

**MINUTES OF THE AUGUST 20, 2013 MEETING OF THE PATIENT
CHOICE AND MEANINGFUL DISCLOSURE WORK GROUP:
BREAK THE GLASS SUBGROUP, OF THE ILLINOIS HEALTH
INFORMATION EXCHANGE AUTHORITY**

The Patient Choice and Meaningful Disclosure Work Group: Break the Glass Subgroup, of the Illinois Health Information Exchange Authority, pursuant to notice duly given, held a meeting at or about 1:50 p.m. on August 20, 2013 in Rm. 9-034 at the James R. Thompson Center, 100 W. Randolph St., Chicago, Illinois 60601, with telephone conference call capability.

Subgroup Members Present:

Deb Gory,	MCHC
Victor Boike	MCHC
Jud Deloss (by phone)	Popovits & Robinson
Nancy Newby (by phone)	Washington County Hospital
Mikki Pierce	Atrium Advisory Services, Inc.
Maria Pekar (by phone)	Loyola
Kerri McBride	ILHIE Authority

Meeting called to order at approximately 1:50 pm. The minutes from August 7 reviewed and approved with corrections: Vic Boike's name misspelled. Maria Pekar requested that she be marked absent as she was not there and her last name had to be added where there was a blank.

Members were to review subgroup deliverables and bring some thoughts on each. Kerri McBride reviewed the deliverables – which are a recommendation on Break the Glass as well as a determination on the new self pay provision in HIPAA. No one had a chance to provide any.

Kerri McBride led a discussion the review of the information with regard to surrounding states' positions on break the glass. Missouri does not allow for break the glass. The group then discussed Renee Popovits' seminar and the results of a flash poll question on break the glass, which show that 87% of respondents wanted the glass broken (some only with restrictions) in case of an emergency, even if they had opted out of sharing on an HIE.

Vic Boike discussed break the glass requirement in North Carolina and stated that it allowed for break the glass, but the treating physician must document the basis for breaking the glass. Kerri mentioned that she believed that in her quick review of Hawaii's statute regarding break the glass that there were 3 options: no information released ever, some information released if you break the glass, or all information released if you break the glass.

The group then attempted to determine whether there was a patient advocate in the group and what the thought was in the patient community, primarily related to sensitive information, regarding breaking the

glass. Jud suggested that the Data Security and Privacy Committee had taken a position that the only information that would be available for break the glass, not sensitive information. Kerri McBride suggested that because the only option right now is all in or all out for medical information, there is no ability to consent to having only some information shared. Perhaps later, when we have more granular consent options, patients will be able to say, 'I want my general health information, but not the information that would allow a provider to identify me as HIV positive.' Kerri suggested that that might be a situation that would allow for breaking the glass for complete information.

Maria Pekar asked at what point does the HIE would know if there was information that was being shared. Her understanding was that providers would provide data to the ILHIE and the ILHIE would turn the switch off so the info could not be accessed if it were sensitive information or if the patient had opted out. Kerri McBride explained that the ILHIE would not keep patient medical information other than a master patient index and a record locator service. Demographic information (including DOB and SSN) will be loaded from the provider and each patient record will list all of the providers that have identified that patient as one of theirs. A request for information about a patient is sent to ILHIE, ILHIE looks at the MPI for that patient, sends out a query to each of those providers, the providers send the data back, the ILHIE assembles it into a C32 or a CCDa and then sends the information to the requestor who downloads it into their EHR or views it on a clinician viewer. Other HIEs, like MetroChicago will store the patient data in a cloud and when the request goes to them, they access the info in the cloud and send the response.

What if a patient opts out? A patient can opt out either by sending a document to ILHIE or signing a document at the provider opting out. Whatever is last in time governs. If you see a provider on Monday and don't opt out, but then see another provider on Tuesday and do, your opt out on Tuesday governs unless you later opt back in. If, for example, you have opted out and go to an ED at 3rd hospital, does that hospital know that you were seen at the other two hospitals? Kerri McBride suggested that that was not finally decided yet. However, it may be that the ILHIE will have a screen where you can check a box that says you are trying to break the glass.

Discussion was then had about how strict the requirements are for breaking the glass. If the law is so broad that any time a patient goes to the ED (even if conscious and rational), then you can break the glass, is that what we want? That may be overkill – should it be more like North Carolina, which requires the provider to explain why he is breaking the glass.

The question is - what about specially protected information? If you let it out for break the glass, can you then remove it from the record? Mikki Pierce asked about the existing rules on break the glass in Illinois. There are a variety of different laws in Illinois. What we are to do is come up with a recommendation on breach the glass. Based on the recommendation, ILHIE Authority and OHIT will move the recommendation forward by policies, rules or legislation. Breaking the glass makes transferring information through the HIE easier. What would be easiest would be to have one law overriding all of the inconsistent laws that says you can break the glass, except (or including) sensitive information. We are trying to work toward the best interests of the people in the state of Illinois. If I opt out and don't have a sensitive protected condition, maybe we should have a policy of always breaking the glass. If a patient is not in the ILHIE or has consent turned off, due to sensitive protected information, then maybe the law

says no. As noted by Maria Pekar, GINA and SAMHSA do not allow for any sharing without permission. Sharing of certain protected records may have to wait until federal action.

We discussed that most providers require specific authorizations to release substance abuse treatment or others. If SAMHSA data was conveyed by someone who is covered by SAMHSA to a physician generally not covered by SAMHSA, the physician would be obligated under 42 CFR Part 2 not to redisclose that information except in compliance with SAMHSA.

We may wish to create a policy where a marker for a record that contained sensitive information exists so that even if it cannot be released, the provider still knows there is something out there.

Under the Mental Health and Disability Act in Illinois, break the glass requires that the ER physician get permission from the treatment provider to review the data. Maria Pekar says that at Loyola they educated their psychiatric staff on the statute and told them that the ED would only be able to break the glass in life threatening situations where the patient is unable to consent. Kerri McBride raised the question of whether at times “unwilling” to consent can be considered “unable” to consent.

Kerri McBride referenced proposed language drafted by one of the legal work groups and stated to provide it to all in this workgroup.

Is break the glass something an individual can agree to or is it an override of my opt out? Kerri stated that it was an override of an individual’s opt out. Our group is working through trying to decide when we want to allow the glass to be broken. The group is in general agreement that each would want the glass to be broken in an emergency, with the exception of Mikki Pierce who wanted to consider it further.

The group moved onto a discussion with regard to the new HIPAA requirement that self pay patients be allowed to restrict access by health plans to the treatment related to self pay patients. The discussion was primarily that it would be an all-in or all out situation until the point in time we have granularity of consent. This included a discussion of the engine outside a hospital’s EHR that can be used to filter information, which would be how a hospital or large provider would prevent a health plan from getting that information.

For the next meeting, each member in attendance was to review another state’s statute relating to break the glass. Vic Boike was to review North Carolina, Nancy Newby to review North Dakota, Maria Pekar-Maryland and Kerri McBride – Hawaii. Kerri was to distribute the proposed draft statute.

There was no public comment. The meeting concluded at approximately 3:40 pm.

Minutes submitted by Kerri McBride