Draft Minutes
STATE BOARD OF HEALTH
June 5th, 2020
9:00 a.m.

MEETING LOCATIONS:

This meeting was held via teleconference only. Pursuant to Governor Sisolak's March 22, 2020, Declaration of Emergency Directive 006, the requirement contained in NRS 241.023(1)(b) that there be a physical location is suspended in order to mitigate the possible exposure or transmission of COVID-19 (Coronavirus). Accordingly, all members of the public were encouraged to participate by using the teleconference number provided in this notice.

BOARD MEMBERS PRESENT:

Jon Pennell, DVM (Phone)
Jeffrey Murawsky, M.D. (Phone)
Monica Ponce, DDS (Phone)
Judith Bittner (Phone)
Charles (Tom) Smith (Phone)
Dipti Shah, M.D.

BOARD MEMBERS EXCUSED:

All Board Members Present

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

Joseph Filippi, Executive Assistant; Rex Gifford, Administrative Assistant III;

OTHERS PRESENT:

Linda Anderson, Attorney General's Office;

Joseph Filippi opened the meeting at 9:00 a.m.

Roll call was taken, and it was determined that a quorum of the State Board of Health was present.

1. **Consent Agenda. For Possible Action:**

Consideration and Approval of previous Board of Health Minutes from March 6th, 2020 and Marth 20th, 2020 – Chair Jon Pennell.

Chair Pennell was concerned that there was some sentences that didn't transcribe correctly and misspelling in the minutes and asked the Board if they wanted to make a motion to approve or approve with corrections, or a motion to come back to this later.

Dr. Murawsky stated that he noticed the same issues with the previous minutes and had a concern about approving and moving forward without corrections. Dr. Murawsky motioned to defer until the meeting minutes were corrected.

Mrs. Anderson with the DAG advised that deferring the approval of the meeting minutes could be done.

Dr. Murawsky motioned to defer approval of past Board of Health meeting minutes until the next meeting. Dr. Shah seconded Dr. Murawsky's motion to defer approval of the meeting minutes until next Board of Health Meeting. Chair Pennell approved the motion and clarified with Dr. Murawsky that both transcripts of the Board of Health meeting minutes needed to be rectified.

The Board members voted unanimously to pass Dr. Murawsky's motion.

Dr. Shah clarified that she did attend March 18th, 2020 Board of Health meeting but she was not marked as having attended in the meeting minutes.

The public was given an opportunity to comment on the previous Board of Health meeting minutes. No public comment was given.

Consent Agenda Items, For Possible Action:

Chair Pennell asked Mrs. Anderson for clarification about some of the childcare provisions that the Board will be voting on in the agenda.

Ms. Anderson stated that in these unprecedented times the use of Compliance Agreements has been a unique and helpful tool because the Chief Medical Officer is able to immediately postpone the enforcement of regulations during this hardship, but if the postponement is longer than 45 days the Compliance Agreements have to be brought before the Board of Health. If the Board of Health approves the Compliance Agreements, they will remain in effect as long as the Division and the Chief Medical Officer determines to be appropriate. Most likely as long as the Governor's Emergency Declaration is in place. This gives the Division flexibility to work with practitioners in Childcare, labs, and other treatment elements. Anywhere where regulations interfere with care and the ability to serve the community.

Chair Pennell asked if the public had any questions for Ms. Anderson.

Dr. Sharon Knafo, School Head of Shenker Academy in Las Vegas asked Ms. Anderson if the regulations are approved will it be for another 45 days? What are the 45 days for?

Ms. Anderson replied that the item related to childcare regulations is further on the agenda and what we are discussing right now is about the consent agenda item number 3. Limiting the enforcement of childcare regulations regarding the number of children in a facility when the

childcare facility is service essential workers. Ms. Anderson stated that the Board will get to the childcare regulations he has a concern about later in the meeting's agenda.

Chair Pennell asked if there was any further public comment. After no public comments were made Chair Pennell asked if there were any objections to the consent agenda. Then he asked if for a motion to approve the consent agenda.

CHAIR PENNELL REQUESTED A MOTION TO APPROVE THE CONSENT AGENDA. A MOTION BY DR. SHAH TO APPROVE OF THE CONSENT AGENDA WAS MADE AND SECONDED BY MR. SMITH. THE REGULATION PASSED UNANIMOUSLY.

Item For Possible Action

Consideration and Adoption of Proposed Regulation Amendments to NAC 433 Mental Health Crisis Hold, LCB File No. R011-20 - Stephen Wood, Health and Human Services Specialist, Behavioral Health Prevention & Treatment, DPBH

Presented by Stephen Wood;

Thank you, Chair Pennell, and members of the Board.

On the line with us today are Dr. Leon Ravin, Statewide Psychiatric Medical Director, Dawn Yohey, Clinical Program Planner, and Julie Slabaugh, Deputy Attorney General. They are here to help answer any questions you may have.

Today, we will be presenting R11-20 to you. This regulation was developed due to the Assembly Bill 85 during the 80th session in 2019. AB85 was introduced by the Northern Regional Behavioral Health Policy Board and was the result of their work to improve the way we care for those in mental health crisis. This legislation as well as NRS 433 and 433A require the Board of Health to adopt regulations concerning the care and treatment of individuals alleged to be in a mental health crisis and other related matters.

R11-20 does several different things to fulfill this requirement. The regulation further defines the requirements and the necessity of a medical examination for those admitted to a mental health facility. This is required to ensure that patients do not have a medical condition that needs immediate treatment before admission to a mental health facility. Should it be determined that the person alleged to be in a mental health crisis have such a medical condition, the regulation also defines the facilities to which the person should be admitted.

This regulation also requires the director of a public or private mental health facility to report certain data to the Regional Behavioral Health Policy Boards, so that they can make more informed decisions regarding the Behavioral Health needs of their region and the state.

At the public workshop, there was some concern raised that the regulation did not require the collection of enough data, and that there was not enough consideration taken for child welfare and parental rights.

Division staff met with the concerned party to discuss these issues. We came to a consensus that the regulations were broad enough to allow for the collection of enough data to get a clear picture of what was happening in the state, and that the authority and purpose of this regulation was not necessarily the appropriate place to address the other concerns.

R11-20 is presented to you today with an errata that amends sections 6 and 8 of the regulation. There was a typo in the errata that said section 3, but it is sections 6 and 8. These changes are required due to an oversight in drafting. The change in section 6 adds "the physician" to the list of providers for the medical examination, bringing the section in line with the rest of the regulation. The change in section 8 changes "medical director" to "administrative officer." This is meant to bring the regulations into conformity with the structure of Division facilities and the duties of the administrative officer of the facilities.

We respectfully request that the Board of Health adopt R11-20, with errata, and we would be happy to try to answer any questions that you might have.

CHAIR PENNELL REQUESTED A MOTION. A MOTION BY DR. MURAWSKY TO APPROVE OF R011-20 AND ERRATA WAS MADE AND SECONDED BY DR. PONCE. THE REGULATION PASSED UNANIMOUSLY.

Item For Possible Action:

Consideration and Adoption of Proposed Regulation Amendments to NAC 433 Involuntary Medication, LCB File No. R012-20 - Stephen Wood, Health and Human Services Specialist, Behavioral Health Prevention & Treatment, DPBH

Presented by Stephen Wood;

Chair Pennell and members of the Board.

Still on the line with us to help answer questions are Dr. Leon Ravin, Statewide Psychiatric Medical Director, Dawn Yohey, Clinical Program Planner, and Julie Slabaugh, Deputy Attorney General.

Now we would like to present R12-20 to you. This regulation, as well, was developed due to the Assembly Bill 85 during the 80th session in 2019. AB85 was introduced by the Northern Regional Behavioral Health Policy Board and was the result of their work to improve the way we care for those in mental health crisis. The legislation as well as NRS 433 and 433A require the Board of Health to adopt regulations concerning the care and treatment of individuals alleged to be in a mental health crisis and other related matters.

R12-20 contains many provisions that will fulfill this requirement. This regulation seeks to establish the procedure for determining whether to involuntarily administer psychotropic medication to a patient at a public or private mental health facility. The regulation also prescribes the conditions that must be met before a practitioner can request the involuntary administration of medication for a patient. The director of the mental health facility is required to appoint a committee to review such requests, and the committee with report back to the director

with a recommendation. The patient will also have an advisor whose job it will be to not only advise the patient, but also to advocate for the patient during the committee review of the request. The regulation limits an authorization for the involuntary administration of psychotropic medication to a maximum of 30 days. If the practitioner determines that there is a need to continue involuntary administration of medication after 30 days, they must submit another request for review.

At the public workshop, there was concern raised over the use of the procedure outlined in these regulations in lieu of court hearings for the involuntary administration of medication.

The Division has been in consultation with the Office of the Attorney General regarding this concern.

We respectfully request that the Board of Health adopt R12-20, and we would be happy to try to answer any questions that you might have.

Chair Pennell asked Ms. Slabaugh about the current discussion regarding this regulation.

Mrs. Slabaugh replied that the concern about the absents of a court hearing is addressed. These procedures are directly out of United States Supreme Court case Washington vs. Harper, which has been upheld by other Federal Circuit cases across the United States. What the United States Supreme Court decided was the risk associated with anti-psychotic medication are mostly medical ones that are assessed by medical professionals, and that a state may conclude with good reason, that a judicial hearing my not be as effective as continuous or as probing as administrative review using medical decision makers. The United State Supreme Court has weighed in on this issue and found it Constitutional and these procedures track what was accepted by the United State Supreme Court.

Chair Pennell asked if there were any questions from the Board.

Dr. Murawsky asked, this covers the involuntary treatment of a person in a mental health crisis in a mental health institution. When the patient has a constant medical condition that requires them to be hospitalized in an acute care facility, how does this address those who also might fall into this category of patient? Or is that covered in another regulation?

Ms. Slabaugh stated that this regulation would apply to those individuals in the hospital. What normally happens when they have a medical condition in a general hospital to be treated once that treatment is done, they are then transferred to the psychiatric facility. There is a meconium in Chapter 43A that allows the general hospital to file a petition so that they my legally maintain holding that individual due to their psychiatric condition. They would also have the option following this procedure in order to medicate them for their psychiatric conditions. In practice after the individual is treated in a medical facility the individual is then transported to a psychiatric facility for their psychiatric condition.

Dr. Murawsky expressed his concern for individuals that are in a medical facility that cannot be sent to a psychiatric facility. Individuals that may need to start or be forced to continue to take

medications in a medical facility. Dr. Murawsky was citing his concern that the medical facility be able to do this regulation as well.

CHAIR PENNELL REQUESTED A MOTION. A MOTION BY DR. MURAWSKY TO APPROVE OF R012-20 AND ERRATA WAS MADE AND SECONDED BY DR. PONCE. THE REGULATION PASSED UNANIMOUSLY.

For Possible Action

Consideration and Adoption of Proposed Regulation Amendments and Errata to NAC 433 Revised Language on Non-emergency Secure Behavioral Health Transport Services. LCB File No. R013-20 and Errata - Stephen Wood, Health and Human Services Specialist, Behavioral Health Prevention & Treatment, DPBH

Presented by Stephen Wood;

Thank you again, Chair Pennell and members of the Board.

Still on the line with us to help answer questions are Dr. Leon Ravin, Statewide Psychiatric Medical Director, Dawn Yohey, Clinical Program Planner, and Julie Slabaugh, Deputy Attorney General.

Now we would like to present R13-20 to you. This regulation, as well, was developed due to the Assembly Bill 85 during the 80th session in 2019. AB85 was introduced by the Northern Regional Behavioral Health Policy Board and was the result of their work to improve the way we care for those in mental health crisis. The legislation as well as NRS 433 and 433A require the Board of Health to adopt regulations concerning the care and treatment of individuals alleged to be in a mental health crisis and other related matters.

R13-20 fulfills the requirement in the legislation for the Board to adopt regulations regarding the transportation of individuals in a mental health crisis. The regulation establishes the licensing by the Division for nonemergency secure behavioral health transport services.

NRS 433.3317 defines nonemergency secure behavioral health transport services as “the use of a motor vehicle, other than an ambulance, or other emergency response vehicle, that is specifically designed, equipped and staffed to transport a person with a mental illness or other behavioral health condition in a manner that allows observation of the person being transported; and prevents the person being transported from escaping from the vehicle or accessing the driver or the means of controlling the vehicle.”

The regulation also requires the provider of such services to maintain certain documentation, insurance, operational policies, and vehicle standards. The provider is also required to obtain a criminal background check on their employees to ensure the safety of the patient.

We received no testimony or comments regarding this regulation during the public workshop.

R13-20 is presented to you today with an errata that amends sections 3, 5, 9, and 12 of the regulation. The errata is necessary due to drafting oversights and needing to conform the new program with Division policy and procedure for licensure.

The amendment to section 3 changes the term of the license from 1 year to 2 years. This is to bring this license into conformity with similar licenses.

The amendment to section 5 changes the recertification requirement for certain training from annually to biennially. The completion of these trainings will provide the employees with a certification that is good for 2 years.

The amendment to section 9 removes the requirement that the attendant be seated in the driver's compartment. The purpose of having an attendant present during a transport is to support the patient. The attendant would need the ability to be in the same vehicle compartment as the patient in order to provide the required support.

Section 12 requires employees of the provider to complete certain trainings. This amendment is meant to clarify which employees are required to comply with section 5. Nonemergency secure behavioral health transport service providers employ staff that would not require the training required in section 5, such as administrative staff. This amendment changes the requirement to apply only to those who will be providing direct services to patients.

With that, we respectfully request that the Board of Health adopt R13-20, with errata, and we would be happy to try to answer any questions that you might have.

CHAIR PENNELL REQUESTED A MOTION. A MOTION BY DR. SHAH TO APPROVE OF R013-20 AND ERRATA WAS MADE AND SECONDED BY MR. SMITH. THE REGULATION PASSED UNANIMOUSLY.

For Possible Action

Consideration and Adoption of Proposed Regulation Amendments and Errata to NAC 439 J-1 Visa Waiver Program, LCB File No. R017-20 and Errata – Joseph Tucker, Primary Care Manager, DPBH

Presented by Joseph Tucker;

Dr. Pennell and members of the Board, for the record my name is Joseph Tucker, Manager of the Primary Care Office. I am presenting for your consideration proposed amendments for Nevada Administrative Code in LCB File No. R017-20 outlining the provisions for the Conrad 30/J-1 Visa Waiver Program. NRS 439A.170 requires the regulatory body, in this case the Board of Health, to adopt regulations providing for the administration of the program in accordance with the provisions outlined in NRS 439A.170. These proposed regulations bring the Board of Health into compliance with NRS 439A.170 to the extent possible.

The proposed amendments modify existing language to make regulations more clear, current, and compatible with the intent and scope of the Conrad 30/J-1 Visa Waiver program. The new language will aid the Conrad 30/J-1 program in carrying out its regulatory role more effectively.

A public workshop was held in January 2020 to share the proposed amendments with stakeholders and receive input on how the proposed changes would impact the community. Additionally, the proposed amendments were reviewed by the Primary Care Advisory Council during two of their public meetings. Concerns were raised by one person during the public workshop, and by members of the Primary Care Advisory Council, regarding the increase in application fees for nonprofits. To address those concerns, a longitudinal study on employer participation was conducted, and an erratum was created to reduce the application fee for nonprofits to $1,000 based on the results of the analysis.

Sections 1 and 3 update the application fee process to allow the employer the option of paying the entire application fee and increases the fee for a letter of support to $2,000. Sections 1, 2, and 4 update language regarding website and address information. Sections 5, 6, and 7 update regulations to allow the Administrator more flexibility in approving additional work locations and reporting violations. Section 8 allows the Administrator to impose sanctions on a non-compliant employer and allow the Administrator to transfer a physician to a new employer.

Section 9 proposes amendments to NAC 439.220 which will allow for the electronic posting of public notices to the Division's website instead of publishing in a newspaper. The update will save costs for everyone who is regulated by the Division and provide a more targeted approach to give notice to those who may be impacted.

This concludes my presentation of the proposed regulations and I ask that the Board of Health adopt the regulation changes in LCB file No. R017-20 and its erratum.

May I answer any questions?

Chair Pennell questioned what the $2,000.00 Letter of Support covered?

Mr. Tucker replied that primary care office reviews the application to make sure it is complete, and that the practice and the physician are both in compliance with State and Federal regulations. Then the application is forwarded to the Department of State while the physician is practicing in an underfilled area of the State. The Division also provides cite visits as well as education and training for both the employers and the J-1 physicians.

Chair Pennell asked if there was any public comment.

Steve Messinger, Policy Director for the Nevada Primary Care Association representing Community Health Centers. The Members of Community Health Centers provide integrated primary dental and behavioral health care in health professional shortage areas to underserved populations. Mr. Messinger thanked Mr. Tucker for acknowledging their concerns and for proposing a separate fee for non-profits. Mr. Messinger is opposed to the proposed change to the

regulations to raise fees on all letters of support. For the non-profit that Mr. Messinger represents Primary Care Members this is a 100% rise in fees to bring an international provider to the state. In contrast for-profit specialty providers this is only a 43% increase. In Nevada we talk about the shortage of providers, especially for providers serving patients on Medicaid or a sliding fee scale as his members do. This is what the J-1 Visa Program was designed to support. Mr. Messinger urges the Board of Health to not support this regulation due to the weakening of a fee scale that is designed to incentivize the use of J-1 Visas by organizations providing health care to underserved Nevadans. It would make a lot more sense for the increase to affect the for-profit organizations than non-profit organizations. Mr. Messinger asked the Board to please insist on regulations that insist our priorities for increasing access to care in Nevada.

Mr. Tucker rebutted, as a part of the analysis that was conducted the Division looked at the numbers of participation the Division had from non-profits from 2002 to the present and that number has maintained relatively steady. There does not seem to be a difference between the non-profit versus the for-profit issue in regard to increased participation from the non-profit businesses.

Chair Pennell opened the discussion to the Board. Dr. Murawsky asked Ms. Anderson, is the fee schedule something that the Board fully considers or is that part of an already set process?

Ms. Anderson replied that the Board does have the ability to approve these regulations. Additionally, the Division of Public and Behavioral Health needs to establish that they have determined those fees to be fair and reasonable. Ms. Anderson stated that if you would like additional information the board can set this regulation aside, or the Board can adopt the rest of the regulation and come back to the fees. Ms. Anderson strongly recommended getting more information from Mr. Tucker to support why the Division feels this regulation is necessary for the Board to adopt today.

Mr. Tucker stated that the Primary Care Office did conduct a time and effort study as part of a cost analysis with travel and education services provided to the J-1 physicians and providers. What was found is that the total cost per applicant is about $2,218.00. That includes the application processing time, travel, and educational resources to the J-1 physicians during their 3-year service. Other states that charge a fee were compared and the range was between $500.00 to $4,000.00 per application, so the proposed fee schedule is not above the national level.

Ms. Anderson added, that if an entity faces a hardship, as with all Board of Health regulations, there is a variance process in place which would allow the entity to come before the Board of Health and establish that hardship. Ms. Anderson pointed out that there used to be a cost associated with requesting a variance, but if this regulation is passed the State will not be charging to place the variance be advertised in the newspaper, so they will be able to bring the hardship, due to the inability to pay, before the Board. There is always a balance between having no other funding source besides these fees for this program and the Division’s ability to

determine the appropriate fee. To provide the services they are asked to do by the legislation, that requires the J-1 Visa to go forward.

Chair Pennell asked if there were anymore comments from the public or Board members. Having no further comment from the public or the Board Chair Pennell asked the Board for a motion. Dr. Murawsky motioned to approve and note Ms. Anderson's comments about the ability to request a waiver. Dr. Murawsky asked if that should be written into the errata.

Ms. Anderson stated that the Division of Public and Behavioral Health will make it clear and that the comments about the waiver do not have to be added to the regulation. The request being transcribed in this meeting can be brought forward by educating the service providers and on the DPBH website to make sure people are aware of that option.

CHAIR PENNELL REQUESTED A MOTION. A MOTION TO APPROVE OF R017-20 AND ERRATA ENSURING THAT THE KNOWLEDGE OF A WAIVER IS AVAILABLE AND THAT THERE NOT BE ANY DETERRENTS PREVENTING SERVICE PROVIDERS TO ASK FOR A WAIVER FROM THE BOARD. THIS MOTION WAS SECONDED BY DR SHAH. THE REGULATION PASSED UNANIMOUSLY.

For Possible Action

Consideration and Adoption of Proposed Regulation Amendments and Errata to NAC 432A Child Care Licensing, LCB File No. R135-18 and Errata - Latisha Brown, Childcare Facilities Surveyor Manager, Childcare Services, DPBH; Paul Shubert, Bureau of Health Care Quality and Compliance, DPBH

Presented by Latisha Brown;

Chairman Pennell and members of the Board, for the record my name is Latisha Brown, Child Care Licensing Program Manager with the Bureau of Health Care Quality and Compliance. I am presenting for your consideration proposed amendments for Nevada Administrative Code, Chapter 432A, Legislative Counsel Bureau File No. R135-18 and proposed errata.

These regulations will align Child Care Licensing with mandates set forth by Nevada Legislation. In 2017, Legislation was passed for the implementation of sanctions applicable to licensed childcare facilities. This proposed regulation and amendments were generated in efforts to bring the Division of Public and Behavioral Health – Child Care Licensing into compliance with the legislation passed in 2017. Additional amendments include: ratios, trainings, mandated reporting, director qualifications and designated operator qualifications to help build transparency and clarity of standards to help ensure successful provider compliance.

Child Care Licensing has received a letter of concern from a member of the industry regarding implementation of what they interpret as severe regulations with extreme consequences.

Child Care Licensing would like to explain that these regulations are minimal structure to ensure sanctions are available as a tool to encourage facilities to comply with existing requirements that are essential to ensuring the safety of children in licensed childcare facilities. The regulations emphasize the expectations regarding safety and risk as set forth through NAC432A. This sanction system creates a framework to encourage compliance by assigning appropriate consequences when a facility fails to protect health and safety. Expectations of compliance have not changed with this system. It is a system which allows for more transparency through carefully delineated outcomes. Even though accountability is clear within this system, it is important to note that the ability and opportunity to correct non-compliant issues through technical assistance is still available. Facilities continue to have rights whenever they feel the implementation of any sanction is unjust in accordance with NAC 439.346. Facilities will be able to dialogue with the program to resolve any sanction inconsistencies which could include informal resolution through program/facility discussion; utilization of the appeals process or the facility's ability to request a possible variance as applicable.

These regulations are designed with multiple levels of severity and scope and requirements for assignment of the applicable level of sanction and to ensure implementation is consistent. In addition, there are a variety of sanctions available so that a sanction aligns with the deficiency.

The Division has provided several opportunities in accordance with NRS 233B, for the childcare industry and facilities, to comment regarding these regulations.

A Small Business Impact Questionnaire was sent to licensed childcare facilities along with a copy of the proposed regulation changes. Respondents of this questionnaire expressed concerns about the proposed changes that were further elaborated by the industry through a public workshop. Quarterly stakeholder meetings were held to promote further discussion and collaboration to provide amendments that were affable between both the Division and the industry in the best interest of children.

Industry and Division discussion brought forth necessary modifications which have been specified in the errata to ensure these essential changes are accomplished.

Through this errata, we are making the following changes:

- Industry was not comfortable with the term "recipient" which has now been changed to "individual" or "case" to be more inclusive.
- Clarified definition of substantial compliance to include no deficiencies with a severity score of 3 or more and the facility has taken effective steps to resolve all deficiencies.
- Plan of correction language clarified to add that facilities are to specify staff responsible for correction and to identify action that will ensure the deficiency will not reoccur.
- Removal of waiver language because there is no waiver process available, because DPBH follows a variance process.
- In support of the Nevada Registry, we want to ensure caregivers are acknowledged as active members, however, it generally takes longer than 90 days to become an active member, but not more than 120 days.
- A table was requested to carefully show what trainings are to be done in 90 days vs. 120 days because tables are usually easier to understand than text.

- Removal of redundant language (clean up)
- Language clean up and removal of table for family/group care ratios as the text written adequately describes the restrictions.
- Clarification on a child of a person who resides in a facility will be counted in ratio up to the age of 4 because 4 is not school age.
- Clarification language added to ensure access to video footage utilized within a childcare facility.

Section 40 of the Errata is being excluded because it was found unacceptable to place a table within the regulations per LCB. Further, section 41 will also be excluded because LCB found the change unacceptable. LCB agreed with all other proposed changes of the errata.

Staff recommends the State Board of Health adopt the proposed regulations, LCB File No. R135-18, along with the changes identified in the errata with the exception of sections 40 and 41 as presented today.

Pursuant to your questions, this concludes my testimony.

Chair Pennell opened the meeting for public comments.

Dr. Sharon Knafo, School Head, Shenker Academy stated that he sent a letter stating 4 concerns that he had about the proposed regulations. As an educator in Nevada he sees that early childhood education in Nevada is valid and necessary and he appreciates the Division's steps toward elevating early childhood education. Dr. Knafo is concerned that the way the Division has chosen to pursue early childhood education is through increased, or elevated consequences. The $500.00 fine is not defined, and it is on a matrix that does not exist. The concern is that the severity of each deficiency encompasses. Dr. Knafo is uncertain if Shenker Academy, or any other facility will be able to operate with such severe monetary consequences. Dr. Knafo stated that 5 pre-schools went out of business around Shenker Academy. Shenker Academy is 30 days away from closing. They had 3% occupancy in April and now the Academy is at 30% occupancy. 90% of their teachers were laid-off and the Academy is in severe financial trouble. Another unclear part of the regulation is the replacement of directors or principals. Dr. Knafo brings up the point that without a matrix there are many questions. 3 years ago, because of unclear regulations Shenker Academy had a problem with its license. The Academy had to involve Mr. Shubert and Ms. Phinney for clarification that was because of a training issue. The Academy had 70 teachers of which 35 of them were out of compliance because of unclear regulations regarding training. Dr. Knafo believes it is an excellent idea to elevate childhood education, but why elevate through increased consequences? Why can't there be a committee that defines how regulations are done through the guidance of education. To go into a classroom and say that I want to elevate student scores, therefor the students who get 40% or less on a test will be dismissed from the classroom or I will replace the teacher, or I will put on the student's forehead a notice that says "Failed at a test." This is similar to putting a notice on the Academy door saying, "No Admissions Allowed." Dr. Knafo concluded that if we compare early

childhood education to elementary school education, and middle school education, similar regulations were not seen in these schools. Why is early childhood education so different?

Mr. Shubert wished to address some of Dr. Knafo's concerns. Mr. Shubert stated that the decision to increase consequences was made by the legislature and not the Division. The legislature passed the law which requires the Division to adopt standards for sanctions that will be applied to facilities. The delineation of the fines is described in the regulations. The fines begin at $50.00 up to $500.00 for extremely egregious deficiencies which actually harm children in the facility. Severity is also defined, there are 4 levels of severity within the regulations. The first is the administrative level, second is the potential for harm, third is probable harm and lastly harm to a child in the facility. Scope and definition of all for levels is defined in the regulation, as well as patterns, such as isolated pattern or widespread. The issue regarding replacing directors is not in the regulation, however the regulations to have direction regarding temporary management. This is only if there were egregious violations and non-compliance in the facility, and it was deemed necessary for the facility to operate. In an emergency situation the Division would apply temporary management to that facility such that the facility could continue to operate with additional management. Finally, to address an issue brought up by Dr. Knafo, these regulations clarify training and training requirements. The hours of training required is in the errata as well. Mr. Shubert believed that Dr. Knafo's concerns were addressed and expressed that it is understood that it is a difficult time for all early childhood facilities and regulators as well. These regulations are designed to bring transparency and clarity to what the Division does and how the Division does it.

Chris Schneider with Mountain View Lutheran stated that he appreciated the intent of the regulation, but his concern is that there is not a matrix yet. Additionally, Mr. Schneider highlighted the fact that, if there was a childcare facility with such egregious violations that the facility needed temporary management from the Division, per section 9 and section 31 of the regulations and fines therein were to happen. Mr. Schneider suggests that the language of the regulation be written in such a way that the facility is given the option of entering in to the QRIS Nevada Silver State Stars System, which is a State system that appoints a coach to help the facility become compliant and do better, so that the facility manager receives training. This is to make the facility better over time and not just when the temporary manager is in place. This is just a suggestion, many facilities may not like this idea. The STAR System is designed to give a manager guidance to a facility so they can make the changes from within. Those changes will last longer because it is internal instead of an external change.

Mr. Shubert replied that a request for a matrix is a simple request that the Division can fulfil. It is just a matter of putting the scope and severity in the table, the table is established but the fees are not defined for childcare, but the Division does fees for health care facilities. The recommendation of using QRIS instead of a temporary manager is something that the Division can consider. Mr. Shubert believes the language should stay the same in the regulation to temporarily assign a manager and choose who the manager would be, but the Division could work with QRIS to see if they would want to work with the Division.

Diane Nicolette, Truckee Meadows Community Collage E.L. Cord Childcare Foundation Center, Ms. Nicolette stated that she once served as a council member on the board of the State Licensing Committee. We worked very hard on this and the top request was that there be a matrix. Ms. Nicolette stated that it was like going into a restaurant, ordering your food, and then finding out what it is going to cost. Ms. Nicolette asked the Division to please reconsider having a fully defined matrix of charges that are assigned with the infraction and sanction.

Hailey Hammel, owner of a preschool in Reno and a member of the Washoe County Child Advisory Board, expressed concern that the Small Business Impact Questioner was not sent out to Reno preschools. Ms. Hammel wanted to highlight that the Small Business Impact stated there was not that much of an effect, it was not administered to all the facilities that would be affected by the regulation. Typically, Reno centers are not questioned about these regulations, Reno preschool centers participate in the workshops, but as for issues brought to the Board Reno is excluded. Ms. Hammel would like to change that moving forward and would like to be included in those. This is a confusing regulation without the matrix, so to pass this regulation without the matrix seams very unwise and uncomfortable for preschool centers.

Dr. Knafo asked, and was given, 2 minutes to comment by Chair Pennell. Dr. Knafo expressed concern that the regulation lacked a matrix. Dr. Knafo stated that the previous issues that Shenker Academy had to do with training. Dr. Knafo stated a rebuttal to Mr. Shubert stating that training was defined in the regulations. Dr. Knafo continued that the training issue for Shenker Academy was the mandatory 24 hours regulation with the initial 18 hours training, because of the regulations gray area the hours were separated and the 18 hours of initial training were not counted in the 24 hours. Therefor Shenker Academy was deficient on 30 hours and the Academy needed 42 hours. That is a gray area in the regulation, and we want to prevent gray areas. Dr. Knafo expressed again that there should be a matrix with full understanding of the regulation.

Ms. Anderson stated that it is understood that a matrix would be helpful, and that the Division would agree to creating a matrix based on the Board moving forward and adopting these regulations today. The matrix would be developed based on what is in the regulations if the Board proceeds. Ms. Anderson expressed support for a matrix, but LCB (Legislative Council Bureau) has decided a matrix can not be part of the regulation itself, even though it is a useful tool to help communicate the regulation. Ms. Anderson pointed out that in Reno, Washoe County does its own childcare licensing.

An unidentified person made comments eluding to the fact that Washoe County would still be subject to these regulations and stated that it was stupid to have the Board of Health decide on these regulations, after being repeatedly asked by Chair Pennell to identify themselves they placed themselves on mute.

Chair Pennell asked for comments from the Board before the motion. Without any additional comments by the Board Chair Pennell asked for a motion. Dr. Murawsky asked if enforcement of the regulation would be deferred until the matrix was published. Ms. Anderson answered yes, and she clarified that the facilities have due process rights. If any sanction was imposed the childcare facility would be able to appeal. Until now the Division has only had the options of

revocation or suspension, so this regulation adds more sanction options, to reduce the enforcement of harder sanction measures. The Department of Public and Behavioral Health (DPBH) even without a matrix would have to carry the burden of proof if an issue went before a hearing to show that the sanction was appropriate, warranted and that the violation occurred.

Dr. Murawsky asked the Division how long before the matrix would be publicly available? +

Mr. Shubert answered that the Division could make a matrix available within a week from this meeting. The matrix could be put on the DPBH website and made publicly available. In addition to the adoption of these regulations there is still a legislative commission approval process, so there is another iteration for public comments to be heard.

CHAIR PENNELL ASKED FOR A MOTION FOR CONSIDERATION AND ADOPTION OF THE AMENDMENT. A MOTION TO APPROVE R135-18 WAS ENTERTAINED BY DR. MURAWSKY AND SECONDED BY MR. SMITH. THE MOTION PASSED UNANIMOUSLY.

Health Department Reports:

Mr. Filippi informed the Board that Ms. Nicki Aaker, Director of Carson City Health and Human Services and Mr. Kevin Dick, District Health Officer for the Washoe County Health District were unable to attend the meeting, however they did submit their district health reports to the Board. Carson City Health and Human Services report is listed as Exhibit "A" and the Washoe County Health District report is listed as Exhibit "B"

- **Southern Nevada Health District:** Dr. Fermin Leguen, Chief Health Officer reported for the Southern Nevada Health District. He gave a report though the teleconference number provided in the Board of Health agenda on updates with the Southern Nevada Health District. His report is attached hereto as Exhibit "C." The SNHD (Southern Nevada Health District) has been working with our community partners to provide tentative resources for seniors, minorities and those individuals who are most at risk for COVID-19. We have also deployed community collection sites in multiple places across the county. Testing was also offered to individuals who do not have signs or symptoms of COVID-19 as well as opening testing to all those who wish to be tested in the community. As for Contact Tracing, SNHD recently activated an automatic type updating system, this is an electronic application that is helping our surveillance teams to quickly get into contact with those individuals that have known positive COVID-19 tests and quickly get into contact with those identified by the cases. SNHD is also collaborating with the city of North Las Vegas. They allowed a group of librarians to help with contact tracing. Training of the librarians was completed last week and now they are a powerful team to help us contact tracing, and after the pandemic they will go back to their duties. There is also a pilot program with Clark County as a resource to help SNHD communicate with individuals who tested negative for COVID-19 during community-based testing. There is also social service-based intervention on behalf of Clark County among those individuals to identify their need for services. This has been an ongoing collaboration for over 8 months already. SNHD's Environmental Health Division

developed a multiple guidance safety plan for business reopening that was positively received. Our community partners have been interacting with multiple individuals, not just giving advice and guidance but also trying to find out what their needs are. In addition, SNHD's Surveillance Team developed a COVID-19 dashboard that is sharing demographic information, maps and COVID-19 information as well as trend reports all of which are posted on the SNHD website as well as teaming with Healthy Streets and other vendors for COVID-19 testing. We are now in the initial phases for preparing for our community rollout of the SNHD Community Health Improvement Plan. We are now in the phase where we identify community partners that will help guide SNHD in the implementation of the Community Health Improvement Plan. The last Community Health Improvement Plan was developed in 2006 now is the time to update that.

- **State of Nevada Department of Health and Human Services:** Dr. Ihsan Azzam, Chief Medical Officer reported for the State of Nevada Board of Health. He gave a report on updates with the State of Nevada Board of Health hereto known as Exhibit "D." Dr. Azzam gave a brief overview of his report. Dr. Azzam stated that the COVID-19 pandemic continues, and it is a highly contagious virus that is spreading throughout our community, workplaces and nursing homes. When COVID-19 first emerged in China even the most experienced public health experts did not anticipate that it would be the worst public health crisis in over 100 years. On March 12th a State Public Health Emergency was declared. The Nevada Emergency Declaration allowed for activating the emergency use and State standard crisis of care suspending elected standard and surgical procedures and objecting regulations to maximize access to health care. Our social distancing measures include strong advice to stay home, use facemasks or other protective face coverings, closure of non-essential business, a ban on large gatherings, school closures, and limits on restaurants and other public health places. These early and extensive non-pharmaceutical interventions by Governor Sisolak helped slow the spread of the virus. After several weeks of social distancing some decrease in the incidents and deaths related to COVID-19 seems to have begun. The threat remains to the health care infrastructure especially if more cases of COVID-19 begin to spike again after re-opening. The gradual decrease in COVID-19 illness hospitalization and death seems to be a good indication that our non-pharmaceutical measures were effective. However, Nevada just began to gradually roll back some of these measures. The opening of the State was timely and justifiable to spur the economy and address other concerns such as domestic violence, physical and emotional child, senior and spouse abuse. In addition to many serious unintended negative health outcomes such as depression, suicide, and crime. The scale of this pandemic is far beyond anything that the public or system has ever experienced. As you know the pandemic continues and the virus is still there. Therefore, we need to open Nevada in a smart and responsible manner. We need to learn how to adjust to the new normal to reduce the harm cause by this virus. The United States just exceeded 109,000 deaths due to this virus. All these deaths appeared to have been in a period of 3 months. That is the equivalent to 1,100 deaths a day. The CDC (Centers for Disease Control) reported almost 2 million confirmed cases in the United States. Nevada

already suffered 459 deaths and 9,100 positive cases. Unfortunately, it became clear that our non-pharmaceutical measures would not protect the most venerable populations. The old and frail residents were affected the most even though these measures were meant to help them. Despite several residential outbreaks in Reno and Las Vegas, Nevada is doing rather well compared to other states. Compared to more that 50% in other states, less than 26% of COVID-19 deaths in Nevada occurred in nursing homes. Hospitalization due to COVID-19 continues to decline. It seems that hospitalization due to these non-pharmaceutical measures started to decline in April and continues. Our hospitals continue to have capacity including the ICU's and ventilators for the flux of COVID-19 patients. Currently Nevada has 360 hospitalized COVID-19 cases. We have enhanced our testing capability. The state is now averaging more than 5,000 tests a day. As of yesterday, more than 186,000 BCR test were done and the state percentage of positive tests is gradually decreasing from a high in April of 12.3% to 5.6% in June. The most fragile time for the state to succumb to COVID-19 again is re-opening, however; we have enhanced our ability to early detect, test, and trace to rapidly contain the spread of the virus. Dr. Azzam concluded his report and asked the Board and the public if they had any questions.

Chair Pennell asked if the Board had any questions. Dr. Murawsky thanked Dr. Azzam for a thorough report and asked Dr. Azzam if there were any triggers that the State was looking at for further implementation of COVID-19 precautions.

Dr. Azzam answered, Absolutely. What is happening is that in early March we didn't have a liquid tool to identify cases earlier and now as we are reopening, we are identifying the risk in populations such as those in the Department of Corrections or nursing homes. Our goal is act immediately on one single case. One single case will trigger our immediate intervention. The case will be immediately isolated, and the contacts of this case will be rapidly identified, quarantined and tested. Even the contacts of the contacts, should one of the contacts test positive for the virus. Eventually, while opening businesses, we are identifying vulnerable areas. Our goal is not to have any setbacks and have to roll back the State opening. We want to focus on every case immediately and now we have enough tests and enough contact tracers to be able to provide testing immediately and identify virus proliferation as it starts and terminate the virus' ability to spread.

Chair Pennell thanked Dr. Azzam and everyone working at the state for working so hard to keep Nevadans safe during these difficult times.

- **Annual update regarding sentinel events, pursuant to NRS 439.843:** Presented by Jesse Wellman, Biostatistician, DPBH. He gave a report on updates with the State of Nevada Board of Health hereto known as Exhibit "E." Mr. Wellman proceeded to report on the Sentinel Events Registry a program designed to enhance safety for events that should never happen. Mr. Wellman gave an overview of the report stating what the report would explain such as; what is a sentinel event, Changes to SB457, who should be reporting sentinel events, data collection methods, data analysis results, plans and goals, then the final briefing. There were unique challenges because of the COVID-19 pandemic that has necessitated some Sentinel Events Registry adjustments. It is expected

that once COVID-19 workloads diminish and SB457 has been implemented the program will return to normal levels of filing participation and data quality enforcement. This year's report reflects those conditions. The Sentinel Events Registry was established in 2011 by statute and was amended in 2013 removing the reporting of health care quiet infections. The NQF (National Quality Foundation) establishes those events that are reportable per this program. In 2014 SB257 expanded the definition of the Sentinel Events Registry's role in who should report and what should be reported.

(1:33:22)

Public Comments:

Public Comment: There was no public comment.

Meeting adjourned at 9:14 am