

Minutes

HOME CARE EMPLOYMENT STANDARDS BOARD

April 26, 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 2:02 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).

Agenda Item 2: Roll Call – Kayla Samuels, Management Analyst

Kayla Samuels reviewed expectations for the meeting and took roll call.

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
Robert P. Crockett

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

Kayla Samuels, Management Analyst, Bureau of Health Care Quality and Compliance (HCQC)
Kirsten Coulombe, Division of Health Care Financing and Policy (DHCFP)

OTHERS PRESENT:

Pierron Tackes, Attorney General's Office
Marlene Lockard, The Lockard Group
Shanika Cooper, Home Care Worker
Allan Ward, Home Care Employer
Kristi De Leon, Home Care Employer
Rosetta Love, Home Care Worker
Gina Jolliff, Home Care Employer

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

General Public Comment

Chair Phinney stated there will also be opportunity for public comment during Agenda Items 7 and 8 and called for any concerns or objections. None heard. Chair Phinney called for general public comment. None heard.

Agenda Item 4: Action Item – Approve Minutes from March 8, 2022 and March 29, 2022 Meetings

Chair Phinney called for edits or discussion on the March 8, 2022 meeting minutes. None Heard.

Chair Phinney called for a motion to approve the March 8, 2022 meeting minutes. Shannon Chambers made a motion to approve the March 8, 2022 minutes. Farren Epstein seconded the motion. The motion passed unanimously.

Chair Phinney called for edits or discussion on the March 29, 2022 meeting minutes. None Heard.

Chair Phinney called for a motion to approve the March 29, 2022 meeting minutes. Sue Wagner made a motion to approve the March 29, 2022 minutes. Ms. Epstein seconded the motion. The motion passed unanimously.

Gerardo Louis Gonzalez asked how many minutes there would be today.

Chair Phinney said there were only two sets of minutes to approve.

Agenda Item 5: Possible Action Item – Discussion and possible action to make recommendations regarding progress on end of year report to Director

Kayla Samuels, Management Analyst I

Chair Phinney introduced the agenda item and asked the Board to bring forth any questions, concerns, or information they have regarding the document detailing progress on the end of year report, noting the December due date and time constraint of the project.

Ms. Samuels presented the [HCESB Report to Director Progress](#) document and explained the document would be updated and presented each meeting as projects and information become available. Ms. Samuels explained the [Provider Type \(PT\) 48 & 58 Waiver Rates Compared to Wages table](#).

Maxine Hartranft explained the personal care services (PCS) rate on the table, \$4.39, was the figure for 15-minute intervals, not hourly.

Ms. Samuels adjusted the figure so it would reflect the hourly PCS rate of \$17.56.

Chair Phinney reminded the board that this is a learning process and staff are trying to find a mechanism to display the various information the board has collected, including Medicaid rates and the living wage that was presented by the State Statistician. Chair Phinney stated these discussions are obligated to be had in public during the HCESB meetings.

Stephanie Schoen voiced concerns over waivers that apply to group settings and asked what “PCW” stood for.

Chair Phinney stated PCW means personal care worker.

Ms. Schoen asked if the PCW rate was what was reimbursed to the agency.

Chair Phinney clarified that the PCW average wage was the figure provided by the State Economist as the median wage for PCWs, and that the PCS rate was what was reimbursed to the agency, which includes overhead for the agency. Chair Phinney stated staff are working to clarify the information the Board has received so far.

Ms. Schoen asked if the waiver for adult day care was for a group setting or individual, stating concerns over the rate being as low as it is.

Ms. Samuels stated the waivers included in the table were only those that have been provided to the board thus far.

Chair Phinney stated questions can be taken down in the minutes and staff can get more feedback and information to adjust the table. The information currently shown are all the waivers provided in the PT 48 and 58 from Medicaid. Nothing was left out, but if some of the information is not related to the discussion of HCESB, then that information could be removed for the final report.

Ms. Schoen stated day care implied a group setting and should not be included as it does not apply to the home care environment and that the group waivers that are so much below the minimum wage and are not applicable to home care.

Ms. Samuels stated any information that the board feels is not relevant to their discussion and recommendations can be removed. The main goal of the table as it stands is to combine all the information that has been given to the board thus far, such as the wages and any waivers

provided, into one resource. Ms. Samuels stated this resource can be adjusted and made note that any waivers for group settings will be removed.

Robert Crockett agreed with Ms. Schoen in that group waivers should be removed as well as the emergency response system. Mr. Crockett stated he would also like to work off the \$9.75 minimum wage most health care agencies work off as well as the minimum wage increases through 2024, saying it would be great to see how much the waiver rates are under the minimum wage if rates do not increase during future legislative sessions.

Ms. Samuels stated she will put the incrementing minimum wages through 2024 into the table.

Michael DiAsio asked if the Board wanted to go through the table to delete waivers that do not apply to their goals now.

Chair Phinney stated that in the interest of time, the Board may send their individual feedback after the meeting and can confirm with Medicaid.

Mr. DiAsio asked to bring up the Nevada Living Wage chart on the table.

Ms. Samuels stated the living wage figures were provided by the State Economist during the last HCESB meeting and have been updated to reflect the new amounts recently released.

Mr. DiAsio stated his impression of the typical caregiver for this agency, other agencies, and Personal Care Association of Nevada (PCAN) is two adults, both working, with no children, stating his typical caregiver is 55 years old, married, under their husband's health insurance, with no children at home. Mr. DiAsio said the survey might show this information out and stated maybe there can be a discussion with those on the committee who are caregivers.

Chair Phinney stated that there is nothing preventing the Board from having more columns with different scenarios, but that having the typical caregiver scenario is helpful.

Ms. Samuels stated that is why the various living wage scenarios are included in the document and that the table can be edited based on discussions from the Board on which figure is most accurate and helpful for these conversations.

Ms. Schoen voiced concern over the disparity of wages across different waivers and stated a recommendation should be that all waivers across the board should be paying the same rate for the same job so one group or demographic does not become favored. Ms. Schoen also stated she feels the minimum wage with insurance is an unfair thing to include, saying things should be gone about without considerations for the husband's insurance or children, saying workers should not be penalized on these factors.

Chair Phinney stated that the only place insurance makes a difference in the figures is the legally required minimum wage from the state law, stating that law-required number is different if the employer is offering insurance or not, regardless of if an employee utilizes that offered insurance or their partner's.

Ms. Schoen said she thinks that type of benefit package should be taken off the table for discussion and work on what would be an acceptable rate for caregivers before putting the cost of insurance on top.

Chair Phinney asked if Ms. Schoen's request was to use the minimum wage without offered insurance.

Ms. Schoen confirmed.

Mr. Louis Gonzalez shared his caregiving situation with his mother to highlight the differences from the typical caregiver Mr. DiAsio described.

Chair Phinney said the Board will have to come to a decision on what they want to use as a basis of comparison if the table is going to be used as a tool, stating the information cannot be customized to every individual situation, and what a reasonable look at the compiled population might be. It will not match up with every individual situation, as is one of the struggles of the public health work done by the Board.

Ms. Samuels clarified the wages initially included in the table, stating the minimum wage is simply what is required by Nevada law, and that if the majority of public care agencies do not offer insurance to their employees, then the amount can be changed to the minimum wage required without offered health insurance.

Chair Phinney asked if that other figure is \$9.75.

Ms. Samuels said the other figure is \$10.50 without offered health insurance, stating the increased minimum wage does not go into effect until July, reiterating she can include the increasing minimum wage data in the table. Ms. Samuels stated the Nevada living wage that was chosen was what was discussed during the last meeting as a good figure to represent caregivers providing for a family member, however reiterated the figure can be changed to suit the Board's needs.

Chair Phinney reiterated the Board's discussion to have the Nevada minimum wage figure be that without offered health insurance and reflect how that amount is currently proposed to change over time, and asked Shannon Chambers to confirm the increases in minimum wage.

Ms. Chambers confirmed the minimum wage will increase July 1st every year through 2024. Ms. Chambers stated July 1, 2022 will have minimum wage rates of \$9.50 with offered health insurance and \$10.50 without offered health insurance. July 1, 2023 will increase the amounts again, as well as in July 1, 2024, until requirements of [Assembly Bill 456](#) passed in 2019 are met.

Chair Phinney clarified that the minimum wage is not necessarily what the companies are paying, but just what is required by law. Chair Phinney stated the report will need to be very specific about what the numbers are representing, saying Mr. Crockett's comment about most

agencies using \$9.75 is different from what the law requires. Additional columns may be added; however, data is not yet available to support what the average wage is other than what was provided by the State Economist.

Mr. DiAsio said he does not see how the Board can pin down the living wage before the survey data is available to help inform the averages of the industry as a whole, stating the situation of the mother taking care of the son is not typical in the personal care industry.

Farren Epstein said the mother-son situation is typical.

Mr. DiAsio disagreed.

Chair Phinney stated the mother-son situation is not reflective of the most people in the industry, however absolutely happens.

Mr. DiAsio agreed with Chair Phinney and stated his agency has clients in that category, however stated the Board is talking about the industry as a whole, not just 10 or 20 percent of what is happening, stating he also feels the survey will show the Medicaid providers are just a small piece in the personal care agency (PCA) world.

Chair Phinney stated that according to the current number, most are enrolled in Medicaid, of those that are licensed.

Mr. DiAsio said he is referring to the number of clients who are receiving personal care services, not the number of agencies who are signed up for Medicaid, asking if the employees take care of a private client or one under Medicaid, stating there is only 10 percent government work, which is basically Medicaid.

Chair Phinney stated hopes that the survey will inform that as well.

Mr. DiAsio stated how he feels the chart cannot be done until the Board gets survey results.

Chair Phinney reminded the group that purview of the Board is state-funded services, so HCESB is highly focused on Medicaid.

Mr. Louis Gonzalez voiced that woman receiving a lower pay if they are on their husband's insurance is unfair.

Chair Phinney stated the laws do not have any allowance for considering that and thanked Mr. Louis Gonzalez for his comment. Chair Phinney asked the Board if the type of comparison in the tables helps at all and asked whether staff should continue to try and work on refining the spreadsheet with additional columns.

Ms. Epstein stated the item should be tabled until survey results are in.

Chair Phinney stated the Board is not finalizing anything today, but is giving feedback so she and Ms. Samuels can keep working on the table and collecting more information in between meetings. Feedback has been heard and the Board does not need to take a finalizing action. The table is for the HCESB final report and is intended to help the Board understand the information being worked with.

Ms. Samuels stated she will remove any waivers or group settings and add columns that detail the raising minimum wage through 2024. Ms. Samuels said to comply with Nevada Open Meeting Law, she will be sending out and posting a draft version of the document as it stands, however welcomes additional feedback as the document evolves.

Ms. Schoen asked if the Ms. Samuels is soliciting feedback to be included from the Board.

Ms. Samuels confirmed.

Ms. Schoen asked for information to be included comparing wages of home care employees to those of competing industries who recruit from the same base of potential care givers.

Agenda Item 6: Possible Action Item – Discussion and possible action to make 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 briefly reviewed [Nevada Revised Statutes \(NRS\) 608.018](#) and stated it has been the statute in Nevada for over a decade, so the Labor Commissioner does not have data on how the NRS impacts employers. Ms. Chambers said the Labor Commissioner has heard from employers, especially small employers and employers that have a lot of employees on shift work, that the 8-hour overtime rule does create issues in scheduling employees, making sure there is coverage, and purposely not calling in employees to work to avoid overtime. The Labor Commissioner does enforce overtime; however, the law does create issues. The Labor Commissioner does not have absolute data on how the law impacts employers and employees, however Ms. Chambers said she has heard stories from employers that the law does impact their business. Ms. Chambers stated the Nevada Legislature has talked about the law before in 2015 in an attempt to change the statute, but the bill did not go anywhere. Ms. Chambers briefly reviewed the [2021](#) and [2022](#) State of Nevada Annual Bulletin on Daily Overtime and stated the cutoff amounts for the daily overtime rule will increase as the minimum wage increases. Ms. Chambers stated she is always asked how many people make below the daily overtime cutoff and are subject to daily overtime, however said she does not have any independent data on that topic and maybe the State Economist can look at the question. Ms. Chambers said Nevada is only one of two places in the country who has the daily overtime rule, the other being Puerto Rico. All other states have moved towards overtime only for working more than 40 hours in a week. The Labor Commissioner does not take a position one way or the other, and just enforces what the current law is and if the Board wants to make a recommendation to change this law, the

Labor Commissioner would not take a position on the matter. The Labor Commissioner would also not be introducing a bill draft request, as stated in the prior meeting. Ms. Chambers said what this board needs to recognize and remember is that each year that the minimum wage goes up, the daily overtime cutoffs go up, so the employer will have to pay more than those amounts each year to avoid daily overtime, and that does have potential ramifications for the employer. Ms. Chambers reiterated the Labor Commissioner will not take a position or make recommendations on the topic but is happy to answer any questions.

Chair Phinney asked for any comment on whether the daily overtime rule provides challenges.

Ms. Schoen said the daily overtime rule creates big challenges and stated as a caregiver who lives with a person being cared for, sometimes care needs pop up at all times of the day and week. When there is nobody around to provide overtime, a caregiver can be up for a couple of hours in the middle of the night performing caregiving tasks, and the daily overtime rule is very inflexible when it comes to these situations. Ms. Schoen stated the law also affects an individual's control over what gets done, when it gets done, and who performs the services. It is not conducive to person-centered planning, where a person does not get to control how long a caregiver is there for. Ms. Schoen recommended that the Board make a recommendation to support whatever legislation might be recommended to oppose the daily overtime law.

Chair Phinney clarified the Board may only make recommendations to the Director, however, understands Ms. Schoen's point on inflexibility.

Mr. Crockett said for his employees, it comes down to control over their schedule and being able to move stuff around and feels a little bit unfair for them. Mr. Crockett also said the daily overtime rules makes it so employers have to tell employees to use paid time off or not get paid if they want to move their schedules around to avoid overtime. Mr. Crockett said he does not know what the best answer is but suggested the ability for employees to opt out of the 8-hour rule. For the most part his employees would be affected by schedule flexibility, not that agencies are forcing employees to work 14 hours a day at regular pay.

Ms. Hartranft echoed Mr. Crockett and Ms. Schoen's sentiments on the issue. The bottom line is it limits consumer choice as they cannot schedule hours in the way they want to, because agencies do not get compensated for overtime, most take the stance that overtime cannot be allowed due to loss of money. If an employee wants to pick up extra shifts, employers cannot allow it over eight hours in a day.

Chair Phinney asked for clarification on whether the rule was only for more than 40 hours in a week, that would be more flexible.

Ms. Hartranft confirmed the 40-hour rule only would be more flexible, stating an employee or consumer could choose where to have their hours.

Ms. Epstein asked whether the overtime rule could be rectified in a care plan rather than changing the whole law.

Chair Phinney stated a care plan is for the recipients, the payment of overtime cannot be rectified in a care plan. The agency is responsible for the payment of workers and any overtime. If a recipient needed more than eight hours of care, that could be handled by two workers to avoid overtime. The flexibility is limited for the recipient of services and the provider.

Ms. Chambers stated she explained issues with shift work and call-ins, using the restaurant industry and workers calling out due to COVID as an example of how the daily overtime rule does not offer flexibility for worker coverage, as employers cannot afford the overtime for working more than eight hours in a 24-hour period. As much as employers plan to avoid this issue, it does come up.

Ms. Wagner said she does not have a problem with the daily overtime rule and would prefer to leave the law as is.

Chair Phinney stated there had previously been a motion on the issue, and the topic was brought back to make sure members of the Board had more information on what the current law is. Chair Phinney asked if someone wanted to make a motion or leave the topic at this time.

Ms. Schoen asked what the ramifications are for keeping the law the way it is and the ramifications for personal care employees and care recipients if the law were to be changed. Ms. Schoen asked if a request for an exception to state law can be made for the private care industry. Ms. Schoen stated her strong support of changing the daily overtime law, citing that there has been a shift from institutional to in-home care, but the laws have not caught up yet. The change would be beneficial for all parties involved.

Mr. DiAsio said he made the motion at the last meeting to make a recommendation that Nevada overtime law be changed to match the other 50 states and asked if he could resurface the motion, stating he cannot imagine that the other 50 states are wrong on the issue.

Chair Phinney asked Mr. DiAsio to clarify that his motion.

Mr. DiAsio made a motion to change the Nevada daily overtime laws to be the same as the other 50 states.

Chair Phinney voiced concern over lack of information provided on what the other states' labor laws are, so board members would not know exactly what they are voting for. Chair Phinney also clarified that the Board may only make recommendations to the Director in a statement that HCESB supports the change; only the legislature can change the law.

Mr. Crockett asked if the Board was asking for the law to be changed state-wide or asking for an exception to the law for the personal care industry.

Chair Phinney asked in the interest of time that the Board table the agenda item and prepare a formal written recommendation that the Board can vote on in May.

Ms. Chambers stated that going forward, the motion should be a simple recommendation that if there is a bill draft request in the Legislature addressing the daily overtime law, that HCESB would support review of the 8-hour overtime rule. Suggesting exceptions without a bill draft at this point would be getting too far ahead.

Chair Phinney stated HCESB does not have bill draft requests, and said a recommendation needs to be formulated that can be put in the report to the Director.

Ms. Hartranft asked if a motion could be emailed for future meetings.

Chair Phinney stated a recommendation is needed that is specific enough to include in the report so other members of the Board can understand what they are voting for or against.

Agenda Item 7: Possible Action Item – Discussion and possible action to make recommendations to draft survey of Nevada home care employers for the investigation of wages

Shannon Chambers, Nevada Labor Commissioner

Chair Phinney stated importance of getting the surveys finalized and that Ms. Chambers confirmed her office will host a link to the employer survey. Chair Phinney reiterated that public comment will be allowed after board discussion on the two survey agenda items.

Ms. Chambers reiterated that the Labor Commissioner will post the employer survey on their website and make every effort to email the survey to the 291 providers received. Ms. Chambers stated the Labor Commissioner office will announce the survey as well as bring it up in Department of Health and Human Services trainings.

Chair Phinney asked if the Board has had a chance to review the survey and asked for specific feedback on the employer survey.

Mr. DiAsio suggested to add the question “Are you accepting new Medicaid clients?” and to repeat the question for each subsequent category.

Chair Cody asked for any objections to the addition. None heard.

Mr. DiAsio suggested to add a line inquiring about the Veterans Administration (VA) program.

Chair Phinney asked if Mr. DiAsio means to add a question asking what percent of clients are VA.

Mr. DiAsio confirmed. The same questions but aligned for the VA program. Mr. DiAsio also requested the following question to be added at the end of the program section: “If you are a Medicaid provider, do you feel reimbursement rates help or hurt what you are paying in caregiver wages?”

Chair Phinney voiced concerns over the wording “do you feel.”

Mr. DiAsio suggested taking out the word “feel” changing the question to “Do Medicaid reimbursement rates help or hurt in what you are paying in caregiver wages?”

Chair Phinney asked the Board if there are any feedback or thoughts on what Mr. DiAsio has proposed so far.

Mr. Crockett asked if a question can be added asking employers if pay rates differ based on the waiver program employees are under.

Chair Phinney asked if the question “Do you pay caregivers a different rate based on the payment source of the recipient?” is reflective of Mr. Crockett’s request.

Mr. Crockett stated it is a Medicaid question, as it refers to waivers, “Do you pay caregivers a different amount based on the service the recipient is receiving?” Mr. Crockett also requested the following questions to be added to the worker survey: “Were you offered healthcare benefits? Were you offered retirement benefits?” Mr. Crockett stated he makes four times as many offers as accepted.

Ms. Epstein asked if requesting revenue and expenses was an easier way to get to the bottom of this information.

Ms. Hartranft asked if the margins are public, stating if the agencies are answering what the pay information is, and the Board knows what the Medicaid rates are, then that should give an idea of what margins are.

Ms. Epstein clarified that she wants to see a vibrant home care industry and wants the businesses to make money but feels a lot of questions are being asked on the employee side of different things they need.

Ms. Wagner agreed with Ms. Epstein and stated she feels to accomplish the job of the Board to recommend the proper increases in Medicaid rates, the survey data is required.

Ms. Schoen agreed with Ms. Wagner and asked why the employers are being surveyed and not the employees.

Chair Phinney clarified that there are two different surveys, one for employers and one for employees, and that the employee survey will be addressed next.

Ms. Schoen said though the Medicaid rates are important for the employers, the employees are more so the focus of the Board to begin with.

Chair Phinney stated the exercise of having an employer and employee survey is comparing the information to see where things align and where they do not.

Ms. Epstein reiterated wish for a vibrant private health industry but stated a need for financial information to be supplied directly instead of reading between the lines.

Chair Phinney agreed with Ms. Epstein that the Board has a common goal of making a viable industry with adequate reimbursement.

Ms. Epstein stated she would like to see something with revenue and expenses.

Chair Phinney asked Ms. Epstein if she is recommending a total revenue and expenditures question.

Ms. Epstein confirmed stating the question could be optional.

Ms. AbdulRahim agreed with Ms. Epstein's proposal for revenue and expenditure questions.

Ms. Schoen expressed desire to keep the survey simple and limit the number of questions, as employers would not have the time or desire to answer too many questions.

Chair Phinney said the Board can look at where other access to information is available and State agencies will continue to do that. Chair Phinney called for public comment on the employer survey.

Allan Ward introduced himself as an employer in the private pay marketplace with Home Instead. Mr. Ward said he would be happy to provide general ideas of operating costs to a business from a PCAN perspective to deliver services on the private side. Mr. Ward stated the Board might be able to require a Medicaid provider to take the survey since they take funds from the State, however, to ask a private provider to spend time and energy on the survey, there needs to be a reason why and explanation how it will benefit them. Employers need to know what the information is being used for and how businesses will be incentivized to disclose private information. What are we getting out of it and what are they going to get out of it?

Marlene Lockard introduced herself representing Service Employees International Union (SEIU) and said she took place in the development of this legislation and every step in its creation, and the whole idea was to get the data and information accurately so everyone could work to improve the reimbursement rates for the providers. The incentive is so there can be consensus among employers and employees that this is a critical issue that the Legislature must deal with. Without all the data to support the elements of analysis, the board cannot do their job properly. The questions are very important. Anecdotal evidence is not helpful, collective evidence is needed. Ms. Lockard asked the board to add questions to get there.

Evan Gadda stated the survey is good, but the Board needs to be careful how many questions are asked at this point and the laws.

Ms. Wagner stated she thinks the survey should be mandatory.

Shanika Cooper said the issue is not whether employees are being offered medical or not, but whether employees can afford those benefits if it is being offered.

Kristi De Leon stated she has not seen all the survey but asked if the survey question regarding required training could be broken down into individual trainings, such as PCA or CPR certification. Ms. De Leon said she believes the survey should be mandatory so all needed information can be collected. She does not care how long the survey is if it will make an impact on the rates for the agency and improve the field altogether.

Chair Phinney asked whether some of Ms. De Leon's comment was regarding the employee survey.

Ms. De Leon clarified the question on the employer survey she was referring to training.

Chair Phinney called for any further public comment on the employer survey agenda item. None heard. Chair Phinney asked if the survey included questions on revenue and expenditures, if making those questions optional would be a reasonable compromise.

Ms. Hartranft agreed.

Ms. AbdulRahim disagreed.

Chair Phinney said that in fact, all the questions are optional. No one is required to answer any questions. If the Board adds financial questions to the survey, but do not force the answer, then information can still be provided where willing.

Ms. AbdulRahim asked what the difference between would be just adding the question without making it optional and making the whole survey mandatory.

Chair Phinney stated she does not have a mechanism to make the whole survey mandatory.

Ms. Wagner asked if the Board may recommend that the survey be mandatory.

Chair Phinney asked for clarification.

Ms. Wagner stated she does not think the survey should be optional, and that it should be mandatory.

Chair Phinney said she is not aware if either Ms. Chambers or herself have a mechanism to have non-government agencies be required to complete the survey.

Ms. Chambers confirmed Chair Phinney's statement and said there is nothing in [SB 340](#) stating employers were required to complete the survey, and there is currently nothing under labor statutes that require employers to complete surveys. Employers are required to provide employment records, but that is a different issue.

Chair Phinney reiterated that as a compromise solution, DHHS can communicate the survey and encourage Medicaid providers to participate, that Ms. Chambers has agreed to communicate to the entire agency, and HCQC can help communicate the survey is available. Suggested questions can be included, and the Board can then use the information that can be collected to inform recommendations to the community. Some information is a great deal better than not having any. Chair Phinney asked for Ms. Wagner's thoughts.

Ms. Wagner said she will likely abstain from any motion.

Mr. DiAsio said that if the Board is going to say that questions are optional, then can there be information at the top of the survey answering whether any question is optional. Mr. DiAsio also stated that when talking about any financial information, that all he thinks is pertinent is the gross margin and if the Board is asking for the gross margin, the survey should include a definition to ensure all agencies are giving the correct figure.

Chair Phinney agreed that the Board would not want employers giving different figures than what is being asked due to confusion.

Mr. DiAsio said he is happy to assist in creating that definition.

Chair Phinney asked if Pierron Tackes was present.

Ms. Tackes confirmed.

Chair Phinney asked if abstentions affected quorum for what is required to pass a motion.

Ms. Tackes stated a majority of quorum is needed to pass for any motion and is only affected when a member is required to abstain by law pursuant to the Ethics and Government Act.

Ms. Samuels said the full board is present in the meeting.

Ms. Tackes said the only time quorum would be reduced is when abstention is required by law, which is triggered by a conflict of interest.

Ms. Wagner said in the Legislature, a member could abstain for reasons other than conflict of interest.

Ms. Tackes stated the Ethics and Government provisions codified in [NRS 281A](#) specifically outline when an abstention is required by law. Members of public bodies are always given the option to abstain, it will just not affect quorum, or the number of votes required to pass a motion. Part of the policy reason behind that is that individuals have been selected serve on a public

body, so their input is valued whenever an action is brought before that public body. Anyone is always able to abstain, but those abstentions will not reduce quorum for the purpose of voting.

Chair Phinney said the addition of either a revenue and expenditures line or a gross margins line with a definition of gross margins is the recommendation for addition to the survey and asked to hear from the Board members.

Ms. AbdulRahim suggested adding both options. The information is important, and even if optional, if need be, can help the Board understand employee wages.

Ms. Epstein requested to make a motion to pass the employer survey with the additions.

Mr. Crockett said when talking about total revenue, since it is typically a mix across different payers, it starts to lose its meaning. Once you know what the average employee wage is, you are close to calculating the gross margins. With corporate structures of the agencies, the key indicator when looking across Medicaid is the Medicaid rate and caregiver rate, which can be compared across all the different states. That number means more than other figures. By the time labor costs are calculated, the total is in the 80s for a percentile of the reimbursement rates.

Chair Phinney said what the Board can get is Medicaid's payment information about services. There is a lot of rich data that does not need to be provided by the employers directly. The surveys are a portion of what can be collected. There is a motion to add the two questions about revenues and expenditures and pass the survey. Chair Phinney asked for a second to Ms. Epstein's motion.

Ms. Hartranft asked for confirmation that the survey has to be optional.

Chair Phinney took the additional public comments requested.

Ms. Lockard recited Section 16.3 of SB 340 stating the Board shall have power to issue subpoenas for materials relevant to their investigation. Requiring the survey is completed is within HCESB powers.

Mr. Ward asked the Board if they are going to subpoena every provider in the state, stating that maybe on a Medicaid end since state money is being taken, something can be mandated. Private sector independent companies cannot be mandated to give any information. Mr. Ward suggested changing the approach to convey why completing the survey will benefit these providers and work on why they should fill out the survey.

Ms. De Leon asked if comments regarding the rates and wages chart was being accepted.

Chair Phinney informed Ms. De Leon that only comments regarding the employer survey were being accepted at this time, but there would be opportunity for any public comment at the end of the meeting. Chair Phinney asked Ms. Tackes to speak to the subpoena power given to the Board.

Ms. Tackes said the Board may request information from any State agency, and those State agencies are required to provide that information. Ms. Tackes reiterated the discussion is the Board hopes to get information from private agencies and wants to mandate that information is provided from them. There is nothing in the Bill that places a mandate on private agencies to provide information when requested by the Board. The Board does have authority to issue a subpoena to agencies, however the subpoena process is onerous. The Board has the authority to issue subpoenas to every single private agency in Nevada, but the agencies have the ability to take those subpoenas to court and quash them.

Ms. Lockard clarified that she is not suggesting the Board subpoena information. Ms. Lockard is suggesting everyone work together to ask the employer for the survey information and believes there may be authority to make the survey mandatory.

Chair Phinney said if the Board said the survey was mandatory, she was looking for the authority the Board would have to do that. Options are to send out a request for information in the form of a survey. If people do not respond, the option would be to theoretically subpoena the information from each of the 291 agencies. Chair Phinney said getting the information that is available voluntarily plus the information offered from the industry might be useful towards the year end report. Chair Phinney returned to the motion made by Ms. Epstein to approve the survey with noted additions.

Ms. Samuels asked the Board to clarify whether the motion included all additions discussed by Board members during this agenda item.

Ms. Epstein confirmed the motion includes all suggested additions to the survey.

Ms. Wagner asked Ms. Epstein to repeat the motion in its entirety.

Ms. Epstein made a motion to pass the employer survey with all suggested additions from the Board.

Ms. Wagner asked if the survey, particularly the financial questions, would be optional.

Ms. Schoen said she thinks the motion needs to include whether the survey will be optional or mandatory, also saying the survey needs to include text explaining to agencies their role in ensuring a robust industry and the benefit of answering the survey to them.

Chair Phinney said her understanding is that the information that would be shared, the cover letter so to speak, would include such information about the Board and why the information is being collected, and asked Ms. Chambers to confirm this was possible with the survey hosting software.

Ms. Chambers confirmed.

Chair Phinney stated there was a motion to approve the survey with the additions discussed and a cover information that explains the purpose of the Board and the purpose of the survey and collecting the requested information. Chair Phinney asked if this was correct.

Ms. Epstein confirmed.

Chair Phinney called for a second to the motion.

Ms. Schoen seconded the motion.

Chair Phinney called for a vote. The motion passed with one abstention.

Agenda Item 8: Possible Action Item – Discussion and possible action to make recommendations to draft survey of Nevada home care workers for the investigation of wages

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

Chair Phinney stated the agenda stated the item would be led by Ms. Chambers, however stated that was a mistake and she would be leading Agenda Item 8. Chair Phinney stated the employee survey will contain cover information about the purpose of the board and purpose of the information being requested. The survey will be hosted by DHHS, DPBH in particular, and employers will be provided a link to provide to their workforce. The link will also be publicized for personal care workers on public State websites. The idea is to get an overall picture of the workforce and their feedback on how much they are being paid, benefits, and perceived needs in the workforce.

Ms. Wagner said the survey is important and would support the survey.

Chair Phinney asked for specific feedback and suggestions on the survey. When the data is aggregated, it should provide a picture of the overall workforce. Chair Phinney noted public comment related to the employee survey will be called on shortly.

Ms. Hartranft asked if “EVV” in one of the questions should be clarified to changed to Authenticare.

Chair Phinney stated the government calls the system EVV and the vendor is Authenticare. Chair Phinney expressed understanding that some agencies may use different language.

Ms. Hartranft asked if the survey could ask what system workers use.

Ms. AbdulRahim stated Authenticare.

Ms. Schoen said there is currently an effort to give feedback on the Authenticare system, as it is rife with problems, but it would be useful to know which programs are being used and what problems workers are encountering. Ms. Schoen stated she feels such information is important to HCESB work but asked for confirmation as to why it is important.

Chair Phinney stated the EVV question is aimed at identifying if individual workers have had a challenge with the system, saying she believes Ms. Hartranft's question was what employees call the system. Chair Phinney also noted Authenticare is specific to Medicaid.

Ms. Schoen stated throughout healthcare industry the system is called EVV.

Ms. Epstein said most home care workers recognize the system as EVV.

Chair Phinney called for any other specific questions, additions, or deletions from the Board.

Ms. Schoen asked if there was a question that asked the employee if they know which waiver they are working under and if they were offered higher wages to take different clients under different waivers.

Chair Phinney said there is not a question under that effect.

Ms. Schoen asked if it would be helpful to add.

Chair Phinney asked if this was an issue in the industry and that she was not aware of it.

Ms. Schoen said someone had told her that different waivers pay different wages.

Chair Phinney stated she has not heard of the issue.

Ms. Hartranft stated agencies may do that because they receive lower reimbursement rates, so they will tailor their wages based on the reimbursement rates from the state. Some of the programs have lower reimbursement rates, so agencies pay less for those services.

Ms. Schoen said the question is if you are a care worker for that agency, has the agency tried to push you into lower wages because they are getting paid less. It would be good to have data on that from the employee's perspective and what they have experienced.

Chair Phinney said the recommendation is to add parallel questions to those added to the employer survey and asked Ms. Schoen if that is correct.

Ms. Schoen confirmed, stating the employers may think they are doing one thing but may be coming across as another to the employees.

Ms. Samuels asked for confirmation whether the parallel questions were just concerning waiver rates and pay, or if the Board would also like to add questions asking which waivers employees are getting paid from.

Ms. Schoen said there are different types of PCAs. Employees might be making less depending on the type of agency they work for, and with the different types of providers, employees may not know what type of provider they are working for.

Mr. Crockett asked to add a question asking whether the worker was a family caregiver to get an idea of how many family caregivers are in the Medicaid program.

Chair Phinney asked for any concern about adding Mr. Crockett's question.

Mr. Louis Gonzalez said Mr. Crockett's question is valid and would be useful.

Ms. Hartranft asked if the employee survey asks whether a worker works under private care or Medicaid.

Chair Phinney said the survey does not ask this information from employees.

Ms. Hartranft stated this would be important to ask, as private pay versus Medicaid affects things like pay rate.

Chair Phinney asked the worker representatives if this information is always clear to the workers.

Ms. Epstein said the information would be clear to the worker.

Ms. AbdulRahim said the question would be valid and suggested adding it.

Chair Phinney clarified the question would ask if workers cared for Medicaid clients, other payer sources, or both. Chair Phinney called for public comment regarding the employee survey.

Ms. Cooper asked if she could see the survey.

Chair Phinney stated the draft surveys are posted on the HCESB website and said that would be the best way to see the whole draft. Chair Phinney said if there was a specific thing Ms. Cooper would like to see, Ms. Samuels can scroll to that section. Chair Phinney called for any other public comment regarding the employee survey.

Ms. De Leon stated there should be a question about the different pay rates. Different wages are paid for different waiver rates. Ms. De Leon asked if family dynamics may be asked to determine what that looks like for workers.

Chair Phinney said the reason family dynamics questions are not on the survey is to protect the anonymity of workers so they may answer without fear of repercussions. Chair Phinney asked for a motion to approve the employee survey for distribution on behalf of the board with the additional questions suggested.

Ms. Hartranft so moved.

Ms. Epstein seconded the motion.

Ms. Wagner asked for the motion to be repeated and for the suggested additions to the survey.

Chair Phinney said the amendments included adding questions about the different types of services that the workers are reimbursed for and asked Ms. Samuels to assist in recounting the other suggestions.

Ms. Samuels said the suggestions include cover information on what HCESB is and the purpose of the information, parallel questions from employer survey regarding perception of whether payment is affected by waiver rates, a question asking whether the worker cared for a family member, and if the worker is paid through Medicaid, payer services, or both.

Chair Phinney asked for a second to the motion to approve.

Ms. AbdulRahim seconded.

Chair Phinney called for a vote, which passed unanimously.

Agenda Item 9: Possible Action Item – Discussion and possible action to make recommendations to Director regarding required paid time off (PTO) rules for personal care agencies (PCAs) and PTO requirements for all PCASs

Shannon Chambers, Nevada Labor Commissioner

Chair Phinney asked Ms. Chambers if she was wanted to discuss the agenda item.

Ms. Hartranft asked if all agenda items need to be heard during the meeting.

Chair Phinney said the Board does not need to hear all items on the agenda during this meeting, and if there is a motion to table any of the items, they can be heard at the next meeting. Chair Phinney asked the Board if there was interest in tabling Agenda Items 9 and 10.

Mr. Crockett moved to table Agenda Item 9, however would like to hear Agenda Item 10.

Chair Phinney called for any objections to the motion. Hearing none, the item was tabled.

Agenda Item 10: Possible Action Item – Discussion and possible action to make recommendations to Director regarding legality of having contract workers (1099) operate under the license of a personal care agency

Shannon Chambers, Nevada Labor Commissioner

Ms. Chambers said in the Nevada Legislature, every session since she has been Labor Commissioner, has developed a new presumption for who is an independent contractor and who is not. Where the Labor Commissioner typically comes down on independent contractors is that they are 100 percent allowed by law. Ms. Chambers said independent contractors serve a vital role in the economy and has never been on record saying independent contractors are not

allowed. When it comes to independent contractors in the personal care industry, the Labor Commissioner has had several cases where there are individuals who are under the control and custody of an entity or person, so the Labor Commissioner looks at various factors where if an individual is being told where to work, what time to work, is being provided equipment, and is being told how to do their job, the Labor Commissioner has held that person is an employee of the agency and cannot be an independent contractor. The decisions are on a case-by-case basis, not an advisory opinion the Labor Commissioner has issued, because there are different presumptions that have to go through to establish whether someone is an independent contractor or not. Another key indicator someone is an independent contractor is any type of professional license. The main point of an independent contractor is that they are truly independent and can work for multiple entities or people and are not tied to one employer. Ms. Chambers cited a key case from the Nevada Supreme Court when an Economic Reality Test was imposed where if an individual is dependent on a specific entity or person for income and wages, they are likely to be an employee. Ms. Chambers said there has been a huge amount of activity and case law concerning Independent Contractors. It was thought when President Biden took office, that the Federal Department of Labor was going to move to a presumption that basically everyone was an employee unless proven otherwise, but that has not happened. At the federal level, there is currently a standstill and federal government is deferring to the states for their own law and case law. What the Labor Commissioner looks at, and what has been found in cases where individuals working in the private care industry are in fact employees, is if the person is being told where to work, how to work, what type of equipment to use, and is being given a uniform. Cases where the worker is using their own care and picking their own hours is not good enough. If an entity or business owner are controlling someone, and they are working technically under the business' agency license or direction, the Labor Commissioner will most likely find the individual is an employee, but it is a case-by-case analysis. Ms. Chambers said members of the Board can ask very specific questions and she is happy to answer now or offline. Ms. Chambers reiterated that control, custody, and direction are key factors, along with now looking at the Economic Reality Test. Ms. Chambers clarified she is not saying the private care business cannot have independent contractors, but they have to be under the right conditions and have to truly be independent. In many cases that means a professional license and ability to work for various people or entities as opposed to one or two entities and being dependent on that income from one or two employers.

Chair Phinney asked for questions from the Board.

Mr. Crockett said he thinks when agencies, especially Medicaid, have a caregiver under their umbrella that it is abusive to the caregiver to classify them as an independent contractor. Payroll taxes are a significant burden that shifts to the caregiver. If an agency classifies a caregiver as 1099 and is not paying for worker's compensation, mileage reimbursement, paid time off and vacation, payroll taxes, insurance, training, or personal protective equipment, does the worker lose independent contractor status if the employer is supplying these things? Agencies are required to do an evaluation for employees, so does that make them mostly employees?

Ms. Chambers said if caregivers are being misclassified as an independent contractor to avoid workers compensation or payroll taxes, that is technically illegal, but again each situation is given a case-by-case analysis. Ms. Chambers said Mr. Crockett knows the personal care industry better than her, but she has had cases from people in the personal care industry who have

identified situations where all the things Mr. Crockett spoke about were going on and was definitely a violation of Nevada Labor Laws. Everything Mr. Crockett said is technically a violation of the law, but still must be a case-by-case analysis. Ms. Chambers said she works with the Department of Taxation, Unemployment, and Workers Compensation, and they all look together at the laws and even in their industries is a case-by-case analysis, but it is a problem.

Mr. Crockett asked if the Board would be able to make a proposal that if a caregiver were under a Medicaid industry, they would have to be classified as an employee.

Ms. Chambers said the Board absolutely could. In the construction industry, during the last legislative session in 2019, Senate Bill 493 was created a presumption in the construction industry that if an individual is performing certain activities under the license of a contractor, the individual is deemed to be an employee. Ms. Chambers said there would be nothing preventing the Board from making a similar recommendation.

Ms. Schoen asked if there are any other PCAs out there who have a professional license that would be applicable to PCA services. An individual could have a professional license say as a certified public accountant (CPA), but that does not relate to personal care services, so when talking about a professional license in this arena, we are talking about a professional license as a nurse, therapist, doctor, or something to that degree. An individual could have a license as a certified nursing assistant (CNA), but then that person is under the jurisdiction of the Nursing Board. Ms. Schoen said her understanding as what Ms. Chambers said is that if an individual is a licensed CAN, they can potentially be an independent contractor, but under nursing law, CNAs cannot practice as a CAN unless they are practicing under a license of a professional like a registered nurse. Ms. Schoen continued that she wonders how important it is for the Board to have this conversation if they can do what Mr. Crockett recommended and strengthen the argument against independent contractors in this arena since, with the exception of a handful of people, there are no professional licenses. Ms. Schoen said if this is a conversation that we need to have given that part of the law and suggested to strengthen the verbiage that is already part of the law.

Ms. Chambers said she thinks Ms. Schoen's points are right on and the Board knows the personal care industry much better than herself. As the Labor Commissioner, Ms. Chambers does not ever want to close the door on options to the extent that independent contracting may or may not work in the personal care industry but thinks if it does not and the Board wanted to come up with a similar type of presumption like they did in the construction industry, Ms. Chambers thinks the Board could absolutely make that recommendation.

Chair Phinney asked if there was a motion on this topic or asked if the Board wanted to bring the item back for future motions if people want to think about it.

Ms. Schoen said she thinks it might be wise to table a motion until public comment is heard at the end of today, so early in the next meeting action may be taken while considering public comment.

Agenda Item 12: Possible Action Item – Discussion and possible action to make collected statement on feedback for Medicaid’s Electronic Visit Verification (EVV) system

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

Chair Phinney said information was distributed to the board members detailing how individuals may provide feedback to Medicaid as they work through the procurement of a new EVV system. Chair Phinney clarified the system could be new or it could not be new, however is required that departments go through this procurement process periodically and asked if the Board as a whole would like to make any statement officially, as this was the last full meeting before the feedback is due, so wanted the Board to have the opportunity to make a statement as the Board and share that with Medicaid.

Ms. Schoen said she would like to see something that goes to Medicaid for EVV that the Board would support that any EVV system that is put into place helps the caregivers tally the allotted hours they have personally as well as for the person they are currently serving. It is too easy to exceed the authorized hours if you do not calculate every single minute, and under Medicaid that is a problem. In order to avoid exceeding the Medicaid authorized time for each person the individual is serving, it would be helpful if the Board were to say they are in support of better accountability on authorized hours per week. It would help a lot of personal care workers with a lot of the math required each week to make sure they are within the limits.

Chair Phinney asked for other comment from the Board or for a motion that supports what Ms. Schoen stated, saying there is common ground across the Board.

Mr. Crockett addressed Ms. Schoen saying, depending on which EVV system is being used, the care worker should be able to see their visit.

Ms. Schoen said individuals can see their visit, however the system does not tally them, so if an individual is limited to 17.5 hours per week, the individual may be coming up on that mark and accidentally go into overtime. The system does not sum the total hours for you. An individual can see the visit later, but then has to add.

Mr. Crockett said the situation is a training issue and offered to talk about it later if Ms. Schoen wants. Mr. Crockett said his main point with the EVV system is some services may be picked off from skilled care under the Cares Act, and if there is a request for proposal (RFP) for another EVV system, it would be bad to see personal care be split from skilled care, as needs of personal care will not get addressed. If everyone is on the same platform, including registered nurses (RNs), physical therapists (PTs), and occupational therapists (OTs), the system will get more support that it needs, and individuals will be better serviced when there is an issue

Ms. Wagner stated she has another meeting at 5:00 pm, and it is currently 4:45 pm. Ms. Wagner said that since she will not be able to hear the public comment, wanted to express her support for employees being presumed as W2 employees.

Chair Phinney clarified that the motion Ms. Wagner is referring to will be addressed early in the next agenda.

Ms. Wagner asked if Chair Phinney is referring to the next meeting.

Chair Phinney confirmed.

Ms. AbdulRahim said she believes the industry needs to stay with Authenticare and fix the current issues instead of going with a whole new system, as it would just create new problems. There are some issues with Authenticare that need to be fixed, for example there is no way for workers to go back and fix start times if they forgot to clock in. The Board should work together on fixing the issues with Authenticare and improving it instead of starting over. Ms. AbdulRahim expressed concern that if another system was adopted, workers would have to all learn a new application and there could be glitches that would prevent workers from being paid. Ms. AbdulRahim said if a worker works with more than one company, they would have multiple systems to clock in to. It is already a hassle doing it the current way, so imagine using three different systems. Ms. AbdulRahim reiterated her stance on fixing the problems that currently exist with Authenticare.

Ms. Hartranft said her company wrote a feedback statement for the EVV system, noting Mr. Crockett's comment that if there is a way that the system tallies the hours or gives workers an indication on how much they have left in their authorization, she is not aware of it, so that was part of the feedback sent. Ms. Hartranft said something else with Authenticare that has been an issue is that when application updates happen, there are huge outages where workers cannot put in the right hours or clock in and out, making it so agencies are scrambling to make sure caregivers are paid correctly. In general, opening tickets with Authenticare has also been an issue, taking weeks and months for them to respond to the ticket. Ms. Hartranft reiterated those were some of the comments being submitted with her company to Authenticare, but though she would bring them up to the Board as well.

Ms. Epstein said the industry should stick with Authenticare and fix some of the problems, stating they seem very fixable. Ms. Epstein said she knows caregivers who sit there on Friday night to make sure they are meeting their hours for Saturday and agreed with Ms. Hartranft's comment about application updates. There are going to be issues with anything we use so I would suggest sticking with Authenticare.

Ms. Schoen stated agreement with Ms. Epstein and other commenters, saying Authenticare is not perfect, but we cannot start over. Authenticare needs to enhance what they have already done.

Chair Phinney asked if there was a motion and stated Kirsten Coulombe with Medicaid was in attendance and was hearing the feedback from the Board.

Ms. Carter expressed frustration with Authenticare, stating that the office she works for has the information regarding what hours she is supposed to work every week and the activities, so does not understand why she has to put in what she is doing every day for her daughter. Ms. Carter

said the process can get aggravating, asking why she cannot just clock in and clock out like other jobs and why things are difficult for their profession.

Chair Phinney said she is not hearing that the Board would like to make a group statement about what they would like to see with EVV, however expressed gratitude for Ms. Coulombe for attending the meeting and hearing the individual feedback.

Ms. Hartranft said she would hate for the Board to miss the opportunity for the Board to give the comments all in one place. Ms. Hartranft asked if she were to make a motion if it could be for members of the Board to send all comments to a designated person by Friday for submittal.

Chair Phinney clarified the Board would have to vote on a statement during the current agenda item.

Ms. Schoen stated willingness to make a motion to the effect that the Board is in support of enhancements to the current EVV system.

Chair Phinney asked Ms. Tackes if there was an issue with the Board recommending keeping the current EVV system, knowing sometimes that is not an option with these processes and a new system may be adopted regardless. Chair Phinney reiterated the Board's recommendation for EVV to implement a system that includes a mechanism to tally worker hours and a mechanism to have manual fixes and assistance when needed.

Ms. Schoen said the recommendations were a good start. It is not all-encompassing, however not every issue needs to be covered in the topic.

Chair Phinney stated that every individual may also provide feedback on the EVV system to Medicaid.

Ms. Wagner moved to mark Agenda Item 12 as already discussed.

Ms. Hartranft said the board was trying to consolidate their recommendations.

Ms. Epstein stated she is willing to make that motion.

Ms. Wagner clarified she had already made the motion.

Chair Phinney stated concerns that Medicaid is in a state procurement process and hoped the Board would submit comments on what they want the system to do, as opposed to whether or not they would like to keep the current vendor.

Ms. Wagner removed her motion.

Ms. Epstein asked if the Board could make a motion that was broader, that they support the current EVV system with improvements, then let individuals put in personal comments and feedback.

Chair Phinney asked Ms. Epstein to make her motion.

Ms. Epstein moved that the Board support keeping the current EVV system with intentions that it will look at improvements.

Chair Phinney called for a second.

Ms. AbdulRahim seconded.

The motion passed unanimously.

Agenda Item 11: Possible Action Item – Discussion and possible action to make recommendations to Director regarding the Medicaid \$500 bonus payment program

Kirsten Coulombe, Social Services Chief, HCQC

Ms. Coulombe said she does not have any recommendations to the director and that Medicaid has issued all the \$500 payments, however, have had some providers reach out with lists of workers who they thought would have received the payment. What Medicaid is finding is that some of the information received had issues with formatting. Ms. Coulombe said Medicaid will reprocess those that were the result of errors. If providers want to follow up, if they have not already, on applications submitted in the original time period of December to January, they may. Medicaid asked for a list of workers then went through a validation process and issued payments. Providers have been helpful in following up for employees who have not received payment, and Medicaid is relooking at those to see if there was some issue, as well as doing a second round of payments soon where the application would open up again. Ms. Coulombe said she is happy to answer any questions.

Mr. Louis Gonzalez asked if an employee can be included in the first round of \$500 payments based of her previous years of employment.

Ms. Coulombe said the application that was open, that has since closed, required workers to go through their employers to submit that application on their behalf. The first round of payments did require that someone was employed as of November 1, 2021 and had provided care at least from that date up until payments were issued in March 2022. That application period has closed; however, workers are encouraged to work through their employer for future applications that would be open.

Ms. AbdulRahim said her understanding is that 25 percent of employers did not even apply for the supplemental payments, which she sees as unacceptable. Ms. AbdulRahim said her experience making \$11 per hour and trying to raise three children does not allow her to have insurance and does not have sick leave. Ms. AbdulRahim said she has to work two jobs to make ends meet and the \$500 payment was really helpful, and just wants her fellow homecare workers throughout the entire state to get the same support, meaning those who are paid through veterans and some private agencies. If the \$500 payments were for homecare workers, she believes they should all be under that umbrella. Ms. AbdulRahim made a motion to DHHS reopens the

deadline for employers to apply for the \$500 payments and send a notice to employers saying they are expected to apply. The motion also states that it is mandatory for employers to apply for the next round of \$500 payments, not voluntary.

Chair Phinney recounted Ms. AbdulRahim's motion of making a recommendation to the Director that Medicaid reopen the application process and that the next round be mandatory for Medicaid providers to apply.

Mr. Crockett asked Ms. Coulombe if Medicaid would be able to send a letter to the agencies that did not participate and give them the first two weeks of May to get their rosters in so they can participate in the first round of payments before the second round starts.

Ms. Coulombe replied that she is happy to take the suggestion back to her administration and see if the application can be reopened. Medicaid is working on getting information on their website to list providers that did provide applications. Ms. Coulombe clarified the payments are specific to Medicaid, so would not apply to the Veteran's Administration or private pay. Deputy Administrator Burrell was on the meeting today, however had to leave for a conflicting meeting, so Ms. Coulombe is happy to take back those questions and any recommendations received from the Board can be taken for consideration as long as they are in the parameters of the powers available to Medicaid.

Mr. Crockett said he would like time set on the motion so the Board is not talking about it next month and action is taken. Mr. Crockett asked Ms. AbdulRahim to change the proposal so that letters are sent next week, and employers are given two weeks to take action.

Ms. AbdulRahim said to get it done in the next two weeks.

Chair Phinney clarified that the motion is for a recommendation to the Director and called for a second.

Ms. Epstein seconded the motion.

The motion passed unanimously.

Chair Phinney stated the recommendation will be sent to the Director and Medicaid.

Agenda Item 13: Informational Item – Discussion to make recommendations to Director to have Medicaid explore the creation of high needs personal care service

Robert Crockett, Home Care Employer Representative, Advanced Personal Care Solutions, Inc.

Chair Phinney asked if Mr. Crockett is willing to table this agenda item until next meeting.

Mr. Crockett agreed.

Agenda Item 14: Possible Action Item – Discussion and possible action to make recommendations to Director regarding the categorization of personal care agencies (PCA as Medical Facilities and for changes to the licensing data system

Maxine Hartranft, Home Care Employer Representative, Consumer Direct Care Network

Chair Phinney asked if Ms. Hartranft is willing to table this agenda item until next meeting.

Ms. Hartranft agreed.

Agenda Item 15: Possible Action Item – Discussion and possible action to make recommendations to Director to ask the Bureau of Health Care Quality and Compliance to provide technical assistance on the top tags identified in an earlier report to be provided to Association meeting and distributed to PCA providers

Robert Crockett, Home Care Employer Representative, Advanced Personal Care Solutions, Inc.

Chair Phinney said the agenda item is included because she expects that the Board supports it, but the Board can support it officially in the future.

Agenda Item 15: Possible Action Item – Recommendations for future agenda items.

Chair Phinney said Mr. DiAsio suggested a presentation from an industry group on the ways in which the industry is receiving and spending money, a breakout of the dollar.

Ms. Schoen asked if the Board does do something like that, that presentations are limited to a shorter timeframe, suggesting a 10-minute limit.

Chair Phinney agreed and said presentations will be no more than 10 minutes.

Ms. Carter said she has to leave the meeting.

Chair Phinney said she believes the Board has plenty of agenda items, however asked if members of the Board had any others to suggest.

General Public Comment

Rosetta Love introduced herself as a homecare worker and said she was glad she heard about the facilities that got the \$500 payments. Ms. Love said she worked for her company for 15 years, and had Medicaid patients that entire time, but during the Corona Virus era had VA, and did not get a check because she did not work for Medicaid, but still worked for the same company. Ms. Love asked if there is anything the Board can do about that because it is not fair and said they are pitting homecare workers against each other. Ms. Love said if you are working in the hospital, you are still a care provider, and if you are working for your parent, you are still a care provider. Ms. Love said she wants to hear more about the topic, if possible, at the next meeting.

Ms. Cooper agreed with Ms. Love and said there are a lot of workers who do not have Medicaid clients and that it is not fair to those who have worked so hard and diligently through this pandemic process to not qualify for the payment, so would like to see something done about that also. Ms. Cooper said there is a difference between agencies offering insurance and the ability to buy insurance for ourselves and families, saying most of us are single parents that are taking care of ourselves and children and cannot afford the insurance being offered. Ms. Cooper said there is a difference between Medicaid and private, and wants to see something the Board can do, the Board was not created to talk about what agencies are doing or offering and wants the Board to be able to get down to the bottom of it and thinks the Board is wasting a lot of time on things that are pointless. Ms. Cooper suggested the Board spend time on things that are more relevant to what is affecting homecare workers, not agencies.

Ms. De Leon said in reference to the chart that was put together, it was mentioned that the respite may not be added on to that list in configuration and that the Personal Emergency Response System (PERS) may be removed as well. Ms. De Leon said her company does offer PERS, so if the Board could keep PERS on that list because that is paid at a very low rate, which leads to agencies having to offer different rates to the caregivers. Ms. De Leon said she is in support of the point of having a flat rate across the board, because caregiving is caregiving.

Gina Joliff suggested the Board have open meeting law training.

Adjournment – Cody Phinney, Chair Designee

Meeting Adjourned at 5:10 p.m.