Attachment G

Recommendation on Break the Glass Policy to the Data Security and Privacy Committee of the Illinois Health Information Exchange Authority

Objectives:

1. Define the scope of patient opt-out choice in the case of medical emergency under Illinois law and make a set of recommendations to clarify applicable Illinois law, whether through adoption of appropriate regulations or the enactment by the Illinois General Assembly, regarding the permitted disclosure of patient health information in the event of medical emergency within the context of health information exchange.
2. Define the scope of a self-pay patient's right to restrict the disclosure of specific health information to a health plan or health plan's business associate within the context of health information exchange.

Deliverables:

1. Recommendation for Clarifying Illinois Law with respect to Opt-Out Override ("Break the Glass") in the Case of Medical Emergency within the Context of Health Information Exchange Policy.
2. Recommendation for Handling a Self-Pay Patient's Right to Restrict Disclosure of Specific Health Information to a Health Plan or a Health Plan's Business Associate within the Context of Health Information Exchange.

Recommendations:

1. At this time, Illinois should not implement an opt-out override ("Break the Glass") in the case of medical emergency for individuals who have opted out of participation in the ILHIE. However, the opt-out documentation should clearly state that if a patient opts out of the ILHIE his or her medical information will not be available through the ILHIE, even in an emergency.

In the event of medical emergency, the law in Illinois is unclear regarding the permitted disclosure of patient health information through the ILHIE and there is currently no specific law that allows an ILHIE participant to access information through the ILHIE on an emergency basis for those patients who are opted out of the ILHIE. In those situations where a patient has exercised the right to opt out from the exchange of his or her health information through ILHIE (except as permitted by law), a Break the Glass exemption would allow a provider access to that patient's health information through the ILHIE in an emergency situation. If Illinois had an overarching Break the Glass exemption, ILHIE provider participants would be authorized to override the existing opt out decision in order to access the health information available on that patient through the ILHIE. This would allow an ILHIE provider participant to access patient data,

despite a patient's restriction on its distribution, and could lead to more informed care decisions by the provider.

After review of a number of other state's policies, including North Carolina, Hawaii and North Dakota, our Subgroup determined that, at this time, no Break the Glass exemption should be permitted and the ILHIE Authority should not allow ILHIE provider participants to override the individual consent preference. Even in circumstances when a patient's demographic data has been uploaded into the ILHIE system by a provider and the participant opts out, there will be no emergency option to access that opted-out patient's medical information. However, if an individual has opted in, his or her health information accessible through the ILHIE will be available in all patient/provider encounters, including emergencies, as long as the provider is an ILHIE participant.

The Subgroup attempted to balance patient privacy preferences along with patient concerns about limiting access to medical information in a life threatening situation. It was agreed if there is no Break the Glass, the ILHIE opt-out document must clearly state that the medical information would not be available through the ILHIE, even in an emergency. Thus, if information is requested through the ILHIE, even in an emergency, the response will be "There is no information for Patient X [an opted-out patient]." This response is the same as if the patient was not loaded in the ILHIE.

The Subgroup also reviewed concerns related to patients with specially protected information. Patients with specially protected information must specifically opt in to the ILHIE. A patient then, after meaningful disclosure, may consent to share his or her medical information, including specially protected information. However, a general consent may not be sufficient for sharing certain categories of specially protected information, e.g. treatment information covered by 42 CFR Part2. At this time there is no technology available to segregate specially protected information from general health information in a patient's record. If a patient has health information that falls into a specially protected category, the patient is loaded, if at all, as opted-out. Therefore patients with specially protected health information will be opted-out and all opt out policies and procedures will apply.

At this point in time, the Subgroup does not recommend a Break the Glass option in any situation. The inconsistent requirements related to specially protected health information make it difficult to clearly assess what information could be shared in an emergency situation. However, when the technology becomes available, the Subgroup recommends an overarching statute, allowing for providers to Break the Glass and access all medical information through the ILHIE, be proposed to the Illinois General Assembly. This policy should be revisited on an annual basis to determine if the time is ripe to propose the legislation.

2. A provider shall be responsible for a self-pay patient's right to restrict disclosure of specific health information to a health plan or a health plan's business associate within the context of the Illinois Health Information Exchange.

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It is the recommendation of the Subgroup that the provider be responsible for preventing the disclosure to a health plan or a health plan's business associate if a self-pay patient has requested that restriction. The provider has the best opportunity to separate that information from the larger patient record and can more easily prevent that information from entering the ILHIE. It is likely the provider will perform some sort of record segmentation, possibly by creating separate records. At this point it is not practical or technically feasible for the ILHIE to implement data segmentation based on payor.