

Draft Minutes
HOME CARE EMPLOYMENT STANDARDS BOARD
March 8th, 2022
2:00 p.m.

MEETING LOCATIONS:

Per AB253 (2021), public bodies whose members are not required to be elected officials may hold public meetings by means of remote technology system with no physical location.

Accordingly, all members of the public were encouraged to participate by using the web-based link and teleconference number provided in the notice.

1. Call to order – Cody Phinney, Chair

2. Roll Call – Isabelle Eckert, Administrative Assistant

BOARD MEMBERS PRESENT:

Cody Phinney, Chair (Online)
Shannon Chambers, Labor Commissioner (Online)
Safiyyah Abdul Rahim, (Online)
Michael L. DiAsio, M.D. (Online and Phone)
Barbara Carter, (Online)
Robert P. Crockett, (Online)
Farren Epstein, (Online)
Gerardo Louis Gonzalez, (Online)
Maxine Hartranft, (Online)
Stephanie Schoen, (Online)
Sue Wagner, (Online)

DIVISION OF PUBLIC & BEHAVIORAL HEALTH (DPBH) STAFF PRESENT:

Terri Henwood, Bureau Chief, Bureau of Health Care Quality and Compliance (BHCQC);
Nathan Orme, Education and Information Officer, BHCQC, Joseph Filippi, Executive Assistant,
Division of Public and Behavioral Health (DPBH), Isabelle Eckert, Administrative Assistant III,
DPBH

OTHERS PRESENT:

Pierron Tackes, Attorney General's Office

Cody Phinney opened the meeting at 2:00 p.m.

Roll call was taken, and it was determined that a quorum of the Home Care Employment Standards Board was present.

Agenda Item 2: General Public Comment

No Public Comment

Agenda Item 7: Informational Item – Presentation by Nevada Occupational Health Administration (OSHA), relating to the role in the safety of Home Care Workers – Division of Industrial Relations – William Gardner, Chief, Nevada OSHA

Mike Rodrigues, Program Coordinator, Nevada OSHA thanked representatives of DPBH for allowing OSHA to speak at the meeting. He wanted to give a brief overview of Nevada OSHA with respect for how their enforcement process works. Presentation is attached hereto as Exhibit “Nevada OSHA Overview.”

Nevada OSHA’s Jurisdiction

Nevada OSHA’s jurisdiction applies to all public and private sector places of employment within the state. Exceptions to Nevada OSHA’s jurisdiction would be federal government employees, private sector maritime, mining worksites, employees working on Tribal land, military installations, currently small farming operations (10 employees or less), and home-based work sites. In any situation where federal government employees are exposed to alleged workplace safety and health hazards, a referral is made to the federal counterpart of OSHA to investigate.

What Triggers and Inspection

Investigations can be triggered by any report of a fatality or accident, report of an imminent danger situation (defined as any condition in the workplace that could reasonably be expected to cause death immediately), alleged reports of safety hazards (in this case, the reporting source could be anyone i.e., current employee, former employee, or family member of a current employee). Emphasis Programs occur at the local and national levels. They are referred to as Local Emphasis Programs (LEPs) or National Emphasis Programs (NEPs) and are intended to address hazards or industries that pose a particular risk to workers. LEPs would deal with risks to workers within Nevada OSHA’s jurisdiction whereas NEPs would address the entire country. Examples of LEPs that are currently specific to Nevada would be hotels, casinos, hotel/casinos, places where amputations may occur, and work being done at construction sites. Targeting lists or target inspections are inspections specifically aimed at high hazard industries which experience higher rates of injuries and illness. These lists are generated from data received from the Bureau of Labor and Statistics. Once high hazard industries have been identified, a list is compiled and randomized of establishments that operate or perform work in that industry and then conduct program inspections.

How to File a Complaint

Complaints can be filed via phone, online, mail. The best way to file would be via phone which would be available on the website: https://dir.nv.gov/OSHA/Report_Workplace_Hazards/

Enforcement Inspection Process

The enforcement inspection process is something an employer or employee can expect when OSHA conducts workplace inspections. The first step is a compliance officer visiting the workplace. They are required to provide work credentials proving they are compliance officers with the state. There have been cases of people impersonating compliance officers. As an employee or employer, if you suspect someone impersonating a compliance officer, please contact the OSHA office to confirm the identity of that officer. Once the compliance officer has established contact with the highest level of management in the workplace, the opening

conference is initiated. The purpose of the opening conference is to provide the employer with the purpose and scope of the inspection, nature of the allegations, as well as the rights and responsibilities throughout the inspection process. As an employer, you have the right to deny entry, and protect any trade secrets for a particular process or operation. As an employer, you have the responsibility to provide any records relevant to the inspection, injury/illness logs, evidence of training, safety, and health programs, etc. Once the conference is concluded, and the employer has granted entry, the next step of the inspection process would be the walk-around. This is where the physical inspection of the workplace occurs with respect to the hazards that have been alleged. In the event the inspection is predicated on an employee complaint, the walk-around would be relegated to physically inspecting the location(s) of the workplace where the hazards are being alleged. This would be different if OSHA were to come in and conduct an inspection that would encompass the entire workplace. As part of the inspection process, the employer can expect the compliance officer to take photos, measurements, and to document the hazards. In addition, this is when the compliance officer would conduct private interviews with respect to hazards that are being alleged or identified by the compliance officer at the time of the walk-around. The final part of the inspection process is the closing conference. Once the walk-around is complete, the compliance officer will evaluate the information and evidence obtained during the physical inspection of the workplace. They will make determinations on whether the allegations were valid or invalid, and whether citations are being proposed. Once the determinations have been made, the compliance officer will conduct the closing conference with management representatives, most likely the same people involved in the opening conference. The closing conference is a forum for the compliance officer to discuss what was alleged in the complaint, the overall findings of the inspection, discuss the citations, if they are being proposed and then provide the employer with their rights and responsibilities with how to dispute citations, and instructions on how to correct hazards.

Workers' Rights Under the Occupational and Safety Health (OSH) Act

It is an employee's right to be provided with a safe work environment. Employees have rights to file confidential complaints with OSHA regarding unsafe work conditions, and a right to have their workplace inspected. Employees have rights to receive information and training about hazards in their workplace and the means and methods in which those hazards are mitigated or eliminated. As an employer, if you have employees that are exposed to those hazards, it's their right to know what the hazard is, how to protect themselves, whether it be engineer controls, or Personal Protective Equipment (PPE). Employees need to be trained on how to use that equipment, what its limitations are, care for the equipment etc. Employees have rights to review work records relating to work related injuries. Employers can provide this information on OSHA form 300A, injury/illness logs. Employees have the right to participate in an OSHA inspection and speak privately with the compliance officer. Employees have rights that protect them against any retaliatory action by the employer, not just for speaking with OSHA but voicing concerns to the employer or participating in any other portion of the inspection other than the interview itself. If an employee is retaliated against, they can file a complaint with OSHA's whistleblower section, who may conduct an investigation.

Examples of Covered Regulations

In some form, healthcare providers are exposed to hazards, such as biological or chemical. This requires protection for hands, eyes, face, etc. OSHA has regulations that address those

requirements: 29 CFR 1910.132 – General PPE Requirements. Nevada OSHA recently released guidance regarding COVID-19 which identifies the healthcare industry as a high-risk industry and may require employers to provide their employees with respiratory protection. Blood borne pathogens is another regulation that would apply. Hazard communication addresses employees that work with hazardous chemicals. The standard provides requirements on how chemicals are labeled, required appropriate protections, chemical training, and the controls that need to be in place to mitigate or eliminate the hazards. These areas are generally where the most citations are issued.

Stephanie Schoen stated she experienced a situation where she was required to provide her own PPE. She inquired about the regulation for PPE. Mr. Rodrigues stated that 29 CFR 1910.132 is the general PPE Requirements. He said that for the most part, the employer is to provide any/all PPE equipment necessary to protect you from hazards that you are exposed to as part of your daily tasks. There are exceptions on when an employer is to provide PPE. Mr. Rodrigues asked Ms. Schoen what PPE she was required to provide on her own. She replied that she is required to provide her own gloves, masks, and a protective gown if needed in case of infection. Mr. Rodrigues said that 29 CFR 1910.132 will touch on that. He also said that employers are required to conduct a hazard assessment which will determine on whether PPE is required, to what levels they are required, what types, etc. He suggested Ms. Schoen start by reaching out to her employer and ask if a hazard assessment has been conducted with respect to the tasks that she does and what PPE is required. Mr. Rodrigues said OSHA has situations where employees will say they are not being provided with PPE but the employer, through their hazard assessment has made no determination that PPE is required. In those cases, it would be on the employee to provide those PPE.

Ms. Phinney asked Mr. Rodrigues if individuals made reports to the contact information for reporting workplace hazards, would OSHA require the assessment by the employer? Mr. Rodrigues answered that if someone called to address a PPE concern, OSHA would at minimum, inquire if a hazard assessment had been done.

Robert Crockett asked if for the next meeting and the distribution of materials, that OSHA could provide a ranked list of the top 10 OSHA violations in the PCS Program that they come across? Mr. Crockett also asked when filling out the OSHA 300 logs, is it for W2 employees or also for 1099 employees? Mr. Crockett asked if you are a family caregiver in the PCS Program, working in your home, are you excluded from the OSHA regulations? Ms. Phinney clarified the question by stating if a parent were a caregiver to their disabled child, in their home, would OSHA regulations apply? Mr. Rodrigues answered the last question and stated that circumstance would fall under the home-based worksite and would be different than if you were a healthcare provider that is required to go into a home, where that would be an extension of your workplace. Mr. Crockett asked in what circumstances would that change? Mr. Rodrigues replied that if you are providing care on behalf an employer that is required to get into a house, that becomes an extension of your workplace.

Mr. Gardner encouraged everyone to reach out to the Safety, Consultation and Training Section (SCATS) for understanding hazards in the workplace. They can provide a high-level overview of the requirements for specific workplaces. After talking to SCATS, if there is a health concern, it

can be brought to OSHA's attention. If there are inquiries about potential hazards and allegations, reach out to OSHA and they can discuss each individual issue. Regarding 1099 matters, Mr. Gardner said that one of the challenges OSHA must contend with is regarding applying their jurisdiction. That is done on a case-by-case basis where OSHA reviews how employers treat their contract workers. In many cases, OSHA finds that workers are 1099 but meet the definition of employee by virtue of the elements of how they are assigned work and given their materials and so forth.

Ms. Schoen said her concern is not so much with the organization she is with now because it seems to fall into the home-based worksite. In the Intermediary Service Organizations (ISOs) model, she thinks this is an exception where they are not required to provide PPE because they are not the employer, the person you are caring for is the employer. If that person is on Medicaid, and they are being required to pay for the PPE so that they can be paid, that should be a reimbursable expense from Medicaid, it should be part of medical supplies that they can get from Medicaid. Ms. Schoen said there may be cases where clients cannot provide those PPE supplies for their caregivers. She would like to possibly discuss that further as the Home Care Employment Standards Board goes forward with recommendations.

Ms. Phinney stated that the union does have PPE available for workers. She thanked the partners from Nevada OSHA and the Division of Industrial Relations for speaking at the meeting.

Agenda Item 3: Action Item: Approval of minutes from January 27, 2022, meeting – Board

Sue Wagner moved to approve the minutes. Stephanie Schoen seconded the motion. Minutes approved by the Board by vote.

Agenda Item 4: Informational Item – Update on Medicaid Implementation of American Rescue Plan Act of 2021 (ARPA) initiatives including \$500 to Home Care Workers and 15% Supplemental Payment to Personal Care Services Providers - Division of Health Care Finance and Policy (DHCFP)

Kirsten Coulombe, Chief, Long Term Services and Support, Nevada Medicaid asked Ms. Phinney to be on this agenda because of several initiatives being worked on relating to the American Rescue Plan Act specific to section 9817 for Home Community Based Services. Ms. Coulombe is providing updates to the Board relating to the \$500 Home Care Workers payment and the 15% Supplemental Payment to Personal Care Services Providers. The \$500 payment was issued on February 25, 2022, to providers and workers that were determined eligible. This payment goes to the providers for personal care service agencies as well as Intermediary Service Organizations (ISOs) and some providers that work for Supported Living Arrangements (SLA) through Aging and Disability Services. Those payments were sent to the providers that did apply through the application process. The application has an attestation that for any provider that did apply was attesting that they would issue those funds to workers within 30 days. Workers that have any questions are encouraged to reach out to their employers on when they might be issuing those payments and how that process will work. DHCFP does not get involved in the process of disbursements. Ms. Coulombe appreciated the questions asked by Mr. Crockett and Ms. Hartranft about returning any of the payments for workers that were no longer employed with the

providers but were eligible for the payment during the eligible period. Responses to those questions should be going out at any time if they have not already been sent out.

Michael DiAsio, Visiting Angels stated they had 6-7 employees that did not received funds. An email was sent back to the American Rescue Plan email address. They have not heard back yet. Ms. Coulombe replied that the \$500 payment went through two validation processes. The first validation is for the providers. Medicaid had to ensure any providers that applied were in good standing with Medicaid. This was done through the Provider Enrollment Unit. The second validation was done with the workers to ensure they rendered services, a minimum of 1 hour. It is possible those workers did not meet the criteria of having any hours. Ms. Coulombe stated that the reason Medicaid had the opportunity to issue the \$500 is there is an opportunity for an additional match. In Medicaid, everything is related to federal match. ARPA allows Medicaid to receive funds but there is also an additional match on top of that. If there are no claims paid on behalf of recipient's services that were rendered, the additional match would not be available. Mr. DiAsio believes the workers did render the appropriate services required.

Kirsten Coulombe stated the time frame to be employed was November 1, 2021, to current. There are a variety of reasons a caregiver may be employed and have some variation in their hours. There was a standard that was set to issue payment out to the most eligible workers.

Robert Crockett commended Ms. Coulombe on the job they did. He commented that she mentioned in January that the other programs that will be discussed would encourage more agencies to participate. If there is disappointment in the agencies that did not participate, is there a chance to make a proposal to get a chance for agencies that didn't participate the first time, to participate the second time on the initial? If we are going to give a caregiver \$500 now, and \$500 later, can an agency that did not participate still sign on now that they know the whole program so that they can distribute the money to their caregivers?

Ms. Coulombe replied that there will be a second round of \$500 payments that will be coming out. She stated that the information may have been confusing about the upcoming supplemental payments. The 15% supplemental payment would help offset any of the costs related to the administrative piece.

Phillip Burrell, Deputy Administrator, DHCFP, stated he would be happy to discuss further at this time or if it gets moved to the next meeting, he can be made available to address questions. At this point, the program set a period of time for the initial payment program and there is going to be a second payment program. DHCFP is hoping that through the nature of the program, as they can identify potential reinvestment funds, there will be additional dollars to be made available that they can create and add additional activities.

Maxine Hartranft stated to Ms. Coulombe that she had checked names that were left off their returns and that she had also emailed ARPA and have not received a response and those caregivers are currently working. Ms. Coulombe stated she was appreciative of the patience and would be happy to help look into that. Medicaid uses the Electronic Visit Verification (EVV) system which electronically verifies that the services occurred. Medicaid worked with the vendor to pull the information, making sure they weren't looking at just paid claims, they looked at basic

information such as did someone have a check in and check out service but perhaps it wasn't billed yet. She suggested if she had more specific information such as worker names, or their EVV IDs if available, and if there is confirmation that there was work after November 1. She will look into that.

Ms. Coulombe said that Medicaid is not offering a permanent rate increase. Medicaid is deliberate in stating that these payments are supplemental because they are time limited due to ARPA funding time being limited. There are supplemental payment opportunities through ARPA. The first one is a 15% supplemental payment to Personal Care Agencies (PCAs), including ISOs, Home Health, and some other Medicaid services. Because the American Rescue Plan allows Medicaid to go back retroactively, they are issuing those payments retroactive to April 1, 2021. The intention of the payment is to assist the providers with whatever has been impacted by COVID such as loss of staff, employee retention, PPE supplies, etc. There is a Frequently Asked Questions (FAQ) on the Medicaid website. There are going to be four lump-sum payments that will be for each of the quarters that they are going back to: April 1, 2021 – February 2022. The other supplemental payments from the 2020 special legislative session involved a 6% cut to Medicaid. Any providers that were dually enrolled as a waiver provider had a 6% cut from December 2020 – June 2021. There is a supplemental payment being issued to make waiver providers whole. There are a lot of PCAs and ISOs that are dually enrolled as waiver providers. There are some Medicaid services, including waiver services that aren't at the minimum wage, so ARPA is being used as a funding opportunity to raise them up to the minimum wage for the service reimbursement.

Farren Epstein stated when she saw that the 15% was for retention and recruitment purposes, she questioned how the agencies were going to distribute that, and if it was going to be discussed at this meeting. She hoped a discussion could be had about how the agencies will use the 15%. It was her understanding that this board would address topics like this. Ms. Coulombe replied that for the American Rescue Plan funding, Medicaid had to submit an initial spending plan. There was a public listening session in June 2021. With regards to the 15%, one of the components in the feedback from providers was related to retaining their staff. Medicaid does not enroll the workers, rather their relationship is with the enrolled Medicaid providers. The hope is that the providers will work with their employees and take some action to improve their retention.

Ms. Phinney stated that the Board could ask Ms. McMullen and agency representatives or anyone else that can speak to this issue and use that information for the Board to make recommendations to the Director.

Maxine Hartranft stated that their agency has not had specific conversations about how they are going to use the 15% supplemental payment in Nevada. What she has seen in other states is there will typically be guidelines such as a specific percentage has to go to the workforce. Ms. Coulombe replied that the current iteration that was submitted in July 2021 was broad to allow flexibility for the providers in terms of depending on how COVID affected them. Medicaid's goal is to work with the Board. ARPA is available through March 2024, provided funds are available. Medicaid is open to feedback for funding consideration going forward. Ms. Hartranft replied that rate increases are difficult to do because eventually the funding stops. What her agency has chosen to do instead is monthly bonuses for caregivers based on hours worked or

other parameters. It is hard to raise rates only to have to cut them later because the funding stops. If a rate increase is something that was going to be proposed, she would request that additional funding be found once ARPA funds are no longer available.

Michael DiAsio stated his agency has not determined yet how much they will be getting or how it will be allocated. He said that during the pandemic, they gave caregivers two or three raises. He said the Medicaid reimbursement rate has not really gone up for 20 years, but they must keep giving raises. Mr. DiAsio said they spent a lot on PPE supplies during the pandemic, so they are looking to get reimbursed. Caregivers need to be motivated to work more hours. They work an average of 20 hours per week. His agency is trying to find a way for them to work a meaningful number of hours per week to help more people.

Safiyah Abdul Rahim said if more employees are needed as well as raises for those employees, providers should cut down on the number of employees they have to increase the pay and hours. She also said bonuses would not be a bad idea. The hourly wage right now is not a livable wage for workers. She stated that maybe workers need to strike to get the wages they need. She said employers are not talking to employees about the \$500. Her employer has told her they have not received the money.

Connie McMullen said that in her volunteer years with the state for strategic planning, any rate increase that would come via Medicaid had to be built into the state budget. There is not an ability to ceremoniously apply supplemental federal funding into rate increases without a maintenance of effort. There must be a continuous source of revenue to give rate increases. If this money was to be used for caregivers and to attract more caregivers, it would have to come in the way of a bonus, training, a supplemental payment to entice caregivers to rural areas, or more enhanced training to provide a higher level of care. A higher reimbursement rate is what Medicaid providers need. Agencies that take private pay can take any type of client they want and charge any rate per hour they want, allowing caregivers to work for private pay providers. If you work for state Medicaid, which is for low income, vulnerable populations, you will hit a ceiling regarding pay. The more pressure put on those companies that opt to be a contractor with the state at reduced salaries, the more difficult it will be to find providers that want to offer Medicaid. It closes the market on those that need the care.

Ms. Phinney asked what information, moving forward with the various pieces of investigation related to SB340, the board needs to make a recommendation about this discussion? The Board's charge is to make recommendations to the Director of the Department of Health and Human Services related to this topic. What data is needed to make recommendations about what is needed?

Robert Crockett said they need to know what rates are around the country. The PCA rate T1019 is \$17.56. Fourteen years ago, it was \$18.52. Arizona is \$22.84, Oregon is \$32.92, Washington is \$31.32, the Veteran's Administration pays over \$30.00 per hour. Our rates are low. If you go to Washington and look at the pay matrix for PCAs, you can take someone with 4 years of experience in mid-point of training, that rate is \$17.71 for the PCA. If you take the \$17.71 by the \$31.32, the wages would be 56.5% of the reimbursement rate. In Colorado, the minimum wage is \$15.00 per hour, making the reimbursement rate would be 59%. Our minimum wage at our

current T1019 rate, with minimum wage at \$12.00 per hour, our floor is 68% and over 70% paid out in wages. You get to the 100% by adding worker's compensation insurance, PPE, mileage, training, Paid Time Off (PTO), employee taxes, and unemployment insurance. That's good news in Nevada if you are in a waiver program. Mr. Crockett wants to know what the opinion is to unilaterally force agencies to take reimbursement under the minimum wage, while agencies still pay minimum wage. In the waiver program, 96% of my wages go to the direct payment of the employee. Once worker's compensation insurance and companion, he loses \$7.00 per hour.

Stephanie Schoen would like to know what the rate is for other competing jobs. An example she gave was if you are currently working as a caregiver but can make twice as much working at Starbucks. It's important to find out what the competition is to make a determination how much they need to be paying to bring people into the field so people can have service or where will caregivers be lost if something is not done to make it competitive. This needs to be real time dollars.

Shannon Chambers, Nevada Labor Commissioner was asked if a comparative analysis was something her office participates in. She replied that the Labor Commissioner enforces minimum wage and wage and hour laws. They don't have any authority over Medicaid reimbursement. She said there should be a connection there. She can survey the number of employers the Board requests to find out their hourly wage but if it has no connection to Medicaid reimbursement, she does not think it will help anyone on the Board or the people they are trying to serve.

Ms. Phinney said she understood the question to be could Ms. Chambers provide any information on the comparison of other opportunities that labor force has in the community compared to this industry, not particular to Medicaid. Ms. Chambers replied that wage comparisons are done through Department of Employment Training and Rehabilitation (DETR). They also calculate the unemployment rate, occupational statistics, etc. The Labor Commissioner does not have any role in any data collection or wage surveys.

Farren Epstein commented that Mr. Crockett's and Ms. Schoen's comments are valid. She is hoping the Board can get some accountability and equal participation from employers and employees. As far as the 15%, she said not every agency is going to be as forthright with how that supplemental payment is going to be used. She was hoping to hear more rules about how agencies were going to have to use that money to recruit and retain employees. There is a problem getting PCAs with a high level of care here. She wants to see good, quality workers in the next couple of years.

Ms. Phinney said the work force does need to be expanded and the goal is to make recommendations in accordance with SB340. In accordance with what needs to happen, the Board is going to find a way to answer the questions that are in that bill and the Board is going to get the information that is needed.

Michael DiAsio advised Ms. Phinney that for the past eight years, there have been attempts with the legislature to increase the Medicaid and waiver rates with no success. There has not been an increase in 15 years. He is proposing that waiver rates be brought up to Medicaid rates.

Stephanie Schoen stated the Board needs to know what is considered, right now, in our largest communities, a livable wage, given inflation and the cost of housing. Caregivers should be paid a livable wage. The other thing the Board needs to know is what are the wages paid to caregivers who are not paid by Medicaid. Ms. Phinney said that this issue will be discussed on a different agenda topic on today's meeting. Ms. Schoen said that DETR needs to be brought in on this conversation. Ms. Phinney replied that DHHS and the Labor Commissioner were provided authority and resource to do this. DETR data can be used. Ms. Schoen said getting this amount of information is going to help the Board with the recommendations and will be taken by Mr. Whitley to the legislature. Ms. Schoen said there is something called the policy window and that the Intellectual / Developmental Disability (IDD) waiver is up for major revisions and the Board may be able to look at other waivers as well. The data is needed before the recommendation can be made.

Ms. Phinney asked Mr. Burrell if he was interested in making any comments or statements about information his agency would be able to provide at future meetings. Mr. Burrell said he could commit to attending future meetings and engaging the group on topics that he could be of assistance with. Some items they will do expansive research related to comparisons with other states. He said he would consider wages vs. rates which are apples and oranges comparisons. He would like to weigh in about home and community-based services spending plan initiative and give a helpful framework and be supportive of the activities and initiatives tied to it. It is an innovative opportunity, that is not a forever project but an opportunity to take advantage of getting additional reinvestment funds that do not add to the state general fund expenditures and allow additional opportunities such as rates and supplemental payments to help support some of these efforts such as infrastructure, expanding of services, and activities that could strengthen HCESB related services.

Mr. Crockett asked Mr. Burrell if the Board could get the proposed rates for the Personal Care Service (PCS) programs if he has started his budgetary model for the next legislative session for the next meeting? Mr. Burrell stated that a lot of the information is available right now on their website but may be able to provide further information.

Agenda Item 5: Informational Item – Presentation by the Bureau of Health Care Quality and Compliance (BHCQC) on current training requirement and the status of regulation updates for training requirements for Home Care workers, pursuant to State and Federal law – Terri Henwood, Health Facilities Inspector Supervisor, BHCQC

Terri Henwood, Health Facilities Inspector Supervisor, BHCQC appeared for Paul Shubert, Chief. BHCQC has oversight for PCAs and the regulatory requirements. Her presentation is attached hereto as Exhibit "PCA Training Requirements." BHCQC does periodic inspections of PCAs on a current schedule of every five years. Nevada Administrative Codes (NAC) outlines the responsibilities of an administrator. Ms. Henwood recommended that everyone read the regulations for PCAs.

Stephanie Schoen asked if the regulations define "qualified". Ms. Henwood said it is not stated in regulation what is defined as qualified, but she will be discussing what the training requirements include which may provide more direction.

Sue Wagner asked regarding the administrator arranging training, who pays for that training? Ms. Henwood said she would be addressing what the regulations say regarding this issue. Ms. Henwood outlined what the training requirements are for caregivers and the timeframes for those training requirements. Ms. Henwood wanted to clarify that if a caregiver worked for one agency but after three months decided to go work for another agency, they would be able to take their training certificates with them as long as they are not older than 12 months. Ms. Henwood indicated that the training requirements are non-medical trainings. The trainings are related to Activities of Daily Living (ADL) – hygiene, customer service-related type of services. Nevada Revised Statutes (NRS) are the laws that regulate PCAs. NRS 449.093 is the regulation that states the Personal Care Agency is responsible for the costs related to the elder abuse training for caregivers. There has been buzz about cultural competency training. Currently BHCQC is going out on periodic inspections. One of the decisions in the interim is to educate providers, not necessarily citing providers for not having a training program, but to educate on the requirement before starting citations. The cultural competency training required for both agencies and caregivers, can be obtained from a third party or the agency can provide their own training. That training would have to be submitted to BHCQC for approval. AB 217 from the 2021 Legislative Session addresses infection control, because of COVID-19. Mandatory training is required for unlicensed caregivers. A list of nationally recognized organizations that provide evidence-based training for caregivers must be free or have a minimal cost. The Centers for Disease Control (CDC) has a link to free training on their website.

Sue Wagner is interested in the statute language that the training must be free. Who describes what minimal cost is in the regulations? Ms. Henwood said that minimal cost is not defined. She also reiterated that both the elder abuse and infection control training is available at no cost to providers.

Ms. Henwood went over the costs for training. Regulations do not specify who pays for training for CPR and First Aid, training tasks prior to providing care, 8 hours of annual training, retraining on tasks and cultural competency. Statutes require the PCA agency to pay training costs for elder abuse and that for unlicensed caregivers regarding infection control, must be free. Ms. Henwood said there is a necessity to ensure caregivers are trained to provide services. One of the issues is who should bear the cost of this training. This is a challenge due to staffing shortages and wage concerns. The work force for PCAs and other healthcare settings has diminished because of COVID-19, but the need and demand for services has increased. More training content is available online now, allowing for training to occur when convenient for the trainee. While there are many options, some of those options will come at a cost, especially for annual training. BHCQC does not endorse any one specific training but have seen where providers have shared a variety of online training options. BHCQC wants to make sure the topic areas are covered and documented.

Robert Crockett stated that when Ms. Henwood said a caregiver that worked at one place for three months and then went to an agency, they could take their training certificate with them, most agencies would not accept that training and will have that caregiver go through the new agencies training. Mr. Crockett also said that agencies need right now, free, or minimal cost cultural competency training. His options right now are an 8-hour course at a cost of \$100 each.

Ms. Henwood thanked Mr. Crockett for the clarification on training requirements. Ms. Henwood said that Mr. Crockett could ensure a free cultural competency training by putting a training program together and submitting it to BHCQC for approval.

Ms. Phinney stated that what has been beneficial is when associations are working on trainings for the industry, because this requirement is more in depth than an approved slide deck. The approval of this training has been more in depth.

Agenda Item 6: Informational Item – Discussion regarding Data Collection and Investigation by the Labor Commissioner, including clarification of data to be collected – Cody Phinney, Chair

Ms. Phinney shared a portion of a document that she hoped would be helpful in response to the letter that Ms. Chambers shared with the Board before. Ms. Phinney hopes this will be a guide for Board discussions moving forward. The letter is attached hereto as Exhibit “Letter” Ms. Phinney asked Ms. Chambers if she was able to provide this information, would it be helpful to the Board in their charge? Ms. Phinney asked what conclusions the Labor Commissioner’s office drew from the DETR data that she included in her previous letter? Would the Labor Commissioner’s comments on what that data tells, be useful to the Board in forming their future recommendations? Ms. Chambers replied that comments about what is a livable wage is a bigger discussion and she would have to ask DETR to draw more conclusions. The current minimum wage, as it is, under the jurisdiction of the Labor Commissioner does not seem to be a living wage in any part of the state. She could not recommend what a new minimum wage should be.

Ms. Chambers said that if the Board members wanted her to survey the 291 private agencies, she could survey them for the hourly wages that are being paid. The Labor Commissioner has never done a survey on what a living wage is.

Ms. Phinney asked what the data that DETR provided tells. Is this something the Labor Commissioner has more information on or is the recommendation to find an economist to help decode that information from DETR? Ms. Chambers recommended talking to DETR and an economist.

Ms. Phinney stated that the Board provided a list of the PCA agencies that are licensed. Also provided was a list of the agencies that are enrolled with Medicaid. From those two lists, would the Labor Commissioner’s office be able to identify a representative sample and survey those agencies in those two groups to make some conclusions about whether there are pay differentials between those two groups? The question to Ms. Chambers is whether that is possible? The question to the Board is would that be helpful if she could? Ms. Schoen replied that it would be helpful to the Board. Ms. Chambers replied that staffing issues might make it challenging but asked what does a representative sample look like, and is she looking for specific job titles, specific positions? Ms. Phinney suggested that DHHS biostatisticians could be of assistance by identifying a representative sample size.

Ms. Phinney said the survey would provide the Board with additional data about the broad industry by which they can make decisions and educate decision makers and lawmakers.

Mr. DiAsio offered to help the Labor Commissioner. He said that Ms. Chambers said there were 900 Medicaid providers. An overwhelming majority of those providers are not in the PCA or home care industry. He would be able to help her identify which ones were. When doing the survey, Ms. Chambers needs to take into consideration how much Medicaid business they do. Since Mr. DiAsio is in the business, he may be able to help so that there is a more accurate results in what the Board is looking for. Ms. Phinney said suggestion for what a survey would look like could be sent to her office. Ms. Schoen asked if outside sources could be used for this survey, she suggested the university is underused and suggested reaching out to a graduate program in social work or political science where students are using this type of statistical analysis. Ms. Phinney appreciated the suggestion but said when they use the university for this type of project, they are paid, and the Board does not have a budget. This bill provided a position for the Labor Commissioner and a position for DPBH. Ms. Phinney has been trying to hire that position and once filled can assist with this project. There are significant resources in the department for data analysis.

Sue Wagner suggested increasing caregiver wage from \$12.00 per hour to \$15.00 per hour between now and 2024.

Maxine Hartranft asked for clarification if suggestions for survey questions can be sent to Ms. Phinney's office. Ms. Phinney affirmed and stated that a draft survey would be produced for the next meeting and making sure three or more members do not communicate outside the public forum.

Ms. Wagner had a follow-up question regarding whether employers were paying mileage reimbursement for home care workers and what the requirements that exist related to mileage reimbursement. Ms. Wagner stated that she let her caregivers use her personal car so that the caregivers were not out mileage. Ms. Phinney did not think that would be an option for most people receiving home care services, and thanked Ms. Wagner for sharing that solution. Ms. Wagner asked why it would not be an option. Ms. Phinney replied that she suspected a large portion of the members have the need to go to more than one service recipient and some of those recipients do not have cars that they could share.

Ms. Chambers said she was happy to work with the board members on the survey and sending it out. In Nevada, employers are only required to keep wage records for two years. In Nevada, there is no requirement to provide paid sick leave. The bill that was passed was paid leave, not paid sick leave. Ms. Chambers stated their office does industry outreach and trainings. Pre-COVID, they knew the paid leave bill was going to be effective January 1, 2020. The Labor Commissioner's office did over 35 webinars and in person meetings with chambers of commerce, industry, businesses etc. They have also done trainings with DHHS and have another coming up. She suggests, specific to this group, whether it is in the application packet, or information sheets that providers get, a Nevada requirement is if you have over 50 employees, you must provide paid leave. The Labor Commissioner's office also has bullet points on their website and required bulletins that they notify employers about.

Agenda Item 8: For Possible Action Item – Discussion and possible action to make a recommendation to Director Whitley to update Nevada Administrative Code (NAC) 449.3973, relating to the payment for the cost of training by employers – Barbara Carter, Board Member

Farren Epstein stated that it is hard for caregivers to pay for training. She would like some clarification or take it to an agenda item as to who pays for the cost of training. Ms. Phinney asked Ms. Epstein her recommendation is to clarify/specify that this is paid by employers? Ms. Epstein said most caregivers have to pay for this training in cash. She stated the training was the same video year after year. Ms. Phinney stated a discussion could be had about the quality of the training. Her understanding of the agenda item is a recommendation to Director Whitley to update the administrative code specifically for NAC 449.3973. Ms. Epstein asked if she could move for a vote for the Board to recommend that DHHS clarify its regulations to be consistent with the statutes to ensure that home care workers no longer pay for their training, including CPR and First Aid certification and that there are fines for caregivers for non-compliance?

Ms. Wagner asked if a motion was being made and seconded the motion.

Michael DiAsio asked if the Board is asking Director Whitley to clarify the training requirements or also changing the requirement that the employer must pay for all training? Ms. Phinney replied that there are specific trainings related to this. What the proposal would result in is the specified NAC would be clarified to specify that CPR and First Aid training are paid for by the employer.

Mr. DiAsio is asking for an opportunity to talk to their members of the Personal Care Association of Nevada (PCAN) before the next meeting. Mr. DiAsio requested to table until a future meeting.

Joseph Filippi clarified that there is a motion and a second to the motion. She is asking the remaining Board members what their feelings are on the motion. Members can still make a motion to amend the regulations. Then if Mr. DiAsio wanted to bring back feedback from his organization, that can be discussed during the regulation process if the Board decided to go through that. Ms. Phinney said there would be more opportunities to discuss.

Pierron Tackes said there needs to be a clear record for the open meeting law. Now that there is an intervening motion to table this vote until the next meeting, there would have to be a second to the motion to table the vote until the next meeting. There has been representation of views on behalf of other organizations. She clarified that the members appointed to this Board represent different industries. Any votes taken on actions for this Board are being made on behalf of the whole industry, not necessarily individual organizations. Ms. Phinney suggested two options. The first was to call for a vote on the original motion asking Director Whitley to clarify the training requirements and change the requirement that the employer must pay for all training. The next option would be to have a second to the intervening motion to have the vote on the first motion tabled until the next meeting. If the Board undergoes the regulatory process, it will allow for many additional pieces of information to be collected over time and for other organizations to speak during that process. Ms. Wagner requested to hear from Ms. Epstein on her feelings

regarding the amended motion. Ms. Epstein would like to pass this motion which would allow going through the regulatory process and give others the opportunity to speak out.

Ms. Phinney called for a vote on the original motion that the Board recommends to Director Whitley that required training be required to be paid for by employers as part of the NAC 449.3973. None opposed, motion passed. A recommendation will be prepared for Director Whitley.

Agenda Item 9: Action Item – Discussion and possible action to set schedule of meeting topics for 2022 and agenda topics for future meetings - Board

Ms. Phinney suggested March 29, 2022, from 2:00 – 4:00 p.m. for the next meeting. No objections to that meeting. Following the March 29 meeting, Ms. Phinney suggested that the Board meet on the fourth Tuesday of the month from 2:00 – 4:00 p.m., would be the regular meeting schedule. No objections.

- Economist
- Ranked list of top 10 OSHA violations in the PCA industry
- 8-hour, 24-hour rolling clock work hours
- Find out what PCA rates are around the country
- information on the comparison of other opportunities that the labor force has in the community compared to this industry, not particular to Medicaid.
- Presentation by BHCQC regarding sanctions and citations in the PCA industry.

General Public Comment

Allan Ward, Home Instead, wanted to point out in an effort to control the costs and efforts in gathering the information regarding the current market rates of what is being offered to caregivers, suggested that this could be done online. The value of what you will get capturing what is paid for in terms of wages in the private pay sector compared to what is paid for by Medicaid can be found much easier than going through a representative sample survey. He would be happy to prepare this for some of the legislative points as well as the fee schedule on the private side. More valuable and easier to capture, would be what states reimburse throughout the country, or at least the western region and what kind of pay rates the caregivers are receiving in those regions. He said the board is talking about the symptoms of the issues that we have in the industry: wages being suppressed, PTO, benefits, who pays for training, PPE etc. The underlying issue is the reimbursement rate. You have to raise what gets paid or reduce the cost of delivering the service. Some of the recommendations to the Bureau could be to reduce some regulations or oversight that might not be relevant today. Legislators add more and more regulations, but never take any off. Mr. Ward's caregivers are being limited in the kind of income they can make. Caregivers might be single moms, have other jobs, going to school, or maybe retired and don't want to work six days a week to get their 40 hours in. They might want to work three days a week or only have certain days they are available to work. The 8-hour overtime is based on a 24-hour rolling clock, limiting caregivers. It is frustrating to the caregivers that the state or legislators should dictate to them when, where and how they want to work. If the caregivers work over 40 hours a week, then they should get overtime. They are

committed to their clients and there are times they may want to stay with their clients more than 8 hours per day. The 24-hour rolling clock holds them back from doing that. When minimum wage increase is talked about, the only way to overcome that is when you are at minimum wage and a half. Nevada is the only state in the country that does not have exceptions to this. or has an 8-hour day on a 24-hour rolling clock. When we get to July 2023, it is going to require a \$20 per hour out of pocket for employers to meet that compensation for minimum wage and a half for that caregiver. That will cause the client \$38-\$40 per hour. As these things are looked at, you have to look at the basic math of how businesses are run. He would like to add this as one of the talking points as recommendations are made. He would like to request an exemption on the 8-hour day, 24-hour rolling clock only for this industry, because it is a 24-hour industry.

Shanieka Cooper, PCA, said caregivers need more time that 5-6 hours per week. She said there are a tremendous number of workers that have issues with the Omnicare application (electronic verification). There have been caregivers working but not getting paid due to technical issues with this application/program. She feels there is an issue with the quality-of-care training. The training is outdated, more up-to-date training is needed and maybe monthly rather than annually. Ms. Cooper hopes that some resolution can be found. She is a PCA, and her son also needs care. Caregivers are struggling because they are not making enough money. It's not that they don't want to work or even an issue with the agencies not wanting to pay. Owners have to run businesses as well. She stated the Medicaid reimbursement rate needs to be raised.

Marlene Lockard, Service Employees International Union (SEIU) 1107, said based on today's discussion, it is important to point out that in the ARPA funding that Medicaid received, there is over \$35 million dollars dedicated to studies because the minimum wage mandate, providers struggle with meeting this requirement due to the reimbursement received by Medicaid which was compounded by the impact of COVID-19. This proposal would raise certain rates that are below the minimum wage to an equivalent or slightly higher than minimum wage. This is \$35 million dollars that DHHS has right now and has yet to put out an FAQ on how that will be reimbursed to providers. Additionally, the ARPA funds that Medicaid received also includes \$600 thousand dollars to do a study on the reimbursement rate methodologies.

Giovanni – Home Solutions, said there should be a complete basic training for everyone that is the same from the State of Nevada. The training would then control the costs, and everyone has the same training. Although the \$500 for the caregivers is wonderful, it is only for Medicaid caregivers. Those caregivers are frustrated because they are working just as hard. He does not believe the cultural competency training for PCAs is effective. PCAs are not a facility, they do not monitor clients in their room, they do not check to see how they are getting treated in their room because PCAs don't have rooms. Regarding 449.3973, people who are not trained are not qualified so they need the training first.

Adjournment – Cody Phinney, Chair

Chair, Cody Phinney adjourned the meeting

Meeting adjourned at 3:10 p.m.