

IL HIE Legal task Force  
General PHI Workgroup  
November 15, 2011

Attended by Phone

Melissa January, Drinker, Biddle & Reath, LLP  
Patricia King, Swedish Covenant Hospital  
Marcia Matthias, Southern Illinois Health Care  
Valerie Montague, Ungaretti & Harris, LLP  
Tracey Salinski, Arnstein & Lehr, LLP

Office of Health Information Technology

Mark Chudzinski, General Counsel  
Melissa Tyler, Legal Intern

Patricia King, co-chair of the workgroup, opened the meeting at 11:05 a.m., hosted by OHIT at the State of Illinois J.R. Thompson Center in Chicago, with a telephone conference call-in option. Notice of the meeting and the agenda were posted on the OHIT website and at the Chicago meeting location no later than 48 hours prior to the meeting. Roll was taken and phone attendees confirmed their ability to hear and participate.

On motion duly made and seconded, the minutes of the prior meeting were approved.

The group began by discussing how it should approach drafting a whitepaper. The work group has thus far produced (1) an analysis of nine Illinois laws that affect how PHI may be transferred through an Illinois HIE and (2) a chart analyzing the HIE statutes of other states. It was determined that the group needs to draft a narrative document that describes what changes are desirable for Illinois law based on what they discovered looking at the Illinois laws and the laws of other states. It was suggested that one of the areas that the group should focus on is the desirability of harmonizing Illinois law with HIPAA, especially given the fact that the Illinois Medical Patient's Rights Act is older than HIPAA.

Mark Chudzinski gave the group an update on the activities of the IL HIE Authority Board and Legal Task Force. He stated that at its December 1<sup>st</sup> meeting, the Board will likely create a Privacy and Security committee that will guide the Board in making its policy decisions. The committee will likely look to the Legal Task Force for guidance. He stated that at its last meeting, the Legal Task Force decided to draft its recommendations in a way that allows the Board to make the policy decisions concerning whether Illinois should adopt an opt-in or opt-out approach to patient consent. The Legal Task Force determined that it will analyze Illinois law from three different patient consent perspectives: (1) no consent; (2) opt-out consent; and (3) opt-in consent (HIE can't disclose PHI unless affirmative consent is achieved).

Mark noted that a new concern of the Legal Task Force is that it may be difficult to get a bill to the Illinois General Assembly within the spring legislation deadlines. In this case, the Illinois HIE may have to operate under Illinois law as it is today. Therefore, in addition to the opt-in/out discussion, the group might need to provide the Board some guidance as to how the HIE will

operate under the legal status quo. Mark mentioned that one topic to consider is, do we have to make legal changes to operate the HIE. In the general PHI area, he explained, there might not be any changes that absolutely need to be made for the HIE to operate as a mechanism for the transfer of PHI, like a fax. This type of information transfer can likely be done under the HIPAA TPO exception. However, this is something that the group should explore more deeply. In conclusion, Mark explained that there are two bits of practical guidance that the General PHI group should provide the Legal Task Force: (1) how will the HIE operate if there are no legislative changes made this year and (2) if legislative changes are made, what needs to be done with respect to general PHI if either an opt-in or opt-out approach to patient consent is adopted.

In the ensuing discussion, the group noted that there does not seem anything that completely inhibits the transfer of general PHI through the HIE; however, the group agreed that it should look back to its previous work to confirm this. It was noted that the Medical Patients Rights Act might be of most concern because it allows for the transfer of patient information to “individuals directly involved with treating” but does not define “directly involved.” The group discussed whether the inclusion of the phrase “otherwise allowed under the law” in the act could be interpreted to allow for HIPAA disclosures. Additionally, the group discussed whether the patient has the right to prohibit disclosures under HIPAA and how this would work in Illinois. Pat volunteered to write up some of these ideas and circulate them to the group to facilitate these discussions. The group decided it would focus on the first issue: if Illinois law is not amended within the next year, if there features of Illinois law that is incompatible with the transfer of general PHI through the HIE.

Next meeting was set for Tuesday, November 29<sup>th</sup> at 11:00 a.m.

Pat asked for questions and comments and there were none.

The meeting adjourned at 11:40 a.m.