

Minutes

HOME CARE EMPLOYMENT STANDARDS BOARD

June 28, 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. and announced Agenda Items 8 and 11 would be moved to follow Agenda Item 6 to group all the Medicaid items together.

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

Safiyyah Abdul Rahim

Maxine Hartranft

Sue Wagner

Robert P. Crockett

Stephanie Schoen

Shanieka Cooper

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

Kayla Samuels, Management Analyst, Bureau of Health Care Quality and Compliance (HCQC)

OTHERS PRESENT:

Pierron Tackes, Attorney General's Office

Kirsten Coulombe, Social Services Chief, Division of Health Care Financing and Policy (DHCFP)

Wendy Montgomery, DHCFP

Cathy Vairo, Provider Enrollment Manager, DHCFP

Vanessa Torti, Home Care Research and Policy Specialist, Service Employees International

Allan Ward, Home Care Employer

Shawn Slatter, Home Care Employer

Erma Henderson, Home Care Worker

Carol Matrón
Dawn Ralenkotter, Home Care Worker
Kristi De Leon, Home Care Employer

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

General Public Comment

Allan Ward recommended that as the Board is evaluating the distribution of employee rights in the Know Your Rights document, it should also include “know your responsibilities.” Mr. Ward gave the example of when businesses offer a healthcare solution to employees, if the employee does not take the offer, they are not allowed to go to the State marketplace to get offset compensation to receive healthcare. Employees are often set up for failure because the State can come back to these employees for money they were not prepared to pay. Mr. Ward said as an employer, if he offers a health care plan, employees need to know they cannot go to the State and participate in that plan with an offset from the State, which most of the employees have the qualifier for. Another thing that sets employees up for failure is if employees become a caregiver for a private individual, they cannot do that as an independent contractor, but when employers pay employees as an independent contractor, not as a W2 employee, it exposes the employee to Internal Revenue Service (IRS) taxes down the road, and complications with workers compensation and Unemployment Insurance (UI). Employees are also at risk for potential injury because they do not have workers compensation. If the Board is going to go out and educate employees on their rights, employees should also be protected against falling into the responsibilities as well.

Shawn Slatter said on the Know Your Rights document, it is also important that it is properly documented that the personal care industry has exemptions from meal and break periods when it is one-on-one care. It has been listed and noted by the labor board, if the Board is going to be distributing this information, it needs to be specific and in accordance with the personal care industry in that meal and break periods are not something that is given. Because it is one-on-one care, when the client is eating workers eat. When the client is resting workers break. It is important to ensure that the Know Your Rights document fits the industry and is not from general postings. Mr. Slatter said he does not want people to be filing claims with the State and wasting time because they are not receiving mealtime or breaks.

Ms. Samuels read the following public comments that were submitted in writing:

“To whom it may concern, I work as a personal care assistant for a home care agency in Reno, Nevada. As a senior citizen it is my goal to get the income, I need by working just a few days per week. However, my employer restricts my shifts to no more than 8 hours due to Nevada’s 8-hour daily overtime provision. If this restriction were removed, I feel I could make more money working fewer days which would benefit me greatly during my semi-retirement. Sincerely, Carl Girtler.”

“Dear Representatives, I am a Care Professional for Home Instead in Reno, Nevada and I am writing this letter to communicate my challenges with the 8-hour overtime law. This law limits

the amount of work that I can do with my company over a 24-hour period of time. This limits my income potential because I have other obligations and interests outside of work which do not allow me to work 5 or 6 days in a week to achieve my week earnings. I support the 40-hour per week overtime rule, but the daily overtime law is intrusive. Work life balance is important to me and my generation, we would like to be empowered to manage our work schedules according to our needs. There are times when my clients need a shift that falls outside my regular schedule, but they cannot afford to pay the overtime rate, so they have to accept a care professional they are not familiar with. My fellow care professionals and I make much more than minimum wage so the time and a half is a significant increase to our client's cost. I appreciate you take the time to hear out concerns. Sincerely, Nevada Whiteside.”

Agenda Item 4: Action Item – Approve Minutes from May 24, 2022, HCESB Meeting

Chair Phinney called for edits or discussion on the May 24, 2022, meeting minutes. None heard.

Chair Phinney called for a motion to approve the May 24, 2022, meeting minutes. Sue Wagner made a motion to approve the May 24, 2022, minutes. Maxine Hartranft seconded the motion. The motion passed unanimously.

Agenda Item 5: Informational Item: Discussion on progress on end of year report to Director of Nevada Department of Health and Human Services (DHHS) and previous project updates

Kayla Samuels, Management Analyst I

Ms. Samuels said there are not updates on the end of year report at this time, however there are updates concerning the Board members. Michael DiAsio, a representative for employers, and Barbara Carter, a representative for employees, have both resigned from the Board. Shanieka Cooper has been appointed to the employee seat and the employer applications are still under review by the Director's Office, and staff hope to have that seat filled soon. Ms. Samuels said there is still no acting Labor Commissioner, so that remains a vacant voting position.

Agenda Item 6: Informational Item – Progress update on the June 6, 2022, recommendation on the Medicaid Home and Community Based Services Plan

Kirsten Coulombe, Social Services Chief, DHCFP

Kirsten Coulombe said the recommendations are related to Medicaid's American Rescue Plan activities specific to section 9817 for home and community-based services. The Interim Finance Committee met last week, and Medicaid received approval for the next fiscal year. When previous approval was received, it was only for the current fiscal year, so Medicaid was working on approval for the next one. Ms. Coulombe said staff are trying to look into best practices for the first initiative which concerned the \$500 payments to home care workers. There was an application period last year and a lot of lessons have been learned relating to that and trying to make that be a smoother process. Recommendations have been received from the Board and some legislative members at the Committee who wanted Medicaid to do some outreach to home

care providers who are enrolled with Nevada Medicaid, but for whatever reason did not apply for the \$500 payments on behalf of their workers. Staff are working on identifying that list of providers that are enrolled and will try to do some targeted outreach to determine why they did not enroll. Ms. Coulombe said one possibility may be because those providers are not accepting Medicaid recipients. Not everyone who is enrolled is actively receiving Medicaid recipients. Ms. Coulombe said her office wants to hear from those providers because we do understand and know that it is an impact to the workers directly for those providers who did not participate in our voluntary application. The office is working to reach out to those providers as well as working on starting in July that next round of payments. Regarding the 15% supplemental payments, the second rounds of payments have not gone out yet. The first round was a payment that was back to April 1, 2021. The American Rescue Plan funding did allow Medicaid to go retro, so that first round of payments was back to April through February. The next round is looking at March, April, May, June, so this quarter, then those would be paid out then basically have quarterly payments through the end of this year, December, for that 15% payment for providers in that service category. Ms. Coulombe said the recommendation from the Board to have Nevada Medicaid inquire with those providers receiving the 15% payment on how they spent it is a very reasonable recommendation so staff are taking that into consideration and seeing how it might be put into practice.

Stephanie Schoen asked if there is recourse for caregivers who were somehow eliminated from the payment even though their agency participated in the application. Some employees were left off the list because of something that happened on the Medicaid end where employers were told those caregivers were not eligible. Ms. Schoen asked if there is recourse for follow up in that situation.

Ms. Coulombe said her understanding is that the Supplemental Reimbursement Unit did some reconciliation after the first payments were issues around the end of March. There was some follow up from providers saying they applied and expected a caregiver to receive that compensation, however they were not included on their end. The Electronic Visit Verification (EVV) system is used to determine whether the services were rendered since Nevada Medicaid does not enroll the caregivers, so EVV is the only insight if services were rendered. To be eligible for the first round of payments, caregivers had to be employed as of November 1, 2021, so that may be a possibility for ineligibility. Additionally, if a caregiver did not have any services they rendered, that would also make them ineligible. There were also issues with the message passing interfaces (MPIs). There were MPIs submitted that were different than those that were in the system. Matching up errors have been resolved. Ms. Coulombe said her office is happy to continue to take a look if there are providers who have specific concerns, they can email those specific concerns to the American Rescue Plan.

Ms. Schoen asked Ms. Coulombe to provide that email.

Ms. Coulombe said she will get the email for Ms. Samuels to distribute to the Board.

Chair Phinney asked Ms. Samuels to read the recommendations that had been made by the Board concerning the Medicaid Home and Community Based Services Plan.

Ms. Samuels read the [recommendations](#).

Ms. Coulombe shared the email: AmericanRescuePlan@dchfp.nv.gov.

Shanieka Cooper said it is important to give the \$500 payment to as many workers as possible. Only about 25% of employers applied for the first round of supplemental checks. It is hard on workers, with the cost of gas and cost of living, they need the money, so it is important to make sure it is extended. The checks are about recognizing home care employee's hard work and sacrifice.

Ms. Hartranft said her personal care agency applied for the \$500 payments and have some employees who did not receive the payment. Ms. Hartranft said she has been emailing the American Rescue Plan Act (ARPA) email provided by Ms. Coulombe weekly to bi-weekly since February and has not received a response or resolution. Ms. Hartranft asked if there is a better way to get the situation rectified, agreeing with Ms. Cooper saying the caregivers deserve that funding.

Ms. Coulombe thanked Ms. Hartranft for the feedback and said she will bring it up with Phillip Burrell, as it is a different unit within the division that is issuing the supplemental reimbursements. Ms. Coulombe said as far as she is aware, that unit is not behind, but will follow up with Mr. Burrell and the manager of the unit responsible. The good news is that Nevada Medicaid is still in the ARPA timeline to be able to issue those payments, and absolutely want to issue those payments to eligible workers and the providers who submitted on behalf of them. Ms. Coulombe said she will give that feedback that Ms. Hartranft's office has been waiting and has emailed without the issue being resolved, as well as apologized for the situation.

Robert Crockett stated approximately five or six months prior, industry representatives wrote a best practices and guidelines for distribution of the \$500 payments for providers and requested to have a meeting with Ms. Coulombe to go over the list of best practices for the agency to get the information submitted and out to caregivers as quickly as possible. Mr. Crockett said the industry has the emails of all the home care industries and could possibly send a letter to them to give advance notice of the next application period.

Chair Phinney clarified that Mr. Crockett was offering the assistance of industry individuals, not the Board, and asked Mr. Crockett to confirm.

Mr. Crockett confirmed his statement referred to industry individuals, not HCESB.

Ms. Coulombe said there was guidance provided that when agencies received the \$500 payments, they would have to issue them within 30 days. Ms. Coulombe said it was great that industry individuals created a best practice and that it especially helps the smaller providers since

when ARPA came out, there was a lot to figure out. Nevada Medicaid was thoughtful before but is trying to be even more thoughtful now and would be happy to meet with the industry individuals.

Chair Phinney stated her understanding is that as long as there are fewer than six members of the board present, it does not present an issue.

Safiyya Abdul Rahim voiced support for the first round of supplemental payments to be reopened for as long as possible to allow all employers a chance to apply, along with sending a strong worded letter encouraging them to apply. No one should be left out. Ms. Abdul Rahim also said she supports agencies applying for a second round to be subject to the same thing. Open up the first round to apply and require agencies to apply for both the first, second, and future rounds of payments, as well as require employers to report how future payments are being spent. Ms. Abdul Rahim acknowledged this had already been said but wanted to reiterate.

Ms. Schoen supported extending the deadline. Since there was such a learning curve it is only fair to the employers and the employees to extend the application time for round one of the supplemental payments. Ms. Schoen said she has followed up with her employer and has been left off the supplemental payment list, and that extending the timeframe would be the fair thing to do at this point regardless of her own situation.

Ms. Wagner said that agencies who do not have Medicaid clients should not get the supplemental payment.

Chair Phinney confirmed that the supplemental payments are limited to agencies with Medicaid clients and are part of the rules.

Agenda Item 8: Informational Item – Discussion of Medicaid provider enrollment fluctuation for Provider Type (PT) 30 and 83 to include in the end of year report to Director

Cynthia Leech, DHCFP

Wendy Montgomery presented the [PT 30 and 83 Provider Counts](#) in place of Cynthia Leech. The rise in intermediary service providers is most likely due to the pandemic.

Chair Phinney asked Ms. Montgomery if what is being presented is the numbers of enrolled providers in June of those years and March of this most current year.

Ms. Montgomery confirmed.

Ms. Hartranft said she works with Consumer Direct Care Network and does both PT 30 and 83. PT 83 is the intermediary service organization and PT 30 is the regular agency-based personal

care services. Ms. Hartranft asked if the numbers presented might be transposed, saying based on her knowledge, there are many more PT 30 providers in the state than there are PT 83 providers.

Ms. Montgomery said the numbers presented are providers that are enrolled in Nevada Medicaid, so while there might be more PT 30 providers, there is an increase in PT 83 providers over the last several years.

Ms. Hartranft said she is part of an agency association and believes she is the only PT 83 provider, so does not feel confident that the numbers presented are correct, and they might need to be switched.

Chair Phinney asked if Ms. Coulombe is still on the meeting and if Ms. Hartranft's concern is something Ms. Coulombe could speak to.

Ms. Coulombe said Cathy Vairo, Provider Enrollment Manager, had joined the meeting and wanted to give her an opportunity to speak on the subject.

Ms. Vairo said her office will take the chart back and double check to report back to the Board on the numbers presented.

Chair Phinney thanked Ms. Vairo and stated the intention for the information is to be included in the end of year report to the Director of DHHS.

Ms. Schoen said she believes the numbers are reversed and would like to see Medicaid break down the figures between the Greater Reno/Sparks/Carson Area, Rural Nevada, and Southern Nevada.

Ms. Vairo said she would take the request back and get the information.

Chair Phinney said the agenda item can be brought back at a future meeting to finalize the information.

Agenda Item 11: Possible Action Item – Discussion and possible recommendation to Director of DHHS that the Medicaid Manual require that personal care workers be employees and not independent contractors

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

Mr. Crockett suggested making a change in the Medicaid Manuals to require workers to be classified as W2 employees so they may receive the benefits and employee has. Mr. Crockett said his hope is that the change will be picked up at the legislative level as well.

Chair Phinney said this would be a recommendation to the Director that Medicaid include in their rules a requirement for employees as opposed to independent contractors.

Ms. Cooper supported Mr. Crockett's proposal because employees have more protection.

Mr. Crockett clarified that the suggestion itself is not a rule change, but a request to have a public hearing to discuss making changes.

Chair Phinney confirmed saying the Board may make a recommendation to the Director, then Medicaid's process includes public hearing, change to their manual, and the approval process. The Board is saying they agree this is a good idea, which is early in the process.

Mr. Crockett made a motion that HCESB create a recommendation to the Director of DHHS requesting a hearing on the Medicaid Manuals that affect personal care to make a change requiring that agencies may only employ W2 employees and ban independent contractors.

Chair Phinney called for a second to the motion.

Ms. Hartranft seconded the motion.

Ms. Schoen said she is not against people being independent contractors and is not against people working for agencies to provide in-home care because of the stability, benefits, and means there are in ensuring quality work. The Board needs to clarify the recommendation that they want to prevent agencies from hiring independent contractors but want to be clear that they are not trying to take the rights away from people who have a business license and are providing Medicaid services in another realm who might want to be independent contractors outside of an agency if they meet all the requirements. Ms. Schoen said it makes sense to ban independent contractors under an agency, but not to say someone could not be a caregiver under Medicaid unless they work for an agency as a W2 employee.

Chair Phinney stated her understanding of Mr. Crockett's motion is to suggest that personal care agencies would hire employees not independent contractors, and asked Mr. Crockett if that was correct.

Mr. Crockett confirmed and stated this change to the Medicaid Manuals would not cut off a career path for others.

Ms. Schoen said some caregivers have higher level education and licenses that allow them to provide those services without going to an agency if they want, and ideally that would make some people's lives a lot simpler, especially for those who care for an adult with disabilities in their own home for whom they are related. Ms. Schoen said there are some exceptions to the rule and wanted to make sure the Board is not limiting someone's ability to do caregiving work and be paid by Medicaid if they did not want to work for an agency.

Chair Phinney called for a vote on Mr. Crockett's motion that was seconded by Ms. Hartranft. The motion passed unanimously.

Agenda Item 7: Possible Action Item – Discussion and possible action to establish a subcommittee to create a set of recommendations regarding systemic racism and economic injustice in the home care industry

Cody Phinney, Chair Designee, Deputy Administrator

Chair Phinney called for a motion to create a subcommittee on systemic racism and economic injustice in the home care industry.

Ms. Wagner moved to create the subcommittee on systemic racism and economic injustice in the home care industry.

Ms. Abdul Rahim seconded the motion.

Chair Phinney asked for volunteers to participate in the subcommittee. One representative from each group volunteered: Ms. Abdul Rahim representing employees, Ms. Wagner representing recipients, and Ms. Hartranft representing employers. Chair Phinney called for a vote to approve the motion to create the subcommittee. The vote passed as follows:

Safiyya Abdul Rahim – Yay

Robert Crockett – Yay

Maxine Hartranft – Yay

Sue Wagner – Yay

Shanieka Cooper – Yay

Stephanie Schoen – Nay

Chair Phinney said she appreciates individuals taking the time to discuss this issue, as it is incredibly complex and nuanced, and reminded the rest of the Board that the subcommittee will be an open meeting which they are welcome to attend and participate by way of the Open Meeting Law process.

Agenda Item 9: Possible Action Item – Discussion and possible recommendation to Director of DHHS regarding rates and wages in the home care industry

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

Kayla Samuels, Management Analyst I

Mr. Crockett presented the [Medicaid Cost Tool](#).

Ms. Abdul Rahim asked if the Medicaid Cost Tool could be used by agencies to show what the Medicaid Home and Community Based Services 15% supplemental payment was used towards.

Chair Phinney said what Mr. Crockett is helping the Board understand is how much it costs to run a personal care agency.

Ms. Abdul Rahim asked if it was a breakdown of how agencies get reimbursed by Medicaid.

Mr. Crockett clarified that it is a breakdown of how agencies spend their money.

Chair Phinney stated that this tool would help the Board understand how much agencies would need to be reimbursed by Medicaid to pay home care workers an increased wage.

Ms. Hartranft said the document shows what agencies have to pay for to remain compliant. They are requirements and do not include the expenses of running the office.

Chair Phinney stated that by filling out the Medicaid Cost Tool, the Board can determine how much the reimbursement from Medicaid would have to be to pay a certain minimum wage to workers.

Chair Phinney asked if she is correct in her assessment that at a wage of \$12 per hour for workers with the current Medicaid rate of \$17, there is no available funds left after required expenses are paid.

Mr. Crockett confirmed and added that is before administrative employees, also called non-revenue producing employees.

Ms. Hartranft said the intention of the presentation is if the Board is going to make recommendations for a Medicaid rate and a minimum wage, the Board needs to figure out what that reimbursement rate would have to be to support the desired minimum wage.

Ms. Schoen said she was concerned with workers compensation and the cost of it could cause financial issues for a company. The Board needs to address the cost of workers compensation and what that does to smaller agencies in the personal care industry. Ms. Schoen said she would also like to know what happens if you have an unemployment claim and how that affects the employer.

Mr. Crockett said agencies have an account with the Nevada Department of Employment, Training, and Rehabilitation (DETR) that money is contributed to. Agencies keep contributing to the account and when they get a claim, they can either challenge or accept. DETR takes an agency's average taxable wages for the last three years and come up with a reserve ratio, which is public information. That reserve ratio is used to determine an agency's contribution to unemployment insurance.

Ms. Wagner asked what would be described as a big agency versus a small agency.

Mr. Crockett said he did not know the distribution of agencies and would have a better answer if he did. Mr. Crockett estimated agencies with over 150 caregivers could be considered large.

Ms. Hartranft said it is hard to say in Nevada since the market is so saturated, but a really big agency could be 500 caregivers, 200 for medium, and less than 100 for small.

Chair Phinney said the Board does not have a specific definition for the size of agencies at this time.

Ms. Hartranft said whatever the Board recommends as far as Medicaid rates and minimum wages for personal care workers, Mr. Crockett's presentation shows the two figures correspond to each other. If the Board makes a recommendation that goes through, but later the rate is cut, minimum wage has to be cut too.

Ms. Abdul Rahim asked if minimum wage increase, does it affect the ability to run small agencies differently.

Mr. Crockett said the increase gives small agencies a shot and what happens when an agency is small is they end up being the caregivers sometimes. A lot of agencies are only one or two people.

Ms. Wagner asked Mr. Crockett what size he considers his own agency.

Mr. Crockett said his agency would probably be large, but not really large.

Chair Phinney refocused the conversation on making a recommendation about the minimum wage and Medicaid reimbursement rate.

Ms. Schoen asked why some Medicaid waivers pay more than others.

Chair Phinney said Ms. Schoen's question is for Medicaid and the Board can bring in experts on Medicaid rates to discuss the topic at a future meeting.

Ms. Samuels presented the [Survey Results on Rates and Wages as of June 20, 2022](#). The presentation is an evolving dataset with information pulled from June 20, 2022, and responses have increased significantly since then. The information presented can shift and will be updated in the July HCESB meeting.

Chair Phinney said Medicaid, as well as the rest of the State agencies including her own, are deep into creating their budget for the next biennium, so it was desirable and urgent to get some of this information out so the Board can make an overarching recommendation and Medicaid can include that in their budget and plan for it. That is why the Board has rearranged the topics and are doing work on rates and wages today. Staff will continue to update the information and Medicaid will have opportunities to add nuance and things to their calculations for their budget. Chair Phinney said she wanted to make sure this was clear as to why the Board was choosing to address the topic in this way.

Ms. Samuels said the fact that the presentation pulls information from June 20th is to comply with Nevada Open Meeting Law and posting deadlines. Ms. Samuels included the following

verbal updates to the presentation: On slide five, worker reported wages have shifted to report the most in the \$10.76-\$11.75 range. On slide 10, Ms. Samuels included that almost 60% of workers say they travel between client homes and 80% of workers report that they do not know their agency's mileage reimbursement policy.

Ms. Abdul Rahim said it is upsetting to see the findings of the survey. Most workers are getting paid less than \$12.75. The average size of an agency is bigger than 50 employees, but only 14% of workers report receiving paid time off. About 60% report driving between client homes, but only 8% receive mileage reimbursement. Ms. Abdul Rahim asked why is that figure so low. Only 6% of workers have healthcare and only 4% have retirement benefits from the employers. The numbers are very low considering the cost of living has gone up, but the wage still has not increased. Ms. Abdul Rahim said it is shameful and unacceptable, and that it needs to change.

Ms. Cooper made a motion that the Board recommends that DHHS includes the following enhancement in the 2023-2024 Fiscal Year budget. In recognition of the system-wide savings generated by caring for the seniors and disabled in their own homes and the opportunity to draw down additional federal dollars due to the Federal Medical Assistance Percentages (FMAP) match, the Medicaid reimbursement rates for personal care services should be increased to \$25 an hour. Additionally, the Board should recommend that DHHS support a bill in the 2023 legislative session that would require personal care agencies to pay a minimum wage of \$15 per hour to workers providing Medicaid provided personal care services. The \$25 reimbursement rate is assuming agencies are providing the benefits detailed in Mr. Crockett's presentation, including paid time off, mileage reimbursement, and healthcare. The bill should also require agencies to provide these benefits.

Ms. Hartranft said she agrees with the motion but would like to add that if the Medicaid reimbursement rates drop below \$25, the minimum wage drops with it in the same percentage.

Chair Phinney stated Ms. Hartranft suggested an addendum to the motion and asked Ms. Cooper if she would accept the addendum.

Ms. Wagner asked if the motion is directing the legislature to do something in the 2023 session.

Chair Phinney said no, the motion is that DHHS would support a bill that may be at the legislature in the 2023 session, not that the legislature would do something. The recommendations are all to the Director of DHHS and the bill that created HCESB specifically directed him to make recommendations about a minimum wage.

Ms. Cooper said she feels very strongly that the Board has to recommend a \$15 per hour minimum wage no matter what. It has to be \$15. There can be negotiations worked out in the legislature, but as a Board we have to take a stand together and not back down from \$15. Anything less is not enough to survive, not enough to feed families, not enough to provide services and attract workers. The \$15 is not negotiable.

Ms. Hartranft said she fully supports the \$15, but if agencies keep the \$15 and rates are cut back down to the \$17.56 figure, there is no agency that can stay in business with those margins. Ms.

Hartranft said she supports the \$15 minimum wage and \$25 reimbursement rate, but if that gets passed and in the future those reimbursement rates are decreased, the minimum wage will have to decrease proportionately.

Chair Phinney said what the Board is contemplating is a recommendation to the Director who is over Medicaid that the reimbursement rate be set at that level and that would be an enhancement in the budget. The \$15 minimum wage would be related to the minimum wage bill that was contemplated in SB 340 and go to the legislature. Chair Phinney said she understands that agencies cannot have the \$15 minimum wage and not have the reimbursement set at an appropriate level to address that. Chair Phinney said she thinks that all of that gets addressed during the legislative session, but what the Board is doing is making a recommendation to help create the information and help support that process in the legislature.

Mr. Crockett said agencies are going to need caregiver support to get the \$25 reimbursement rate. Reimbursement rates have been stuck since 2003, agencies actually received about \$18.50 in 2007, so are making almost a dollar less 14 years later. Agencies need caregiver support to get \$25 reimbursement rates. When the bill goes through and addresses a \$15 minimum wage, there is a chance the Chambers of Commerce and other small business organizations may come out and force against it because they do not want it as a precursor to \$15 minimum wage across the state. At that time, workers are going to need industry support to say they want workers to have \$15 and take the brunt of the argument from the Chamber of Commerce. Workers and agencies have never been partners in 20 years, and this time they need to or else they are just going to end up at a \$17.56 reimbursement rate and \$12 minimum wage two years from now.

Chair Phinney said Mr. Crockett's statement is a helpful framing of what the Board can expect to see in this process. What the Board is doing today is creating information and support for both sides of what will be happening in the legislature starting in February.

Ms. Abdul Rahim said she agrees that agencies and workers probably need to work together, and workers need nothing less than \$15. Ms. Abdul Rahim said what she believes is with how the economy is now, a \$20 minimum wage would be feasible because the way that inflation is, \$30 reimbursement for an agency so that the worker could get \$20 is what she would be saying the Board should fight for, but if the process has to start somewhere, the Board definitely cannot go lower than a \$15 minimum wage with the way inflation and everything is. Ms. Abdul Rahim said if workers and agencies have to fight together and work together to raise the reimbursement rates to \$25, then if workers can get that \$15 minimum wage out of the \$25 reimbursement rate, that would definitely work for everybody.

Chair Phinney said the motion on the floor includes the recommendation for \$25 reimbursement from Medicaid to the agencies and \$15 an hour minimum wage for the personal care workers.

Ms. Wagner said she will definitely support the motion but wanted to say for the record that she pays her caregivers \$25 per hour.

Ms. Schoen said she believes the Board is also recommending low for a minimum wage and need to go higher. Individuals cannot call a private agency to pay out of pocket and get anyone in

their home for less than \$25. If the Board recommends \$15, workers might get \$13. If the Board makes a recommendation for more, maybe workers will come out with the desired amount.

Chair Phinney said there are some differences between Medicaid and the private industry. Medicaid is going to have to go through the budget process, but need to build their enhancement now, the process is not at the negotiation stage yet. Chair Phinney reiterated that the motion on the floor includes the \$25 Medicaid reimbursement rate and a \$15 minimum wage.

Ms. Schoen asked if Ms. Cooper can amend the motion before Ms. Schoen seconds it.

Chair Phinney asked if there is anyone currently willing to second Ms. Cooper's motion as it currently stands.

Mr. Crockett seconded the motion.

Ms. Abdul Rahim asked if the Board could change the motion to increase the reimbursement and minimum wage amounts. If the Board is fighting for something, why not fight for what is really wanted.

Chair Phinney said it is technically possible, however there is currently a motion on the floor and a lot of work has been done outside the meeting to come to an agreement on those amounts.

Ms. Hartranft said that if the Board does want to change the amounts, there is a lot of math that would need to be figured out with the reimbursement rate that would support an increased minimum wage. Ms. Hartranft said she is not opposed to the possibility of an increase; it would just require some more calculations.

Chair Phinney said there is a motion and a second.

Ms. Wagner asked for clarification on whether the motion is for the \$15 minimum wage.

Chair Phinney clarified that the motion is for a \$15 per hour minimum wage and a Medicaid reimbursement rate of \$25 per hour. Chair Phinney said she wants to emphasize that there is a very large government process happening with budget building and what she does not want to see happen is the Board continue to discuss the possible recommendation and not recommend anything in time for it to get into the budget. If it does not get into the budget the Board is really reducing the chances of getting it through the budget. Chair Phinney said she is likely not explaining the concept well but has been watching State budgets get developed for 24 years and promised the Board that the earlier they get a recommendation in, the better chances there are of getting results. Chair Phinney asked Ms. Samuels to take a vote on the motion.

Ms. Samuels conducted a vote which passed as follows:

Safiyya Abdul Rahim – Yay
Robert Crockett – Yay
Maxine Hartranft – Yay
Sue Wagner – Abstain

Shanieka Cooper – Yay
Stephanie Schoen – Yay

Ms. Wagner requested to make a motion that the Board recommend a \$25 minimum wage for home care workers.

Chair Phinney said Ms. Wagner's motion would be in direct competition with the motion the Board just passed for a minimum wage of \$15.

Ms. Wagner let the motion pass.

Chair Phinney said she is trying to think of mechanisms the Board has for including these sentiments in the end of year report. Clearly the discussion indicates that \$15 is absolutely the minimum that would make the situation better and many would support even higher wages for the individuals who are participating in personal care work. Chair Phinney said she is happy to explore the options the Board has available to include that information and make sure it is extraordinarily clear in the minutes and asked if that helps to some degree.

Ms. Wagner said yes it does help.

Chair Phinney said there was originally a planned subcommittee on July 12, 2022, to discuss rates and wages further and asked the Board if they would like to have additional discussion and perhaps use that meeting to refine the end of year report language.

Ms. Wagner said she is not able to attend the meeting on July 12th.

Chair Phinney stated that there would be difficulties reaching quorum for the subcommittee.

Ms. Abdul Rahim said yes if it has anything to do with the budget being met and created, she would like to discuss rates and wages further.

Chair Phinney suggested that rather than having the meeting due to trouble with individuals attending, Ms. Samuels and herself will draft language and send that out to the members of the Board and finalize that at the next regular meeting. Chair Phinney asked if that is an acceptable path forward.

Ms. Wagner confirmed that is an acceptable path.

Chair Phinney noted members affirming as well over camera and confirmed there will not be a subcommittee meeting on July 12th. The Board will finalize the end of year report language.

Agenda Item 10: Possible Action Item – Discussion and possible recommendation to Director of DHHS to distribute a Know Your Rights bulletin to home care workers

Kayla Samuels, Management Analyst I

Chair Phinney said she is hopeful the Board will have additional information on the [Know Your Rights](#) document from the Labor Commissioner's Office by next meeting and will be able to finalize the document then.

Mr. Crockett said there are required postings with the Office of the Labor Commissioner, one of which is rules to be observed by employers. It has almost everything in the Know Your Rights bulletin with the exception of things like time between visits and the right to unionize, that is updated every couple years so it has already been vetted. Mr. Crockett said maybe that document from the Labor Commissioner would be a better document to look at since it has already been created. Mr. Crockett said he would be concerned if the Board approved the current version of the Know Your Rights document without having a lawyer look at it, whereas he would have his employees sign the rules to be observed by employers document today. The Know Your Rights document is a wonderful idea but does not want to sign something that has not been vetted and accidentally create an implied contract with employees. Mr. Crockett said the document is super important but will abstain from a vote currently because there are some issues until the document gets fully vetted.

Chair Phinney said she agrees with Mr. Crockett and wants to continue working with the Labor Commissioner's Office.

Ms. Hartranft made a motion to table the agenda item until next meeting when more information is available.

Chair Phinney welcomed any comments from the Board for the record, however, would like to finish the vetting from the Office of the Labor Commissioner.

Ms. Hartranft said under the breaks and meals section, language was added saying the section does not apply to situations where there is only one person at a particular place of employment. Ms. Hartranft asked if that applies to caregiving situations, and if so, does the section even need to be there if it does not apply to the personal care industry.

Chair Phinney stated she believes that is how some people are interpreting the language and that she asked the same question when reading the stipulation. Chair Phinney said she believes the Board needs expertise from the Office of the Labor Commissioner to make a determination.

Ms. Hartranft said mileage reimbursement may be a misleading term because agencies pay travel time. It is not reimbursement per mile traveled, but the time traveled between two places, sometimes called portal to portal. Ms. Hartranft said the explanation is accurate to travel time, but the phrase "mileage reimbursement" may be misleading and should be changed. Ms. Hartranft also said training was under the mileage reimbursement section and maybe needs to be its own section.

Chair Phinney said staff will review Ms. Hartranft's concerns as well.

Agenda Item 11: Possible Action Item – Recommendations for future agenda items.

Chair Phinney called for future agenda items.

Ms. Schoen said as general comment she was able to take the worker survey twice and requested an agenda item to extend the activities of HCESB another year.

Ms. Cooper asked if she could be on the subcommittee on systemic racism.

Chair Phinney asked the Board if there was any objection to Ms. Cooper joining the subcommittee. None heard. Ms. Cooper was appointed to the subcommittee on systemic racism and economic injustice.

Ms. Samuels said she wanted to address Ms. Schoen's concern with the survey. When creating the survey, it was put forth with the knowledge that it is not a perfect data collection tool, especially when focusing on protecting the anonymity of respondents, specifically the workers. There was not a way for staff to ensure only individuals were submitting only one survey response. To accomplish that, information such as email or name would have to be collected, which would invalidate that protection of anonymity.

Chair Phinney said staff want to be transparent with what that information does and does not tell the Board and will continue to make those statements and include those kinds of caveats in the end of the year report.

General Public Comment

Carol Matrón introduced herself as a parent of a recipient and a personal care attendant for her daughter since the pandemic where there has been a major shortage and incredible overturn of workers. There has always been an overturn of workers in the 31 years Ms. Matrón's daughter has needed care, but it is getting so critical and so bad right now. Ms. Matrón stated she has over 100 people in her phone contacts who have filtered through and come and gone out of her daughter's life and care. It is critical now as the agency individuals and workers to gather up agencies like the American Association of Retired Persons (AARP) and the Alzheimer's Association to get a bigger voice because everyone will need a caregiver, hire a caregiver, or be a caregiver. There is a lot of momentum behind this group, and everyone needs to unite and go and get that \$15 an hour minimum wage. Ms. Matrón said she knows it does not seem like the \$15 is where workers want to end up, but it is a good start, and for this state it is going to be a big uphill battle.

Mr. Ward said when the Board was talking about putting in the law about agencies who pay as independent contractors, it is like the Board is submitting a law over a law. The Employment Security Division's ABC Test and the Federal Internal Revenue Service (IRS) Asset Test make it clear that a homecare worker does not qualify as an independent contractor whether with an agency or with a consumer and in 2019 SB 493 was passed specific to the misclassification of those. The Labor Commissioner created a task force to enforce that law. Mr. Ward said he does not know why the Board when then put into Medicaid document that it is illegal to break the law. Mr. Ward said he is excited about the minimum wage increase, but in seeing Mr. Crockett's presentation, the Board as to remember if the minimum wage is pushed to \$15, \$17, or \$20, the

Medicaid rate also has to increase. If there were a \$25 minimum wage plus contributions, agencies would already be in the negative if receiving a \$25 Medicaid reimbursement. Mr. Ward said when discussing minimum wage increasing, the Board should also consider additionally that if the 8-hour day on a 24-hour rolling clock rule can be eliminated, it helps accomplish that. There are a lot of unintended consequences to consider.

Erma Henderson said she is very appreciative to hear today's activities and it is a great inspiration to hear and see something about to happen with bringing the \$15 minimum wage. It may not seem like a lot to some people, but \$15 an hour to start is a lot. Ms. Henderson has said she has talked to numerous home care workers and to see them continue to do what they do just to care for others in hopes to see the \$15 is a start. Ms. Henderson thanked all the Board members and said he will continue to support their activities.

Dawn Ralenkotter introduced herself from Las Vegas, Nevada and said she was listening the whole time and thought this was a good meeting. Ms. Ralenkotter, agreed with what Ms. Henderson said in that the \$15 minimum wage is a start. Care workers would like to have more, but it is a start. Ms. Ralenkotter said all the Board members were on cue about everything, thanked the Board and encouraged them to keep up the good work.

Kristi De Leon introduced herself as a home care employer with Love's Home Health Care and said she remembers the discussion and that the Board was talking about discussing rates and wages a little bit more, as well as mentioned to make sure to make the budget deadline with the end of the fiscal year and budget planning. Ms. De Leon said she appreciates the Board putting together the verbiage to be submitted and reviewed so the deadline is met. The \$25 reimbursement rate and \$15 minimum wage would allow agencies an opportunity to pay the caregivers more money and offer benefits. Ms. De Leon said she cannot wait to be able to announce the \$15 minimum wage to her caregivers and thanked the Board for this opportunity.

Chair Phinney said at this point the action is a recommendation to the Director and there will be some action in the upcoming legislative session before the recommendation gets completely vetted out. Chair Phinney said she wanted to make sure the Board was not creating any undue expectations, saying this is exciting progress for the Board and thanked everyone for their participation and work that has been put in between meetings.

Adjournment – Cody Phinney, Chair Designee

Meeting Adjourned at 4:23 p.m.