MINUTES OF THE
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-sixth Session
February 17, 2011

The Senate Committee on Health and Human Services was called to order by Chair Allison Copening at 3:31 p.m. on Thursday, February 17, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Allison Copening, Chair
Senator Valerie Wiener, Vice Chair
Senator Sheila Leslie
Senator Ruben J. Kihuen
Senator Joseph (Joe) P. Hardy
Senator Ben Kieckhefer
Senator Greg Brower

STAFF MEMBERS PRESENT:

Risa Lang, Counsel
Marsheilah Lyons, Policy Analyst
Annette Ramirez, Committee Secretary

OTHERS PRESENT:

Lynne O'Mara, State Health Information Technology Coordinator, Director's Office, Department of Health and Human Services.
Charles Duarte, Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services
David Schumann, Nevada Committee For Full Statehood
Bobbette Bond, Health Services Coalition
Jack Kim, Southwest Medical Associates, Inc.
Rebecca Gasca, American Civil Liberties Union of Nevada
Graham Galloway, Nevada Justice Association

Tracey D. Green, M.D., State Health Officer, Health Division, Department of Health and Human Services
Mary Guinan, M.D., Dean, School of Community Health Sciences, University of Nevada, Las Vegas
Louis Brown, M.D., MPH, Director, Nevada State Public Health Laboratory System, University of Nevada School of Medicine
Cheryl Hug-English, M.D., MPH, Interim Dean, University of Nevada School of Medicine

CHAIR COPENING:
I will open the hearing on Senate Bill (S.B.) 43.

SENATE BILL 43: Makes various changes relating to electronic health records. (BDR 40-443)

LYNN O'MARA (State Health Information Technology Coordinator, Division of Administration, Department of Health and Human Services):
I will be testifying on the Health Information Technology for Economic and Clinical Health Act ((HITECH Act) and its relation to stimulus funds, through the American Recovery and Reinvestment Act of 2009 (ARRA). When ARRA passed, it included a section entitled, "Health Information Technology and Clinical Health Act." One of the items contained in the HITECH Act requires states to implement a health information exchange (HIE) infrastructure to support the adoption of electronic health records (EHRs). It is one thing to have an EHR, but sharing the information requires the infrastructure and ability to execute it. That is what S.B. 43 addresses. It is the framework for the requirements contained in the HITECH Act.

You have in front of you a handout (Exhibit C) entitled "ARRA HITECH Act and Nevada." This handout contains background information about how S.B. 43 came about. There are four key programs funded by the HITECH Act: the state grants for the implementation of HIE infrastructure, the Medicaid and Medicare incentive payments to providers who use certified EHR systems, the Regional Extension Center grants to qualifying entities to provide technical assistance, guidance and information, and the Health Information Technology (HIT) Workforce Development Program grants for higher education programs to train EHR users. It is the combination of these four key pieces that will accomplish implementation of the HITECH Act. Health information exchange is already occurring in Nevada. However, it is occurring in closed systems. We need to

determine how to open those systems and become more interoperable so a true exchange of patient information may occur.

General Funds are not requested for the implementation of this program. The Department of Health and Human Services (DHHS) will use the federal grant to implement the specific sections and provisions of the Act.

Your handout, Exhibit C, contains background information about the incentive programs for physicians. Physicians and certain hospitals adopting EHRs that meet "meaningful use" standards within a certain period of time, will be reimbursed for their efforts. Meaningful use is the exchange and use of health information for effective clinical decisions at the point of care.

The Health Information Technology Blue Ribbon Task Force (Task Force) was appointed by the Governor in 2009 to provide DHHS with recommendations and feedback. That Task Force has become a part of the collaborative effort in putting together S.B. 43.

The DHHS has identified human resource issues and related components involved with the implementation of the program. The readiness of health-care providers to implement the program is important, but so is the actual workforce required to maintain the system. Over the next 3-5 years a nationwide shortage of over 50,000 trained HIT professionals is expected. Nevada will need approximately 5,500 HIT professionals to meet the needs of the new system. We are not sure we will be able to accomplish that in this State. This may put us at a disadvantage. Nevada will also see a shift in the types of health-care workers needed. We may not need the same number of medical coders, billers and transcriptionists, but we will need more HIT professionals.

Broadband connectivity is a key factor for this program. We can have EHRs and HIEs, but without connectivity it will be difficult for those systems to communicate. We have been working with the Nevada Broadband Task Force and the HIT Task Force, and we will continue to coordinate those efforts as we move forward. The College of Southern Nevada (CSN) is part of our pilot program to train current office staff to manage EHRs properly and effectively. The CSN is expected to put 300 people through their program in 2 years.

The current economic situation, broadband connectivity, a trained workforce and the unknown impact of future federal requirements are the challenges of implementing this program.

CHAIR COPENING:
How will we go about training the workforce we need for this program?

MS. O'MARA:
I do not have a clear answer. I am coordinating with the Workforce Investment Board about this issue, as well as the College of Business, University of Nevada, Reno. Also, the pilot program at CSN could be expanded to all community colleges in Nevada.

CHAIR COPENING:
Before we proceed, there is a proposed amendment to S.B. 43 (Exhibit D). The Committee has not had a chance to review it.

SENATOR LESLIE:
Has private money been identified for this program?

MS. O'MARA:
We have two, possibly three, private groups that are looking at how they can make their closed HIE systems work in a more open way. They are going to find out if there are any dollars they may be able to put on the table to combine with what we receive from the federal level.

SENATOR LESLIE:
Is the program going to be a for-profit system or a nonprofit system?

MS. O'MARA:
We are required to set up a governing entity which will be a nonprofit organization. That does not mean that the vendors who provide HIE services must be nonprofit.

SENATOR LESLIE:
I want to make sure we are not creating extra layers of bureaucracy and that everything is transparent. Who will be the governing authority?

MS. O'MARA:
The director of the DHHS will be the HIT authority. We envision the role of the DHHS as the regulator. A nonprofit, stand-alone, nongovernmental entity would actually set the rules. That entity would then allow the vendors to provide services to the medical providers or hospitals they contract with.

SENATOR LESLIE:
Who would be the nonprofit group? Is it an existing group or a new group?

MS. O'MARA:
That still needs to be determined. There are mandatory members specified by the HITECH Act, representing the key stakeholders. Key stakeholders include governmental agencies, such as Medicaid in DHHS.

I have also provided you with a summary of the provisions (Exhibit E) contained in the amendment. These provisions help identify gaps and barriers regarding compliance with the HITECH Act. Although S.B. 43 does not address all outstanding issues, it will allow us to accomplish, at least through the next biennium, the terms and conditions of the HIE Cooperative Agreement. This agreement is more than a grant. It is managed as more of a contract between the U.S. Department of Health and Human Services and DHHS. Because of this, the DHHS has clear deliverables and deadlines.

CHAIR COPENING:
Please take us through the amendments to this bill.

MS. O'MARA:
Sections 2 through 12 are the most critical provisions of the bill. Those provisions contain the enabling language to allow us to meet HITECH requirements and to implement the terms and conditions of the HIE Cooperative Agreement. Sections 1 through 5 clarify some of the definitions and specifications contained in chapter 439 of *Nevada Revised Statutes* (NRS). Sections 6 and 7 outline the duties of the director.

SENATOR KIECKHEFER:
Section 5 specifies the powers and duties of the director of DHHS. Is that something which is envisioned through the DHHS?

MS. O'MARA:
It is envisioned that the director himself will be the State HIT authority.

SENATOR KIECKHEFER:
Is there a public process for the regulations to be promulgated?

MS. O'MARA:
We will have to follow the administrative rule-making process. It will be transparent, just as any other rule-making process is.

SENATOR KIECKHEFER:
I want to make sure this is done transparently and in a public process.

MS. O'MARA:
The process for adopting the regulations includes a public workshop, and gathering information and feedback from the stakeholders. A public hearing is held on the proposed regulations. The final regulations are adopted by the director of the DHHS and then delivered to the Legislative Commission for approval.

SENATOR HARDY:
Who is the director mentioned in these provisions?

MS. O'MARA:
Michael Willden is the current director.

SENATOR HARDY:
Will he be the director of all HIEs?

MS. O'MARA:
He will be the director for all HIEs which operate in this State.

SENATOR HARDY:
With regard to section 6 of the provisions, when it refers to "others," is that a way to be more inclusive when we do not know who else will be involved?

MS. O'MARA:
That is correct.

SENATOR HARDY:
Will we develop a new system of education which will be available to medical assistants, front office staff and others who are required to work with EHRs?

MS. O'MARA:
As I mentioned, CSN is piloting that program. Training will be available for anyone working with an EHR. We may make that training mandatory.

SENATOR WIENER:
The bill addresses the circumstances where there may be a breach of confidentiality of information and the damages associated with the breach. I assume these are the remedies for the person who is violated by the breach.

MS. O'MARA:
That is my understanding.

SENATOR WIENER:
What would the burden be to the breached party in proving the case? I am concerned with identity protection. I see we have some protections in the regulations. Do we need to design greater protections in the statute?

MS. O'MARA:
That could be defined in the regulations. We should research strengthening the language in the statutes.

SENATOR KIECKHEFER:
Will it be up to the governing board of the nonprofit organization to make all business decisions for this entity?

MS. O'MARA:
That is correct. The entity is required to develop its own sustainability model. The State HIT authority and the State HIT coordinator will be exofficio members of the entity. That entity is accountable to the State HIT authority.

SENATOR LESLIE:
Section 6, paragraph 2, subsection d of the amendment, Exhibit D, reads that the entity which is contracted, "Will, with the approval of the Director, contract with a public or private entity ... ." That is a change from S.B. 43, as introduced, which read that the entity, "May, with the approval of the Director,

contract with public or private entities ... .” Is there someone you already have in mind as the governing entity? We are receiving federal dollars to set up this community asset, and if we contract with a private for-profit company, rather than a nonprofit company, how will we ensure those federal dollars are used as an asset for the community and are not diverted to the private for-profit company?

MS. O’MARA:
The HIEs in this State could be private for-profit companies. However, the governing entity must be a nonprofit organization. To my knowledge, no such entity, public or private, exists at this time.

SENATOR LESLIE:
Why did you change the language from “entities” to “entity?”

MS. O’MARA:
There will be one governing entity. It will contract with either a public or private entity to oversee and coordinate the operations of HIEs.

SENATOR HARDY:
I need to make a disclosure. I am a nonpaid volunteer board member of an organization which is currently conducting HIEs.

CHAIR COPENING:
We are going to assign this to a subcommittee. I have asked Senator Hardy and Senator Wiener to serve on this subcommittee. Please continue through the sections of the amendment, Exhibit D, and give an explanation for the changes.

MS. O’MARA:
Section 7 refers to security and confidentiality standards. We want to ensure that patient consent is required and that we could maintain the security of the EHRs.

SENATOR KIECKHEFER:
I had envisioned HIE as a database which could be used to track down health information. Instead, it is more a transmission of information from point to point with no other contacts in between. That would undermine the ability to use the database for public health research.

Ms. O'Mara:
The HIE is not limited to sending information. We should ensure that the information will be used to enhance public health surveillance in case of a health threat. We would like to use the information to mitigate risk. It is also important that in certain situations, researchers be able to access the information for research purposes or clinical trials. It is meant to be more than the simple exchange of health records.

Section 8 contains the requirements for transmission and participation in HIEs.

SENATOR WIENER:
I see this as an "opt-in" law. It is not mandatory for providers to participate. If that is the case, what does it mean to providers who would prefer not to opt-in?

MS. O'MARA:
Providers are not required to participate.

SENATOR WIENER:
What will the distinction be between those who participate and those who do not?

MS. O'MARA:
I do not believe we looked at that. We may need to address that issue in the subcommittee.

SENATOR KIECKHEFER:
Will it be a requirement that all Medicaid providers participate in HIEs?

MS. O'MARA:
That may be up to the Medicaid program. If they are interested in receiving incentives, then yes, they would be required to meet "meaningful use." To meet "meaningful use" they would have to exchange and use health information for effective clinical decisions.

CHARLES DUARTE (Administrator, Division of Health Care Financing and Policy, Department of Health and Human Services:
At this time there are no requirements, nor do I foresee any, for a provider to participate in HIEs to be a participating Medicaid provider.

MS. O'MARA:
Section 9 is an attempt to provide HIEs with indemnification for inaccurate information contained in EHRs.

SENATOR WIENER:
Section 9 states "... who in good faith relies ... ." Did this language come from the federal level, or is this something we can work with to create a standard for the people of Nevada?

MS. O'MARA:
The Nevada Justice Association (NJA) and I discussed this. I understand they will be proposing a language change.

CHAIR COPENING:
I have a concern with this area as well. The way I read the amendment, Exhibit D, immunity is now being given to a health-care provider who relies on the accuracy of the electronic information. Is that correct?

MS. O'MARA:
The language is not an attempt to circumvent any malpractice laws. If it does read that way, we should amend it accordingly.

Section 10 of the amendment, Exhibit D, addresses unfair trade practices and provides that the transfer of information to an EHR would not constitute an unfair trade practice. Section 11 addresses patient consent. There are differing opinions as to how this can be accomplished. At the federal level, informed patient consent is recommended. That is the language we would like to have in the bill.

Sections 13 through 15 attempt to include provisions that are found throughout NRS. The language also authorizes the State Board of Pharmacy (SBP) to amend their current regulations to allow for electronic prescribing. I understand SBP has added a fiscal note to this bill to cover the costs of the new regulations.

CHAIR COPENING:
Stimulus money through ARRA is being used for this program. Will the fiscal note be covered by that money?

MS. O'MARA:
There are two fiscal notes to this bill. One is for DHHS, and grant funds can be used to cover the cost of the regulations. I would have to research the use of those funds for SBP and see if that would be considered an allowable expense. We may be able to cost share.

SENATOR KIECKHEFER:
Can we go back to section 11 and discuss patient consent? I do not see language in that section that allows a patient to opt out of the program once placed into the electronic information exchange. Also, the bill allows patients to review and correct the electronic records. If a patient finds an error in the record, the health-care provider is directed to make the corrections. What if the patient were a hypochondriac and asked the health-care provider to insert information which may not be medically correct? I am concerned that another physician using this record to provide treatment may be held liable based on the erroneous health record.

MS. O'MARA:
Patients who "opt-in" and then later decide to "opt-out" should have the opportunity to do so. That process would be developed by the Director. With regard to the liability issue, that is a good question. This may warrant more stringent measures. We should ask for a legal opinion.

Section 27 contains the effective date of the bill. We are requesting that at least sections 2 through 12 be effective upon passage so we can stay on track to meet the federal deadlines.

CHAIR COPENING:
In section 11, you have stricken the word "error" and replaced it with "accuracy problem." What is the difference between those meanings, and why have you made the replacement?

MS. O'MARA
Some of our stakeholders felt that "error" was not inclusive enough.

DAVID SCHUMANN (Nevada Committee For Full Statehood):
I am here in opposition to S.B. 43. The bill purports to align state and federal law. It is a bad idea to get federal law involved in health care. The federal

government should not be involved in the interaction between patient and doctor. I do not see a benefit to a patient who participates in HIEs.

BOBBETTE BOND (Health Services Coalition):
I am a member of the Task Force for this HIE. We are in favor of creating an exchange which will help our State move forward in fixing the fragmentation in the health-care delivery system. For patient care and patient quality reasons, we are supportive of HIEs. We have concerns about the inclusion of a free-market approach and the governing structure. The governing structure should clearly be a nonprofit organization so we can comply with the intent of the federal legislation.

I was told that HealthInsight has contracted with UnitedHealth Group to create an exchange in this State. HealthInsight will then be a candidate in whatever is constructed within the State for HIEs. I am surprised that UnitedHealth's intent was not part of the record today. When the subcommittee meets, I hope all parties have an equal opportunity to participate in this discussion and legislation is not written in a way that provides preferential treatment to one group. I firmly believe that the governing body should remain a nonprofit organization. I understand the need to bring in capital to make this exchange work. However, any returns on this program should be reinvested in the infrastructure and development of the program. I hope there is an open-door policy with regard to any hearings or subcommittee meetings, because this is a complicated issue.

MS. O'MARA:
Ms. Bond is correct. We want the entity to remain a nonprofit organization, and any returns should be reinvested in the project. We are proposing language requiring transparency in this process.

JACK KIM (Southwest Medical Associates, Inc.):
When discussing medical HIEs, we are talking about how to improve the quality of care a patient receives. The concept of this bill is to make sure that a physician possesses the appropriate medical records to treat the patient. Southwest Medical Associates (SMA) did engage HealthInsight to see if an exchange could be developed as a private enterprise. The SMA performed a financial analysis and discovered that it would cost approximately $12 million over a 5 year period. The SMA and other providers in the community have come up with the funds to get the process moving. The system will meet all federal and state privacy laws and will be governed by HealthInsight, a nonprofit board.

Our goal is not about making money. It is about improving the quality of health care.

CHAIR COPENING:
We did receive an e-mail (Exhibit F) from Janine Hansen, President of Nevada Families Eagle Forum, opposing the bill.

REBECCA GASCA (American Civil Liberties Union of Nevada):
The American Civil Liberties Union (ACLU) has been working with the Task Force for over one year on drafting this bill. The ACLU's concerns are not related to the HIT system itself. We do not have a position on the creation of the system. The ACLU is interested because the bill presents unique privacy and security concerns. We have stressed the importance of an "opt-in" system and that the information provided should be segmented. Patients should have the opportunity to restrict access to their medical records. Patients should be able to find out who is accessing their records and why. The ACLU has not had an opportunity to review the amendments as drafted; however, we will do that and come back to you with any concerns.

GRAHAM GALLOWAY (Nevada Justice Association):
Originally, the NJA opposed this bill due to language contained in section 9. Ms. O'Mara has agreed to sit down with us and work through our concerns. We are now in a neutral position. We believe there is language that can be drafted to suit the purposes of this bill better. For example, granting immunity does not encourage or foster diligence, conscientiousness or compliance. Our intention is to strengthen this part of the bill.

MS. O'MARA:
I neglected to enter into the record that Chris Bosse, from Renown Medical Center, who is on the Task Force, did e-mail me. She could not be here today, and she had two concerns she wanted me to mention. One of her concerns is the improper matching of health information records and the indemnification of them. Her other concern has to do with the ability of physicians to use computerized physician order-entry systems for both ambulatory and inpatient drug orders.

CHAIR COPENING:
Senator Hardy is withdrawing from the subcommittee and Senator Kieckhefer will be taking his place.

We will now close the hearing on S.B. 43 and open the hearing for S.B. 131.

SENATE BILL 131: Revises provisions relating to tests of infants. (BDR 40-352)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):
Senate Bill 131 sets up an opportunity to maximize preventative health-care testing for infants.

TRACEY D. GREEN, M.D. (State Health Officer, Health Division, Department of Health and Human Services):
I am here today in support of S.B. 131, and I have a summary of my testimony (Exhibit G). This bill authorizes the Health Division of DHHS to assess Nevada's capability to provide newborn-screening, diagnostic-testing in state. In addition, it will give priority to the Nevada State Public Health Laboratory (NSPHL) for that testing, if the infrastructure can be created to sustain a newborn-screening laboratory. The bill also gives descending priority to other qualified in-state laboratories, and then to qualified out-of-state laboratories. Newborn screening is recognized internationally as an essential, preventative public health program, and our first priority is to keep the screening in our State. *Nevada Administrative Code* 442.020 through .050 provides that every infant born at a birthing facility must have diagnostic blood samples taken to screen for inborn metabolic disorders before discharge from the hospital or obstetric center. The program is 100 percent fee based. Nevada contracts with the Oregon State Public Health Laboratory to perform these diagnostic tests. This bill will allow the DHHS to assess the current and future capacity of State, university and private laboratories.

SENATOR LESLIE:
Please explain the term, "capacity."

DR. GREEN:
"Capacity" specifically refers to the physicians, pediatricians, laboratory space and services needed to provide the newborn screening.

SENATOR LESLIE:
Would the money for this testing then be redirected to the State?

DR. GREEN:
This is a permissive bill to allow the possibility of using NSPHL. The bill does not contain the specifics of the program.

SENATOR LESLIE:
Why do we need this bill? Is Nevada not allowed to utilize their own laboratories at this time?

SENATOR WIENER:
The bill would establish a statutory priority system so we could look to Nevada first. We would only go out of state if we did not have the capacity to perform the testing. I feel we have a good way to establish a tier system which will sustain itself.

SENATOR HARDY:
When will Nevada be able to begin instituting this program, and are we ready to take it over?

DR. GREEN:
We have been in contact with the directors of the Oregon State Laboratory. They are interested in working with us. They do not want to lose the contract, but they understand that this is the direction we would like to take.

MARY GUINAN, M.D. (Dean, School of Community Health Sciences, University of Nevada, Las Vegas):
I am here in support of S.B. 131. This bill is the result of careful planning.

MS. BOND:
I also support this bill. It is important to be able to use health-care dollars to provide quality care and to use those dollars to provide infrastructure as well. Any initiative to try to keep those dollars in Nevada should be encouraged.

LOUIS BROWN, M.D., MPH (Director, Nevada State Public Health Laboratory System, University of Nevada School of Medicine):
I am here to testify in support of this bill, and I would like to read from my prepared testimony (Exhibit H). The NSPHL is eager to expand our working

relationship within the existing public health infrastructure to increase services and include testing of Nevada newborns.

CHERYL HUG-ENGLISH, M.D., MPH (Interim Dean, University of Nevada School of Medicine):
I am here to offer support for S.B. 131.

SENATOR HARDY:
Where is NSPHL located?

DR. BROWN:
The main laboratory is located in Reno.

SENATOR HARDY:
Are there other public laboratories in Nevada?

DR. BROWN:
There are other branches, the largest of which is located in Clark County.

SENATOR HARDY:
What if Oregon no longer wanted to perform the testing for Nevada and we were not yet ready to take over?

DR. BROWN:
Other state laboratories are well poised to take over the testing.

SENATOR WIENER MOVED TO DO PASS S.B. 131.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR COPENING:
We will adjourn this meeting at 5:31 p.m.

RESPECTFULLY SUBMITTED:

_____
Jodene Poley,
Committee Secretary

APPROVED BY:

_____
Senator Allison Copening, Chair

DATE:_____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: February 17, 2011 Time of Meeting: 3:31 p.m.

Bill	Exhibit	Witness / Agency	Description
	A	Agenda	
	B	Attendance Roster	
S.B.43	C	Lynn O'Mara	ARRA HITECH Act and Nevada
S.B.43	D	Lynn O'Mara	Proposed Amendment
S.B.43	E	Lynn O'Mara	Summary of Provisions
S.B.43	F	Janine Hansen	E-mail opposition
S.B.131	G	Dr. Tracey Green	Testimony
S.B.131	H	Dr. Louis Brown	Testimony