree program funds to misuse, abuse, cronyism, fraud, pay-to-play trading, and possible criminal activities, as has been the ignominious and sorry experience in other states. (Numerous examples of such misuse of funds in other states are so easily available as not to require elaborate citation, but a few examples are cited here).[1] Passage of SB 80 could open up the Nevada employee Deferred Compensation funds to control by one or two individuals and thus **increase the risk of similar bad choices and illicit activities, if not now, then one day in the future.** These provisions of SB 80 are not in the best interests of the citizens of Nevada.

6. In conclusion: The proposed elimination of the Public Employee Benefits Board and the concentration of power and authority over health care and other benefits to the sole and exclusive authority of one person working under the Department of Administration is **a bad proposal, with potentially very serious negative consequences for Nevada State Employees and the citizens of our state.**

So, herewith: **We call on the Public Employee Benefits Program Board to take a strong stance in opposition to SB 80. As well, we appeal to the Board of Regents of the State of Nevada to oppose this draft legislation. And we most respectfully call on members of the Senate and Assembly of the Nevada Legislature to stand with the Faculty of UNLV and other Nevada State Employees in our opposition to SB 80 and all it implies.** Our state's hard-working employees were harmed once before, and so were the citizens of Nevada, with very costly consequences. Please do not open the door to similar harm and unnecessary costs ever being inflicted on our state again**.**

[1] (See California CaliPers pension fund litigation history, including unwise investments, also "placement agents and kickbacks" at www.allgov.com.usa.ca; also at www.sec.gov, the SEC prosecution for "pay to play" of two former administrators of the New York State employee pension fund; and search the Essex Regional Retirement Board case in Massachusetts, etc.).

Pedroza, Kari

From: Shaun Franklin-Sewell [redacted]
Sent: Tuesday, March 07, 2017 2:06 PM
To: Pedroza, Kari; PEBP Board
Subject: Public Comment for Thursday's meeting

Members of the Public Employee Benefits Program Board:

For the record, my name is Shaun Franklin-Sewell and I'm the chair of the UNLV Employee Benefits Advisory Council.

At your Thursday, March 9 meeting, you may discuss a bill draft request, #40-809. The summary of the bill draft request's potential impact seems to indicate that ultimate passage of such a bill would require PEBP to start providing pharmacy coverage with a maximum out-of-pocket cost of $500. On behalf of employees who continue to suffer under the high-deductible health plan, I urge you to support legislation that may result from this BDR.

Among recent reports received by the UNLV Faculty Senate, employees are forgoing drugs to treat seizures, cancer, cystic fibrosis, and auto-immune diseases. Some employees attempting to afford their medications, including chemotherapy, are suffering from what they term financial ruin. With the new 4-tier HMO drug plan, I expect this will only get worse.

Staff's estimates indicate that the cost will be $25 million to $35 million dollars annually to provide this benefit. I think that a pittance to ensure that employees can lead healthful, productive lives during their working years.

Shaun Franklin-Sewell, Ph.D.
Director of Marketing & Patron Services, UNLV Performing Arts Center
Chair, UNLV President's Advisory Council
[redacted]

March 9, 2017
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Supplemental Material
Regarding SB233

Hometown Health

INDIVIDUAL | FAMILY | GROUP | MEDICARE

There's a plan for everyone. Find yours.

March 9, 2017

Thank you for inviting us to comment on SB 233 and its potential issues and consequences. These comments follow.

Hometown Health as a Nevada based health plan currently covers all essential generic dosage forms of oral contraceptives at no cost to the patient, along with brand products that are without generic availability; also at no cost to the patient. The Affordable Care Act requires coverage of generic oral contraceptives at no cost, and allows for brand products where generic products are not appropriate, which essentially makes all types of contraceptives available at no cost, after a 'trial and failure' of a generic alternative. The bill appears to provide for medication without restriction. Removing all clinical appropriateness management tools and medical research validated evidence based criteria for oral contraceptives, should this bill be implemented, will not change accessibility to contraceptives for health plan members or for participants in other like plans. This bill is not guaranteed to improve the care that the member receives; instead, this bill will drive up healthcare costs by not providing for the use of solid evidence based practice recommendations that assure both patient safety and sound financial practices that allow the use of limited resources to be managed appropriately.

Insurers and pharmacy benefit management companies use those clinically sound evidence based criteria including FDA recommendations to make preliminary determinations concerning specific pharmaceutical use for specific conditions. Pharmacists and physicians review patient specific clinical information and often reach out to the prescriber to understand why a particular medication has been requested. Patients who have been on a medication and who are stable on that medication are most often approved to stay on the medication. The goal is to provide the best care and the best use of resources.

Drug patent expirations occur throughout the year, which allows generic drug availability, frequently, at much lower costs. Most often formularies are not changed mid-year, but members who want the generic medication to get a

lower cost sharing can ask for it. There are literally hundreds of oral contraceptive medications on the market that can be chosen by providers for prescribing. The vast majority of the most often prescribed hormonal combinations are available in generic form. Millions of women around the country are on these medications and do well with them. If there are generic equivalents to the medication that is available in brand, there is minimal downside in asking that the generic be the first choice for the prescriber and the member. The inability to require use of the generic equivalent first, will inhibit the plan's ability to move or maintain utilization to the generic replacement, which would otherwise result in cost savings for both the member, and the plan. The cost increase for the oral contraceptives could be substantial without any real change in value or treatment outcomes.

Allowing a 12 month supply of oral contraceptives without criteria has the potential to lead to waste and excessive costs. A provider never knows how a patient is going to respond to any type of oral contraceptive. Many times, titration of the strength is needed, as the patient may experience side effects thus leading to discontinuation, or necessitate a change in strength. A patient may decide they want to stop the contraceptive to become pregnant. These situations will lead to waste, and may increase the risk for improper disposal. Therefore, reasonable criteria would require an initial 3 month supply to be dispensed, in order to establish safety and efficacy of the medication, before allowing a 12 month supply. This would ensure that the member is stable, and would avoid waste and unnecessary expenditures. Also if a 12 month supply is dispensed and side effects occur or the medication is ineffective, the member would be responsible for out of pocket costs for that next supply; a cost that could be substantial.

Hormone replacement therapy (HRT) as described in the bill is ambiguous within the bill and needs clarification. It is unclear if the HRT is related to only female hormone replacement for postmenopausal use or for all hormone replacement such as thyroid, testosterone, growth hormone etc. There are many therapies classified as hormones, and clinical appropriateness criteria is in place to ensure patient safety and efficacy of the products. Removal of prior

authorizations, allowing open access to these medications, will drive up costs, allow for over-utilization, and allow for potential abuse. For example, testosterone is one type of HRT. Androgen (an anabolic steroid) misuse is of growing concern, and is increasingly observed in men for purported, but unproven, anti-aging, and other unsupported clinical conditions. Currently, our prior authorization criteria exists for both patient safety, as well as to guide usage in the appropriate population who possess a medical necessity for such hormone therapy. Removal of the criteria will open up access to who individuals who fall outside this scope, which will lead to abuse and substantial increased overall spending for these hormones. Testosterone has a well-documented potential for abuse, and the FDA recently approved a class-wide label change to indicate the risk of abuse and dependence for testosterone and other anabolic, androgenic, steroids.

Even if "Hormone Replacement" referred only to Estrogen and Progesterone replacement in females, opening up access to all products without any appropriateness oversight would lead to overutilization of expensive formulations (mists, gels, etc.), for which there are numerous generic alternatives at a fraction of the cost. There is still much clinical controversy surrounding the proper use, and duration, of hormone replacement in post-menopausal women. Open and free access to all products, without safety considerations through clinical appropriateness management, would significantly drive up utilization, and could lead to *more* adverse outcomes for women.

Richard Rosen, MD
Medical Director Hometown Health

James Kim, Pharm D
Managed Care Pharmacist Hometown Health

Linda Ash-Jackson, MD
Chief Medical Officer
Hometown Health