

**IL HIE Legal Task Force
General PHI Meeting
September 7, 2011
Meeting Notes**

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
Tracy Salinski, Arnstein & Lehr, LLP

Office of Health Information Technology

Melissa Tyler, Legal Intern

Patricia King, co-chair of the workgroup, opened the meeting at 11:35p.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.

Participants confirmed that they had received an e-mail containing the HIE statutes of various states. Patricia stated that a few topics stood out to her when she was reviewing the statutes. These topics are: (1) opt-in vs. opt-out consent, (2) consent by minors, (as current IL law does not deal with who can authorize release of information for minors) and (3) how broad the Illinois statute should be. She noted that the statutes provisions seem to exist on a spectrum. For example, Kansas harmonizes with HIPPA, another state allows patients to impose reasonable restrictions on what can be exchanged, and others have chosen "opt-out" consent. The group will have to decide where along the spectrum Illinois should fall.

It was suggested that the group identify what other states have done, decide which provisions will work for Illinois, and compile it into one document.

Concern was expressed about addressing the issues in a piecemeal fashion. The question was raised whether it would be more desirable to suggest revision of the different existing statutes or to draft a new HIE statute that encompasses all of the various issues. It was suggested that a HIE statute would be more desirable.

The group discussed how the work of the General PHI overlaps with the work of the other groups. It was noted that General PHI is the broadest, so it makes sense for the group to address the broad question of how information is disclosed to the exchange while issue spotting for some of the other workgroups. (e.g. consent and liability) For example, Patricia noted that some of the statutes dealt with immunity for providing information to the exchange, as long as the provider

complied with the standards outlined in the statute. She noted that definitional issues are within the purview of the PHI group, as well as weighing in on the opt-in v. opt-out issue.

It was agreed upon that a good way to get started is to create a list of positives and negatives of the state statutes.

Patricia did a quick review of the statutes:

- The Maine statute, 2011 ME S.P. 414, was pretty well designed. At point of initial contact the practitioner gives the patient an information form about the Statewide HIE and the opportunity to opt-out.
 - o Maine is developing a website from which patients can request a report listing who has requested their information. This is a concept the group could consider.
- The Texas, 2011 Tex. Sess. Law Serv. Ch. 1126 (H.B. 300), statute mostly deals with expanding obligations beyond HIPPA. There is an additional section dealing with standards of electronic disclosures.
- The Arizona statute, 2011 AZ H.B. 2620, has a section at the end dealing with health information exchange and individual rights (seems like it is based on HIPPA). It was suggested that the group take a look at this. Arizona also has a notice of health information practices.
- As noted earlier, Kansas, 2011 Kansas Laws Ch. 114 (H.B. 2128 § 21-34), has taken a broad approach that harmonizes Kansas law with HIPPA. The unusual thing about Kansas is that it gives the individual the right to limit what is disclosed. This seems like it would be burdensome to administer.
- Minnesota, Minn. Stat. Ann. § 144.291, seems to have adopted an “opt-in” model, Minn.
- New Mexico, 2009 NM S.B. 278 (NS), covers a lot of areas and has good content. NM has different definitions for HIE and record locator. It was noted that this might be a principle that the group should consider.

Because the statutes address many different issues, the group chose to focus on their attention on four topics:

- o Patients rights
 - Patient right obtain an “access report” to find out who has asked for their information
 - Patient right of correction
- o Notice of NPP
- o Record Locator Service v. HIE (definitional section of one of these statutes)
- o “Opt-in” vs. “Opt-out”

The group divided the states up. Each member will create an overview and a list of pro's and con's for their assigned state.

- Tracy – Maine and Minnesota
- Patricia – Texas
- Marcia – Arizona
- Valerie – Kansas
- Melissa – New Mexico

Patricia suggested that the members get their comments in before the next meeting so that they can be circulated. This will facilitate discussion on the final report.

The group set the next meeting time at Wednesday, September 28th at 11:00 a.m.

Patricia asked for questions and comments and there were none.

The meeting adjourned at 12:08pm.