MINUTES OF THE SUBCOMMITTEE OF THE SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-sixth Session
February 24, 2011

The subcommittee of the Senate Committee on Health and Human Services was called to order by Chair Valerie Wiener at 1:31 p.m. on Thursday, February 24, 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.

SUBCOMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Ben Kieckhefer

STAFF MEMBERS PRESENT:

Marsheilah Lyons, Policy Analyst
Risa Lang, Counsel
Shauna Kirk, Committee Secretary

OTHERS PRESENT:

Michael J. Willden, Director, Department of Health and Human Services
Lynn O'Mara, Project Manager, Office of Health Information Technology, Department of Health and Human Services
John Pappageorge, Health Services Coalition
Amber Joiner, Director of Governmental Relations, Nevada State Medical Association
Jack Kim, Southwest Medical Associates, Inc.
Jerry Reeves, M.D., Vice President, Medical Affairs, NV, HealthInsight
Bobbette Bond, M.P.H., Executive Director, Nevada Health Care Policy Group, LLC
Janine Hansen, Nevada Eagle Forum
John Wagner, State Chairman, Independent American Party

CHAIR WIENER:
We will open the subcommittee meeting with Senate Bill (S.B.) 43.

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

MICHAEL J. WILLDEN (Director, Department of Health and Human Services):
I have had a lot of e-mail and conversations with people regarding the intent of this bill. The intent is a governance structure for the statewide system. That is my first goal. We also want there to be as many health information exchanges (HIE) as needed in this State, as well as interoperability between those HIEs. Those are two fundamental goals. A governance structure and an interoperability between the HIEs is needed to comply with the Health Information Technology for Economic and Clinical Health (HITECH) Act to receive funding. That is our goal.

LYNN O'MARA (Project Manager, Office of Health Information Technology, Department of Health and Human Services):
We have new information we would like to have on the record. It is the "ARRA HITECH State Health Information Exchange (HIE) Cooperative Agreement: Governance Requirements" (Exhibit C). It contains a federal health and human services approved definition of governance that was used for the HITECH Act as well as for the cooperative agreement through which we received funding to facilitate the HIE. It is now a noun and a verb, and the terms are used interchangeably. You will find the definition on the first page, Exhibit C.

People are concerned with the issue of prevention of medical and personal identity theft. We are required under the cooperative agreement to address that.

You have a second handout titled, "ONC-Acceptable HIE Governance Structure" (Exhibit D). It is a guideline the Health Information Technology Blue Ribbon Task Force reviewed.

Senate Bill 43 Establishes the framework necessary for implementation of the corporative agreement and the requirements for HIE that were part of the stimulus funding.

CHAIR WIENER:
Are there changes in the amendment from the meeting of the full Committee on February 17, 2011 (Exhibit E)?

MS. O'MARA:
Some of the amendments may not be necessary, and others may need clarifying language. The goal is to be ready for implementation and have a governing structure that enables HIEs to function.

CHAIR WIENER:
Is there anything that you can clarify for us at this point?

MS. O'MARA:
We do not have anything new on the old amendment. While the intent was to clarify language, it muddied the waters, especially the amendment to section 6, subsection 2, paragraph (d) which may not be necessary. It depends on what will best meet the intent of having our governing entity along with adding HIEs, and what will be required to make sure the State has what it needs for implementation.

In addition, there was a request to add some provision for transparency in having an open meeting law. What we proposed may or may not be adequate. There was testimony provided last week that perhaps there might be more stringent requirements.

CHAIR WIENER:
Will there be a new amendment to replace this one?

MS. O'MARA:
Yes. Part of what we had discussed during the full Committee hearing was that we may need to work with the Legislative Counsel Bureau's staff to make sure we are meeting statutory language requirements and see what we need.

SENATOR WIENER:
Do you have a time line?

MS. O'MARA:
We would like to see it done as soon as possible.

SENATOR WIENER:
Is there anything that we know now that will need to be changed on the amendment?

MS. O'MARA:
Yes. There were some suggested changes that we did not incorporate. There will be testimony today that will affect what will be included in any amendments. There are some questions regarding privacy we need to address. We want to make sure that language is incorporated.

JOHN PAPPAGEORGE (Health Services Coalition):
The Health Services Coalition is here in support of the bill as long as it comes out of the Health Insurance Portability and Accountability Act of 1997 (HIPAA) laws.

AMBER JOINER (Director of Governmental Relations, Nevada State Medical Association):
The Nevada State Medical Association is in support of this bill. Our physicians have some concerns. Section 8 of the bill appears to create a new misdemeanor. The concern is the vagueness. It is not clear what behavior would or would not result in a misdemeanor, because this entity does not exist yet. We are creating a new penalty and criminalizing behavior that is not clearly defined in the statute. One word of concern is "marketing." We are not sure what that includes. The amended version, Exhibit E, talks about releasing information related to care and well-being. We are not clear on that definition. It creates a barrier to implementation and participation by physicians if they are not sure what they are allowed to do and may choose not to share information. It has real impacts on a physician's license. We strongly believe the federal law and Nevada law protect patient records, which is why we do not understand this new misdemeanor. After speaking with the Department of Health and Human Services, it appears they did not request this either. We ask for an amendment that removes this new misdemeanor and cross-references current federal and Nevada law relating to patient records.

JACK KIM (Southwest Medical Associates, Inc.):
Would there be an opportunity to look at the amendments prior to the full Committee hearing the bill?

CHAIR WIENER:
We will have another subcommittee meeting on this bill before it is heard in the full Committee.

SENATOR KIECKHEFER:
Is section 8 the only area where there is a penalty against a physician for releasing data improperly?

MS. JOINER:
That was the only item identified as a concern.

SENATOR KIECKHEFER:
It is important for there to be a hammer in terms of protecting patient information.

MS. JOINER:
That is why our recommendation is to have a section referencing a penalty and to cross-reference the current laws.

CHAIR WIENER:
We will accept amendments until 5 p.m., Wednesday, March 2, 2011.

JERRY REEVES, M.D. (Vice President, Medical Affairs, NV, HealthInsight):
HealthInsight is in support of this bill. We would like to present information for consideration regarding a statewide HIE that is in progress and offer to collaborate to meet fully the requirements and expectations of the State. HealthInsight is a not-for-profit, private organization devoted to improving health care and outcomes for Nevadans. We have been doing this largely through contracts with the federal government and with quality-improvement organizations and with the federal Office of the National Coordinator for Health Information Technology (ONC). The ONC is the regional extension center to promote adoption and meaningful use of electronic health records (EHR) in doctor's offices and hospitals, especially small primary-care groups with less than five physicians. Work with the HIE is very relevant to working with EHRs. The benefits of EHRs are best met when they can connect with other EHRs wherever patients may have points of care. We began a community-wide HIE during the fall after receiving funding from Southwest Medical Associates as start-up funding to establish a not-for-profit, multi-stakeholder steering-committee governing board that would engage payers, providers, doctors and hospitals.

I have provided a handout that displays the vision of our HealthInsight HIE (Exhibit F). Our vision is to improve quality and effectiveness of "patient-centric

health care" through timely, secure, authorized access to pertinent health information at the point of care for the benefit of patients and their health-care providers. The benefits of our approach to an HIE are indicated on page 3. Our vision indicates that the patient at the center of this care may access multiple points of care, and it is important to improve the effectiveness and the timeliness of care. Our goal is to connect as many of the entities listed on page 4 as potential participants in the HIE. The vendor we are using for this underlying network system has been doing this for 15 years and has implemented this in multiple states and regions, including Utah; Idaho; Nebraska; Maryland; the Cincinnati area; Grand Junction, Colorado; Bloomington, Indiana; and Bronx, New York. The lessons learned from this experience are relevant to accomplishing an effective governance and implementation that assures protection of patient privacy, security and interoperability with each of the various delivery systems in our State, as well as the connection they make when patients go to other states.

We have gained commitment from several entities throughout the State to serve on the governing steering committee to assure privacy, security, interoperability and promotion of adoption by as many providers of care as possible. They include Renown Hospital; Saint Rose Dominican Hospital - Rose de Lima Campus; University Medical Center of Southern Nevada; Hospital Corporation of American (HCA); Women's Specialty Care; Nevada Cancer Institute; University of Nevada, School of Medicine and Southwest Medical Associates. We are in discussions with multiple other hospitals and doctor-delivery systems, including Medicaid managed-care plans, Medicaid providers and indigent-care providers throughout the State and not just the large counties.

We work with a consultant who has extensive experience in Colorado, Pennsylvania, Texas, West Virginia, Michigan, Indiana and Ohio with the implementation of HIEs. We are trying to leverage and adopt the best practices we can in this State. The proposed legislation is extremely important in transforming health care and its efficiency, effectiveness and outcomes in this State. We are ready to serve as a designated HIE and will support the oversight structure the State implements. We will provide input regarding security, privacy, inclusiveness, efficiency, sustainability and each of the topics and directives outlined by ONC. We want to work closely with the Health Division at championing rapid adoption and meaningful use of EHR through this information exchange.

The most effective way to start a community-based HIE is to prove its feasibility by actually doing it. We are appreciative of the capital investment that Southwest Medical Associates has offered this not-for-profit, multi-stakeholder board. Our structure meets ONC requirements. We are committed to patient consent and data security. The optimal state oversight structure should be efficient and nonredundant with other types that are promoted through the federal government. The Nevada Health Information Exchange sustainability is dependant on demonstrating value to all stakeholders in this State.

CHAIR WIENER:
How broad is the network that you have established?

DR. REEVES:
The hospital systems who have committed to be participants include four hospitals within the Hospital Corporation of America's system, University Medical Center and its "Quick Care" providers, three hospitals for Saint Rose health system in the south and two hospitals for Renown. We are in discussions with Saint Mary's Hospital. The Nevada Cancer Institute has operations both at the University Medical Center and its campus in northwest Las Vegas. Women's Specialty Care operates in four different hospitals throughout the Las Vegas Valley in southern Nevada. Southwest Medical Associates has approximately 250 physicians. They are in discussions with the high-volume specialists and hospital systems with whom they deal the most. We began this in December, and it takes a certain amount of time to meet with everyone and for them to coordinate within their various corporate structures for coordination and approval. We have not talked to anyone in this domain who does not see the value of being connected and improving the time limits of information at the point of care.

SENATOR WIENER:
Does HealthInsight comply with what this bill prescribes as it is now?

DR. REEVES:
We are overly aggressive in that regard. We are contracted with the ONC for the regional extension center. We have daily phone calls with ONC. We are intensely aligned with their staff and the nature of their requirements for EHR adoption and meaningful use. As you may know, in order to meet the criteria for meaningful use, you have to be able to connect to other places of care. This will

bring more funds to Nevada, more jobs and dramatically improve health-care outcomes in Nevada.

SENATOR KIECKHEFER:
Did you provide a full list of who serves on the board of the exchange you are creating?

DR. REEVES:
No, but I can provide that for you.

SENATOR KIECKHEFER:
This is the cart before the horse. You are saying that you can put in a bid to run our HIE, and we have not authorized one yet. It concerns me that there are a lot of mechanisms behind the scenes to get this set up for you to run it when the regulations have not been written. A lot of the concerns of the entire and broader community have not been taken into account. I know the Blue Ribbon Task Force has spent a lot of time working on this, but it concerns me.

DR. REEVES:
Our Chief Executive Officer, Marc Bennett, has been the Vice-Chair of the Blue Ribbon Task Force. We are sensitive to meeting the needs that develop and mature in the State. Many states have not yet finished their regulations and laws that relate to HIE. We are connected with and committed to meeting the federal requirements as well as the State requirements when they are clear. Real people are dying today for lack of coordination and time limits of information. We have been committed for more than 20 years to improving health care and health outcomes.

SENATOR KIECKHEFER:
The regulations also say that Mr. Willden can create a nonprofit. I do not think that it is a decided factor yet.

BOBBETTE BOND, M.P.H. (Executive Director, Nevada Health Care Policy Group, LLC):
I spoke at the original hearing on this bill from Las Vegas and was confused about the amendment. I appreciate what Mr. Willden put on the record about the intent, and I appreciate the comments of Senator Kieckhefer regarding the need to get the regulations in place and the work of the Blue Ribbon Task Force.

There were 20 members on that Task Force. They have put in a lot of time, and there was a lot of debate about the governing structure.

JANINE HANSEN (President, Nevada Eagle Forum):
Some states, including Idaho, have said they are not going to comply with the federal law. They feel it is an imposition and jeopardizes the privacy of the citizens in their state. That is what happened with REAL ID. So many states objected and did not put it into operation. The federal government had to abandon it. Section 6 of the bill defines insurance privacy. We know that is a goal, but we know in today's society there will be breaches. This information will be misused and abused, and there will be people involved and profiteering from the information. This is something that is practically impossible to avoid. Section 8 refers to a provider of health care, insurer or other payer who elects not to participate. What happens to those people? Are there sanctions for doctors or health-care providers who decide they do not want to participate? Some doctors may choose not to participate.

SENATOR WIENER:
On line 37, page 4, the language says "... elects to participate ... "

MS. HANSEN:
What happens to the person who does not elect to participate? My same question is on section 11, lines 36 and 37. There it says "... a patient must not be required to participate in a health information exchange system." What happens to that person? There have been times I have gone to the hospital without insurance, and I did not want to give my social security number. I could not receive care unless I did give them my social security number. What happens to a person who says they do not want to be a part of this system?

MS. O'MARA:
The state of Idaho did accept their stimulus fund money for their HIE cooperative agreement, and it is proceeding. I work with that state's Health Information Technology coordinator on several subcommittees. However, they are doing so very cautiously much in the same way that Oregon, Nevada, Montana, Wyoming and a lot of the western states are doing. They did elect to stop work on their health insurance exchange. For eligible physicians, chiefly primary-care physicians, who choose not to participate, this means they may not be meeting the meaningful use requirements under the HITECH Act of the stimulus fund bill and would not be eligible for incentive payments for adopting

EHR systems. The whole point of that is to help defray some of the costs of doing the implementation. However, to meet meaningful use, they have to be able to use the HIE to be eligible. Medicare will start disincentive payments for their physicians who do not adopt EHR and utilize HIE beginning in 2015.

We do not know what the penalty will be for anyone who chooses not to participate or not have their information exchanged. If someone comes into an emergency room, it does not matter. They would have to be examined and treated. We do not know what will happen in Nevada.

SENATOR KIECKHEFER:
Did you say that starting in 2015, Medicare will start reducing payments to physicians who do not participate in HIE?

MS. O'MARA:
If they do not use EHR and HIE and meet meaningful use requirements, yes. They are looking at the utilization of EHR, and, therefore, HIE.

SENATOR KIECKHEFER:
Would there be systems that utilize EHR but do not transmit them into an exchange?

MS. O'MARA:
It is possible for physicians to have an EHR system and not want to participate in exchanging that information over an HIE. We do not know if that means they would still fax it over or choose another route. The reason HIE funding was made available was because of the stress on privacy and security to allow exchange of information to happen. Even with a fax, there is no guarantee there will not be a problem.

SENATOR KIECKHEFER:
Is there anything in the bill that prohibits a physician from turning away someone because that person does not want to participate, or anything that prevents a payer from excluding a potential enrollee because of not wanting to participate? Could a health maintenance organization mandate that if a person is going to be in its system, that person will have to participate?

MS. O'MARA:
Medicaid does have something that says their clients would be required to participate. However, there are no requirements in this bill, or anywhere that I am aware of, that would mandate that.

SENATOR KIECKHEFER:
There is nothing that would preclude them either, correct?

MS. O'MARA:
Correct.

MS. HANSEN:
I continue to be concerned about what is going to happen to the person who chooses not to participate. Another issue I have is the privacy issue. We have heard many assurances over the last two hearings that everyone wants to maintain privacy. That is an important goal. On page 5, line 11, it defines a misdemeanor for marketing purposes. Years ago when we were dealing with health information, one of the purposes of getting that health information into a system was so that it could be used for research and studies. The people who were put into research and studies were not necessarily informed. Each individual should have to give consent, especially if it is personally identifiable information in a research study. In the past, we know information has been used for marketing information by drug companies. The section the medical association wanted removed deals with marketing protection.

The research and marketing are significant concerns. If a person's personal information were to be abused, it could ruin their whole life. It is not just their financial identity that could be stolen, but personal information they do not want the world to know. I do not believe that a misdemeanor is penalty enough for people who would abuse this. There are many people, other than a doctor whose medical license might be in jeopardy, who have access to this information. We hear often about someone in a doctor's office abusing information and stealing identity. I go to a doctor who does not take Medicare or insurance payments. I choose to go to him because that is the kind of care I want, and he is the kind of doctor that may not want to participate in this. I do not want him to be in jeopardy because of this bill

JOHN WAGNER (State Chairman, Independent American Party):
I represent the Independent American Party of Nevada. I have concerns, most of which have been mentioned by Ms. Hansen. When I go to doctors, they provide a form to fill out regarding who is authorized to have this information. I do not want the State to know everything that happens to my health. It is none of their business. I do not like "Big Brother," whether it is the State or the federal government, interfering in my life. I am still trying to figure out from the U.S. Constitution, what gives the federal government the right to get involved with my health care. I also have a concern with the security. We know what Wikileaks has done, and we also know what Daniel Ellsberg, Ph.D., did with the Pentagon papers years ago, and those were not even electronic records.

CHAIR WIENER:
There being no other business before this subcommittee, we will close the meeting on S.B. 43 and adjourn at 4:24 p.m.

RESPECTFULLY SUBMITTED:

Shauna Kirk,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS

Committee Name: SubCommittee on Health and Human Services

Date: February 24, 2011 Time of Meeting: 1:31 p.m.

Bill	Exhibit	Witness / Agency	Description
	A	Agenda	Agenda
	B	Attendance Roster	Attendance Roster
S.B. 43	C	Lynn O'Mara	"ARRA HITECH State Health Information Exchange (HIE) Cooperative Agreement: Governance Requirements"
S.B. 43	D	Lynn O'Mara	ONC-Acceptable HIE Governance Structure
S.B. 43	E	Lynn O'Mara	Amendment
S.B. 43	F	Jerry Reeves, M.D.	HealthInsight