Re: AB7 Regulations

Please consider this testimony regarding recommendations for new EHI regulations as recommended by the EHI Advisory Group and as discussed in a public workshop on 09/04/2024 from James Fleming, Nevada board-certified community health worker and professional medical data analyst.

Submitted by e-mail to communityandprovider@dhcfp.nv.gov **on 09/13/2024 .**

Summary

The recommendations for new EHI regulations, largely originating from HealtHIE Nevada, will strongly advantage HealtHIE Nevada to the point of giving them monopolistic access to a state contract with a Health Information Exchange that the new rules mandate. Tax documents show that HealtHIE Nevada is controlled completely by Cognosante, a large healthcare sector I.T. contractor. As such, the new rules will give strong advantage to Accenture Federal Services, a major nationwide government contractor that purchased Cognosante recently precisely in order to expand its market share in government health agency contracting. New rules will also disadvantage potential competitors, thus reinforcing a HealtHIE Nevada monopoly indefinitely. These disadvantages would arise from this section of the draft recommendations:

NAC 439.XXX Required findings and considerations if Director contracts with multiple Health Information Exchange; required hearing; . *(NRS 439.587, 439.588, 439.589)*

1. Before establishing or contracting with more than one Health Information Exchange to serve as the State's Contracted Health Information Exchange, the Director must:

Nevada should not pass into law any new rules that give extraordinary advantage to HealtHIE Nevada, nor should they disadvantage any potential competitors. Nevada, like almost all other states, can enjoy the benefits of increased data portability via interoperable electronic health record software and health information exchanges without any such anti-competitive rules. Furthermore, the state would avoid complaints to the FTC for anti-competition by removing or changing the clauses which I highlighted in yellow below.

Also, I agree with the written testimony from the Culinary Workers' Health Fund that the rules MUST guarantee patients' easy, electronic, prompt access to their medical records as required by many federal laws, most recently here in Title 42, see below for URL and scroll down for screenshots with detail about the prohibition against information blocking.

https://www.govinfo.gov/content/pkg/USCODE-2022-title42/pdf/USCODE-2022-title42-chap6A-subchapXXVIII-sec300jj.pdf

As such I agree with the Culinary Workers' opinion that a hospital or state health agency, such as the WIC program, should NOT be allowed to join HealtHIE Nevada in lieu of a patient-accessible electronic health record platform. If that clause is allowed to become law, interested parties would immediately file a complaint of intentional, systemic information blocking to the federal Health and Human Services Office of Civil Rights

Last, please scroll down for a link to a report commissioned by Idaho's legislature, which provides insight into how a state-sanctioned HIE monopoly resulted in massive cost overruns and a lack of oversight and accountability.

Details and screenshots

The final draft of the recommendations include many rules that will specifically benefit the NV HIE, and therefore Cognosante and Accenture Federal Services specifically, in that only HealtHIE Nevada will be able to meet the requirements at the time they become law. Not only that, but these new rules will inevitably stifle any other attempts by competing HIEs to enter the marketplace in Nevada.

Pay special attention to the yellow highlighted section below—the committee has agreed to NV HIEs verbiage that NAC regulations REQUIRE subscription and membership to an HIE. Importantly, these rules were decided upon not by a transparent legislative process but mainly by one financially interested member of one virtually unknown committee. The rules make clear that the only HIE in Nevada is and will be operated by monopolistically by entities controlled by Accenture.

See excerpts from the final draft of recommendations below. Here is the link to the document in full:
https://dhcfp.nv.gov/uploadedFiles/dhcfpnvgov/content/Public/AdminSupport/MeetingArchive/EHIAG/EHIAG_06-17-24_DRAFT_Regulations_Per_AB7_2023_NAC_439.572_HealtHIE_Proposed_Edits_SW_FinaL_4-9-24_ADA.pdf

NAC 439.XXX Requirements for a Contracted Statewide Health Information Exchange. *(NRS 439.587, 439.588, 439.589) Prior to January 1, 2026, if a qualifying Health Information Exchange applies to the Director to provide services to the State on commercially reasonable terms acceptable to the Director and the Department, the Department shall contract with a Health Information Exchange to be a Contracted Statewide Health Information Exchange. Any Contracted Statewide Health Information Exchange must:*

1. *File an application and enter into a contract with the Director to become a Contracted Statewide Health Information Exchange.*
2. *Meet the following requirements at the time of its application:*
   a. *Be incorporated as a Nevada non-profit corporation.*
   b. *Demonstrate the highest standards in information protection and security by holding a current certification from the Health Information Trust Alliance or another certificating body delineated by the Director;*

c. Have at least five years' experience of operating a Health Information Exchange in the State that has been certified pursuant to NRS 439.588;
d. Maintain and operate statewide master indexes of Providers, patients, and payers that comprise a diverse and substantial number of Providers, patients, and payers in the State;
e. Have procedures in place acceptable to the Department by which its statewide master indexes will be transferred to the Department upon termination of its contract;
f. Demonstrate the ability to aggregate and manage clinical information;
g. Demonstrate the ability to adequately advise the Director on appropriate standards for certifying other exchanges;
h. Perform communication and information transactional services, including, but not limited to, event notification, delivery of lab results, sending discharge summaries, and other real time transactions;
i. Resolve patient identity matching by using a statewide master patient index that subsumes patient identities from all participating Providers, patients, and payers;
j. Provide public health services, including, but not limited to, electronic lab reporting, syndromic surveillance, immunizations coordination, population health analyses, public health analyses, and medical research coordination among Providers or members of academia;
k. Comply with the consent laws codified in this Chapter and Chapter 439 of the NRS, including demonstrating the ability to collect patient consent form submissions and consistently comply with patient consent decisions;
l. Coordinate and connect with national exchange networks (e.g., a Qualified Health Information Network (QHIN)); and
m. Demonstrate transactional capabilities to create and maintain a patient information communication network to facilitate the push, pull, and expeditious transfer of patient information and notices regarding patient health.

NAC 439.XXX Required findings and considerations if Director contracts with multiple Health Information Exchange; required hearing; . *(NRS 439.587, 439.588, 439.589)*

1. Before establishing or contracting with more than one Health Information Exchange to serve as the State's Contracted Health Information Exchange, the Director must:

a. Determine that contracting with multiple exchanges will improve the services provided to this State with respect to the creation of a modern, integrated, and real-time public health infrastructure that facilitates statewide electronic health data sharing across the healthcare ecosystem;
b. Determine that contracting with multiple Health Information Exchanges will reduce the costs to the State, Providers, and payers that would be incurred if the State contracted with only one Health Information Exchange;
c. Convene an advisory group of Providers, payers, and other industry stakeholders to advise the Director on whether contracting with multiple Health Information Exchanges is in the best interest of the State; and
d. Make determinations and findings pursuant to this Section in a report to: (i) if the Legislature is not in session, the Joint Interim Standing Committee on Health and Human Services; (ii) if the Legislature is in session, to the Health and Human Services committees of the Nevada State Senate and Assembly.

A previous draft proposal for these rules, rejected by the committee, called for healthcare entities to use BOTH interoperable EHR software AND an HIE connection. See screenshot and URL below. The newest draft allows a hospital or a public health agency to utilize one but not the other.

https://dhcfp.nv.gov/uploadedFiles/dhcfpnvgov/content/Public/AdminSupport/MeetingArchive/EHIAG/EHIAG_06-17-24_DRAFT_Regulations_Per_AB7_2023_NAC_439.572_HealtHIE_Proposed_Edits_SW_FinaL_4-9-24_ADA.pdf

3. *Except as otherwise provided in subsections X, X, and X of NRS 439.589:*
   a. *Hospitals and Provider group practices with more than 20 employees must comply with the provisions of subsection X of NRS 439.589 on or before July 1, 2024.*
   b. *The Department and the divisions thereof, other state and local governmental entities, Providers, third parties, pharmacy benefit managers and other entities licensed or certified pursuant to title 57 of NRS operating in this state must comply with the provisions of subsection X of NRS 439.589 on or before July 1, 2025.*
   c. *Provider group practices or other business entities organized for the purpose of practicing a health care profession or combination of professions with 20 or fewer employees, including, without limitation, sole proprietorships, must comply with the provisions of subsection X of NRS 439.589 on or before January 1, 2030.*

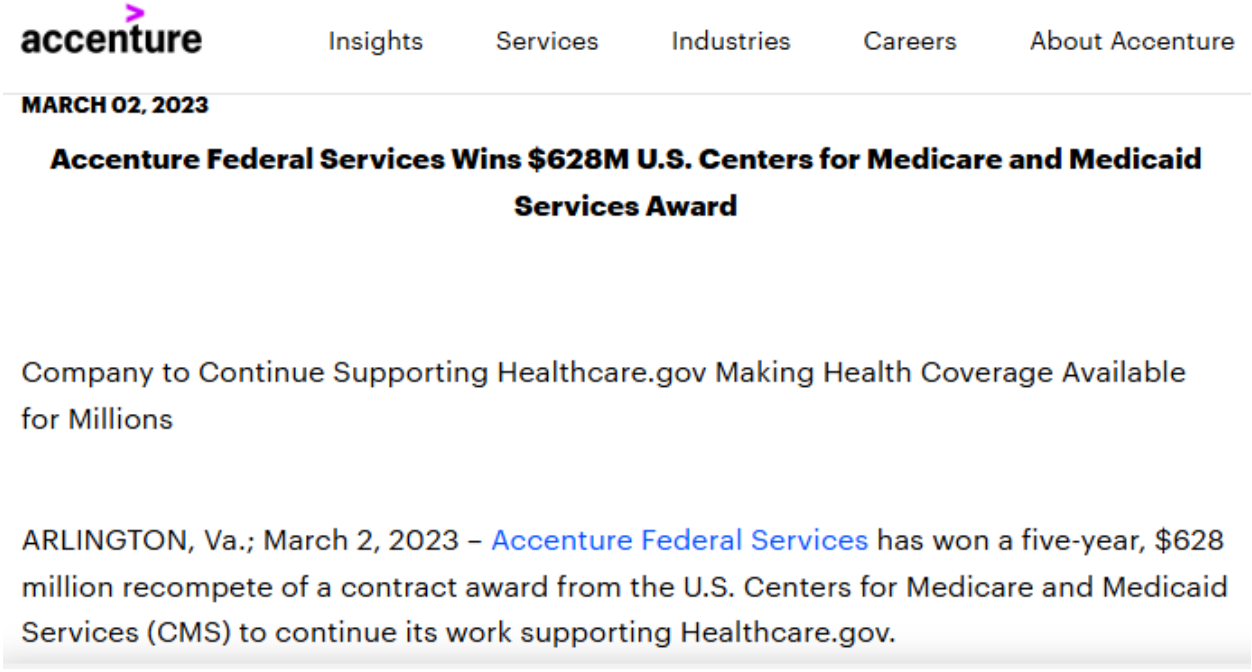
4. *Compliance with the provisions of subsection X of NRS 439.589 is satisfied by the following:*
   a. *Maintaining an electronic health record system pursuant to NAC 439.586 subsection 2; and*
   b. *Maintaining connection with a health information exchange pursuant to NAC 439.586 subsection 1;or*
   c. *Maintaining an electronic health record system pursuant to NAC 439.586 subsection 2 that itself maintains a connection with a health information exchange pursuant to NAC 439.586 subsection 1, to which connection function the Hospital, Provider group practice or other business entity is subscribed.*

NAC 439.598 Inapplicability of certain provisions *The provisions of NRS 439.581 to 439.595, inclusive, and NAC 439.572 to 439.596, inclusive, do not apply to the Federal Government and employees thereof, a provider of health coverage for federal employees, a provider of health coverage that is subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq., a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5), or the Nevada Department of Corrections.*

HealtHIE Nevada is Nevada's only open statewide health information exchange and currently the only HIE which fits the definition of an HIE with which the state can contract. **The committee's proposed regulations go much farther than NRS 439.572 through 439.598 in that they heavily favor an eventual, perpetually non-competitive monopoly over NV health agency IT contracts by Accenture.** Effectively, the state MUST contract with HeatlHIE Nevada. And though state law allows HHS to contract with more than one HIE, the EHI committee's proposed regulations will cause HHS to ONLY contract with HealtHIE NV, which itself is controlled by Cognosante, a subsidiary of Accenture, according to HealthHIE's form 990 tax filings.

Accenture Federal Services is a large, rapidly growing provider of health program I.T. and administration services for federal and state governments. See the below screenshot from

https://newsroom.accenture.com/news/2023/accenture-federal-services-wins-628m-us-centers-for-medicare-and-medicaid-services-award



In 2024, Accenture acquired Cognosante, a major government health I.T. contractor who operates the nation's largest network of Health Information Exchanges, including Nevada Health Information Exchange.

About Cognosante

Cognosante is a mission-driven technology company delivering innovative and transformative solutions that improve the health and safety of Americans. With more than a decade of experience working with Federal and state government agencies, we aim to expand access to care, improve care delivery, deliver solutions addressing social determinants of health, and ensure safety and security through multi-faceted technology and customer experience (CX) solutions. Our broad range of capabilities includes enterprise IT and cloud, data science, telehealth, interoperability, public health surveillance, clinical performance, eligibility and enrollment, and consumer engagement.

About the eHealth Exchange

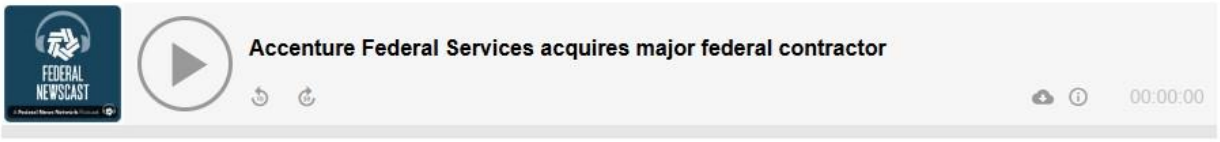
The eHealth Exchange, a 501(c)3 non-profit, is among the oldest and largest health information networks in America and is most well-known as the principal way the federal government shares data between agencies and with the private sector. The eHealth Exchange, a network of networks, is the only network connecting healthcare providers to five federal agencies, 61 regional or state HIEs, 75 percent of all U.S. hospitals, and 85 percent of dialysis clinics running on more than 30 electronic health record (EHR) platforms. National interoperability is facilitated by one common trust agreement and a single set of APIs. Five federal agencies (Department of Veterans Affairs, Department of Defense, Indian Health Service (IHS), Food and Drug Administration (FDA), and Social Security Administration) participate in the network to share patient information with private-sector healthcare partners as well as other agencies. The eHealth Exchange supports the secure exchange of the more than 12 billion patient record transactions annually.

FEDERAL NEWSCAST

Accenture Federal Services acquires major federal contractor

Cognosante, a provider of digital transformation and cloud modernization services, won more than $300M in federal contracts the last two years.

Peter Musurlian | @PMusurlianWFED
April 16, 2024 9:05 am < a min read



- A major contractor for the Veterans Affairs Department is getting acquired. Cognosante, a provider of digital transformation and cloud modernization services, will merge into Accenture Federal Services. Cognosante won more than $300 million in federal prime contracts the last two years, with its largest customers being the VA and the Centers for Medicare and Medicaid Services. Cognosante holds spots on several governmentwide contracts including CIO-SP3, OASIS and Alliant 2. Accenture Federal Services did not disclose the terms of the deal.

https://govconwire.com/2024/05/accenture-federal-services-closes-cognosante-buy-unveils-health-portfolio-john-goodman-quoted/

Lessons from the Idaho Health Data Exchange

The Idaho Health Data Exchange, Idaho's only HIE and a current participant in Cognosante's eHealth network, declared bankruptcy in 2022 after its management was outsourced to a D.C. consulting firm in 2019. In a legislative report, researchers found that the Idaho HDE lacked oversight, was associated with non-competitive contracts, and was never required to operate with financial transparency. Here's the URL for that report and a screen shot from the report's introduction:

https://legislature.idaho.gov/wp-content/uploads/OPE/Reports/r2301.pdf

What practices are considered information blocking?

Info blocking practices can be an Actor's acts or omissions—essentially anything that interferes with the access, exchange, or use of EHI. However, just because an action interferes with the access, exchange, or use of EHI does not mean the practice is automatically considered an info blocking violation—facts and circumstances unique to each action should be taken into account. For instance, physician Actors must have the required ***knowledge and intent*** to interfere with access, exchange, or use of EHI. Info blocking practices may include but are not limited to:

1. Practices that restrict authorized access, exchange, or use under applicable state or federal law of such information for treatment and other permitted purposes under such applicable law;
2. Implementing health IT **in nonstandard** ways that are likely to substantially increase the **complexity or burden** of accessing, exchanging, or using EHI;
3. Limiting or restricting the interoperability of health IT, such as **disabling or restricting** the use of a capability that enables sharing EHI with users of other systems or restricting access to EHI by certain types of persons or purposes that are legally permissible, or **refusing to register a software application that enables patient access to their EHI** (assuming there is not a legitimate security reason that meets the conditions of the Security Exception, discussed further below);
4. Implementing health IT in ways that are likely to restrict the access, exchange, or use of EHI with respect to **exporting complete information sets or in transitioning between health IT systems**. This would include acts that make **transitions between certified health information technologies more challenging (e.g., an EHR vendor charging excessive fees or using tactics to delay a practice's switch from their EHR to another vendor's EHR);**
5. Acts that lead to **fraud, waste, or abuse**, or **impede innovations** and **advancements** in health information access, exchange, and use, including care delivery enabled by health IT;

of health care providers.

"(4) FACA.—The Federal Advisory Committee Act ([former] 5 U.S.C. App.) [see 5 U.S.C. 1001 et seq.] shall not apply to the development of the goal, strategies, or recommendations described in this section.

"(c) APPLICATION OF CERTAIN REGULATORY REQUIREMENTS.—A physician (as defined in section 1861(r)(1) of the Social Security Act [42 U.S.C. 1395x(r)(1)]), to the extent consistent with applicable State law, may delegate electronic medical record documentation requirements specified in regulations promulgated by the Centers for Medicare & Medicaid Services to a person performing a scribe function who is not such physician if such physician has signed and verified the documentation."

PART A—PROMOTION OF HEALTH INFORMATION TECHNOLOGY

§ 300jj–11. Office of the National Coordinator for Health Information Technology

(a) Establishment

There is established within the Department of Health and Human Services an Office of the National Coordinator for Health Information Technology (referred to in this section as the "Office"). The Office shall be headed by a National

(11) improves efforts to reduce health disparities.

(c) Duties of the National Coordinator

(1) Standards

The National Coordinator shall—

(A) review and determine whether to endorse each standard, implementation specification, and certification criterion for the electronic exchange and use of health information that is recommended by the HIT Advisory Committee under section 300jj–12 of this title for purposes of adoption under section 300jj–14 of this title;

(B) make such determinations under subparagraph (A), and report to the Secretary such determinations, not later than 45 days after the date the recommendation is received by the Coordinator; and

(C) review Federal health information technology investments to ensure that Federal health information technology programs are meeting the objectives of the strategic plan published under paragraph (3).