

Joe Lombardo
Governor



Richard Whitley, MS
Director

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DIVISION OF HEALTH CARE FINANCING AND POLICY

Helping people. It's who we are and what we do.



Stacie Weeks,
JD MPH
Administrator

DRAFT EHIAG MEETING MINUTES

Date and Time of Meeting: April 4, 2024 at 10:15a-12:15p

Name of Organization: State of Nevada, Department of Health and Human Services (DHHS), Division of Health Care Financing and Policy (DHCFP)

Place Meeting: Microsoft Teams

EHIAG Voting Member Attendance	
Member Name	
Dr. Christopher Lake	ABS
Brooke Greenlee	X
Ashley Jonkey	X
Dr. Quinn Pauly	X
Andrew Topper	X
Michael Gagnon	X
Chuck Podesta	X
Dr. Vilas Sastry	X
Michael Kennedy	X
Eileen Colen	Jerry Reeves attended on behalf of Eileen Colen
Dr. Eddie Ableser	ABS
Sarah Bradley	X
Cathy Dinauer	X
Dr. Mark Rosenberg	X
Dr. Darla Zarley	X
Lynne McAllister	X
Catrina Peters	X
Dr. Jonathan Salinas	X
Lei Zhang	X
Ex-Officio Member Attendance	
Malinda Southard	X
Sandie Ruybalid	X
Shelly Aguilar	X
Lisa Lottritz	X
Dr. Fermin Leguen	X
Cody Phinney	X
Scott Kipper	X
Russell Cook	X
Celestena Glover	X

I. Call to Order

Chair Malinda Southard called the meeting to order at 10:16 AM.

II. Roll Call

Chair Malinda Southard asked for a roll call. A quorum was established.

III. For Possible Action: Review and approve meeting minutes from the previous meeting held on March 7, 2024.

Chair Malinda Southard called for a motion to amend or approve the draft minutes from the previous meeting held on March 7, 2024. A motion to approve the draft minutes as presented was provided by Lynne McAllister and a second was provided by Michael Gagnon. Motion passed unanimously.

IV. Public Comment

No public comment was made.

V. Discussion of Part One of Draft Regulations

Chair Malinda Southard begins by stating this will be the first opportunity for this group to review draft language on what might be included in these draft regulations pertaining to the requirements that are outlined through Assembly Bill 7 (AB 7) of the 2023 Legislature. The premise for these proposed revisions is based primarily on three things: 1) reviewing the specific requirements of AB 7, particularly section 1.08, 2) reviewing the regulations already developed pursuant to NRS 439.589 governing health information exchanges, and 3) proposing draft language looking to encompass AB 7 requirements in alignment with the needs of the state and the timelines documented throughout the bill. Chair Southard allows the members to solicit feedback and discuss as they go through the document, section by section. Senior Deputy Attorney General, Gabriel Lither adds to Chair Southard's remarks and states this agenda item is to discuss only and is not a voting item. He states that at a later date, the members will be allowed to vote for their approvals or recommendations of the various draft regulations.

Chair Southard then begins by sharing a section of the draft regulations. She states they will use the information gathered from this meeting discussion to inform further revisions, additions, or deletions to the draft regulation language to put forward for further discussion and action during the May EHIAG meeting. The May meeting will include specific action items to the draft language for members to vote upon. She states any suggested deletions will be shown in red strike-through text and any suggested additions will be shown in blue italics text. AB 7 calls out in section 1.08 of the bill that these regulations are to be expanded to include not only health information exchanges, but more broadly the maintenance, transmittal, and exchange of health information. Mr. Lei Zhang expresses that the word "designated" should be added before "the Office of the National Coordinator for Health Information Technology of the United States Department of Health and Human Services in NAC 439.XXX "Interoperability" defined.

Chair Southard then continues with NAC 439.XXX "Provider of Health Care". She states the suggested definition is for a provider of healthcare to have the meeting ascribed to it in NRS 629.031. The justification is linked to the language and requirements set forth in the bill. Lastly, in the definitions section is NAC 439. XXX "Electronic Health Record System". The suggested definition is that an electronic health record system means technology with the ability to securely maintain, transmit, and exchange electronic health information that makes protected health information available instantly and securely to authorized users. The justification for this is that the bill requires unless otherwise exempted, the department and the divisions thereof. Other state and local government entities, health care providers, third parties, pharmacy benefit managers, and other entities licensed or certified pursuant to Title 57 of NRS to maintain transmit, and exchange health information. Mr.

Michael Gagnon then responds to Chair Southard and states that there are several applicable standards for interoperability that are not specifically about qualified health information networks that are a level of interoperability on a national scale, but there is also other interoperability standards around things like Medicare conditions of participation alerting that has to happen and that's not required of a QHIN at this point. He states they may need to change NAC 439.XXX to identify the applicable ONC standards. He states he can propose something if Chair Southard is interested. Lynne McAllister agrees with Mr. Gagnon.

Chair Southard then begins sharing the first section of the regulations with the proposed title to note the requirements concerning the electronic maintenance, transmittal, and exchange of electronic health records, prescriptions, health-related information, and electronic signatures. Because the regulations prescribed by the bill are intended to more broadly focus on the electronic maintenance, transmittal, and exchange of electronic health information and signatures, rather than narrowly on health information exchanges, they propose the renaming of the section. Chair Southard adds the numbering changes from the original language with the addition in Section 1A that a health information exchange that operates in this state must be a member of the Trusted Exchange framework and common agreement developed under section 3001 C 9B of the Public Health Service Act. In the Federal Register, prescribed by the Office of the National Coordinator for Health Information Technology of the United States Department of Health and Human Services. The reasoning for this language is due to alignment with the nationally recognized best practices for maintaining, transmitting, and exchanging health information electronically. She then continues by sharing the last bit of this section. The addition is a health information exchange that operates in this state must operate a secure exchange network in which healthcare providers and other authorized users can share information from different electronic health record systems and comply with the reporting and audit requirements of NAC 439.586 in sections one, I, and J.

Chair Southard then shares that they've added an entirely new subsection to NAC 439.576. The Chair mentions they are looking for an electronic health system record as prescribed in this section to be certified by the office of the National Coordinator for Health Information Technology of the United States Department of Health and Human Services, thereby maintaining interoperability and allowing patients to access electronic health records directly from the healthcare provider of the patient and forward such electronic health records electronically to other persons and entities to allow for the electronic transmission of prior authorizations for prescription medication. Ensure compliance with the requirements, specifications, and protocols for exchanging, securing, and disclosing electronic health records, health-related information, and related data prescribed pursuant to the provisions of the Health Information Technology for Economic and Clinical Health Act, 42 United States Codes (U.S.C), section 300JJ and 17901, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and other applicable federal and state law and be based on nationally recognized best practices for maintaining, transmitting, and exchanging health information electronically. The justification here is that this requirement is in alignment with nationally recognized best practices for maintaining, transmitting, and exchanging health information electronically, and does tie back to the bill in section 1.08, specifically subsection one.

Next, Chair Southard states that they have again entirely added a new subsection to this more broadly focused area, and this section is meant to provide that, except as otherwise provided in subsections X, X, & X, because those are the exemptions that are outlined in the bill to be codified. She states that she does not have those exact subsections yet, but further that hospitals and physician 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. The Department and the divisions thereof, other state and local government entities, providers of healthcare, third parties, benefit, 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 and physician group practices or other business entities organized for the purpose of practicing a healthcare profession 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. The justification for this subsection is related to specific requirements outlined in the bill in section 2.8. Then lastly, in the broader focus section, we've added an

entirely new subsection that provides compliance with the provisions of subsection X meeting the requirement to electronically exchange health information. It is satisfied by either of the following. Either maintaining an electronic health record system pursuant to NAC for 439.586 subsection 2, or maintaining connection with a health information exchange pursuant to NAC 439.586 subsection 1. The intent here is to allow for providers of healthcare to meet the requirements as outlined in the bill by either connection with an electronic health record system or a health information exchange. Mr. Gagnon suggested to the group to revise the “or” with “and” between these two subsections because just having a certified EHR may not be sufficient to meeting the requirements for interoperability and exchange of data to meet AB7. Simply allowing for the interoperability capability is different than actually implementing it. Mr. Chuck Podesta and Mr. Jerry Reeves also made comments in support of Mr. Gagnon’s comments.

Chair Southard then continues to NAC 439.584, duty of exchange to limit access to exchange compliance with policies and procedures of exchange creation, maintenance or transmission of prescription using exchange. Subsection 1A is revised to read a health information exchange shall except when the use or disclosure of protected health information is permitted or required by federal law for treatment, healthcare operations, or otherwise and except as otherwise directed by the patient, ensure that only covered entities with which the health information exchange has entered into a business associate agreement, as described in NAC 439.588 and members of the workforces, contractors and agents with such covered entities who have a legitimate need to use the health information exchange are allowed to use the health information exchange. The broad intent here is to again align this federal law and maintain patient confidentiality. Mr. Jerry Reeves adds a comment, there is a lot of work that is necessary and beneficial for community-based care coordination activities. He agrees that they need to include public health and care coordination activities because especially for high social needs populations there is a considerable requirement and need to share some clinical information that the patients consent to with the social service entities. Because social determinants of health are such a major component of adverse health outcomes.

Chair Southard continues to NAC 439.588, the prohibited use retrieval, or disclosure of health information using the exchange compliance with certain federal and state laws concerning electronic information. Subsection 1 is revised to read, except when the use or disclosure of protected health information is permitted or required by federal law for treatment, healthcare operations, or otherwise. And except as otherwise directed by the patient, a person, while not use, retrieve, or disclose more health information using a health information exchange than is necessary to accomplish the purchase purpose of the use, retrieval, or disclosure.

Chair Southard then adds they have an entirely new section proposed titled Request for Waiver of Requirements and this is per NRS 439.589. A provider may request a waiver of the requirements of NRS 439.581 to 439.595 inclusive and NAC 439.572 to 439.596 inclusive pursuant to subsection X of NRS 439.589 which requests must include a written statement signed by the provider of healthcare certifying that the provider of healthcare satisfies the criteria set forth in subsection X of NRS 439.589 or other appropriate documentation that satisfies the department that such criteria is satisfied. The Department will consider each request for such a waiver on a case-by-case basis and render a determination in writing. The provider of health care requesting the waiver may appeal the determination pursuant to the requirements of NAC 439.346. The justification here is related to the requirements as outlined specifically in the bill and section 1.08 subsection 6. Chair Southard then adds, lastly, an entirely new section proposed titled 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. Employees thereof are 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, a Taft Hartley Trust formed pursuant to 29 United States Code, or the Nevada Department of Corrections. The justification for this section is related to the requirements as outlined in the bill section 1.08, specifically subsections 5 and 7.

Chair Southard requests to the members to email her if they have any additional comments, feedback, or draft language that they would like to propose for the upcoming May 2, 2024 meeting.

VI. Public Comment

Mr. Michael Gagnon adds a public comment relating to the recently passed Labor H Bill. He states that there is some language in there defining an organization they call a Health Data Utility that is very similar to the concept of the contracted HIE in AB 7. Federal regulation says the committee urges the CDC to encourage states to coordinate with ONC to designate existing neutral, trusted, and nonprofit health information exchanges to be the state's health data utility. He is wondering if that might be able to become a concept that this advisory group reviews and considers.

VII. Adjournment

Chair adjourns the meeting at 11:15 am.