

Draft Minutes
HOME CARE EMPLOYMENT STANDARDS BOARD
March 29, 2022
2:00 p.m.

MEETING LOCATIONS:

Per Assembly Bill (AB) 253 (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.

Call to order– Cody Phinney, Chair Designee

Cody Phinney, Chair opened the meeting at 2:01 p.m.

Agenda Item 1: Introductions– Cody Phinney, Chair Designee

Chair Phinney introduced herself as the Chair of the Home Care Employment Standards Board (HCESB) and representative of the Nevada Department of Health and Human Services (DHHS) and Director Whitley. Chair Phinney introduced Kayla Samuels as the new Management Analyst awarded to the Nevada Division of Public and Behavioral Health (DPBH) by [Senate Bill \(SB\) 340](#) that will support HCESB activities.

Ms. Samuels introduced herself to the Board.

Chair Phinney noted that a request was received from the Labor Commissioner Shannon Chambers to hear Agenda Items 10 and 11 early in the agenda in order to accommodate an emergency that arose for Ms. Chambers. Chair Phinney also announced that Agenda Item 4 to approve the prior meeting's minutes would be tabled until the subsequent meeting, as minutes had not been completed yet due to the shortened time between meetings. Both the March 8, 2022 and March 29, 2022 meeting minutes will be approved at the next meeting. Chair Phinney requested that board members keep their cameras on for the duration of the meeting as a tribute to Nevada Open Meeting Law, as well as to ensure quorum is kept through the duration of the meeting.

Agenda Item 2: Roll Call – Isabelle Eckert, Administrative Assistant

BOARD MEMBERS PRESENT:

Cody Phinney, Chair Designee
Shannon Chambers, Labor Commissioner
Safiyyah Abdul Rahim
Michael L. DiAsio, M.D.

Barbara Carter
Farren Epstein
Gerardo Louis Gonzalez
Maxine Hartranft
Stephanie Schoen
Sue Wagner

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

Paul Shubert, Bureau Chief, Bureau of Health Care Quality and Compliance (HCQC)
Phillip Burrell, Deputy Administrator, Division of Health Care Financing and Policy (DHCFP)
Kirsten Coulombe, DHCFP

OTHERS PRESENT:

Pierron Tackes, Attorney General's Office
David Schmidt, Chief Economist, Nevada Department of Employment, Training, and Rehabilitation
Vanessa Torti, Home Care Research and Policy Specialist, Service Employees International Union
Cheryl Knight, Home Care Worker
Irma Nuñez, Home Care Worker
Dawn Ralenkotter, Home Care Worker
Arzelia Sanford, Home Care Worker
Tamela Lindsey, Home Care Worker
Shawn Slatter, Owner, Right at Home, LLC.
Pete Kuzmich, Right at Home Reno
Gina Jolliff, Owner, Aging Perspectives LLC
Shanika Cooper

Roll call was taken, and it was determined that a quorum of HCESB was present.

General Public Comment

Cheryl Knight introduced herself as a home care worker of four years in Carson City.

Chair Phinney called for any other home care workers or members of the public who would like to introduce themselves at this time.

Irma Nuñez introduced herself as a home care worker of 12 years in Las Vegas.

Dawn Ralenkotter introduced herself as a home care worker of over ten years in Las Vegas and thanked the board for their good work and help.

Arzelia Sanford introduced herself as a caregiver of 12 years. Ms. Sanford noted that it was her first time attending an HCESB meeting and that she was here to support the board and help wherever able.

Tamela Lindsey introduced herself and noted she was invited by Gloria with NCIU. Ms. Lindsey stated she was excited to join the meeting and help where able to improve working conditions for home care workers and noted she has been a home care worker since 2016.

Chair Phinney called for any other public comment, hearing none, the board continued with the agenda.

Agenda Item 4: Action Item – Approve Minutes from March 8, 2022 Meeting

Chair Phinney repeated that Agenda Item 4 would be tabled until next meeting.

Agenda Item 10: Possible Action Item – Recommendations to Director regarding overtime rules and personal care industry, challenges created by the 8-hour within 24 hours rule, effectiveness of overtime on a weekly scale

Shannon Chambers, Nevada Labor Commissioner

Ms. Chambers started by introducing the overtime rule unique to Nevada where over eight hours of work in a 24-hour period is considered overtime detailed in [Nevada Revised Statutes \(NRS\) 608.018](#). Ms. Chambers stated that any type of change regarding the overtime rule would have to be done by statute by the Nevada Legislature because this overtime rule is in statute. The essence of the rule is that if an individual makes less than one and one-half the minimum wage, and over eight hours are worked in a 24-hour period, or more than 40 hours are worked in one week, the worker is entitled to overtime. Ms. Chambers clarified that in the State of Nevada in 2021, if an employee makes less than \$13.125 per hour and is offered qualified health insurance as an employee or makes less than \$14.625 per hour and is not offered qualified health insurance, then that employee is entitled to overtime if more than eight hours of work is completed in a 24-hour period. The overtime rule is tied to the Nevada minimum wage amount, which is increased each July per statute until 2024. The new notice for 2022 has been posted, effective July 1, 2022, the state minimum wage will increase to \$9.50 if offered qualified health insurance, and \$10.50 if the employee is not offered qualified health insurance. The increase in minimum wage will also increase the daily overtime rate to \$14.25 with offer of qualified health insurance and \$15.75 without offer of qualified health insurance. If a worker makes less than those amounts, they are entitled to the overtime rule. Ms. Chambers noted that in 2015 a legislative proposal, SB 193, to eliminate the Nevada daily overtime requirement was heard by the Legislature, however, did not pass. The issue has been discussed by the Nevada Legislature before but was not successful. Ms. Chambers stated that she has had ongoing conversations with not only the home health care industry, but also the restaurant industry and casino industry about the overtime over eight-hour rule in Nevada, and that it does create some issues with employees working shifts or multiple jobs triggering daily overtime. The daily overtime rule is a topic the Labor Commissioner is happy to discuss and work with any parties on potential changes to the rule. Ms. Chambers noted the majority of states in the country do not have daily overtime rules and follow the federal Fair

Labor Standards Act which has overtime for over 40 hours worked in a week. The Nevada daily overtime rule does create questions and complications for employers who do not understand that they can trigger a daily overtime requirement if they are paying employees less than one and one-half times the minimum wage. Ms. Chambers also noted this is an especially prevalent problem for small businesses who may have only a few employees and must rotate shifts. The Labor Commissioner recognizes this issue and has had discussions with the Legislature about the issue in every session since Ms. Chambers has become the Labor Commissioner, however, did not come up last legislative session. Ms. Chambers reiterated that she is happy to work with the board or any stakeholders or parties on potential language or proposals. Ms. Chambers stated that in the past there has been discussion on exempting certain industries and businesses from the daily overtime rule, and that though it has not happened, Ms. Chambers is happy to hold those conversations and answer any questions.

Chair Phinney thanked Ms. Chambers and called for any questions from members of the board.

Stephanie Schoen asked Ms. Chambers to repeat the NRS code mentioned in the report.

Ms. Chambers repeated [NRS 608.018](#).

Michael DiAsio asked if it would be an appropriate time to suggest that the Nevada daily overtime rule be changed so that the state would follow the federal regulation like every other state does.

Chair Phinney clarified that the board has the authority to make recommendations to the DHHS Director to take whatever steps are available to achieving the end goal. Chair Phinney said Ms. Chambers mentioned working with others on the language and asked if that is what was intended for this agenda item.

Ms. Chambers stated that because the Nevada daily overtime rule was in statute, a legislative proposal would be required through a bill draft request. Ms. Chambers was not able to speak to who would sponsor a bill draft request, and stated it was not likely to come from the Labor Commissioner office. Ms. Chambers stated that if a bill draft would be produced, she is happy to work with any of the stakeholders on proposed language but clarified once again that the action would require a bill.

Chair Phinney stated that she could not commit DHHS to creating such a bill either, but could, if the board was so inclined, include a finding relevant to the Nevada daily overtime rule in the yearly report. Chair Phinney informed Mr. DiAsio that he is welcome to make a motion regarding recommendations after the discussion is completed on the agenda item.

Ms. Schoen stated she would make the motion if Mr. DiAsio would not.

Chair Phinney called for a motion for action on the agenda item.

Mr. DiAsio made a motion to include in the board's findings and recommendations that Nevada follow the federal overtime requirements.

Sue Wagner asked for the monetary amount to be repeated for the national overtime rule.

Ms. Chambers clarified that there is not a federal overtime amount, and that overtime would be paid when over 40 hours are worked in a week, and that amount would be based on the employee's hourly wage.

Chair Phinney asked Mr. DiAsio to confirm whether what Ms. Chambers explained was the intention with the motion proposed.

Mr. DiAsio confirmed yes.

Chair Phinney called for a second on the motion.

Ms. Schoen seconded the motion.

Chair Phinney called for a vote.

Shannon Chambers, Labor Commissioner - Abstain

Safiyyah Abdul Rahim - Nay

Michael L. DiAsio, M.D. - Yay

Barbara Carter - Abstain

Farren Epstein - Abstain

Gerardo Louis Gonzalez - Abstain

Maxine Hartranft - Yay

Stephanie Schoen - Yay

Sue Wagner – Nay

The motion did not pass.

Ms. Schoen asked if the topic may come up in discussion at a later date despite the results of the motion.

Chair Phinney stated the topic may be brought up for further discussion, however noted time constraints.

Pierron Tackes stated that board members are welcome to abstain from a vote as they see fit, however encouraged board members limit their abstentions to the extent they are required by the ethics and government provision--the abstentions required by law due to conflict of interest. Ms. Tackes clarified that board members are always able to abstain from a vote, even when not required by law, however, went on to say that board members were appointed to this public body to contribute their ideas and thoughts and encouraged them to limit the number of times they abstain from votes to the extent they are not required to do so by law. Ms. Tackes also stated that the topic can always be brought back for discussion on a future agenda to the extent additional discussion is wanted by one or multiple members of the board.

Chair Phinney noted the call for vote may have been premature, however confirmed the motion did not pass. Chair Phinney stated the topic was able to be placed on a future agenda or opened for further discussion and called for a motion to include the topic on a future agenda or any additional questions or information.

Ms. Schoen moved that the topic be included in the next agenda for further discussion.

Chair Phinney asked if there were any board members who would like to ask additional questions or have additional information distributed.

Farren Epstein stated desire to further understand the issue and requested documentation of the statute referred to in Ms. Chambers' presentation.

Mr. DiAsio requested information on the federal overtime rule.

Ms. Chambers confirmed she can send this reference to the board.

Chair Phinney stated Agenda Item 10 will be tabled for the next meeting for further discussion and possible action.

Agenda Item 11: Possible Action Item – Draft a survey of Nevada home care employers for the investigation of wages

Shannon Chambers, Nevada Labor Commissioner

Ms. Chambers stated she has seen the survey and is comfortable with the language if the board is also comfortable. Ms. Chambers said the original list the Labor Commissioner was provided consisted of 291 providers and stated the survey can certainly be emailed to those providers and be posted to the Labor Commissioner website. What is not able to be done by the Labor Commissioner is require an employee or worker to complete the survey and would be unable to pull every worker name from the providers to distribute the survey directly to employees. Ms. Chambers said the Labor Commissioner would be able to send the survey to providers to then distribute to their workers, however there is no requirement stating an employee would have to fill out the survey. The Labor Commissioner will make the survey as available as possible to providers on the original list and advise them to give to their employees to fill out, who can then send it back to the Labor Commissioner, but in terms of sending out notification that an employee would be required to fill out the survey, that is not possible. To the extent that the employee did fill out the survey, information would likely be public. Ms. Chambers reiterated that the Labor Commissioner is comfortable with the survey and is happy to distribute to see what the feedback is.

Chair Phinney asked the board if they have received the draft survey.

Mr. DiAsio said the board has not received a draft survey and noted the board was led to believe they would have participation in developing the draft survey, however, feels they have not had the opportunity to do so.

Chair Phinney confirmed that the draft survey is supposed to be the board's opportunity to contribute and develop the survey.

Maxine Hartranft asked who created the draft survey.

Chair Phinney stated the DPBH office created the draft and asked Ms. Samuels to prioritize sending the draft survey to the board as part of the materials for the next meeting. Chair Phinney stated the agenda item will need to be tabled for the next meeting due to the board not having seen the draft survey. The goal of the survey is to collect information from both employers and employees about the working conditions and wages paid, and that the survey will be a voluntary activity to collect as much information as people are willing to share. Chair Phinney said the board does have subpoena power, however noted preference to collect voluntary information before going to such lengths. One of the logistical complications of the projects is that the office is able through Medicaid to contact personal care agencies, however, does not have a mechanism to contact workers directly. The survey may be posted to a website that may be shared but DPBH cannot contact employees directly.

Mr. DiAsio asked why individual workers would need to be contacted.

Chair Phinney clarified that there are two sets of information to be gathered: a survey from employers and a survey from employees.

Mr. DiAsio asked how responses from employees would be verified to be credible if the survey is open to anybody.

Chair Phinney stated that the project is a survey and is not perfect information.

Mr. DiAsio said that if the survey is going through the employer, then the employer has a certain level of control over the information.

Chair Phinney stated that if the goal is learning an unvarnished version of certain information, then if the employer only has control over that information, there might be a difference in response from others who take the survey anonymously. Chair Phinney clarified the board's charge in SB 340 is to investigate matters related to the wages and working conditions of home care employees and stated that the survey is one of the mechanisms the board is contemplating to collect said information. If a survey is used to collect that information, the information must be presented in the board's findings that way, not as sworn testimony, and that there is no perfect control over the responses.

Mr. DiAsio noted his understanding that the survey was to be completed by the employers.

Chair Phinney clarified that there are two surveys: one for employers and one for employees, and stated there are mechanisms to distribute the survey to employers who then distribute to employees and have no control over how the employees answer the survey.

Mr. DiAsio stated concern over ensuring that survey responses were legitimate.

Ms. Chambers reiterated that there is no requirement for the employee to fill out the survey and thinks having the employer distribute the survey might be the better approach.

Chair Phinney asked for clarification on having the employer collect the information from employees.

Ms. Chambers clarified that the link to the employee survey would be given to the employers via the distribution list, and the employer would then distribute the survey to their employees to complete individually.

Chair Phinney stated her understanding of the goal of the project is to have two surveys.

Ms. Epstein stated concern over obtaining unrestrained information if the survey is distributed by the employer and asked if a survey could be put out by a union who has access to home care workers.

Chair Phinney responded that there was contemplation of a third party assisting in the distribution of surveys to employees. If a union or other third party has a mechanism to reach those workers, that is one way to do it.

Ms. Schoen agreed with Ms. Epstein on the quality of the survey responses when being distributed by employers, not everyone has a positive relationship with their employer. Anything that comes from the employer in these cases might be seen as a tool that would work against the employee. Ms. Schoen also voiced concerns over the fact that not all home care workers belong to the union, and that distribution through such entity might not be the best course of action to distribute the survey, since the union might be attempting to influence the survey responses as much as an employer might be trying to. Ms. Schoen recommended that as the survey is developed, that the board ensures that there is an outline stating the survey is neutral and that employers or unions will not see individual responses. Ms. Schoen also asked if the board could get a verification from employers that the survey was distributed to all employees.

Chair Phinney stated that if the sample size was large enough, then an individual should not be able to sway the overall information to the point where the information is no longer valid. Chair Phinney stated that there is access to the state biostatistician, and help could be obtained on ensuring the design of the survey is adequate to gain valid information. One option was also that the Labor Commission office would work on the employer survey while a third party or DPBH work on the employee survey. Chair Phinney restated that the board also needs to approve the

contents of the survey and asked the board members to consider how questions could get asked. Chair Phinney asked Ms. Chambers if she implied that the employers would not have control over the collection of employee data and therefore the ability to change those answers, only be able to distribute the surveys to employees.

Ms. Chambers confirmed Chair Phinney was correct and went on to voice concerns over confidentiality of the survey answers.

Barbara Carter asked if the discussion could be tabled until the next meeting when more information on the survey is available to the board.

Chair Phinney said that comments must be heard from board members wishing to contribute before moving on to other topics.

Ms. Schoen voiced concern over whether responses would be true to the opinions of those taking the surveys due to reluctance of repercussions, and suggested a question be put on the survey asking if anyone else attempted to influence responses given on the survey as a yes or no answer.

Ms. Hartranft asked for clarification that there are two different drafts, one for employers and one for employees.

Ms. Chambers confirmed that yes there are two drafts.

Ms. Hartranft agreed with concerns raised over distribution, however noted that the first step would be getting the survey finalized.

Chair Phinney asked for Ms. Tackes to weigh in on any aspects of the anonymity of the survey for the education of the board.

Ms. Tackes stated that to the extent that information is being submitted to any government entity, in this instance DPBH, it is presumed to be a public record. Ms. Tackes stated she is unaware of any provision of law that would make the survey confidential, so the presumption is that if someone or an entity were to request the information, it would be required to be disclosed by law. Ms. Tackes said that as the board is reviewing the survey draft, that it is fine to want to keep the answers anonymous for concern that the information would be subject to a public records request.

Chair Phinney asked if the survey could be drafted without identifying information for employees.

Ms. Tackes confirmed the survey could be drafted without identifying information for employees.

Safiyya AbdulRahim asked if each employer has a list of each employee.

Chair Phinney responded that employers have lists of their employees, however the government does not have these lists or access to them, so there are considerations on whether DPBH wants to take on that project or if the employees are comfortable with DPBH having access to those lists.

Chair Phinney confirmed the draft surveys will be sent to the board prior to the next meeting for further discussion and called for a motion to table the agenda item until the next meeting.

Ms. Carter moved to table the agenda item until the next meeting. Ms. Wagner seconded the motion. The motion passed unanimously.

Agenda Item 5: Informational Item – Living wage in Nevada and the implications of competing industries paying higher wages in relation to personal care agency workers

David Schmidt, Chief Economist, Nevada Department of Employment, Training, and Rehabilitation

Mr. Schmidt presented the [Home Health Aides & Personal Care Assistants Overview of Available Data on Employment and Wages](#).

Ms. Schoen asked that since many caregivers care for a family member with a disability, if there is data on how the cost of living differs for those with disabilities and the higher costs for their care, or what the living wage would be for someone with a disability or one adult who cares for someone with a disability.

Mr. Schmidt stated that he is unaware of data that would directly support those additional costs, however said one way to start to approximate this information might be to look at the living wage for two adults in a household with one working and compare that figure to the single working adult in a household figure. Mr. Schmidt said the board may pursue using the methodology available for calculating living wages for various circumstances to find an approximate value for the living wage necessary for one adult who provides home care for a family member, however there is not existing data that details the specific situation.

Chair Phinney called for any further questions for Mr. Schmidt. Hearing none, Chair Phinney called for statistician Vanessa Torti, Home Care Research and Policy Specialist for Service Employees International Union (SEIU), to speak.

Ms. Torti stated that the \$13.00 wage detailed in Mr. Schmidt's presentation is a national figure, and that Nevada has a \$1.33 lower wage than that figure. The salary that was reported in the presentation, which was just over \$27,000, was also based on national data and assumes a 40-hour workweek, however a conservative estimate is that half of the workforce is only getting part time hours. Public Health Institute (PHI) estimates the median earnings for a personal care worker in Nevada in 2019 was only \$15,500. In 2019 the U.S. Bureau of Labor Statistics (BLS) started to combine personal care aides and home health aides into one occupation, which skews

the wage data upward since medical home health is reimbursed at a higher rate, and consequently home health aides are paid more. In 2018, when the occupations were separate, the median wage for a personal care aide in Nevada was \$11.07, whereas the median wage for a home health aide in Nevada was \$13.44. Ms. Torti concluded that as the board continues their investigation into rates and wages, it is important to keep three things in mind- 1: use state specific data; 2: distinguish personal care from home health, which is regulated and reimbursed differently; 3: keep in mind the challenges that many workers are facing to gain full time hours.

Chair Phinney asked Mr. Schmidt if there are sources of Nevada-specific data to inform what Ms. Torti discussed.

Mr. Schmidt responded that this information is collected at the state level and at the MSA level and stated that all the information being discussed would be completely new in two days when the 2021 data is released. Mr. Schmidt stated that one reason why the personal care aide and home health aide professions are now reported together is the statistical challenge in reporting them separately. There was a lot of improper coding and assignment of employer data where there are overlaps between those occupations, resulting in a lot of volatility. The details behind the data collection are confidential and protected under federal law, so cannot be disclosed. Mr. Schmidt clarified that he thinks keeping in mind the pay and reimbursement rates between the two positions is valuable while considering decisions for the workers.

Chair Phinney stated that the board has a report of recommendations and findings due to the Director of the Department of Health and Human Services in December, and that the information being discussed will be part of that report with the caveats mentioned included as well. Chair Phinney also stated that updated figures will be needed once the 2021 wage data is released.

Mr. DiAsio stated his understanding for many agencies is that caregivers get to pick their assignments and choose how many hours they work a week, from his experience being between 20 and 25 hours a week. Mr. DiAsio said that for a worker not to get 40 hours of work a week is the worker's choice, and that agencies often beg employees to work 40 hours a week due to the current labor shortage. Mr. DiAsio said that the discrepancy between state and federal wages can also be because Nevada has chosen not to have a state income tax. The average employee age for Mr. DiAsio's agency is 55 years old and on average do not have children in their home, stating that because of this, the portion of the presentation detailing living wages for adults with children is not relevant to the industry as much as other parts of that chart. Mr. DiAsio stated the biggest constraint to the wages the home care industry faces in the state of Nevada is due to the Medicaid rates are below what they should be, and that agencies have brought the issue to the attention of the State of Nevada numerous times in the Legislature.

Ms. Epstein agreed with Mr. DiAsio on the issue of too low Medicaid reimbursement rates, however disagreed with Mr. DiAsio's statement on the 40-hour workweek. Ms. Epstein said her disabled son is granted 26.75 hours a week in care, however stated she is required to give her son nearly 24/7 care. Ms. Epstein said that if she were not present to provide that care, Medicaid would put her son in a nursing facility and pay for full-time care in a nursing facility, stating the 40-hour argument falls flat for many caregivers and that they work with what the state allows,

not what is desired. Ms. Epstein stated that many agencies do not want caregivers taking two clients or split hours if the employee is on different waiver programs.

Chair Phinney said the issue regarding the number of hours that are approved for a particular client has been mentioned, being an issue of Medicaid policy versus Medicaid rates, and how that interacts with the number of hours the individual works, as well as the difference between providing care for a family member versus a stranger, may all be reasonably addressed in the board report findings. Chair Phinney asked if anyone has a question or comment for Mr. Schmidt specifically before internal discussion continues.

Ms. AbdulRahim asked if the 2021 data will reflect inflation since the presentation consists of 2019 data.

Mr. Schmidt said the 2021 occupational wage estimates will be released in two days, however the living wage estimates were updated in the first quarter of 2020, so there should be updates on that information shortly as methodology is updated. The 2019 household data will likely not be updated for a while due to the pandemic; the Census Bureau will not be releasing data for 2020 on a one-year basis for the state, however, should expect 2021 data around December 2022 and these numbers are likely to experience the least change from prior figures.

Gerardo Louis Gonzalez recounted his situation as a quadriplegic person receiving care from his 77-year-old mother and stated the wage his mother receives is not enough to support both. Mr. Louis Gonzalez stated his mother is only allowed 35 hours a week at \$11.00 to \$11.50 an hour, and that is not a livable wage.

Chair Phinney asked the board if there were any desired future agenda items related to the topic and thanked Mr. Schmidt and Ms. Chambers for the presentation.

No motions were heard for future agenda items related to the topic.

Agenda Item 6: Informational Item – Presentation by the Bureau of Health Care Quality and Compliance on fines and enforcement actions in the home care industry

Paul Shubert, Bureau Chief, Bureau of Health Care Quality and Compliance

Mr. Shubert presented [Personal Care Agency \(PCA\) Sanctions and Citations](#).

Ms. Wagner asked for an example of where penalty charges would be \$400 versus \$1,000.

Mr. Shubert replied the fines were changed to where the \$1,000 fine is now the minimum. The instances of \$1,000 fines in the presentation are instances of multiple fines at the three or four level. The \$1,000 fine in the presentation could have been one deficiency at a four level, wherein major harm occurred, such as abuse. The \$400 fines presented, which are no longer available, but under the previous allowance for sanctions, would have been more the routine minimal harm or predictable harm citations.

Ms. Wagner asked if there was more current data than 2018.

Mr. Shubert replied that the last sanctions were applied in 2018 and the data is current to what is available. Personal care attendant agencies are only surveyed once every six years.

Ms. Wagner asked what the current top fee is.

Mr. Shubert replied the top fee is \$5,000 for a single citation, however if there are multiple citations that are at that level, there might be multiple \$5,000 fees. In any one citation, the fee is \$1,000-\$5,000, however there can be multiple citations.

Mr. DiAsio noted he was happy to see the list of last cited fines were brief and that shows that of all the agencies in Nevada, there were not very many penalties.

Mr. Shubert said it was a short list compared to other facility types, and that PCAs have not generated citations at sanction levels traditionally. Part of that may be associated with the level of services that are provided in that they are non-medical.

Chair Phinney stated that most of the citations were related to complaint investigations compared to periodicity investigations and asked Mr. Shubert to briefly describe the process a complaint investigation goes through, as well as describe a non-sanction level deficiency might be that was not seen in the presentation but could exist.

Mr. Shubert said one of the requirements for PCA agencies is to train employees regarding the services they provide, giving the example of a caregiver not receiving training for a certain service, such as bathing a client. If no harm was observed regarding that action, no citation at harm or predictable harm is issued, instead a citation is issued at the level of potential harm. Training is a requirement to prevent harm from occurring to a client, and if the training did not occur, there is a potential of harm, even if not yet realized, resulting in a level 2 citation. If there is harm, it is a level 3 citation. Level 2 is not a sanction level citation. The facility still needs to provide an acceptable plan of correction but will not get the monetary fine of \$1,000. Mr. Shubert said the difference between a complaint investigation and a periodic investigation is that an individual brought to the attention of the office that violation of regulations has occurred, including an incident that occurred in a facility, between individuals, from the media, or any of the many ways to intake complaints to perform an investigation. First step of this process is to look at the allegation and try to relate it to existing regulatory requirement, then develop a plan to conduct the investigation, which includes interviews, document review, and determining questions to ask individuals to discern if the facility was in compliance with regulations. The issue is not to substantiate whether an event occurred or did not occur, but whether facilities are in compliance with regulations. Compliance versus noncompliance. Periodic investigations look at a subset of the full set of regulations. The narrow focus of most surveys is due to a lack of sufficient staff or resources to conduct full surveys of every agency every time the periodic surveys are conducted. This is also why periodic surveys are not conducted more often, such as annual or even monthly. The subset of regulations and requirements surveyed is tailored to issues that most effect the clients. The goal is to ensure the safety of the clients in any survey that is

conducted. Along with analysis of the survey, personnel files, the actual care being given, home visits are also able to be done for PCA, however could be difficult to conduct as the client needs to give permission to do so. The goal is to look at a sample of clients being served and try to do as many home visits as possible to get a feel for how things are conducted onsite. All that information together with interviews and document reviews are combined to generate a statement of deficiencies.

Ms. AbdulRahim asked for confirmation on the fact that the only time an investigation is done is when someone makes a complaint.

Mr. Shubert confirmed that investigations are done when someone makes a complaint, periodicities are also done. On a rotating basis, all facilities should be inspected once every six years.

Ms. Wagner asked if periodicities are only done once every six years due to staffing.

Mr. Shubert confirmed the agency's resources do not allow for surveys to be conducted more often based on available staffing as well as the fees the agencies will pay for as far as the staff that are necessary to conduct surveys.

Chair Phinney asked if the periodicity is in statute or regulation.

Mr. Shubert replied that the periodicity is in neither statute nor regulation and is based on the workload study that is conducted to determine the fees for facilities. The budget that is approved then becomes the allowance the agency has for conducting surveys.

Chair Phinney asked the board for any items to add to future agendas in relation to the topic.

Ms. AbdulRahim asked to add an agenda item to discuss what would be needed for more frequent periodic surveys to be conducted without a complaint being made.

Agenda Item 8: Possible Action Item – Update on progress and possible action to make recommendations to the Director regarding the Medicaid Plan for Home and Community Based Services and American Rescue Plan Funding, and distribution of supplemental funds or personal care services

Phillip Burrell, Deputy Administrator, Division of Health Care Financing and Policy

Mr. Burrell reminded the board that the American Rescue Plan 2021 was implemented to address the COVID-19 Pandemic, and that Section 9817 offers a limited and unique opportunity to enhance, expand, or strengthen home and community-based services (HCBS) under the Medicaid program by authorizing a 10% increase in the Federal Medical Assistance Percentage (FMAP). The FMAP is increased for a limited time from April 1, 2021 to March 31, 2022 and must be used to implement or supplement one or more HCBS-related activities offered through the Medicaid program. Mr. Burrell noted caveats with the program in that there are limitations, such as the increase was designed and is only for HCBS activities. The initiative is also

temporary, in timing as well as scope. The program is limited to the period through March 31, 2022, however an additional two years from that point is allowed for initiatives and activities that continue to reinvest into the community. The program sunsets by March 2024 or when funds run out. Supplementals that will be discussed specifically are supplemental programs not as rate increases, but an effort to help address challenges and reinvestments of the HCBS community that have been presented through public workshop. Mr. Burrell listed the initiatives which have already been discussed with the board: \$500 payments, salvage of the PACE program, enhancement of advocate patient services, and supplemental payment to home care services providers.

Kirsten Coulombe reminded the board that during the last conversation on the topic, it was recommended that the Division take certain actions regarding the supplemental payments, which included the \$500 payments specific to the home care workers there was an application for that has now ended. There is now an initiative to create a document that summarizes the success of that program and to share information on the details of the qualifications and details of the program. Ms. Coulombe presented updates to the frequently asked questions (FAQ) sheet for the [American Rescue Plan ACT HCBS Initiative: 15-29% Supplemental Payments to Providers](#).

Mr. DiAsio said his agency had received payments for the program the prior two weeks and asked if there will be future payments.

Ms. Coulombe replied that the funding for the American Rescue Plan was able to be used retroactively to go back to April 1, 2021, and that those payments might have been from the retroactive dues and were split into two payments due to government fiscal years which would be from April to June, then July to present. Going forward, payments will be distributed quarterly based on pay claims.

Mr. Burrell confirmed Ms. Coulombe's statement that the multiple payments were to catch up on what was due and future distributions will line up quarterly going forward.

Mr. DiAsio asked if the payments covered the waiver programs at all or if they were only for Medicaid.

Ms. Coulombe confirmed payments were only for Medicaid

Ms. Wagner asked if, as detailed in President Biden's American Relief Bill, 15% goes to the providers.

Ms. Coulombe replied President's Biden's bill is an opportunity for states to have enhanced funding, and how the 15% was determined based on feedback received from a public listening session.

Ms. Wagner clarified the question of whether the amount goes to the provider.

Ms. Coulombe confirmed the payment does go to the provider because Medicaid has the relationship with the provider. The FAQ sheet details the intent of the 15%, however there is no mechanism to mandate that intent at this time.

Ms. Wagner asked if the preference that employees receive some of the payment was not able to be mandated.

Ms. Coulombe confirmed that there is no mechanism to mandate that employees receive a portion of the payment at this time, such as passthrough laws present in other states that require any type of reimbursement from Medicaid to be passed on to the workers.

Agenda Item 9: Possible Action Item – Discussion and possible action to create a working group to provide additional recommendations to the Director on the Medicaid Plan for Home and Community Based Services and American Rescue Plan Funding, and distribution of supplemental funds for personal care services

Farren Epstein, Home Care Worker Representative

Ms. Epstein moved for the board to establish a working group to create a set of recommendations to DHHS on how agencies should be instructed on spending Medicaid reimbursement payments going forward.

Ms. Schoen asked for clarification on the motion, as her understanding was that the work group would be to make recommendations for future activities, not current ones.

Chair Phinney clarified the agenda item and that it detailed the possible creation of an additional committee to provide feedback that cannot wait until the HCESB report is due in December. The recommendations are not binding but provide a forum to supply information.

Ms. Hartranft asked if it was possible to provide recommendations for current projects since funding has already been issued to providers and if the workgroup came forward with recommendations, there is no way for Nevada to implement or enforce them.

Chair Phinney stated the board can provide recommendations per SB 340, then Medicaid can determine whether a policy, regulation, or law change is required to implement those recommendations. Medicaid will not immediately have the authority required to enforce recommended changes, however there will be documentation on what the board indicated would be best, which will inform future decisions and may inform the next legislative session.

Mr. DiAsio stated the supplemental payment is to reimburse Medicaid providers during the COVID-19 Pandemic where additional costs were incurred.

Chair Phinney stated that though what Mr. DiAsio said is correct for the 15%, the agenda item is meant to address HCBS Plan and recommendations for the plan in a broader sense than just the 15% paid to providers. The workgroup could look at a larger umbrella of Medicaid work.

Mr. DiAsio reiterated that his comment referred to the fact that the payment was reimbursing costs that have already been spent during the COVID-19 Pandemic.

Chair Phinney stated preference for one member of each group represented on the board to join the subcommittee.

Ms. Wagner seconded the motion to create a subcommittee to establish a working group to create a set of recommendations to DHHS on how agencies should be instructed on spending these payments going forward. Motion passed unanimously.

Chair Phinney appointed Robert Crockett, Ms. Wagner, and Ms. Epstein to the subcommittee.

Ms. Wagner left the meeting.

Ms. Takes noted the subcommittee will be subject to Open Meeting Law just as the main board is.

Agenda Item 7: Informational Item – Status update: Nevada Medicaid Rates for personal care services to rates in other states

Phillip Burrell, Deputy Administrator, Division of Health Care Financing and Policy

Mr. Burrell summarized [Nevada Medicaid Rates for Personal Care Services \(PCS\)](#).

Ms. Coulombe said Nevada Medicaid has had many conversations about PCS rates, and understands the frustration related to the increases and cuts that have occurred with those services. Studies to look at the rate methodology are being conducted, and PCS has been added to that study due to the recommendation of the board. Research will be shared with the board as it becomes available. Ms. Coulombe also noted representatives from Nevada Medicaid will attend subcommittee meetings to contribute to those conversations as well.

Chair Phinney asked the board for questions for Mr. Burrell and confirmed with Mr. Burrell that the Nevada Medicaid Rates for PCS document will be distributed to the board after the meeting.

Chair Phinney asked the board for future agenda items related to the topic.

Mr. DiAsio asked whether the waiver programs, which are grossly under Medicaid rates, would be included in the document or if it needs to be added to the agenda.

Ms. Coulombe stated the information presented was for PCS in Medicaid, however, can look at information for waivers, and noted the process to obtain the information is done manually so reports take longer to create. Ms. Coulombe also said the rates study will have PCS services that include waivers (Provider Type [48](#) and [58](#) Reimbursement Schedules).

Chair Phinney asked when the rates study is expected to come out.

Ms. Coulombe said the estimated timeframe is approximately nine to twelve months.

Chair Phinney said the rates report will not be able to be used in the board report due in December and asked if it is possible for Medicaid to provide the rates for home care-like services that are in the waiver.

Ms. Coulombe asked Chair Phinney if the question referred to rates on fee schedule for PCS-like services.

Chair Phinney confirmed the information would be valuable to the education of the board and asked Mr. DiAsio what other information is being requested.

Mr. DiAsio stated the information would be a great place to start.

Ms. Coulombe stated the information will be sent out to the board.

Ms. Schoen stated concern over isolating types of care services and stated that all care services should have the same rate for Medicaid. Ms. Schoen asked if it would be possible for Medicaid to do their rate study, then give one standard for personal care services and suggested clarification on FMAP for members of the board who may not know what FMAP is.

Chair Phinney asked if there was a brief informational sheet on FMAP that could be sent to the board.

Ms. Schoen stated Kaiser Family Foundation has FMAP information for every state on their website.

Ms. AbdulRahim asked about technical issues with Medicaid that affect client logins impacting payment.

Chair Phinney asked if Ms. AbdulRahim was referring to the Medicaid Electronic Visit Verification System.

Ms. AbdulRahim confirmed.

Chair Phinney asked Ms. Tackes if concerns over challenges with the Medicaid Electronic Visit Verification System and recourse when workers are denied payment needs to be put on the agenda for a future meeting to discuss.

Ms. Tackes suggested adding the topic to a future agenda as current agenda items do not capture the issue.

Agenda Item 12: Possible Action Item – Discussion and possible action to define scope of information to be included in investigation, pursuant to Section 16 of Senate Bill 340 (2021) and determination of next steps

Cody Phinney, Deputy Administrator, Division of Public and Behavioral Health

Chair Phinney reviewed an [excerpt from SB 340](#) outlining purposes of the board and asked the board for questions and comments.

Ms. Schoen asked if Chair Phinney is requesting the board to justify why topics are agendaized and how they fit into the purpose of the board.

Chair Phinney clarified that the document is to show how topics will be referred to and referenced in relation to the final goal of producing the report to give to the Director that all must be completed during board meetings, raising concerns that it is already March and recommendations must begin forming.

Ms. Schoen stated she believes the subcommittee formed will address many of the concerns.

Chair Phinney clarified the subcommittee will be focused on the intersection of Medicaid HCBS that refer to items (e) and (g) on the document. Chair Phinney said there are items in the document that the board has not yet addressed, such as items (b) and (f) on the document, and asked the board what information and from whom do board members see being useful related to those items, stressing that the items to be addressed are broad and though Open Meeting Law affords everyone a voice, it also limits where decisions can be made. Chair Phinney voiced desire to outline agenda items based on how they fit into one of the items in the document and what the board needs to make recommendations.

Ms. AbdulRahim said the SB 340 excerpt helps guide the creation of future agenda items.

Ms. Schoen stated part of retention and recruitment should be ensuring support of higher education communities and asked if the board could invite a representative from the Nevada System of Higher Education (NSHE) to address possibilities of offering training for caregivers, perhaps using certified nursing assistant (CAN) instructors to offer personal care courses, stating once individuals have a course in the practice, they would be more interested in pursuing the line of work.

Chair Phinney said DPBH would attempt to get in contact with someone from the universities who has information on training related to personal care.

Ms. Schoen suggested someone from NSHE instead of the universities due to concerns of cost of universities versus community colleges and public-school districts.

Chair Phinney said a good place to start would be with the Office of Special Projects that does health care provider pipeline studies, who might be able to direct the board to those who have the requested information.

Ms. Schoen stated recruitment could greatly benefit from early introduction to the profession.

General Public Comment

Shawn Slatter asked why individuals not listed as speakers on the agenda and are not board members were called upon during various topics, while various owners on the call were not called upon and asked if there is a specific order individuals are called upon to issue comments and questions.

Chair Phinney stated if a request to make comment on a specific agenda item is received ahead of the meeting, or if the Chair needs help, individuals are allowed to speak during agenda items.

Mr. Slatter stated that never in the history of homecare have agencies had waiting lists for care recipients until now because agencies cannot get PCAs to work full-time hours. Requested a question to be added to the survey that asked if the worker is willing to work full-time. Mr. Slatter stated he is represented by SEIU and said not a single PCA agency in Nevada is represented by SEIU, and the only PCA agency that was represented by SEIU shut down due to union rules and regulations as well as expenses.

Pete Kuzmich stated the statistics presented in Agenda Item 5 are grossly skewed downward due to the fact of Medicaid providers and urged the board to consider the difference between those who do Medicaid services and those who do private pay, stating those who do private pay will not start work for less than \$15 an hour. Mr. Kuzmich stated the concept of the median wage being \$11 an hour does not match reality, and that the starting pay at his agency is currently \$16 an hour. Hopes that as surveys and other information is collected, that the board will get actual numbers from real companies that exist.

Gina Jolliff agreed with Ms. Epstein's previous comment that the amount of time given to many Medicaid service recipients is severely insufficient, while others are too much. Allowing agencies to give input may not be a bad plan. Ms. Jolliff stated the cost of living has gone up over 7%, and if people are trying to direct how money is spent, they need to understand how business works as well, saying while providers have been giving raises to caregivers, their costs have gone up four-fold for items such as PPE, workers compensation, and taxes.

Shanika Cooper said someone referred to SEIU, however there is no SEIU union for home care workers, and home care workers are being represented on behalf of SEIU. Would like to see as far as Medicaid, how the board plans on getting more hours for clients, not just PCAs, and asked if that was covered. Asked how calculations work for clients to get hours so PCAs get hours. If the clients do not have enough hours, they cannot give PCAs the hours to work.

Adjournment – Cody Phinney, Chair Designee

Meeting Adjourned at 5:08 p.m.