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September 4, 2024

Division of Health Care Financing and Policy
Community and Provider Engagement Unit
1100 E. William Street, Suite 101
Carson City, NV 89701

Submitted via email communityandprovider@dncfp.nv.gov

RE: Comment Letter for September 4, 2024 Public Workshop on Amendments to the Nevada Administrative Code (NAC), Chapter 439 Health Information Maintenance, Transmittal, and Exchange (AB7 Regulations)

We closely followed Assembly Bill 7 through the Patient Protection Commission and the 2023 Legislative Session. The goal of AB7 was to require electronic health record interoperability consistent with national standards and best practices and ensure patients can access their electronic health records directly from their providers and forward that information electronically. The bill was focused on direct patient access to their electronic health records and ensuring interoperable health records and was not intended to permit compliance through connection to a health information exchange.

We are concerned that the proposed regulations for AB7 indicate that compliance for covered parties is based on either maintaining an electronic health record system that meets specified interoperability standards **OR** maintaining a connection with a health information exchange. The background section of the Division of Healthcare Financing and Policy's Small Business Impact Statement states that the Electronic Health Information Advisory Group (EHIAG) "did not come lightly to the solution that if an HIE were to be a viable solution for health care providers to meet the requirements of AB 7, it had to meet federal interoperability standards and direct patient access requirements."

We disagree with EHIAG and reiterate that a connection to a health information exchange (HIE) should not be an alternative to an interoperable electronic health record system. AB7 includes waivers for providers who do not have the infrastructure to comply and funding to assist those that would like to participate. Additionally, the provision allowing compliance through a connect to an HIE conflicts with the provisions of Sec. 1.08 in AB7, which require the Department to establish standards that allow patients to directly access electronic health records from their providers and electronically forward those records. Access through a health information exchange is not direct access from a provider. If compliance can be met solely based on connection with a health information exchange, how will patients be able to directly access their electronic health records from their providers and forward their information which is a requirement of AB7?

A health information exchange in Nevada, HealthIE Nevada is a member of eHealth Exchange, one of seven currently designated Qualified Health Information Networks (QHINs) for TEFCAs exchange that allows its network participants to opt-in to TEFCAs exchange.¹ However, it is not clear if HealthIE Nevada

has opted into TEFCA-based exchange with eHealth Exchange. We cannot find any information on the HealthIE Nevada website indicating it is a member of the TEFCA Common Agreement or compliant with TEFCA. How will this be confirmed per the regulations and known to patients, providers, and other healthcare stakeholders? Additionally, on the eHealth Exchange website, HealthIE Nevada has a note that its content is not validated.

Moreover, during the 6/17/24 EHIAG meeting we requested information [in the chat] from HealthIE Nevada in writing stating that a patient is able to get their records directly from the HIE and send them to where they want through the HIE and the status of such a service from the more than a decade-old private non-profit. HealthIE Nevada Executive Director Michael Gagnon stated [wrote in the chat] that he could provide information on “our new HealthIE Patient service” and that “there is no charge for providers or patients.” Unfortunately, we have not received that information.

According to the HealthIE Nevada website, “Only doctors, hospitals, laboratories, radiologists, and pharmacies that are members of the HIE can see your personal information.”ⁱⁱ We cannot find any mention on the HealthIE Nevada website indicating how patients can access their own information in the HIE and we could not find anywhere on the HealthIE Nevada website a method for patients to request, access or forward their records. Additionally, there is no mention of a HealthIE Patient service as of 8/30/24.

AB7 did not have a provision stating providers can use a health information exchange connection to be compliant so we do not understand why such a connection is an alternative to a having an interoperable electronic health system in the regulations. It will prevent patient access, which is the basis of the law. In the guise of “flexibility” the proposed regulations exceed the intent and scope of the law.

Sincerely,



Maya Holmes
Health Policy Director

ⁱ https://www.healthit.gov/sites/default/files/page/2023-11/TEFCA_2-Pager_Digital_508.pdf

ⁱⁱ Accessed 8/30/24 <https://healthienevada.org/frequently-asked-questions>