

**TESTIMONY**  
**OF THE**  
**ILLINOIS STATE MEDICAL SOCIETY**  
**BEFORE THE**  
**ILLINOIS HEALTH INFORMATION EXCHANGE AUTHORITY**  
**DATA SECURITY AND PRIVACY COMMITTEE**



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The Illinois State Medical Society (ISMS) is grateful to the Illinois Health Information Exchange Authority for hosting this meeting to obtain stakeholder input on possible privacy, security, and consent management policies for the Illinois Health Information Exchange (ILHIE). Our comments will pertain to Panel 1 - Patient Choice: Options and Permitted Uses for Patient Data; and Panel 5 - Patient Choice and Consent: Operational Protocols.

The development of a health information exchange (HIE) in Illinois has the potential to improve the quality of care by providing physicians and other health care professionals with accurate and complete patient clinical information. The possible uses and benefits of an HIE include the ability of an HIE to compile a virtual patient record that aggregates clinical information into a single patient record as well as the secure delivery of hospital discharge summaries, consultation notes, and referrals. There will undoubtedly be other uses for the HIE such as providing population analytics that health professionals may need as they take on more risk due to changing reimbursement methodologies.

To be successful, the HIE must ensure the secure delivery of information without placing additional administrative burdens on physicians and other providers. We are concerned that federal guidance to date may add to the administrative burdens placed on health care professionals as the provisions go beyond what the Health Insurance Portability and Accountability Act (HIPAA) require. We cannot support new regulatory requirements that have the potential to place a significant administrative burden on physician practices, especially when a clear justification for the new regulations is lacking.

*Panel 1 - Patient Choice: Options and Permitted Uses for Patient Data*

Our concerns primarily relate to the Office of the National Coordinator's March 23, 2012 Program Information Notice 003, which would result in additional burdensome administrative requirements placed on physician practices. Currently, HIPAA governs how health care information can be used and shared and is specific on the permitted uses of patient data. It is unclear why the HIPAA Privacy and Security Rule is not sufficient to govern the transmission of patient data through an HIE. The sharing of patient records for purposes of treatment, payment, and health care operations is governed by HIPAA and this should be sufficient for HIE operations. It is unclear why the mode of secure data transmission would lead to more granular choice or why patients should be given a choice to affirmatively consent for exchange of their data through an HIE. The current security practices regarding disclosure should be sufficient for any HIE data exchange.

However, if the HIE uses data beyond the treatment, payment, and health care operations exception, then it should be incumbent upon the HIE to obtain any additionally required patient consent.

*Panel 5 - Patient Choice and Consent: Operational Protocols*

Similar to our comments regarding Panel 1, our concerns with patient choice and consent as outlined in PIN 003, would place undue burdens on physicians and other health professionals in an attempt to obtain “meaningful choice.” Again, we are concerned about why the ONC would propose a standard that goes beyond HIPAA simply because protected health information data is being exchanged via an HIE. The current notice of privacy practices should be sufficient to cover data exchanges for treatment, payment, and health care operations via an HIE. It is the responsibility of the HIE to provide a secure environment to exchange data, and such exchange falls within the HIPAA treatment, payment, and health care operations exception. Therefore, we do not see a need to collect additional consents or obtain “meaningful choice.” If ONC insists on additional administrative burdens pertaining to patient consent, we would suggest that any patient preferences and consent be obtained via an HIE portal. However, if a patient has restricted the release of data, such a summary of care record should be flagged to indicate that the record is incomplete so those viewing the record will know that they may not be viewing a complete record. An incomplete record can endanger patients.

In summary, the ISMS shares many of the same concerns expressed in the June 26, 2012 ILHIE comment letter on the Nationwide Health Information Network: Conditions for Trusted Exchange. We compliment the ILHIE Authority on its well-researched and articulate comments. While we recognize the need to ensure the privacy and security of health information when it is exchanged via an HIE, the current HIPAA regulations provide sufficient guidance and any additional restrictions should be justified and balanced against cost and other considerations as stated in the June 26, 2012 ILHIE Authority comment letter to the Office of the National Coordinator for Health Information Technology.