

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

ELECTRONIC HEALTH INFORMATION ADVISORY GROUP

MEETING MINUTES

Date and Time of Meeting: March 7, 2024, at 10:00 AM

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

Place of Meeting: Microsoft Teams

<i>Board Members Present</i>	<i>Board Members Absent:</i>
Dr. Christopher Lake	Brooke Greenlee
Dr. Quinn Pauly	
Andrew Topper	
Michael Gagnon	
Chuck Podesta	
Michael Kennedy	
Eileen Colen	
Dr. Edward Ableser	
Sarah Bradley	
Cathy Dinauer	
Dr. Mark Rosenberg	
Dr. Darla Zarley	
Lynne Macallister	
Ashley Jonkey	
Dr. Vilas Sastry	
Lei Zhang	
<i>Ex Officio Members Present:</i>	<i>Ex Officio Members Absent</i>
Sandie Ruybalid	Russel Cook
Shelly Aguilar	
Dr. Malinda Southard, Chair	
Kevin Dick	
Matt Fox	
Cody Phinney	
Scott Kipper	
Celestena Glover	
Dr. Fermin Leguen	

1. Call to Order

Chair Malinda Southard called this meeting to order at 10:01 AM.

2. Roll Call

Chair Southard conducted roll call. A quorum was established.

3. Public Comment

Chair Southard calls for public comment. No public comment.

4. Welcome and Introduction of Advisory Group Members

Introductions are made by advisory group members. Please see attendee list.

5. Informational Presentation on Open Meeting Law (OML)

By: Gabriel Lither, Senior Deputy Attorney General,

Mr. Lither begins by introducing himself and sharing a Power Point presentation on Open Meeting Law. This presentation focuses on five main points:

What is Open Meeting Law?

In summary, everything should be done as transparently as possible. (Nevada Revised Statute (NRS) Chapter 24) “the legislature finds and declares that all public bodies exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

When Does it Apply?

Public Body: This applies to all meetings of public bodies. (NRS Chapter 241) This includes subcommittees.

Meeting: Under the OML, a “meeting” requires a Quorum plus deliberation or action. It applies:

- when there is a gathering of a quorum at a social function if the people start discussing items related to the business of the board.
- Electronic communication between a quorum of members can constitute a meeting, for example, an email with “reply all”.
- Serial communications or “walking quorums” constitute a constructive meeting. This can exist with less than a quorum speaking together at any given time if opinions are relayed between members.

How do we comply with it? (Requirements can be found in NRS 24 I. 020)

Meeting notice and agenda must include:

- a time, place, and location (or information on remote technology system)
- name, contact, and business address for supporting material, plus location (physical or electronic)
- clear and complete statements of topics
- action items denoted as “for possible action.”
- public comment periods and restrictions

Mr. Lither points out that a higher degree of specificity is required for agenda items of substantial public interest and efforts will be made to be more specific on some of their agendas to make sure people know specifically what items they are contemplating taking action on.

ADDITIONAL REQUIREMENTS:

- Public bodies shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend. Mr. Lither believes that’s especially important in all the business Nevada Medicaid does because they have many members in the community who have disabilities and who are especially interested in all of the actions taken at these meetings.
- Additional notice required for consideration of a person’s character, but Mr. Lither points out that this is not something this body will be working on.
- Meetings must be recorded or transcribed.

- Minutes must be kept in conformance with NRS 24 I.03
- Supporting material is required to be available to the public at the time it is provided to members of the public body.

Regarding accommodation made for the public, Mr. Lither adds the importance of scheduling a room in a manner that will facilitate the people that are expecting to attend, for example making sure the meetings space is big enough.

PUBLIC COMMENT:

- Minimum requirement:
 - Two options – general or limited to agenda items prior to any action item or on each action item after discussion, but prior to vote. Mr. Lither points out that they are allowed to go above and beyond the minimum requirements, which Nevada Medicaid and DHHS has frequently done in the past.
 - General public comment period at some time prior to adjournment.
- Restrictions must be reasonable time, place, and manner restrictions. NRS 24 I.020 There can be a limit to the amount of time each speaker has, but speech cannot be forbidden simply because one does not like or agree with what is being said.

Mr. Lither talks on the importance of public comment and that people want to be heard and express their frustrations with the system, but also mentions that the public has a lot of really good ideas, especially as it relates to this field.

- The OML does not “prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.”
- If using remote technology, must offer at least telephonic public comment.

VIRTUAL ATTENDANCE

- Attendance may be virtual whether there is a physical location for the public to attend or not.
 - If there is no physical location for the public, virtual attendance options must be provided.
- The public must be able to hear and observe to the same level as members.
 - Pit-fall: Chat function in remote technology; another note: it is encouraging to limit texting as it may appear that meeting attendees are texting each other.

What Happens when it is violated?

- Actions taken in violation of the OML are void; there will be actions taken to fix it.
- The Attorney General’s Office (AGO) has authority to investigate and prosecute violations.
- Corrective action may be taken, which helps and may mitigate the severity of the consequences, but it requires independent deliberate process.

When do we need to disclose or abstain from voting?

- Disclosure is mandatory for any interest created by:
 - A gift or loan
 - A substantial pecuniary interest
 - A “commitment in a private capacity”
 - Representation of a private client

Mr. Lither mentions that if someone has a question regarding whether you should disclose or abstain, they should certainly disclose them and if a person thinks there’s a possibility that they will rise to something that perhaps requires an abstention, it should be flagged to him and Chair Southard.

As Mr. Lither concludes his presentation, he asks if there are any questions or comments. There are no questions or comments.

6. Administrative Rule-making Process

By: Pierron Tackes, Senior Deputy Attorney General

Pierron Tackes begins to share a PowerPoint presentation. She notes that all their trainings are posted on the Attorney General's website, including a presentation on administrative rule-making that is lengthier than today's. Today she will touch on administrative rulemaking under NRS Chapter 233B which will cover:

- **Authority:** Where does it come from? Who is authorized?
- **What is regulation?** When does NRS 233B apply? When is 233B exempted?
- **How do I do it?** There are 3 types of regulations: Permanent, temporary, and emergency.

Before continuing, Ms. Tackes highlights her favorite resources:

- AGO Administrative Rulemaking Manual, Tenth Edition (2023) <https://ag.nv.gov/Publications/Manuals/>
- State of Nevada Register of Administrative Regulations: <http://www.leg.state.nv.us/register/> *This contains every draft of every regulation brought forward, and this is good to look at if one trying to figure out what an initial draft should look like and what it looks like once LCB has returned it with their edit.*
- Legislative Council's Preface to the NRS: <https://www.leg.state.nv.us/Divison/Research/Documents/LegislativeCounselsPreface.pdf> *Explains how the NRS sections are formatted and how their administrative forms follow the same format.*
- Killebrew v. State of Nevada, 139 Nev. Adv. Op. 43 (2023): https://nvcourts.gov/supreme/decisions/advance_opinions *A recent Nevada Supreme Court decision: an example of where an agency did rulemaking right.*

Continuing with her presentation:

- **Authority:** An agency must be specifically authorized to pass regulations. As it relates to the Electronic Health Information Advisory Group (EHIAG), the authorizing statute is Assembly Bill 7 (2023) and NRS 439.589 – to ADVISE on what those regulations will be about. To further clarify, Ms. Tackes points that that this public body is not the one that is going to be engaging in the step by step of what she is giving an overview on today but it is still really valuable for everyone to know what that process is because it will inform the body's decisions on what regulations need to be adopted and what that process looks like going forward if the director chooses to take those up.
- **What is a regulation?** They are created by agencies, boards and commissions and the purpose of them is to explain how laws should be carried out; this is delegated to agencies, boards, and commissions because they are considered the subject matter experts. Regulations carry with them the force of law, in that the public must abide by them. NRS 233B.038 defines "Regulation", key term: General Applicability, which means something that is going to apply to the objective group. If it is something more specific, that is not considered a regulation, such as contract terms.
- **How Do I Do it?** Types of regulations: Permanent, temporary, and emergency. Ms. Tackes says when you are considering whether permanent or temporary will be adopted, the first question to ask is "What day is it?". Nevada goes off a season for permanent and temporary regulations that's based on when the legislature is meeting.
 - Permanent Regulations: Must submit between July 2nd of an odd numbered year and June 30th the following even-numbered year.
 - Temporary Regulations: May submit from August 1st of an even-numbered year to July 1st the following odd-numbered year. Valid through November 1st of the odd-numbered year.

Ms. Tackes highlights that there is a checklist of everything the body needs to do for Permanent and Temporary Regulations in pages 7-9 of the AGO Administrative Rule-Making Manual. It includes the time requirements for when to post notices, what needs to be done for a small business impact statement, etc.

SMALL BUSINESS IMPACT STATEMENTS: Ms. Tackes explains that these are required for regulation. This is forcing the body that's putting regulations forward to consider the impact on small businesses. A small business is defined as a business conducted for profit, which employs fewer than 150 small full time or part time employees. She points out that 150 is not terribly small and that can include quite a few businesses. The Statute does not set forth

how an agency is required to consult with those businesses. There's a lot of list serves that can be used to reach those businesses. Oftentimes it's relating to licensees, so one can contact all those licenses through a list serv. One can also post about them on their website, or in places that these small businesses often interact, or reaching out to business organizations or associations. In your small business impact statement, you're required to identify how you went about consulting with these small businesses.

LEGISLATIVE COMMISSION: Who are they? A body of legislators from each house, that give the final stamp of approval on regulations before they are enacted. They can object to regulations. Those grounds for objection are set forth specifically in the NRS, so there may be a case where they identify one of these issues with the regulations and send them back to the agency and then the agency must revise those and return it back to LCB within 60 days.

- Emergency Regulations: these are rare and only valid for 120 days. There are no extensions, so if a public body wants those regulations to carry forward, they must engage in the permanent or temporary and then permanent regulation process. The agency is required to submit a statement of emergency to the governor; this is a written statement saying this is the emergency that requires regulations to be to address that emergency. A common misconception is there must be a state of emergency formal declaration, state of emergency from the governor to engage in emergency rule rulemaking but that is not the case. If there is an emergency that this agency has the scope over to enact regulations, they can submit a written statement to the governor. If the governor endorses that statement, then the regulations may be adopted. Those regulations will dictate how many hearings or public meetings there are to enact those.

Ms. Tackes highlights an update on a bill that was passed in 2023. It's AB 219 which amends NRS 241.023 which says that if a public body is holding a meeting to consider regulations, then there must be a physical location and she points out that for this public body, that's going to relate to once the rulemaking has started. The public body's role is to make recommendations to advise the department on what regulations are needed So this would not apply in making that requirement of a physical location.

As Ms. Tackes concluded her presentation, she asked if there were any questions. Committee member Michael Gagnon asks if the regulations coming out of this are going to be temporary regulations due to the time frame. Chair Southard answers that they are looking to make permanent regulations and that they are on a very tight timeline. She wants to get those submitted no later than June 30th this year. She points out that they may need to meet more than once a month.

Chair Southard as if there are any other questions. There are no questions.

7. Electronic Health Information Advisory Overview and Objectives

By: Chair Malinda Southard, Deputy Administrator

Chair Southard begins with her presentation that will touch on these points:

- **Responsibilities of this Advisory Group:** for reference, NRS 439.589 describes the adoption of regulations to prescribe standards relating to electronic health records, health related information and health information exchanges.
- **Assembly Bill 7 Language Regarding Regulations:** The regulations must establish standards for networks and technologies to be used to maintain, transmit and exchange health information, including without limitation, standards that require the use of networks and technologies that allow patients to access electronic health records directly from the healthcare provider of the patient and be able to forward that electronic health record electronically to other persons and entities.

The regulations must establish standards. These standards should ensure that electronic health records retained or shared are secure to maintain the confidentiality of electronic health records and health related information, to ensure the privacy of individually identifiable health information for obtaining consent from a patient before retrieving the patients' health records from a health information exchange for making any necessary corrections

to information or records, and for notifying a patient if the confidentiality of information contained in the electronic health record of the patient is breached.

Chair Southard moves to the amended language in that the regulations must establish standards governing the ownership, management, and use of electronic health records, health related information and related data, and for the electronic transmission of prior authorizations for prescription medication. And then for those prescription medication prior authorizations, ensuring compliance with the requirement specifications and protocols for exchanging, securing, and disclosing electronic health records, health related information and related data pursuant to the HITEC and HIPAA and other applicable federal and state law and be based on nationally recognized best practices for maintaining, transmitting, and exchanging health information electronically.

Item 2 of these amended provisions note that the standards prescribed by these regulations must include, per the original statutory language, requirements for the creation, maintenance, and transmittal of electronic health records, requirements for protecting confidentiality, including control over access to and the collection, organization, and maintenance of electronic health records, health related information and individually identifiable health information, requirements for how patient can revoke his or her consent for healthcare provider to retrieve the patients' health records from the health information exchange, a secure and traceable electronic audit system for identifying access points and trails to electronic health records and health information exchanges, and any other requirements necessary to comply with all applicable federal laws relating to electronic health.

Chair Southard highlights AB 7 Sect. 1.08 Subsection 4 because this is the subsection that requires electronic maintenance, transmission, and exchange of health information in accordance with these amended provisions of NRS. Subsection 5 notes the exemption for ERISA and the Taft Hartley Trust health coverage providers, and then they are not required to, but may maintain, transmit and exchange electronic health information in accordance with the regulations adopted.

Subsection 6 notes, a healthcare provider may apply to the department for a waiver from the provisions of subsection 4 on the basis that they do not have the infrastructure necessary to comply with those provisions and goes on to note how the department shall determine to grant a waiver or not. Chair Southard adds a quick note: This bill did come with an appropriation of 3 million dollars for the specific purpose of awarding grants to providers of healthcare and medical facilities so that they can comply with the requirements of subsection 4 and the electronic maintenance, transmission, and exchange of health information. The grants are to be prioritized to smaller providers of healthcare or medical facilities, so meaning those that have a staff of less than 50 people or work for an entity that has a staff of less than 50 people. The Division of Health Care Financing and Policy has been appropriated these funds and will broadly announce the notice of funding opportunity this July after the final draft regulations have been submitted to the Legislative Council Bureau (LCB). Chair Southard also hopes to utilize members of this advisory group in pushing out the announcement for the availability of these funds through all channels available.

Continuing on that, subsection 7 notes and exemption for the Nevada Department of Corrections, Subsection 8 provides that a violation of the provisions or any regulations adopted pursuant is not a misdemeanor, and subsection 9 gives some final definitions.

Chair Southard provides a summary of her presentation which notes the importance of having so many of those present at the table today and why they included healthcare providers, third parties and a few key other interested parties such as state licensing boards, those involved in health information exchanges, health departments and social service agencies, all who are all important to this work and Chair Southard mentions again how much she appreciates having these members as part of the committee.

Another key feature of these regulations was the intent behind this bill is the direct patient access and the ability for the patients to forward their health records electronically to other health providers or individuals at that, they would like to with additional importance highlighted and ensuring particularly the interoperability of such health information systems along with the security, confidentiality and privacy of health information maintained and transmitted electronically.

The regulations this group approves in advisement to the Director of the Department must be sure to prescribe standards for making any necessary corrections to the information or records notifying a patient if their healthcare record is breached, electronically transmitting prescription medication and prior authorizations, ensuring compliance with HITEC and HIPAA, and being based on nationally recognized best practices for electronically maintaining, transmitting and exchanging health information electronically. In noting the waiver process for health care providers lacking the infrastructure to implement, Chair Southard has already been asked about how this process will work. She highlights that this is another process that must included in these regulations as they develop this draft and that the regulations must include an exemption for ERISA plans and the Department of Corrections, meaning if they choose to comply with subsection 4, they may, but are not required to.

Important Dates

- Before June 30, 2024, the committee must draft and submit regulations to the Legislative Council, Bureau in order for those regulations to be considered permanent and receive Legislative Commission review and approval prior to the 2025 Legislative Session. Chair Southard notes a drop-dead date of June 28th to submit the draft regulations to LCB. She also points out that the Advisory Group will be submitting their draft regulations to LCB prior to the required workshop and official regulations development process that Ms. Tackes was talking about earlier: the workshops, small business impact statement, public hearings; all that will come after the June 30th deadline.
- Before August 1st of 2024, we must present to the Joint Interim Standing Committee on Health and Human Services concerning the progress of developing and implementing these regulations. The June 10th meeting is the last one before August 1st, so Chair Southard is hoping to be able to present at that June meeting or potentially earlier.
- Lastly this year, the Advisory Group is required to submit a report to LCB before December 31st for transmittal to the 83rd Session of the Legislature regarding the progress of developing and implementing the regulations.

Timeline

- March – Meeting 1: Group Orientation, Outline Responsibilities
- April – Meeting 2: Provide Constructive Feedback on Regulations Draft 1: asking questions, providing language edits or resources with additional information, to help improve the language.
- May – Meeting 3: Provide Constructive Feedback on Regulations Draft 2
- June – Meeting 4: Finalize and Approve Draft Regulations to Submit to LCB
- October – Meeting 5: Update on Regulation Adoption and guidance on Implementation.

Chair Southard continues to say that she will keep the members apprised of all the steps as they occur regarding the draft regulations, meaning when there are submitted to LCB, any comment or feedback received from LCB on the draft scheduling of the workshop. She welcomes the group to attend any of the associated public meetings that are held regarding these regulations. All associated meeting notices will be posted on the Electronic Health Information Advisory Group (EHIAG) website. Around the October time frame, Chair Southard anticipates having some robust updates to share with the committee on the regulation adoption and perhaps the need to request guidance from this group on the implementation of the regulations. Additional meetings of this group beyond October will be scheduled as needed, with the caveat that if additional meetings are not needed prior to the final approval of the draft regulations during the June meeting, the committee may need to schedule meetings more than once a month.

Chair Southard opens it up for questions. Dr. Christopher Lake asks if any other states have similar regulations or laws in effect that perhaps the committee could study and look at. Chair Southard answers that she is looking into that and hopes to have something that she can share with the committee from other states that would help guide them as well. Michael Gagnon mentions that he has colleagues across the entire country that have gone through these processes before, and as the as this group decides, they could bring in others to talk about that. He offers to help Chair Southard with contacting those people. Dr. Lake points out that prior to last month, the best practice was probably the Change Healthcare model but that has just been hacked, and shows how once you build all these intertwined systems, what one bad actor can do to the entire health care system.

Chair Southard calls for any other comments from the group. There are no other comments. She proceeds to close the agenda item and moves to the next.

8. Discussion of Meeting Dates (1st Thursday of every month at 10:00a-12:00p)

By: Chair Malinda Southard, Deputy Administrator

Chair Southard addresses the proposal for the first Thursday of every month between now and June from 10:00 AM to 12:00 PM. Everyone is okay with those dates. Celestena Glover mentions that she has standing meetings on those dates that start at 10:00 that do not go on for very long. Chair Southard proposes to move the meeting to 10:30. Sandie Ruybalid suggests doing a poll for efficiency. Mr. Lither suggests having everyone send their availability to Chair Southard. Everyone agrees on that.

9. Public Comment

Chair Malinda Southard calls for public comment. There is no public comment.

10. Adjournment

Chair Malinda Southard adjourns the meeting at 11:18 am.