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

Seventy-sixth Session
March 10, 2011

The subcommittee of the Senate Committee on Health and Human Services was called to order by Chair Valerie Wiener at 1:37 p.m. on Thursday, March 10, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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:

Lynn O'Mara, Project Manager, Office of Health Information Technology, Department of Health and Human Services
Amber Joiner, Director of Governmental Relations, Nevada State Medical Association
Jerry Reeves, M.D., Vice President, Medical Affairs, NV, HealthInsight
Graham Galloway, Attorney at Law, Nevada Justice Association
Janine Hansen, Nevada Eagle Forum
Elisa Cafferata, President & CEO, Nevada Advocates for Planned Parenthood Affiliates
Rebecca Gasca, American Civil Liberties Union of Nevada
Chris Bosse, Vice President, Government Relations, Renown Health
Michael J. Willden, Director, Department of Health and Human Services
Dennis Gomez

CHAIR WIENER:
We will open this subcommittee meeting on Senate Bill (S.B.) 43. We have a packet of the proposed amendments provided, and I will go in the order they were presented to us (Exhibit C). The first one is from Lynn O'Mara.

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

LYNN O'MARA (Project Manager, Office of Health Information Technology, Department of Health and Human Services):
The amendment you have in the packet is a revision. We worked with the Committee's Counsel, Risa Lang, and refined the proposed language that was suggested in the last meeting. The term "person" used in the bill was not the inclusive definition we anticipated. We are requesting a definition be added that says "person" as defined in the *Nevada Revised Statutes* chapter 0.039 and to include those entities that are excluded. We will have state agencies that are direct service providers having to access electronic health records (EHR) and use the health information exchange (HIE). Another definition with confusion was "health care provider" or "provider of health care services." That definition is clear in the Health Information Technology for Economic and Clinical Health (HITECH) Act. We are requesting the definition of "health care provider" be consistent with that Act. I have provided the justification and what that encompasses in the proposed amendment, Exhibit C. It encompasses three U.S. Code definitions combined into one. That needs to be included to be covered under the HITECH Act and be used for EHRs as well for HIEs. In section 3, we are requesting an EHR be defined as it is in the HITECH Act.

Section 4 on page 2, line 15 is verbal guidance provided to us by the U.S. Department of Health and Human Services (USDHHS). We are requesting the words "... storage, analysis ... " be added to the electronic movement of information.

SENATOR WIENER:
Did you want to talk about working with the State Board of Pharmacy?

MS. O'MARA:
Yes. We are requesting a feasibility study be conducted with the State Board of Pharmacy regarding the standardization of prescription medication prior authorization. Because of electronic prescribing, many states are addressing this

issue. We will want to address it. The USDHHS is working on standards. We will have to see how those standards would be incorporated into Nevada. It was brought to our attention that the Department of Business and Industry, Division of Insurance (DOI) might also need to be involved. I have spoken with the Board of Pharmacy and DOI. They are willing to assist in whatever way necessary.

SENATOR KIECKHEFER:
Is there a need to do this study regardless of whether or not it is incorporated in this bill?

MS. O'MARA:
I do not know. It is probably a good idea based on the feedback from stakeholders.

SENATOR KIECKHEFER:
When do you expect federal guidance to be done?

MS. O'MARA:
They are hoping to get it done before the end of the calendar year.

SENATOR KIECKHEFER:
If that comes in on time, would we have to do another study within one month?

MS. O'MARA:
We might want to look at that. The date put in for this was a suggestion. We wanted to make sure it did not fall through the cracks. If in the event regulations have to be done, that will allow time for the regulation process between legislative sessions to be done as permanent regulations. The date may not be feasible.

SENATOR KIECKHEFER:
Based on this feasibility study, would the vision be that the regulations adopted are incorporated into the regulations that govern the exchange?

MS. O'MARA:
It would depend on the impact. It may be a combination of those of the exchange, DOI and the Board of Pharmacy. It may cover all three.

Sections 5 and 6 are the most difficult, and we are not sure if the suggested word changes are clear. I would like to review what was presented at the last meeting about intent. We are required to have a governing entity. This is a board that sets the rules of the road. The board can contract or hire staff to operate the entity. The entity would coordinate and collaborate to ensure all health information exchange systems operating in this State are doing so in a uniform manner and federal and State standards and protocols follow along with the Health Insurance Portability and Accountability Act (HIPAA), privacy and anything else this State is going to require or determine to put into legislation. We are proposing in section 5 an attempt to clarify what we are trying to accomplish. It seemed that section 5, subsection 1, paragraph (b) was duplicative and request it be deleted. There will have to be some kind of certification and an HIE in the State, and it will need to meet at least some minimum requirement such as interoperability to assure it can meet the privacy and security requirements. The entity will also need to be financially healthy and stable. It is possible in five to seven years there will be an accreditation process established by a third-party entity that would be used to fulfill that requirement. We are also asking that paragraph (c) be deleted. That statewide plan is complete and going through the approval process by the USDHHS.

In section 6, we are suggesting an additional change. We are still not sure it captures what we are attempting to accomplish. While the governing entity has to be a nonprofit and address issues, the actual physical operations do not have to be done by a nonprofit. I did request guidance from the Office of the National Coordinator (ONC). The USDHHS is looking for the governing entity to be a nonprofit. If contracting with someone for the day-to-day operations, they do not have to be a nonprofit. We are not sure if we need to say a profit or a nonprofit if the Director contracts or establishes the operational information for the administration of the statewide structure.

SENATOR WIENER:
Will the consideration of separating out operational information affect the fiscal impact?

MS. O'MARA:
It is not supposed to. We have that worked into the business model that has been proposed as part of the statewide plan. It would come from operations. There are certain core services provided, and revenue would be generated from that to keep the entity going. The HIE cooperative-agreement funding will be the

start-up funds and services offered would generate revenues that would then have the sustainability part of the model.

SENATOR KIECKHEFER:
I originally considered there to be a governing entity and that governing entity would set the regulations and establish the framework for the HIE, and a separate entity would actually run the exchange. By including that, this nonprofit entity may also hire staff to make a single layer both to govern and administer. Are we consolidating too much power into one entity?

MS. O'MARA:
We are struggling with how we define this. The governing entity is essentially like a board of directors, and like a company, they usually have an executive team to take care of day-to-day operations. There will be things the governing entity will have responsibility for to ensure core services and possibly being the back for the HIE of last resort. However, there will also need to be an operations type of team to help work with all of the HIEs operating in this State. The vision, as Michael J. Willden, Director, Department of Health and Human Services stated, is to have as many HIEs needed to allow HIEs to occur. There has to be someone coordinating that effort, and that is what this operating group would be envisioned to do. It is a tough concept to explain and understand which is why we struggled with the wording in the bill.

SENATOR KIECKHEFER:
There is language that a contracted entity must have proven experience to operate a financially sustainable HIE. How many people can meet that qualification?

MS. O'MARA:
Because it is a new industry or segment of an industry that is growing, there are not many at this time. However, there are certain financial parameters that could be monitored to ensure they were financially healthy.

SENATOR KIECKHEFER:
Would they have to have run an HIE?

MS. O'MARA:
Yes.

SENATOR KIECKHEFER:
Do you expect there will be a lot of options within a year?

MS. O'MARA:
Yes. Entities are already starting to do those kinds of things because of the tight deadlines that have to be met by all who have HIE cooperative agreements. In Nevada, we have small systems already running. There are those with experience that may not be sharing data outside of their system. That means they would have some financial sustainability.

Under section 6, the entity has to have transparency and accountability at many levels. Because one of the entity's roles would be advisory to the State HITECH, we have requested it be the DHHS director. We are simply making the statement that they have to comply with open meeting law provisions. They would be acting in that capacity, and it would be required. Section 7 is clarified to include health-related information. There may be times when information moving across the HIE is only a small part of a record such as laboratory data. Within HITECH, it does include health-related information as part of the EHR. For example, laboratory data may be sent from the laboratory to the ordering physician and does not become part of the EHR until the physician adds it. We still need to have the information covered.

SENATOR WIENER:
Could you explain that logistically? Is it a piece based on request from a medical provider and not considered a part until it is added into the patient's record? However, it is an independent patient test.

MS. O'MARA:
What has been defined as part of the EHR is all-encompassing of the patient. However, when you have certain information moving across the exchange such as a laboratory test, it is not that it is not part of the record, but it has to be populated into that record once the physician receives it. It may not go across as part of an entire record, but only that piece of data. We have to ensure the privacy and security of that data. The same could be said for certain prescriptions.

Section 8 has concerns for several State agencies as well as stakeholders regarding when someone can and cannot use, release or publish information. We added in the phrase " ... Except as authorized by the Health Insurance

Portability and Accountability Act ... " If Medicaid is conducting an audit or an investigation, the release of certain information is allowed for the reasons defined by HIPAA.

In section 9, there was a suggestion made by the Nevada Justice Association to change "good faith" to "reasonable care." We are requesting some indemnification for the providers. We are also requesting it for the HIEs. There are certain things that will be beyond their control, and the intent is to provide them with some protection from that. There are things they will not know are correct. They are just a vehicle. Many of the stakeholders involved requested it.

SENATOR WIENER:
Is their role at that level facilitating movement of information or holding the information and not being responsible for what the information is?

MS. O'MARA:
That is correct. There is also a concern, through no fault of their own, there may be false positives or false negatives based on data. As long as they are following protocol in the operation of their system, it should be alright. However, as with any electronic system, there may be some false positives and negatives. They are looking at the fact they would not know if the data were true or not.

SENATOR WIENER:
Their level of responsibility would be as transmitters or holders of information and not for the content of the information.

MS. O'MARA:
Correct. However, individuals have been known to not tell their physicians correct information.

SENATOR KIECKHEFER:
I have a question regarding the Nevada Justice Association's suggested amendment, Exhibit C. What does it mean by "The provider of care is informed of known risks associated with information quality and accuracy;" on page 6, Exhibit C, section 9, subsection 2?"

MS. O'MARA:
That provider of care would become health-care provider with the definition. If a physician is communicating with another, the physician may find the information received would have to have been subjectively provided by a patient. It may or may not be accurate and may suggest a fellow physician should look at it more closely or take additional care in using that information to support a clinical decision. I believe that is the intent.

SENATOR KIECKHEFER:
It is not a situation where a provider signs up to be a member of the exchange and signs a waiver that this data may not be accurate, but is going to use it. If providers of care are informed of known risks, one would assume that there is some level of documentation that they were informed of it.

MS. O'MARA:
I agree. We may need to work on the wording.

There is one correction made in section 11. There is a lot of confusion between health insurance exchanges and HIEs. There was an attempt to address the requirement for the HIE for an individual. There needs to be a methodology developed so that if an individual finds something incorrect, it gets corrected.

Finally, with everything that has to be done and to meet deadlines for the HIE cooperative agreement, as well as assist physicians who are eligible to get their incentive payments, we are requesting the bill be effective upon passage and approval so we can meet the deadlines.

SENATOR KIECKHEFER:
Who owns a medical record as it exists now?

MS. O'MARA:
That is not clear. We do not know if that is going to be decided at a federal level. An EHR is all of someone's health information contained in a record. Then there is an electronic medical record (EMR) that legally is defined as a physician's record of care. It would be a subset of an EHR. Based on that, it would seem that legally the physicians would own their EMRs. However, to the broader question, we do not have an answer.

SENATOR KIECKHEFER:
Would EHRs transmitted across the HIE be records that are owned by the individual to whom they pertain?

MS. O'MARA:
I do not know. It is not clear, and we are not given guidance as to how to determine that. Some states are struggling with it.

SENATOR KIECKHEFER:
Who has a right to query the exchange for information?

MS. O'MARA:
That would be determined by the patient consent. The patient has the right to say who has access to the information. A query of an HIE would be through the providers of health care authorized to query. Whether or not they receive the information requested would be dependent on the individual about whom the query was made. Public-health surveillance is included in meaningful use. What we are not clear about would become clearer in stages two and three. We are required under the cooperative agreement to coordinate with public health officials to ensure reporting can occur over the exchange. For example, reportable information that has to go to the health authorities, whether it is any of the three stand-alones we have or to the State, would be able to get that information through the exchange. That will not change. However, what is not clear yet is how that may happen. It is happening now in a very closed system.

SENATOR KIECKHEFER:
Is there any public oversight over the nonprofit governing board?

MS. O'MARA:
The wording in sections 5 and 6 provides that the entity is accountable to the DHHS director. When we did an assessment, it was very clear the stakeholders expected the State to have the roles of oversight, regulator and enforcer. The governing entity would be the convening, collaborating group for all of the stakeholders involved. It is where they would go to work with the DHHS director as the oversight for that body.

SENATOR WIENER:
If a record contains information of something highly contagious and the person has not reported it, can you capture that from the record?

MS. O'MARA:
I am not sure how that would happen technically. We do have certain laboratory data that has to be reported. The purpose of using the HIE would be to get information to the sources that need it. For the purposes of public-health surveillance in real time, for example, minimizing and mitigating something like an outbreak, it is not clear how that would happen. We do not know how all this is going to occur. We are required to coordinate with public health. We are required to work out how our public-health system in this State can make use of the HIE.

SENATOR WIENER:
I need the clarification to know that this will be no different in electronic form than what we are already required to do, and we would not be stepping beyond that and into people's health lives.

MS. O'MARA:
That is correct.

AMBER JOINER (Director of Governmental Relations, Nevada State Medical Association):
The amendment provided, Exhibit C, is the same as presented verbally in the last meeting. It is in section 8. Our concern was the section criminalized behavior not clearly defined and that it punished interaction with an entity that did not currently exist. There are still words of concern to us such as "care" and "wellbeing." The word wellbeing is not in HIPAA. We would encourage you to remove those specific terms and allow the federal law definitions to govern that section. The federal law definitions are very clear for defining the words of treatment, payment and health-care operations. We found several advantages to using the federal guidelines. This law has kept pace with EHRs. As every state has to implement these HIEs, we believe it will also keep pace.

We request you remove the unique State misdemeanor provision that would entail a new punishment. The penalties in the federal law are appropriately severe and can result in up to 10 years of prison.

SENATOR KIECKHEFER:
Is a violator under HIPAA responsible for potential damages to the patient?

MS. JOINER:
That is determined by the U.S. Department of Justice (DOJ). There are civil and criminal penalties. Cases go to the DOJ if they rise to a certain level. It does not automatically result in damages.

SENATOR KIECKHEFER:
If they have to follow HIPAA and there is a violation, does it go to the federal judicial system, and we would lose control of it at the state level?

MS. JOINER:
Correct. It would be a federal case. It is investigated by USDHHS, Office of Civil Rights, to determine whether it rises to the level of being reported to DOJ.

SENATOR KIECKHEFER:
What impact does a misdemeanor have on a physician's license?

MS. JOINER:
I do not know. I will get back to you with that information.

JERRY REEVES, M.D. (Vice President, Medical Affairs, NV, HealthInsight):
Our interest and commitment to the success of this bill has to do with the fact that we are currently in the process of rolling out a multi-stakeholder, multi-location and multi-organizational HIE. We are establishing the governance of that exchange which relates to privacy, security, interoperability and patient consent for northern and southern Nevada with multi-organizational HIEs. Part of the challenge describing an HIE or an HIE system is whether we are describing something like the New York Stock Exchange, or are we describing the transfer of stock certificates between people? There should be some clarity between those two definitions when talking about governance and oversight of the transfer of information between providers as opposed to an entity that is overseeing and implementing operational processes that manage the transfer of information. Is it an activity or it is a noun? We have difficulty as we read the wording in the bill and the amendment as to which is being referenced. The role of the State represented by the director of DHHS and his advisors should take actions to ensure entities that facilitate information transfers meet the standards of interoperability, privacy, security and consent. We do not believe the State has a role of managing the operations of specific entities in facilitating such exchange between doctors, hospitals and laboratories, etc. We would like more clarity as to when "governing" describes an executive and managing function

and when it describes a coordination and collaboration function. As the language is specified now, we have difficulty differentiating which is being referred. When the new language describes the certification process for all HIE systems wishing to operate in this State, it is not clear what exactly is being certified. Is it software and technology, certifying organizational structure of entities or certifying compliance with federal and state law? What is being certified, by whom and with what expertise, and applying what standards from where?

We have difficulty with the clarity of scope and intent of this law in regard to governance. We are concerned the language is overreaching and creates unnecessary, costly bureaucracy. We are not clear what the mandate creates. These barriers or activities may slow the timely interchange of information not only within systems that might already be transferring information, but between systems when someone goes from one hospital to another. There may be current exchange going on between attending physicians and the hospital regarding test results and clinical summaries, but patients often cross party lines.

SENATOR WIENER:
Since you have engaged in this, there has been substantial federal legislation. We need to create assurances and protections that are standard and not an individualized organization's standard of practice. In response to your concerns about the governance role and the State's role, that is what we are doing now. The questions are important, but we do not have those answers yet.

On page 10, Exhibit C, section 6, subsection 1, you have "The Director as the State HIE authority, shall ... ." Then you have new language you are proposing. Can you explain that to us? As I look at it, it is an alternative that does not work well with what Ms. O'Mara has offered.

DR. REEVES:
The basis of the language we have inserted there was a combination of language and discussion deliberated by the Health Reform Blue Ribbon Task Force that has been focusing on HIE activities for the past year and a half. The handout at the last meeting dealt with guidance from the American Recovery and Reinvestment Act of 2009 (ARRA) and HITECH, state HIE cooperative agreement governance requirements and the ONC acceptable HIE governance structure. We attempted to take the actual verbiage from those federal

guidelines, clone them and insert them into our bill rather than using words that were so general we do not know what they mean. There are terms from the USDHHS that are the approved definition of governance. We took the words defining governance from the ARRA and HITECH Act and inserted them into the term as being used in the draft of the prior amendment that used the words governance. We are not trying to be prescriptive. We are trying to make the language understandable. It helps us understand the intent. Our intent and desire is to comply with all federal and state regulations.

SENATOR WIENER:
Could you explain the provision that it must be a nonprofit?

DR. REEVES:
That was language taken from Ms. O'Mara and the DHHS that had to do with nonprofit.

MS. O'MARA:
The purpose of the overall statewide-governing entity is to protect the public interest, including consumers. It is not the intent of the DHHS to tell the HIEs how to do their business. We do not need that role. There will be common standards coming from the USDHHS that everyone will have to abide by to accomplish an HIE within Nevada and with other states. We are watching what other states are doing with respect to certification. Electronic health records have to be certified now if eligible providers want to receive their financial incentive payments. There is a grace period. We should not see anything different. We know exchanges are occurring within closed systems. It would be whether or not exchanges can happen with each other. That is the concern of the State in being able to facilitate and make sure that was happening. We have not heard to the contrary that any system would not want to do it.

GRAHAM GALLOWAY (Attorney at Law, Nevada Justice Association):
We have proposed a modest change to section 9, page 15, Exhibit C, to exchange the language "good faith" with "reasonable care." Section 9 is essentially a standard-of-care provision and "good faith" is not a term typically associated with standard of care. Good faith, in my mind, is a state of mind. It is a concept that comes into play when you determine someone's standard of care. The better language would be "reasonable care."

SENATOR WIENER:
Ms. O'Mara presented a first revised version of the amendment and included that.

JANINE HANSEN (Nevada Eagle Forum):
I would like to place on the record a copy of the United States District Court for the Northern District of Florida Pensacola Division's Final Summary Declaratory Judgment (Exhibit D). There are 26 states involved in this, including Nevada. There is a real question as to the constitutionality of this law. Two decisions stated it was constitutional, and two decisions stated it was not.

My proposed amendment starts on page 16, Exhibit C. In the first conceptual amendment, section 3, the bill states that personally identifiable information is not to be used except for treatment and billing, which I support. In section 8, subsection 3, paragraph (b) it specifically mentions that it cannot be used for marketing. I strongly support the prohibition on marketing. I want to be sure we are doing all we can to protect those individual records, and if it is through federal justice, that can be difficult for an ordinary person to access.

We would like to see a specific prohibition against using personal health information for studies. This is especially an issue if it is personally identifiable information. I have concerns about general information being used in a study without consent.

In section 11, it states that a patient must not be required to participate in the HIE. There are no protections or guarantees the person who chooses not to participate will have access to health care. I saw that I left out a word in here, but in my conceptual amendment, Exhibit C, page 16, it states "Because a person has opted not to participate in the health information exchange system, they shall not be denied medical [care] by providers."

SENATOR WIENER:
I assure you I added that for you in my notes.

MS. HANSEN:
Last year I had a ruptured appendix when ARRA came about. It was a good thing it happened then, because without health insurance, I would be taken to jail instead of the hospital.

Section 8 addresses providers who opt to participate in the HIE system. However, there is no protection for those providers who choose not to participate. I want to make sure providers have the freedom to continue their medical practices without other interference or sanctions. Choice in medical care is an important issue for many people. It is a growing area of concern as many people are interested in alternative care.

MS. O'MARA:
What we are doing under the State cooperative HIE agreement is part of the stimulus funding and not connected to the ARRA for health-care reform. I want to be clear we are not compelled by anything under health-care reform in what we are doing here. Whether information is on paper or electronic, HIPAA is HIPAA. It still applies. It does not matter what form personally identifiable information is in; it is covered by HIPAA. Part of the State's responsibility is to ensure protection for health information is in an electronic format.

Individuals who need care in an emergency room would have to be provided with care. I do not believe there is any intent to do anything for providers who choose not to participate. We do not know how that will play out.

SENATOR KIECKHEFER:
If physicians find HIEs an efficient way to do business and an efficient way for them to provide care, could it become difficult for a consumer to find a provider who does not require them to participate in HIE?

MS. O'MARA:
It is conceivable.

ELISA CAFFERATA (President & CEO, Nevada Advocates for Planned Parenthood Affiliates):
We have two areas of concern. We have concerns with minors' access to confidential care, and we have concerns around the issue of segmentation of electronic records. The amendment we have proposed is on page 17, Exhibit C, and has several areas that are explicitly outlined in State law and other areas in the practice of medicine where minors have the right to confidential access to health care. We would like to see the regulations address the EHR in such a way the records themselves protect that confidentiality and also in practice to protect a minor's ability to access this care where we have said there is a State interest in getting the health care the minor needs.

SENATOR WIENER:
Is that in section 7?

MS. CAFFERATA:
In section 7 we made some recommendations, and it does not show up very clearly. There are three paragraphs that state regulations need to be adopted to maintain and protect not only the confidentiality but a minor's legal right to access care without the consent of a parent or guardian as outlined in State law.

In section 8, we would like to add a sentence that states records of minors cannot be released. We would like to have that included in the regulations.

REBECCA GASCA (American Civil Liberties Union of Nevada):
The segmentation is a specific example of existing law that makes it clear people should have access to this kind of confidential care, and confidentiality should be mirrored in how their records are maintained. One of the examples I gave in the first committee meeting was in regard to making sure someone's podiatrist is not seeing portions of the medical record relating to that person's fertility treatments. I have talked with Ms. O'Mara regarding the "portions thereof" phrase, and it was taken out of the amendment. I want to be sure the broader segmentation is being addressed. It is not clear what would be included.

SENATOR WIENER:
We have the amendment provided by the Nevada Advocates for Planned Parenthood Affiliates. Are you suggesting additional revisions of that amendment on page 17, Exhibit C?

MS. GASCA:
The revisions I am speaking of were in a previous version.

SENATOR WIENER:
We are working with what was provided as amendments for this subcommittee meeting.

MS. O'MARA:
The "portions thereof" is what the health-related information is about. I did talk with ONC, and that is their intent. Data segmentation is an issue that will have

to be addressed at some point. We are waiting for guidance from the U.S. DHHS.

SENATOR KIECKHEFER:
Will transmittal consents get burdensome, or does it become a simple request for transmittal?

MS. O'MARA:
Under HIPAA, a patient can do that. It depends on what the patient would allow who to see, when and what. One observation made by many of the states is the process of the informed patient consent should reinforce the relationship between a patient and the provider. They do need to discuss what can be transmitted and what cannot.

CHRIS BOSSE (Vice President, Government Relations, Renown Health):
I proposed the last amendment on page 19, Exhibit C. The first issue relates to providing some indemnification for providers as it relates to the matching of patient records. The federal government is not assisting us with issuing unique patient identifiers. States have adopted an algorithm in which they match so many characteristics of a patient. We are asking that once the director determines the approved algorithm for this State, providers are indemnified as long as they are following the director's approved methodology for false matches.

The second piece relates to the language in section 18. The concerns are with the "... must be written on a prescription blank .... " My organization and many organizations are working to computerize and want to make sure this does not preclude physicians from being able to use computerized physician order entry to initiate prescriptions in an inpatient and outpatient setting.

SENATOR WIENER:
I know you had a question regarding "dangerous drug" that Risa Lang will answer.

RISA LANG (Counsel):
The term "dangerous drug" is defined in *Nevada Revised Statute* 454.201.

MS. O'MARA:
Ms. Bosse and I have discussed the issues. We will have to find some kind of unique patient identifier. However, there could be false positives and negatives no matter how careful we are. The computerized physician order entry has one of the purposes of being able to allow that with HITECH. We will have to work with the State Board of Pharmacy to determine, with what is in statute and what is being allowed by the drug enforcement agency, if we can do this for dangerous drugs. I raised the issue with the ONC. They could not give me an answer.

SENATOR WIENER:
Is the feasibility study something you can incorporate into the conversation with the Pharmacy Board?

MS. O'MARA:
Yes.

SENATOR KIECKHEFER:
Are the unique identifiers the subject of debate in other states?

MS. O'MARA:
Yes, it is being heavily debated in many states. What was presented to the Task Force as a possibility is the birth record. The birth record could become the start of someone's EHR.

SENATOR WIENER:
One of the challenges when using birth records is the public and Ms. Hansen's concerns about opting out of EHRs. That would not give the person a choice.

MS. O'MARA:
We may want to use the birth record numbers. It is a unique identifier.

MICHAEL J. WILLDEN (Director, Department of Health and Human Services):
In the testimony of Ms. Hansen, she indicated there were constitutional issues with some of the provisions. This bill is about the HIE and not the health insurance exchange. The constitutional issues are with the health insurance exchange. This legislation stems from HITECH and HIPAA.

DENNIS GOMEZ:
I am a citizen of Dayton. Senator Kieckhefer asked who owns the electronic health records. I believe I own my medical records. I also believe the government having access to my records electronically is a violation of my Fourth Amendment rights.

SENATOR WIENER:
There being no other business to come before this subcommittee, the meeting is adjourned at 3:06 p.m.

RESPECTFULLY SUBMITTED:

_____
Shauna Kirk,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
S.B. 43	A	Agenda	Agenda
S.B. 43	B	Attendance Roster	Attendance Roster
S.B. 43	C	Chair Wiener	Proposed Amendments to Senate Bill 43
S.B. 43	D	Janine Hansen	United States District Court for the Northern District of Florida Pensacola Division's Final Summary Declaratory Judgment