

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

NOTICE OF PUBLIC HEARING TO SOLICIT COMMENT AND INTENT TO ADOPT TEMPORARY REGULATIONS

**Public Hearing October 1, 2024
Summary**

Date and Time of Meeting: October 1, 2024, at 1:00 PM

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

Place of Meeting: DHCFP
4070 Silver Sage Drive
Main Conference Room
Carson City, Nevada 89701

**Teleconference and/or Microsoft Teams Attendees
(Note: This List May Not Include All Participants, Just Those Who Identified Themselves)**

Lauren Driscoll, DHCFP Deputy Attorney General	April Caughron, DHCFP IT Manager
Malinda Southard, DHCFP Deputy Administrator	Ashley Barton, DHCFP Project Manager
Sandie Ruybalid, DHCFP Deputy Administrator	Shelly Capurro, Tom Clark Solutions, NvAHP

Introduction:

Malinda Southard, DHCFP Deputy Administrator, opened the Public Hearing introducing herself, Sandie Ruybalid, DHCFP Deputy Administrator and Lauren Driscoll, Deputy Attorney General.

Malinda Southard – The notice for this public hearing was published on August 28, 2024, and revised on September 24, 2024, in accordance with Nevada Revised Statutes 233B.

1. **Public Comments:** Shelly Capurro, Tom Clark Solutions, Nevada Association of Health Plans - Formally submitted comments via email on October 1, 2024. During the public hearing, she recited the letter for public comment.

“The Nevada Association of Health Plans (NvAHP) appreciates the opportunity to provide comments on the regulations and activities regarding the All Payers Claim Database (APCD). During the 2021 legislative session, NvAHP worked closely with the sponsor of the APCD bill, Senate Bill (SB) 40, to ensure that health plans were given ample time to pull and submit the appropriate data, consistent with what APCD organizations collect in other states. NvAHP respectfully requests that the State of Nevada examine the key points below that we’re providing, and we remain hopeful that the State will carefully consider them as it moves forward.”

Third Party Administrators

We strongly recommend that the State explicitly clarify that for purposes of how “third party” is defined in these regulations, the Nevada Department of Health and Human Services Division of Health Care Financing and Policy and Children’s Health Insurance Program are the Nevada agencies referenced. Health plans that administer these programs and products submit data to the State; therefore, clarifying this will avoid duplicative data sharing and confusion among data that is submitted

Suggested change in yellow: Sec. 9. “Third party” means: 1. A health carrier, as defined in NRS 439B.840; 2. A governing body of a local governmental agency that provides health insurance through a selfinsurance reserve fund pursuant to NRS 287.010; 3. [REDACTED] Medicaid [REDACTED]; 4. [REDACTED] - The Children’s Health Insurance Program; 5. The Public Employees’ Benefits Program; 6. A provider of health coverage for federal employees; 7. A provider of health coverage that is subject to the Employee Retirement Income

Sec. 17. 1. In addition to the entities described in subsection 1 of NRS 439B.840, [REDACTED] and the Children’s Health Insurance Programs shall submit historical data to the all[1]payer claims database.

Timeline Concerns

We also remain concerned that the timeline, format, historical timeframe, and other important details, remain unknown (such as when and what will be contained in the Data Submission Guide) leaving health insurance carriers without guardrails from tight turnarounds and deadlines. For instance, if the State expects health insurance carriers to provide data in a certain format within 30 days after a hearing and the release of the Common Data Layout, the expectation will not be met. Health insurance carriers need at a minimum 120 to 180 days to make changes to the layout that is used to submit data to the State. Even if the Common Data Layout is similar across several states, it is not standard and each layout is built and tailored for individual state requirements. Furthermore, health insurance carriers have different market footprints, meaning that for each market, health insurance carriers build out the specific layouts – this is key to consider given the impact to carriers that are new or have smaller market footprints.

Advisory Committee

NvAHP highly advises the State to accommodate the participation of carriers’ experienced subject matter experts in this area for the Advisory Committee, even if they do not physically reside in the state. As you know, many carriers receive support and assistance from national teams regardless of where they are physically located. Accommodating the participation of carriers that conduct business in the State, regardless of where the subject matter experts reside, would be helpful to all stakeholders involved in the implementation of the APCD.”

Hearing no other public comments, Malinda proceeded to the next item on the agenda.

2. Review Proposed Regulations - LCB File No. R104-23RP2 - NAC Chapter 439B

The proposed regulations provide provisions for the following:

- Creation of the All-Payer Claims Database Advisory Committee
- Data Collection Procedures
- Requirements for Data Submission
- Registration Requirements
- Variance and Extension Requests
- Correction of Erroneous Data
- Penalties for Non-Compliance

The effective date of change is upon approval by the Nevada Legislative Commission.

Ashley mentioned that the link to the regulations had been posted in the chat, allowing everyone on the call to follow along as each section would only be summarized.

[R104-23RP2.pdf \(state.nv.us\)](#)

The regulations were presented by Ashley Barton, who provided a high-level overview of each section, highlighting the changes from the previous draft.

Roadmap to Adoption:

- 6/7/21: Senate Bill 40 was passed in the 81st (2021) Session of the Nevada Legislature
- 10/1/21: Begin drafting APCD Regulations
- 2/22/22: 1st Public Workshop Listening Session
- 5/17/23: Launched Survey for Small Business Impact
- 8/30/23: 2nd Public Workshop – APCD Draft of Proposed Regulations
- 10/24/23: First Draft of Regulations Submitted to LCB
- 12/12/23 – 8/15/24: Revision process with LCB
- 8/28/24: Public Hearing Notification
- 10/01/24: Host Public Hearing

Sections 1 through 10- Definition of Terms:

These cover definitions of terms used in the regulations.

Ashley highlighted a couple of key definitions: "Data submitters" refers to those required to submit data to the APCD. " Administrator" refers to the entity or vendor responsible for implementing and maintaining the APCD. Section 10 defines "cost of healthcare".

Sections 11-12 and 25 – Advisory Committee:

- Section 11 establishes the APCD Advisory Committee and sets rules for its operation. For instance, members must be state residents and serve two-year terms.
- Section 12 outlines the Committee's duties like reporting annually on healthcare quality, efficiency, and cost.
- Section 25 details how members are appointed by the Department Director.

Sections 13-23 – Data Submission Requirements:

Sections 13 through 23, the regulations were improved to provide clarity for data submitters related specifically to the submission requirements. One significant change is references to the data submission guide which were removed. Instead, we'll be using the APCD-CDL (Common Data Layout) format for Nevada's Data Submission.

<https://www.apcdouncil.org/apcd-cdlm/download-apcd-cdlm>

- Section 13 sets the scope for data collection from certain entities.
- Section 14 mandates that historical data be collected.
- Section 15 adopts the APCD-CDL format—see the regulation document for the link to the APCD-CDL.
- Section 16 – requires certain entities to register annually.

- Sections 17-19 cover specifics like Medicaid and CHIP data submissions, de-identifying data, and encryption methods. Something to note here is that the data submitter will only be required to submit 3 years of historical data at the time of initial registration.
- Sections 20-23 touch on data validations (for example quality measures and thresholds), variance requests, extensions, and correcting errors related to certain measures.
- Section 24 lays out penalties for non-compliance.
- Section 25 was already covered under the Advisory Committee section.
- Section 26 covers notification and submission deadlines for data submitters.

This concluded the high-level overview of the regulations and Ashley handed this back over to Malinda to proceed with Public Comment and the adoption process.

3. Public Comment regarding subject matter.

Before moving to public comments, Malinda acknowledged that the Division had received written public comments from both Friedman Healthcare LLC as well as the Nevada Association of Health Plans regarding the proposed regulation. The written comments will be posted as attachments to the Division’s website.

Malinda opened the floor for public comments.

Hearing no additional public comments, she proceeded to the 4th item on the agenda.

4. Adoption of Proposed Regulation LCB File No. R104-23RP2 – NAC Chapter 439B.

Malinda introduced Sandie Ruybalid as the Deputy Administrator to approve the adoption of the proposed regulation R104-23RP2.

Sandie Ruybalid stated her name for the record and formally adopted the regulation as Malinda had suggested.

5. General Public Comment

No comments received.

6. Adjournment – 1:49 PM

Malinda proceeded to adjourn the meeting by stating, *“the hearing on the adoption of regulations that pertain to Chapter 439B of the Nevada Administrative Code is now closed and this public hearing is now adjourned.”*

***This meeting was recorded and a version of this meeting is available through the DHCFP Document Control Office. For more detailed information on any of the handouts, submittals, testimony and or comments please contact Jenifer Graham at documentcontrol@dhcfp.nv.gov with any questions.**

Comments on PROPOSED REGULATION OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES RELATING TO THE ALL-PAYER CLAIMS DATABASE

Freedman HealthCare, LLC offers the following comments to the Nevada Department of Health and Human Services regarding regulatory oversight of the Nevada All-Payer Claims Database.

Section 3.2: Advisory Committee Composition

FHC understands the importance of obtaining input from the payer and provider communities during APCD development and operations. The proposed membership listed in section 3.2 successfully represents those groups. Based on our experience, we find that Advisory Groups in other states benefit from the opinions and input from the following additional entities.

- Health care researchers, typically from a university and unaffiliated with a commercial entities, with insight into how to make the data most useful to the research community
- Public health experts, often from a state government agency, who could assist in prioritizing and clarifying the ways in the data could be used for the public good.
- Health care economist or state health insurance oversight agency representative, who can weigh in on the landscape of coverage, benefits and service access for consumers.

Input is especially valuable when the state has an obligation to release public reports and to provide access to the data in ways that benefit state residents.

Section 5.b. Advisory Committee Duties and Powers

The proposed rule directs the Advisory Committee to make recommendations about the “analysis and reporting of data...., secure access to the data, and release of such data.” In our work in other states, Advisory Committees have been instrumental in helping state agencies prioritize, review timelines and ensure that the direction of the APCD is consistent with enabling legislation and state health priorities. Other states have also come to see that designing and operating an APCD data access process requires specialized skills and insights into the data that differ from those involved in the technical process of data submission. We strongly recommend that a separate data access group be authorized to offer recommendations to the Director on whether requests for access to entity and financial information by external, non-state agency users are consistent with the purpose and intent of the APCD enabling legislation.

Section 11 Requests for Waivers

The proposed mechanism for reviewing and granting waiver requests is clearly stated, including conditions for approval and timelines. To ensure that these requests are monitored and tracked over time, the Department could consider implementing an annual attestation/registration process for every submitter. In the initial years, this process offers the Department some estimation of the number of incoming data feeds, the approximate number of members and other information about the submitter. In subsequent years, a registration process enables the Department to obtain updated covered lives numbers as well as maintain a current record of key contacts at the submitter.

NRS 439B.840 States:

The provisions of this subsection do not apply to:

*(a) An issuer of insurance that only provides limited-scope **dental** or vision benefits or coverage that is only for a specified disease or illness, with respect to such coverage*

We suggest clarifying that this section does not conflict with the requirement to collect dental claims designating the collection of dental claims.

(b) Any health carrier or other entity that provides health coverage to a total of less than 1,000 residents of this State.

We recommend specifying the date on which a submitter would count the number of covered residents (e.g., as of December 31st) and specify whether the requirement of 1,000 or more residents applies across the entire book of business (e.g., if one book of business only has 500 members, these 500 members would still be reported if the total members across the all is greater than 1,000).

3a & 3b:

3. Before submitting data to the all-payer claims database pursuant to subsection 1 or 2, an entity described in either of those subsections shall:

(a) Remove all direct patient identifiers from the data; and

(b) Assign a unique identifier to all data concerning a specific patient.

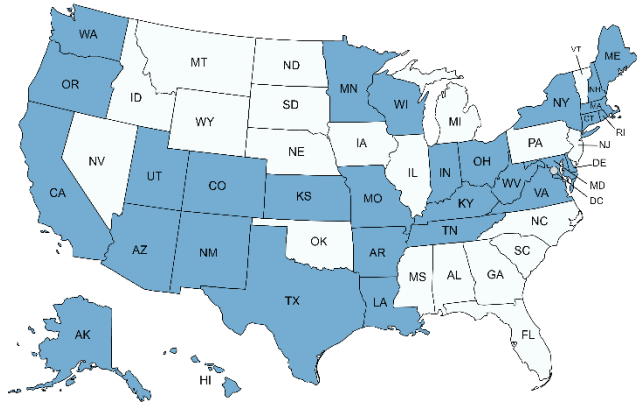
Understanding that direct identifiers may not be collected, we recommend hashing or encrypting with a single, consistently applied methodology. If a submitter removes the identifiers and submits their own unique identifier, researchers will not be able to track a member once the member changes health plans. If they submit the identifiers, consistently hashed or encrypted across submitters, a cross-payer MPI can be generated which would allow for tracking members across payers in addition to over time. Having the direct identifiers removed will severely limit the usefulness of the data such as inability to link dual-eligible members between Medicare and Medicaid, generation of HEDIS measures that require a specific look-back period which may not be able to be met if a member changed health plan, in addition to limiting research and analytics.

Sec. 7:

1. Consider explicitly requiring collection of encounters so that utilization analysis captures services paid under capitated payment arrangements.
2. Consider adding collection of non-claims / alternative payment data, with an intent to collect that at a future date.

About Freedman HealthCare

Freedman HealthCare, LLC is a focused consulting firm comprised of experienced and specialized technical experts, skilled project managers and dynamic facilitators who support states across the country in using data to transform healthcare. Since its establishment in 2005, FHC has provided technical assistance, project management, subject matter expertise, and data analysis to public, private, and non-profit entities based in 31 states. This nationwide experience has honed FHC's skill in developing flexible, data-driven, and state-specific solutions to address a broad range of health policy issues. With this experience, our team brings deep knowledge of how to manage complex multi-sector healthcare initiatives that generate meaningful outcomes.





October 1, 2024

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NvAHP hopes this feedback is helpful and we look forward to working with the State of Nevada as it moves forward with the implementation of the APCD.

Thank you,

/s/ Shelly Capurro
NvAHP, Legislative Representative