Meeting Minutes

Public Hearing
Intent for the Adoption of Regulations
Amendment to Nevada Administrative Code (NAC) Chapter 439 Health Information Maintenance, Transmittal, and Exchange

Date and Time of Meeting:	October 31, 2024, at 10:30 AM (PST)
Name of Organization:	The State of Nevada, Department of Health and Human Services (DHHS), Division of Health Care Financing and Policy (DHCFP)
Place of Meeting:	In Person at DHCFP 4070 Silver Sage Drive Main Conference Room Carson City, NV 89701 **OR** Microsoft TEAMS

Agenda

1. **General Public Comment**.
    A. Michael Gagnon, HealtHIE Nevada
        - Participated in the Electronic Health Information Advisory Group (EHIAG) that helped draft the proposed regulations.
        - The proposed regulation [LCB File No. R173-24P] has a major change which does not match what was submitted by the Department of Health and Human Services Director, or as agreed upon by the EHIAG, in that it does not meet the requirements for sharing data.
        - Specifically under section 4.1(a): The current proposed regulation states the following: "maintains an electronic health record system which meets the requirements of Section 5 of this regulation" while the original language discussed and approved during the EHIAG meetings states [under NAC 439.576, Section 4(a.)]: "maintain an electronic health record system pursuant to [Nevada Administrative Code] 439.576, subsection 2, and install and implement components or services for exchanging data".
        - Mr. Gagnon expressed this is a crucial change in language because, as discussed with the EHIAG members, interoperable data exchanges are not just parts of a standard electronic health record system; those components must be added to allow for the exchange of data, for managing opt-in consent, and for patient access to the medical records.

- Mr. Gagnon suggested editing the proposed regulation back to the original language to include that specific capability because those operational components are crucially important to the exchange of information.
- Mr. Gagnon further commented the law [NRS 439.589] specifies that HIE is allowed, not required, but is allowed. We should be viewing an HIE as a solution for this.

3. **Review Proposed Regulations**: LCB File No. R173-24 – NAC Chapter 439.
   - Malinda Southard, DC, Deputy Administrator with the Division of Health Care Financing and Policy, reviewed the proposed regulations [LCB File No. R173-24P] in whole, by section.
4. **Public Comment on the Subject Matter**:
   - Robert Fliegler, MD, concierge practice owner in Carson City, NV
     - As a small medical practice owner, Dr. Fliegler agrees with the idea of interoperability, security, and patient access. However, he states he is currently able to do so without an electronic health record system and without a health information exchange.
     - This law would put an undue burden on himself and others who have small health care practices that do not bill insurance, do not accept Medicare or Medicaid, and work completely as a cash practice.
     - Dr. Fliegler further expressed his hope for some flexibility for small practices through the waiver process authorized through the bill that could be afforded to those providers who would find this specific requirement to be harmful to the existence of their ongoing health care practice.
   - Assemblyman Ken Gray, Nevada District 39
     - Supports Dr. Fliegler's comments.
     - Assemblyman Gray commented he met with Nevada Medical Association members, mentioned the stipulations of Assembly Bill 7 (2023) and received concerning comments from doctors in attendance. A few younger doctors mentioned to him they would not be able to afford implementing the system as required through the bill and subsequent regulations, due to ongoing system maintenance fees and necessary upgrades.
     - Assemblyman Gray noted the importance of the State ensuring everyone has access to care, not access to medical records, but access to care. He stressed the need to carefully review these regulations before implementing, and encouraged a wide-reaching exemption waiver to help reduce providers leaving our state.
   - Maya Holmes, Culinary Health Fund
     - Submitted a public comment letter for the September 4th Public Workshop stating concerns of the Culinary Health Fund, including those voiced during the Public Workshop, and at the June meeting of the EHIAG regarding the proposed regulations.
     - Ms. Holmes commented the proposed regulations exceed the Department's scope of authority established by the statute. The proposed regulations indicate that compliance for providers is based on either maintaining an electronic health record system that meets specified interoperability standards, or by maintaining a connection with the health information exchange. This conflicts with the provisions of section 1.08 in AB 7 and the legislative intent, which prescribed the ability for patients to directly access their records from their provider.
     - Ms. Holmes argued that the intent of AB 7 is regarding patient access and control of their health information by ensuring patients have that direct access to their electronic data, not to permit provider compliance to connection to an HIE [health information exchange]; and to support interoperability based on national standards and patient access directly from their providers. The HIE inclusion is the opposite. This regulation adds a new layer between patients and their doctors, and this is exactly what AB 7 was designed to avoid.
     - The statute did not include a provision that providers may use an HIE connection to be compliant. Therefore, it is unclear why the regulations include an HIE option for compliance. This is not consistent with the statute and should not move forward as is. Ms. Holmes requested for the

proposed regulations to be revised or rejected as they inserted the HIE into the law inappropriately.

- Jim Willis, Common Spirit Health (formerly known as Dignity Health)
  - Mr. Willis commented, based on AB 7, all the national standard networks, namely, E-Health Exchange, Commonwealth, and Care Equality are all now considered health information exchanges by law, as it defines any network that connects these disparate systems. It also requires that HIE's get state certification and manage informed consent; and because there are currently no national networks that are certified, we find that concerning. Willis added that there may be challenges with managing consent in certain provider groups across the state.
- Michael Gagnon, HealtHIE Nevada
  - Agrees Mr. Willis is correct in the way the statute is written. All health information exchanges, and all such national networks would become health information exchanges. That would mean they would have to be certified by the state, meaning they would also have to comply with the state's rules regarding opt-in consent. None of the national networks, according to their data use and reciprocal service agreements, do that function. This would mean that the function for maintaining consent to release information to others would need to be managed by all the hospitals, provider groups, and anyone connected to a national network.
  - The EHIAG attempted to fix that issue by allowing for health information exchanges in the state to manage the consent on behalf of everyone else, allowing any participant, any member, and any provider in the state to be a sub participant of an HIE to connect to a national network and let the HIE manage the consent requirements. These changes are significant, and they will result in the added data not being accessible to anyone else in the entire state or outside the state, if they are proposed as is. This law needs to have a centralized management method if the state is going to continue to have opt-in.
  - Mr. Gagnon added the concept of having the patient be the only one who can manage their records and push them out will not serve underserved populations such as those who do not have clinical access or are elderly. A method is needed to send information between providers and to the patient, and that is what is being proposed in the regulation by the EHIAG. This will fix some of the issues that would have greatly limited interoperability in the state.
- Jim Willis, Common Spirit Health (formerly known as Dignity Health)
  - If Common Spirit Health were to disable its connections to Commonwealth and Care Equality via its primary EHR [electronic health record system], which is Cerner, due to Commonwealth and Care Equity not being certified by the state, that would essentially require Common Spirit Health to stop data sharing in the State of Nevada.

5. **For Possible Action: Adoption of Proposed Regulation. LCB File No. R173-24 – NAC Chapter 439**
   - Stacie Weeks, Administrator of the Division of Health Care Financing and Policy, commented the State has done its best to implement the requirements stated within the bill. Administrator Weeks approved the adoption of the proposed regulation and noted any clarifications that may be necessary are at the discretion of the Legislature.
6. **Public Comment regarding any other issue**.
   - Assemblyman Ken Gray, Nevada District 39
     - Encouraged the Division not to adopt the proposed regulations. The legislative intent was to provide patients access to their records, but just by the mere overreach of providers, meeting the requirement of the HIE, that does not impact patients accessing their records. Assemblyman Gray added it would be overreaching considering the recent Chevron decision and could be challenged.
   - Administrator Stacie Weeks, Division of Health Care Financing and Policy
     - The statute does not read that way around patient access. The statute is not clear and perhaps the Legislature should review.
7. **Adjournment** at 11:05 am.