

MINUTES
HOUSE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, March 05, 2024

TIME: 9:00 A.M.

PLACE: Room EW20

MEMBERS: Chairman Vander Woude, Vice Chairman Erickson, Representatives Blanksma, Kingsley, Mitchell, Dixon(24), Gallagher, Healey, Redman, Wheeler, Chew (Schmick), Rubel, Roberts

**ABSENT/
EXCUSED:** Representative(s) Blanksma, Kingsley, Mitchell

GUESTS: The sign-in sheet will be retained in the committee secretary's office; following the end of session the sign-in sheet will be filed with the minutes in the Legislative Library.

Chairman Vander Woude called the meeting to order at 9:01 a.m.

Ryan Langrill, Principal Evaluator, Office of Performance Evaluation (OPE), presented information on the Health Information Exchange (HIE) Oversight OPE report. The HIE allows participating users electronic health records access. Created in 2006, the HIE became a non-profit 501(c)(6) corporation which transitioned to a 501(c)(3) non-profit corporation.

At its inception, the HIE was not treated like other vendors. This includes a former Department of Health and Welfare (DHW) staff member as the first director, commissioners appointed to the first board, and the DHW Director as a board member until 2021. The DHW also shared offices, equipment, and supplies with the HIE.

Idaho Code required the commission to monitor the HIE but never included an enforcement mechanism and never defined the exchange as separate from the DHW.

The legislature never directly appropriated funding to the exchange. However, since 2006 the DHW has requested and received appropriations for exchange development, promotion and use.

If being a non profit is the best way, the legislature needs to consider codifying regular reporting requirements, financial audits, board membership, Idaho Code transparency, and ethical requirements for public entities. It is also recommended the legislature clarify the authority of public officials to create non profits for public work.

Since 2009 the DHW has had a \$100k annual data access contract with the exchange and has requested a sole source competitive procurement laws exemption. From 2008 until 2014, the DHW developed and improved the exchange using subawards which have more federal transparency requirements than contracts and are not subject to procurement laws. In 2015, the DHW began using contracts to pay more than \$22M for HIE improvements that were not covered under its procurement exemption for data access.

It was inappropriate for the DHW to administer its own multimillion dollar noncompetitive contracts with an untransparent vendor. In 2020 the DHW was appropriated \$19.5M through the Federal Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) Act.

The DHW staff said the SUPPORT Act contract was front-loaded with 14 project charters at \$100k each and 15 communication plans at \$100k each. The exchange violated contract provisions by entering into subcontracts without approval before the SUPPORT Act funding was appropriated. Attempts by the DHW to require more transparency proved unsuccessful.

Although the DHW information technology experts questioned the HIE data security, a third party attestation arranged by the exchange was deemed sufficient evidence for the DHW to release the final \$630k in payments. The late certification of attestation arranged by the HIE was a conflict of interest and against CMS advice. There was also concern regarding the qualifications of the certifying entity. **Mr. Langrill** noted one individual who conducted the certification is now employed by the exchange. The OPE recommendations include regularly required data security proof by an independent party.

The DHW did not receive everything promised under the improvement contract but still has a small data access agreement with the exchange. Only two of the fifty expected connections were delivered and the exchange claims it is still owed \$1.5M.

The exchange filed for bankruptcy in October 2022 after being sued for withholding pass-through payments to a contractor. The court ordered the Ada County Sheriff seize \$790k from the exchange.

Initially the most common exchange model was state agencies operated HIEs. The remaining nine states with that model do not appear to be more successful than other models. States with similar public-private partnerships tended to have requirements in statute.

A 2021 survey suggests Idaho hospitals relied more on mail and fax methods for sending and receiving health information. In 2022 the Department of Health and Human Services developed a common agreement to standardize data privacy expectations, simplify connectivity, and increase exchange electronic health records through private designated Qualified Health Information Networks (QHINs). QHINs must submit annual security assessments, ensure reasonable costs and fees, and share data with one another. The DHW could continue the HIE data access contract but be open to new vendors.

In February, 2024, the DHW interim director recommended to JFAC to cease business with the exchange unless it agrees to statute changes for transparency and oversight.

Answering questions, **Mr. Langrill** said the QHINs are more likely to talk to providers in every state. Idaho does not have a way to force the private HIE to comply. The only recourse is through the attorney general who has oversight of all charitable organizations.

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 9:34 a.m.

Representative Vander Woude
Chair

Irene Moore
Secretary