

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

**Seventy-sixth Session
March 31, 2011**

The subcommittee of the Senate Committee on Health and Human Services was called to order by Chair Valerie Wiener at 1:35 p.m. on Thursday, March 31, 2011, in Room 2149 of the Legislative Building, Carson City, 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
Janine Hansen, Nevada Eagle Forum
Bobbette Bond, M.P.H., Executive Director, Nevada Health Care Policy Group,
LLC

SENATOR WIENER:

We will open this subcommittee meeting with Senate Bill (S.B.) 43. I am proposing an amendment ([Exhibit C](#)). Ms. O'Mara and Ms. Lyons will walk us through the amendment.

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

Subcommittee of the Senate Committee on Health and Human Services
March 31, 2011
Page 2

SENATOR KIECKHEFER:

Is the intent of section 5, subsection 1, paragraph (e) of the proposed amendment, [Exhibit C](#), to allow the director of the Department of Health and Human Services (DHHS) to determine ownership by regulation?

MARSHEILAH LYONS (Policy Analyst):

The intent is to have the director create regulations that address ownership and stewardship of information and data.

LYNN O'MARA (Project Manager, Office of Health Information Technology, Department of Health and Human Services):

The health information exchange (HIE) cooperative agreement needs some requirements to ensure the privacy and security of data, including stewardship and ownership, are addressed. It is an issue on which we are to be receiving additional guidance.

SENATOR KIECKHEFER:

I understand the concept of rules governing stewardship of information and data, but ownership is an issue I do not feel comfortable allowing to be decided by regulation.

Ms. O'MARA:

The Health Insurance Portability and Accountability Act (HIPAA) is clear. The individual decides who can see personal information, so it is like a de facto ownership to the individual.

CHAIR WIENER:

This is intended not to put the information in a free fall and let information in an HIE go out there—wherever—and continue to go out—wherever. This is to align with the protection of that information.

Ms. O'MARA:

The Nevada State Medical Association is also trying to align with HIPAA.

Ms. LYONS:

Section 6, subsection 1 of the proposed amendment is intended to make clear the director of DHHS can establish or contract with a nonprofit entity to govern the HIE system, and the actual nonprofit entity is the governing body.

Subcommittee of the Senate Committee on Health and Human Services
March 31, 2011
Page 3

SENATOR KIECKHEFER:

I want to make sure I understand this. The director establishes or contracts with a nonprofit to serve as the governance, control entity. This entity will oversee the regulatory environment in which HIEs act.

MS. O'MARA:

That is correct.

CHAIR WIENER:

Section 7 of the proposed amendment references current law in *Nevada Revised Statute* 129.010. Is that correct?

MS. LYONS:

Yes.

SENATOR KIECKHEFER:

Is this necessary? If there are rights already protected by State law, how would a regulation overturn that?

MS. LYONS:

The proponent of this proposed amendment is simply saying when regulations are being developed, these things need to be considered.

SENATOR KIECKHEFER:

Should those regulations contemplate all existing State law?

MS. LYONS:

I would assume they would.

MS. O'MARA:

There is language from the Health Information Technology for Economic and Clinical Health Act (HITECH) that we were attempting to include throughout the bill. In section 8 of the proposed amendment, we needed to find a process for protecting confidentiality as well as a process related to how a patient can request only part of the information be shared or what is to go across the HIE.

MS. LYONS:

Number 11 on page 6 of the proposed amendment, [Exhibit C](#), removes the language relating to the creation of the new misdemeanor in section 8 of the

Subcommittee of the Senate Committee on Health and Human Services
March 31, 2011
Page 4

bill. It subjects violators to the penalties of HIPAA instead. It also requires the director to adopt regulations establishing a procedure for reporting a violation of this section.

SENATOR KIECKHEFER:
What is the penalty for violating HIPAA?

MS. LYONS:
The American Medical Association outlines HIPAA violations, and there is a minimum penalty of \$100 per violation with an annual maximum of \$25,000 for repeat violations for certain offenses. For other offenses, the fines can go all the way up to \$50,000 per violation with an annual maximum of \$1.5 million.

SENATOR KIECKHEFER:
Will HIPAA violations be prosecuted in federal court?

MS. LYONS:
Just recently, through HITECH, the Attorney General (AG) is able to prosecute those cases.

SENATOR KIECKHEFER:
Has that ever happened?

MS. LYONS:
It has not. I have talked to people in the AG Office, and they are prepared to do what the law requires. I do not know if it is limited to them, but it is the avenue the State would have.

SENATOR KIECKHEFER:
Do you like it, Ms. O'Mara?

MS. O'MARA:
Director of DHHS, Michael Willden, has reviewed this, and we believe it will help us meet the requirements of the HITECH Act and the HIE cooperative agreement.

SENATOR KIECKHEFER:
How can a person who had opted in then opt out?

Subcommittee of the Senate Committee on Health and Human Services
March 31, 2011
Page 5

MS. O'MARA:

That process would be established in regulations. We do have to provide individuals the ability to do that.

SENATOR KIECKHEFER:

I am still concerned about deferring the criminal penalty to HIPAA and having the AG prosecute.

JANINE HANSEN (Nevada Eagle Forum):

I want to thank the Committee for including the protection for individual health providers who choose not to participate. Is there any protection for an individual who decides not to participate?

MS. O'MARA:

An individual can choose to participate or not participate. The Health Information Technology Blue Ribbon Task Force is looking at alternatives for information to be shared by an individual and if not choosing to participate in the HIE, especially if the physicians also choose not to participate.

MS. HANSEN:

Can people be denied care if they do not opt into the system?

MS. O'MARA:

I do not have an answer.

SENATOR KIECKHEFER:

In an emergency situation, people would be protected by the Emergency Medical Treatment and Active Labor Act (EMTALA).

MS. O'MARA:

That is correct.

SENATOR KIECKHEFER:

Would you be against it if hospitals or physicians chose to have all of their patients enrolled?

MS. HANSEN:

I am not against an individual physician doing that. In the case of a hospital, there are no options.

MS. O'MARA:

The EMTALA laws would preempt a hospital from not providing care. They are required by law to treat patients. The HIE will operate statewide, but it will not be owned and operated by the State. There may be a nonprofit governing entity establishing, guiding and making sure everyone is playing by the rules, but there will be independent HIEs with which various hospitals, doctors and providers will contract that will be able to move data and will not be a government agency or system.

MS. HANSEN:

I do not think this is clear or resolved. Was the issue to prohibit marketing addressed?

MS. LYONS:

It was determined that HIPAA has already covered those prohibitions.

BOBBETTE BOND (M.P.H., Executive Director, Nevada Health Care Policy Group, LLC; Health Services Coalition):

Section 6, on page 3, of the proposed amendment says a contracted entity "must" have proven experience to operate a financially sustainable HIE system. Must is very compelling. This is such a new industry with many new markets and emerging technologies that it seems to block someone who is not already a dominant player from being able to come to Nevada and be innovative.

We also do not understand the difference between an exchange and an exchange system.

MS. O'MARA:

It might be stronger language than we intended, and we are willing to look at that.

SENATOR KIECKHEFER:

We should recommend Senator Wiener's amendment to the full committee.

Subcommittee of the Senate Committee on Health and Human Services
March 31, 2011
Page 7

CHAIR WIENER:

With no further business to come before this subcommittee, we will adjourn the meeting at 2:17 p.m.

RESPECTFULLY SUBMITTED:

Shauna Kirk,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

| <u>EXHIBITS</u> | | | |
|-----------------|----------------|-------------------------|--------------------|
| Bill | Exhibit | Witness / Agency | Description |
| | A | Agenda | Agenda |
| | B | Attendance Roster | Attendance Roster |
| S.B. 43 | C | Senator Wiener | Proposed amendment |