

**IL HIE Legal Task Force  
Executive Committee Meeting  
Meeting Notes  
July 6, 2011**

In-person Attendees:

Bernadette Broccolo, McDermott, Will & Emery  
Laura Morgan, McDermott, Will & Emery

Office of Health Information Technology

Abe Arnold  
Robert Bollinger  
Mark Chudzinski

Attendance by Phone

Cliff Berman, SXC Health Solutions Corp.  
David Carvalho, Illinois Department of Public Health  
Judd DeLoss, DeLoss Health Law  
Laurel Fleming, Northwestern Medical Faculty Foundation  
Patricia King, Swedish Covenant Hospital  
Marilyn Lamar, Liss & Lamar  
Mary Lucie, Northwestern Memorial Hospital  
Maria Pekar, Loyola University Health System  
Renee Popovits, Popovits & Robinson  
Jay Ready, Chicago Lawyers' Committee for Civil Rights under Law  
Wendy Rubas, Central Dupage Hospital  
Maia Thiagarajan, Ingalls Health System  
Marilyn Thomas, IL Dept HFS (Springfield)

Bernadette Broccolo, co-chair of the Executive Committee, opened the meeting at 2:00PM hosted by OHIT at the State of Illinois J.R. Thompson Center in Downtown Chicago, with a telephone conference call-in number. It was noted that 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 the ability of those attending by telephone to hear and participate was confirmed.

Before proceeding to an update report from each of the workgroups, nearly all of which have made significant progress, Ms. Broccolo thanked the Public Health, Liability and General PHI workgroups for preparing draft reports regarding the findings to date of their workgroups.

Public Health – Maria Pekar and David Carvalho, co-chairs, gave the following update:

- The workgroup has divided into subgroups that are looking at the relevant statutes, and expects to have a written work product by the end of July.
- The group's work on the specific wording of proposed revisions to SB 1338 resulted in the preparation of a template of statutory provisions that could be useful to other workgroups that may be proposing IL statutory revisions.
- One of the priorities for the workgroup is to propose amendments to Illinois statutes to harmonize them with HIPAA, which will facilitate the task of interpreting and implementing relevant Illinois law.

- Recent legislation amends the utilization of patient Social Security Numbers in hospital data discharge sets, with potential implications for the HIE's patient and record indexes.
- Additional consideration will be required with regard to the State's policy for the collection of patient consent for the disclosure and use of PHI, and the degree of granularity that is required when securing patient consent (e.g. duration of consent or nature of permitted future disclosures), or that applies to a patient's excluding certain data from disclosure.

In the ensuing discussion, it was noted that the collection of patient identification information, and the de-identification of patient records, has implications for the State's public health registries (e.g., immunization data), as well as for the conduct of medical research. Practical considerations include the wording and collection of patient consent, and the securing of approvals from appropriate review bodies (e.g., privacy boards, IRBs). Consideration is also being given to the discrepancies between the common rule and HIPAA in terms of patient consent for medical research.

Liability Group - Jud DeLoss, co-chair, reported that the workgroup formed five subgroups to examine potential impediments under Illinois law to the development and implementation of HIE.

- The Medical Studies Act subgroup found no barriers in that Act. Additional consideration may be needed if the HIE wants to use data for audits.
- The Testimonials Privileges subgroup focused on the laws protecting victims of violent crimes/rape and found no barriers.
- The Hospital Licensing Act subgroup focused on language in that Act that allows disclosure of patient information "as otherwise provided by law." The group has questioned whether licensed hospitals enjoy sufficient express authorization to disclose patient information to the HIE, and consideration should be given to potentially amending the Act.
- The Freedom of Information Act subgroup did not find any inconsistencies with or recommendations regarding FOIA. The group's preliminary review of the Act suggests that the HIE's audit logs would not be accessible under FOIA; additional consideration of the issue is proposed.
- The subgroup examining the immunity provision in the IL HIE and Technology Act noted that the provision is broad and no definitions of key terms are included. The subgroup will be proposing the addition of several definitions, which can be adopted by the new IL HIE Authority in regulations.

General PHI - Patricia King, co-chair, reported that the workgroup is at a midway point, and has not yet formulated specific recommendations but is making progress. The workgroup will be examining HIE-specific statutes enacted in other States. Several issues discussed by the

workgroup have already been noted in the report of other workgroups. A fuller appreciation of the architecture of the proposed state-level ILHIE and its intended participants would be helpful in informing the deliberations of the workgroup.

Patient Consent - Marilyn Thomas, co-chair, reported that the workgroup has generated several recommendations which will be reviewed next week. Marilyn has been recently interfacing with several of the other workgroups regarding their potential input regarding amendments they would propose to the model IL form of patient consent created in the HISPC-IL 2007 project.

Interstate – Marilyn Lamar, co-chair, updated the group on the continuing work of the Upper Midwest Health Information Exchange Consortium (UMHIE) in trying to develop a common form of consent, noting that it may impose more of a burden on Illinois providers than would be required under our state laws due to the need to accommodate Minnesota’s requirement of consent for all disclosures of information (including disclosures for treatment) regardless of whether an HIE is involved. The draft UMHIE consent includes separate “check the box” areas for consent to release highly confidential information under IL law. Marilyn Lamar will touch base with Marilyn Thomas regarding efforts to possibly develop a form for consent to disclosure of highly confidential information under Illinois law, working from the draft form developed by the HISPC-IL 2007 work group.

Substance Abuse – Renee Popovits, co-chair, gave the following update:

- The group will be reviewing on July 13 amendments they would propose to the model IL form of patient consent created in the HISPC-IL 2007 project.
- The group is anticipating further Federal guidance on 42 CFR in the form of FAQs “any day”.
- A key legal and policy barrier, under Federal and IL law, to the disclosure of substance abuse PHI is the restriction on “redisclosure”.
- A fuller appreciation of the architecture of the proposed state-level ILHIE, its participants and its proposed uses of clinical information, would be helpful in informing the deliberations of the workgroup. Such information also needs to be eventually more widely shared and explained to the provider and patient communities.

In the ensuing discussion it was noted that the workgroup’s recommendations regarding any proposed amendments, to reflect recent legislative and regulatory developments, to the Notice of Privacy Practices, which is customarily provided by providers to patients in compliance with HIPAA, would also be most welcome.

Genetic Testing – Mary Lucie, co-chair, reported that the workgroup is working to update the group’s analysis matrix, and is looking to finalize soon its deliverable for the Executive Committee.

Behavioral Health – Wendy Rubas and Laurel Fleming, co-chairs, reported that both of the subgroups, one addressing IL licensing laws the other addressing the IL Mental Health Confidentiality Act, have drafted reports, which are being revised and consolidated; a written report from the entire workgroup will be finalized soon. In general, the Workgroup is proposing greater alignment of Illinois law with corresponding Federal law (e.g., HIPAA).

Disclosure of Clinical Laboratory Test Results; Prescription Drug Information; E-prescribing; Payment Claims – Cliff Berman, co-chair, advised that the Workgroup had divided its analysis among several sub-groups, most of which had already provided their input, which would be aggregated into a “white paper” by the end of August.

On motion duly made and seconded, the minutes from the previous meeting (May 11, 2011) were approved.

Mark Chudzinski, General Counsel of OHIT, provided a brief Illinois and Federal HIE update.

1. The IL HIE Authority Board met on June 22, 2011. The Board has appointed the members of its Advisory Committee, whose 32 members include Jud DeLoss. The next meeting of the Board is scheduled for September 7, 2011.
2. OHIT issued an RFP for the acquisition of certain IT services which will constitute the core services of the state-level IL HIE. Responses to the RFP are due by July 22.
3. Illinois State pending legislation
  - a. HB1338, the Immunization Data Registry Act, has passed and was sent to the Governor for signature on June 10. It provides patients an opt-out option for the exclusion of data from the Immunization Registry.
  - b. SB1234 has passed and was sent to the Governor for signature on June 24. It changes the Mental Health and Developmental Disabilities Confidentiality Act (740 ILCS 110/11) to allow for the disclosure for treatment purposes of the mental health records of patients in State of Illinois programs, being principally Medicaid.
  - c. HB2917, a comprehensive revision of the Illinois Controlled Substances Act, has passed and was sent to the Governor for signature on June 15. It includes a provision expressly authorizing the e-prescribing of controlled substances.

In response to the chair’s invitation, there were no comments offered from the general public.

The next meeting will be scheduled after August to accommodate the anticipated break in workgroup activities during summer vacations.

The meeting was adjourned at 3:45PM.