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Oregon Nurse Staffing Advisory Board (NSAB)

Wednesday, May 31, 2017 1:00 PM - 5:00 PM

Meeting Minutes

Cochairs	Carol Bradley, MSN, RN, CENP (Presiding); Susan King, MS, RN, CEN, FAAN
Members present	Trece Gurrad, RN, MSN (by phone); Carolyn Starnes, ASN, RN; Debbie Robinson, RN, MSN; Jennifer Burrows, RN, BN, BSc, MBA; Rob Campbell, CP, ADN, RN; Virginia Smith, BSN, RN-BC; Zennia Ceniza, RN, MA, CCRN, ACNP-BC, NE-BC, Amanda Newman, CNA; Margie Gutierrez, RN
PHD staff present	Dana Selover, MD, MPH; Annabelle Henry, JD, MBA; Anna Davis, JD; Lisa Finkle
Guests present	Andi Easton; Danielle Meyer; Beth Underwood

Agenda Item 1	Call to Order – Carol Bradley
Time Stamp: 00:00:01	,
The meeting was called to order and all individuals present and on the phone identified themselves.	

Agenda Item 2	February 22, 2017 Board Minutes – Carol Bradley
Time stamp 00:04:24	
Debbie Robinson noted that on page 4 the word "mandatory" should be "mandate," and on page 11 the phrase "single too" should be "single tool."	
The minutes were approved as corrected.	
Action Item	 OHA will make the changes on pages 4 and 11 of the minutes.

Agenda Item 3	Waiver Update – Anna Davis
Time stamp 00:05:30	

Anna Davis stated that the additional materials provided at the meeting include a summary of all waiver requests received to date. The summary reflects the information provided by the hospitals in their waiver requests. Thirty-three hospitals have requested waivers to date. Some hospitals have requested waivers for multiple units. Anna Davis has followed up with many of the hospitals to get additional information about the requests. When hospitals request a waiver of the minimum staffing standard, there are often additional questions about the training and qualifications of staff who would provide care in lieu of nursing staff members. Plan requirements can be waived; other sections of the regulations cannot be waived. The agency would like input from the board about waiver requests and what waivers they envision.

Carol Bradley stated that the summary reflects the discussions the board has already had regarding the departments where specialized techs are being used. This predominates in procedural areas. The need for waivers is a result of the omission of techs from the definition of nursing staff members. Techs are vital in many procedural areas. Carol Bradley asked whether there were references to physician providers in the waiver requests.

Anna Davis stated that there were very few references in the requests to physician providers. Anna Davis said that hospitals generally indicate that they consider whether the named staff members will be providing direct care nursing services or fulfilling a different role when discussing waivers. Physician providers and other medical staff have a different set of responsibilities than nursing staff.

Susan King asked about the waivers that have been granted to date and how those requests differ from the pending requests.

Anna Davis stated that the granted waivers are not necessarily substantively different from the pending requests. After a few initial waivers were addressed the number of requests increased significantly. In considering the sheer volume and breadth of the waivers, staff determined that it would be prudent to bring the requests to the board to see if the agency and the board share the same waiver expectations. Requests denied prior to the granted waivers were requests that could not be granted because they were beyond the scope of the agency's waiver authority.

Virginia Smith noted that the common theme among the requests is that when the waiver is for a non-nursing staff member to be used in lieu of a nursing staff member the waiver states that the non-nursing staff member has additional training that goes beyond CNA training that makes this type of staff member more qualified to provide this type of care. Virginia Smith suggested that as long as the hospital can provide that documentation of training and show that the training is necessary for the position, then the waiver would be appropriate.

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Debbie Robinson clarified that the non-nursing staff member should have specialized training, rather than simply having other training.

Virginia Smith agreed that the training should be for the purpose of providing specialized care rather than merely providing training in order to justify a waiver.

Zennia Ceniza stated that the training should be in an area that is more technical in nature and that it is training that a CNA does not have.

Susan King asked how much flexibility there is to grant waivers for techs who are highly trained and provide specialized care.

Annabelle Henry stated that the agency has the authority to grant the waivers and that the test for granting a waiver is whether the waiver is necessary to provide patient care. The goal of the conversation today is to determine the appropriate limits for waivers. Virginia Smith's comment goes toward that definition of what types of staff members can provide care in lieu of nursing staff members and what type of training is required.

Carol Bradley pointed out that most of the techs under discussion have training that surpasses the training of a CNA. This discussion also raises the questions of whether having a nurse in a department makes that department a nursing department and whether the definition of nursing units is overly inclusive. On an average nursing unit nurses are legally responsible for care of patients, but in procedural units the lead provider is legally responsible for the patients' care. In several of these units there is no requirement for nurses to be present, but hospitals have nurses in the units in order to ensure quality patient care. Using techs in these environments is so prevalent that Carol Bradley believes hospitals need to either not define these as nursing units or OHA needs to allow techs to be treated as nursing staff members.

Annabelle Henry clarified that waivers are by definition a departure from the rules, so discussion of techs in this context is not disparaging, but instead acknowledges that their role is not contemplated within the regulations. Annabelle Henry noted that the determination of which units provide nursing services is made by the provider. This definition was discussed during rulemaking. During surveys the hospital will give its list of departments that provide nursing services to the surveyors. To the extent that these surveys show differences in which units are regularly considered to be providing nursing services, the agency will bring that issue to the board for discussion when there are a sufficient number of surveys to gauge practices statewide.

Rob Campbell cautioned against waivers that rely on untrained staff or inappropriate staff to provide care in lieu of nursing staff members. He raised the example of unit secretaries that do not have Basic Life Support skills providing care. Rob Campbell also noted that among the requests there are similarities in the tasks assigned to techs.

Carol Bradley stated that requests to date reference a tech, a paramedic or a respiratory therapist. We are discussing individuals with skills that typically exceed CNAs in these specific situations.

Susan King suggested that the board set some expectations regarding the special training required of individuals who provide care in lieu of the second nursing staff member. Susan King suggested that one expectation would be that the individual have training in emergency procedures.

Margie Gutierrez pointed out that there is an Oregon State Board of Nursing (OSBN) policy that individuals working with patients who receive conscious sedation have this type of training.

Susan King noted that the OSBN policy does not apply automatically to techs, as they are not licensed by the OSBN.

Amanda Newman stated that her hospital sought a waiver even though there were enough nursing staff members present, because there were techs assisting with the procedure.

Dana Selover asked whether Anna Davis asked hospitals to note in their waiver requests whether substitute staff had BLS or ACLS training.

Anna Davis stated that she did ask that question when she discussed waiver requests with multiple hospitals.

Dana Selover also noted that many of the units requesting waivers are interventional and a few diagnostic units. Some types of techs have BLS or ACLS as a standard training requirement and others do not.

Carolyn Starnes noted that hospitals often require BLS or ACLS training even if it is not standard for that tech specialty. She noted with concern that some surgical techs are allowed to be certified based on on-the-job training rather than completing an education program.

Dana Selover noted that the surgical tech certification system is unique; many techs are not in this system.

Carol Bradley stated that the real question is whether techs should be added to the definition of nursing staff members.

Annabelle Henry noted that waivers would not add techs to the definition, but would waive the requirement of having two nursing staff members. She pointed out that the waiver is provider-initiated.

Amanda Newman asked whether the agency can specify the training requirements for techs.

Carol Bradley stated that it is up to the hospital to list the competencies required for the position.

Amanda Newman pointed out that sometimes training is required and then staff are not required to maintain skills.

Carol Bradley stated that often staff are required to maintain skills even if the exact wording of the requirement varies.

Margie Gutierrez asked how OHA actually responds to the waiver requests.

Annabelle Henry stated that the agency immediately acknowledges receipt of any waiver request. She clarified that the board is not required to review all requests. Often staff reach out the hospital and ask additional questions.

Dana Selover pointed out that generally waiver requests are resolved quickly, but the number and subject of these waiver requests necessitated additional time.

Carol Bradley noted that this is the area that generates the most questions she receives from hospitals.

Zennia Ceniza stated that it is important to consider national standards and practices. Techs are used nationally in these procedural units.

Susan King stated that now that it is clear that the agency has the authority to grant these waivers, then it should do so when waiver is appropriate.

Zennia Ceniza stated that the agency cannot change the definition of nursing staff members, but can grant waivers to units to allow for a safe staffing plan that does not fit within the definition.

Dana Selover noted that if it becomes clear after several years that the definition needs to be changed, then it would be a statutory change. The definition of nursing staff member could then specify what training is required.

Susan King asked what the agency needs from the board at this point.

Annabelle Henry stated that the guidance provided during the meeting has been helpful. The guidance covered training, temporal separation, and acceptability within the industry of these practices. It is not necessary for the board to vote on this issue.

Jennifer Burrows noted that some of the waiver requests are for units that her hospital would not define as nursing services.

Annabelle Henry stated that the decision to define a unit as a nursing service unit is made by the hospital based on the scope of the activities in the unit. The agency will also reach out to providers and ask whether the hospital has determined that nursing services are regularly provided in the unit type if the unit differs significantly from other unit types requesting waiver.

Agenda Item 4	Survey Update – Anna Davis
Time stamp 00:40:15	

Anna Davis stated that there have been three on-site surveys already. Surveys began in April. In preparation for the surveys some minor changes were made to the survey tools to provide additional space for writing. The maximum hour review tool was changed to reflect the changes made to the overtime rule in January. The survey tools are substantially the same as the set presented to the board and during

the webinar. The tools were reordered based on how surveyors use them on-site. Hospitals receive part of the needs list with the advance notice so that hospitals can have that information ready when surveyors arrive. This allows surveyors to begin work immediately while hospital administration gathers additional information. The advance list is also available on the website. Some hospitals are using the list to maintain notebooks in advance of receiving a survey notice. There is also a Nursing Staff Member Survey Interview that uses SurveyMonkey to gather information directly from nursing staff members about their experiences. This allows surveyors to gather quantitative information directly from nursing staff members. The SurveyMonkey link remains active for one week after surveyors enter the hospital for the onsite survey.

Susan King asked if the SurveyMonkey interview is available for any staff member.

Anna Davis confirmed that it is.

Annabelle Henry noted that anyone can fill out the Surveymonkey interview. The link is posted on the wall when surveyors are on-site.

Anna Davis stated that surveyors also bring fliers with the link and some hospitals email the link out to staff.

Carol Bradley noted that one of the hospitals in her system has had a survey. She has several suggestions. First, the Chief Nursing Officer should receive the 3-day notice prior to the survey. The nurse staffing committee co-chairs and the hospital administrator may not inform the Chief Nursing Officer when they receive the notice. If the CEO is out of office it's possible that nobody would know that the survey is going to happen. The other option would be for the agency to request confirmation that the notice has been received. Second, there should be an explicit date and time for the start of the survey. There is a cost to having staff gather for a survey and that becomes problematic when surveyors do not specify an arrival time. Hospitals are accustomed to surveys by The Joint Commission which begin at 8:00 AM. Third, Carol Bradley asked about expectations for meeting with staff members, including nurse staffing committee members, who may not work on the days that surveyors are on site. It would be helpful if there were a schedule of the survey so that hospitals can plan ahead and have staff available for surveyors. The survey went well at the hospital in her health system

Susan King asked whether there are any themes that have come from the surveys that have been done.

Annabelle Henry noted that reports have not been issued yet and the exit conferences have not occurred for two of the surveys, so it is still early in the process. Based on the first survey, the results are not unexpected. We hope to bring the reports to the next quarterly meeting and talk about them in detail.

Susan King asked whether the agency will be able to meet the number and the timelines set for surveys in the rules.

Annabelle Henry stated that this will be difficult, and the logistics are complicated by revisits, but the schedule has been set to try to make this possible. Surveyors are

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also adjusting to the structure of the new tools. The experience at all three hospitals has been positive. We have participated in webinars with the Oregon Association of Hospitals and Health Systems during which the hospitals described the experience from their perspective.

Susan King asked about the response rate to the SurveyMonkey interviews.

Annabelle Henry stated that there were 40-60 SurveyMonkey responses at each of the hospitals surveyed so far.

Carol Bradley noted that the Legacy hospital surveyed was the smallest hospital in the Legacy system. She stated that the direct care co-chair was very engaged in the survey and having staff ready to help and retrieve data was crucial.

Trece Gurrad asked who received the SurveyMonkey interview and what questions are included.

Anna Davis confirmed that the SurveyMonkey is available to anyone once the survey starts. The survey questions were distributed to the board today.

Susan King suggested that at the next meeting the board should hear the results of the three surveys.

Annabelle Henry described the survey timeline from the on-site time to the exit conference and then the report-writing time. We may have Plans of Corrections by the next meeting.

Susan King asked how the SurveyMonkey responses will be used and how hospitals will know about participation rates.

Annabelle Henry stated that we will know how many individuals participate, but we do not know how many nursing staff members there are. There will be findings in the report that include information from the SurveyMonkey responses.

Agenda Item 5	Documentation of Nursing Staff Member Overtime and On-
Time stamp 00:58:40	Call Time as Voluntary or Mandatory

Anna Davis stated that there have been multiple questions raised regarding the documentation of nursing staff member overtime. There are differences in how hospitals document overtime as voluntary or mandatory.

Zennia Ceniza states that at her hospital there is no requirement to document overtime as voluntary, but mandatory overtime must be documented as such. A supervisor and nursing staff member must both document the mandatory overtime. She is concerned that this type of documentation would be tedious if it were necessary for all overtime.

Virginia Smith asked whether that means that the assumption is that overtime is voluntary unless it is otherwise documented.

Rob Campbell asked about the amount of call that operating room nurses take at Zennia Ceniza's facility. He raised the example of a team that has a set number of hours each month and asked whether hours in excess of 48 in a week are mandatory if they're part of the hours necessary to meet the monthly quota.

Carol Bradley stated that, in the original discussions of call shifts, pre-arranged and pre-scheduled call shifts that are selected by staff are not treated as mandatory overtime. There may be overtime hours during the call shift, and the staff can claim the 10-hour break, but the call shift itself is not mandatory overtime.

Rob Campbell suggested that the call burden breaks the law because nurses are required to take call shifts and then when called the nurses must respond.

Carol Bradley asked for clarification of whether Rob Campbell was referring to call hours scheduled or call hours worked.

Rob Campbell stated that he was referring to both hours scheduled and hours worked.

Carol Bradley asserted that there is a distinction between scheduled hours and worked hours.

Rob Campbell asked why there is a distinction when the nursing staff member has to respond when called.

Carol Bradley suggested that the percent of hours that a nurse is actually called in can be informative.

Rob Campbell stated that at his hospital nurses are called in 75% of the time they're on call.

Carol Bradley suggested that this percentage is unusual. A hospital calling in staff that frequently may decide to add an additional shift.

Rob Campbell pointed out that the 48-hour week is the maximum in the statute.

Zennia Ceniza noted that there is an FAQ answer about this topic.

Susan King stated that her understanding is that if you accept a position that has a call requirement, then the shifts that are part of that job are voluntary, even if they involved overtime. A nurse who has the call shift knows that for some of that call time she will be called in. The regular call shift is an agreed-upon shift. That same nurse can claim the 10-hour break. Her understanding is that when the hospital then says that a nursing staff member needs to take two additional nights of call, that those times are mandatory, because they were not agree-upon.

Zennia Ceniza stated that this was the understanding at her hospital as well.

Rob Campbell suggested that this system is too great a burden on nurses.

Virginia Smith stated that asking about the call burden is part of what nursing staff members do when deciding whether to take a nursing position. Whether hospitals are transparent about the expectations for call is a big factor for the nursing staff member who is accepting a position.

Carol Bradley asked whether Virginia Smith was referring to hospitals hiring nursing staff members and not telling them the amount of call that would be required for the position.

Virginia Smith stated that that happens and also that the amount of call changes after employment is accepted.

Trece Gurrad stated that this is an important conversation for each hospital's nurse staffing committee to consider and determine whether the burden at their hospital is too great. She would expect that there would be complaints about this.

Rob Campbell suggested that this is a cultural change that needs to occur.

Margie Gutierrez stated that each nursing staff member has an individual capacity to take call shifts. As she moves towards retirement she is personally less interested in taking call shifts.

Virginia Smith stated that there may be a question about who has the burden of determining when call shifts are too onerous. Is the burden on the hospital to set safe schedules or is it the nurse's responsibility to notify the hospital when the schedule is unsafe? Virginia Smith suggested that this is a shared responsibility. Most hospitals try to provide safe call schedules, but nurses have a responsibility to inform the hospital when the call schedule is unsafe. Those are the situations when the hospital is failing the patients and the nurses.

Carol Bradley agreed with Trece Gurrad that this issue must be addressed by the hospital nurse staffing committee.

Virginia Smith agreed as well.

Carol Bradley raised the issue of overtime that accrues when a patient care assignment is taken over by the next shift and the exiting nurse continues to work in order to finish documentation. At her hospital this is called incidental overtime and it is not treated as voluntary or mandatory. This type of overtime is distinguished from a nurse staying over for two hours because the nurse on the next shift has not arrived. The two hours can be mandatory or voluntary depending on the circumstances. She suggested that these are generally voluntary pickups. She also noted that the clock-in/clock-out system does not allow rounding, it measures in real time, so there is a lot of overtime accruing in small amounts.

Carolyn Starnes stated that her team devised a new way to handle call. The call nurses only do call shifts for an entire week and get paid for the week whether or not they're called in. Then they're off call and back to regular shifts until their next week of only call shifts. Once every seven weeks nursing staff members have an only call shift week. There are only a few nurses who did not want to do call, so others pick up their call shifts. Their call weekends are now on for 12 hours and off for 12 hours. Satisfaction in the unit has increased greatly. Staff knows that at the end of their day they'll leave, because the call team is going to come in. This is a creative solution that worked for this small hospital.

Susan King stated that she is hearing that managers are under extreme pressure to keep incremental time to a minimum, but policies at the hospitals are ensuring that this type of overtime occurs. We may see other influences on this as time goes on.

Agenda Item 6	Meals and Breaks
Time stamp	
01:23:00	

Carol Bradley stated that this topic was raised to discuss strategies that are being used to cover this time. As Carolyn Starnes said earlier, hospitals are trying to be creative to solve common problems.

Margie Gutierrez stated that this has been a huge issue at her hospital, so it was written into their collective bargaining agreement. The hospital intermittently surveys staff to see whether staff is getting their meals and breaks.

Jennifer Burrows stated that at her hospital some departments do mid-shift huddles and one topic they ask about is whether staff have gotten their breaks so that they can make sure these times are covered. She suggested that a buddy system can work well in some situations, but if you have a sick patient then it may not work.

Rob Campbell pointed out that if a hospital uses the buddy system, then for eight hours during the day the unit is working below the staffing level required in the staffing plan.

Carol Bradley stated that it depends on the staffing plan and that hospitals do it differently around the state. Using the buddy system does not necessary mean doubling a nurse's assignment. The law requires that hospitals take meals and breaks into account when formulating the plan, so the committees do that. They determine the staffing level that's needed based on the patient population and then figure meals and breaks into the equation.

Rob Campbell stated that the buddy system itself does not take that into account.

Carol Bradley stated that the capacity within the unit may allow each nurse to watch one additional patient.

Virginia Smith stated that using the buddy system assumes that patients will remain stable while the assigned nurse is on a break. The buddy system does not take into account sudden changes. Even in units that use a float pool to replace nurses on breaks, they may not have float nurses all the time and may use the buddy system sometimes.

Carol Bradley stated that if the system is not providing adequate coverage, then it needs to be addressed by the nurse staffing committee. In some departments shifts start almost every hour and the mid-shift staff cover for meals and breaks before taking an assignment. No regulation can address all of the variations.

Virginia Smith agreed and stated that a plan that is as specific as possible is helpful. She stated that if a hospital does not have an adequate plan or is not following their

plan, then the committee needs to make changes. Often there are plans that have been approved by the committee but not been implemented even after two years. In some situations, the staffing plan development falls short because it assumes resources or tools that the unit wants, but does not have. These problems take a toll on the nurses in a unit.

Carol Bradley stated that every hospital has its challenges and the purpose of the regulations is to create a structure in which issues can be resolved at the hospital level. The board is here to make sure that each hospital can do that. She expects that the board will learn a lot from what OHA surveyors see around the state during audits. The board's job is to make sure the process is as competent and effective as possible in meeting the objectives of the statute.

Carolyn Starnes asked whether nurses who are required to take their phone on breaks are considered on break during that time.

Carol Bradley stated that at her hospital if a nursing staff member gets called in while on break it negates the break.

Carolyn Starnes stated that this issue comes up with the buddy system because nurses are asked to take their phones so that the nurse who is covering can call them back in if necessary.

Carol Bradley stated that there is a lot of variation around the state.

Virginia Smith stated that it will be good if OHA surveyors look at both the plan and what is actually happening on the unit. The SurveyMonkey interview will be a critical information gathering tool for what is actually happening.

Jennifer Burrows stated that the team has to determine how to manage breaks and how to use resources. Patients need nursing staff members to take breaks and refresh. In some departments the culture is that "we're tough; we don't need breaks." But the reality is that a 12-hour shift is long and it is important to refresh yourself.

Susan King agreed that nurses working together can come up with workable solutions. She hears that teams come up with good plans and the plans are rejected for budgetary reasons. She was at a facility recently and the staff had a staffing plan that accounted for all factors and the manager was told that to implement the plan they would need to take resources from another unit. Staffing resources have not kept pace with the increased layers of responsibilities. In preparing for this meeting OHA gave a good statement of guidance to the cochairs.

Annabelle Henry stated that the guidance was that a hospital needs to demonstrate to surveyors that the plan accounted for all of the required factors and the hospital needs to show that the plan was actually implemented. Surveyors look at both plan development and plan implementation when they are on site. If there is a supplemental plan in place that covers breaks specifically, then surveyors will look at the supplemental plan for both development and implementation.

Susan King asked a hypothetical question: If a staffing plan said that breaks would be covered by one nurse taking on the patients of another in addition to her own patients, would OHA have difficulty in concluding that the plan met the elements of the law?

Annabelle Henry stated that hypotheticals are tricky, but if the language is that vague in the plan then it would be unlikely that a provider could demonstrate that the system as described accounts for acuity, intensity and other factors.

Carol Bradley stated that we will need to see how meals and breaks are covered. There are a lot of creative solutions around the state and by department within hospitals.

Zennia Ceniza stated that different organizations also have different ways of documenting breaks.

Time Stamp:	Other regulatory topics – Carol Bradley
01:46:01	

Carol Bradley asked whether there are other regulatory topics that the board would like to discuss that were not included in the agenda. She noted that there has been a question about posting requirements. The question has arisen about where the notices need to be posted online. Carol Bradley understood that the complaint notice needed to be posted on the unit and the anti-retaliation notice needed to be posted with human resources documents.

Anna Davis stated that the posting requirements are statutory. The complaint notice must be posted on each hospital unit in a place that is clearly visible to the public.

Carol Bradley asked whether the anti-retaliation notice can be posted in the hospital where other human resources notices are posted.

Anna Davis agreed that the anti-retaliation notice can be posted in the hospital and it can also be posted electronically. If it is posted electronically it must be available where job applicants would be able to see it.

Virginia Smith asked about the timeline for addressing the currently pending waivers.

Annabelle Henry stated that the pending waivers would be addressed prior to the next board meeting.

Virginia Smith asked for confirmation that waivers are a standing agenda item.

Anna Davis stated that they are.

Margie Gutierrez asked whether complaints are also a standing agenda item.

Annabelle Henry stated that complaints are confidential and that the board will be able to see reports once the investigations are completed.

Margie Gutierrez asked whether there could be information on the types of complaints received.

Annabelle Henry stated that staff could present aggregate data about complaints at the next meeting.

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Carol Bradley stated that it would be helpful to have a discussion about what types of data the board would like to see about waivers, audits and complaints.

Margie Gutierrez asked whether the same staff investigate complaints and perform the audits.

Annabelle Henry stated that there are five dedicated staff for hospital relicensure, recertification and complaint investigations. The federal workload is combined with the state workload, so there may be a shift over time in who investigates nurse staffing complaints. Surveyors are generally working in teams.

Susan King agreed that it would be helpful to see aggregate data that tracks the rules and show whether the timelines are being met for investigations, reports and Plans of Correction.

Annabelle Henry stated that there will be a lag in data because staff is ramping up, but it will be helpful to know which metrics the board would like to measure.

Amanda Newman asked where the reports will be available on the website.

Annabelle Henry stated that the website will transition in about three weeks. In 2017 there will be PDFs on the nurse staffing website and in 2018 that might become part of a database on the website.

Agenda Item 6	Public Comment
Time Stamp: 01:55:03	
None	

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