



**IL HIE Legal Task Force
Executive Committee Meeting
Meeting Notes
September 19, 2011**

Attendance by Phone

Bernadette Broccolo, McDermott, Will & Emery
David Carvalho, Illinois Department of Public Health
Gerald DeLoss, DeLoss Health Law
Laurel Fleming, Northwestern Medical Faculty Foundation
Patricia Foltz, Anderson, Rasor & Partners, LLP
Patricia King, Swedish Covenant Hospital
Marilyn Lamar, Liss & Lamar
Mary Lucie, Northwestern Memorial Hospital
Maria Pekar, Loyola University Health System
Rene Popovits, Popovits & Robinson
Maia Thiagarajan, Ingalls Health System

Office of Health Information Technology

Mark Chudzinski, General Counsel
Michael Flanigan, Legal Intern
Matthew Schmidt, Legal Intern
Melissa Tyler, Legal Intern

Bernadette Broccolo, co-chair of the Executive Committee, opened the meeting at 1:00PM hosted by OHIT at the State of Illinois J.R. Thompson Center in Downtown Chicago, with a telephone conference call-in number. 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.

The meeting began with each of the workgroups represented giving an update on their groups progress.

General PHI - Patricia King, co-chair, gave the following up date:

- The workgroup is reviewing various state health information exchange (HIE) statutes for ideas that will be helpful when making recommendations for Illinois.
- The group will be reconvening in about two weeks to begin creating draft legislation.
- The group expects to have a white paper/draft legislation completed in about a month.

Substance Abuse - Rene Popovits, co-chair, reported that the group's next meeting will be in the first week in October.

- The federal government had indicated that it was planning on releasing statutes or regulations that may affect the Substance Abuse group's recommendations, so they are closely monitoring for any updates.
- If nothing comes from the federal government in the next week or so, the group will finalize the draft that it has created with its recommendations.

Mark Chudzinski, OHIT general counsel, noted that an ONC strategic plan issued Sept. 12, 2011 referenced a pilot program between ONC and SAMSA regarding privacy and security and the sequestering of data. This program involved the development of software that would strip out from patient records sensitive patient information regarding substance abuse and behavioral health. (page 31 & 32 of the ONC report). The ONC strategic plan also mentioned that an NPRM will likely be issued this year regarding the national NwHIN. This NPRM will likely contain provisions about privacy and security and may adopt certain of the “Tiger Team” recommendations regarding the collection of patient consent before a provider may obtain records from the HIE. This NPRM may be issued in the next two or three months and could affect how the Illinois HIE is structured.

In the ensuing discussion, the group considered what level of access substance abuse treatment centers should have to the Illinois HIE. In many cases, it will be beneficial for residential treatment facilities to have access to patient records. At the same time, consent laws make it difficult for these facilities to pass information through the HIE. The group recognized that a patient’s substance abuse history is an important piece of information to get the full picture of a patient’s health.

Genetic Testing – Mary Lucie and Maia Thiagarajan, co-chairs, reported that the group is finalizing its review matrix and will likely have one more meeting to touch base. They are close to submitting a final report.

Public Health Reporting: Maria Pekar, co-chair, reported that the group’s white paper is almost completed.

- She provided an overview of the contents of the white paper:
 - Executive summary
 - Introduction including:
 - Background, purpose of task, the process employed, method of legal analysis, how the group arrived at its recommendations, and the scope and limitation of the analysis
 - A description of the Health Information Exchange Section
 - As a mode of transmitting information, like sending a fax, and
 - As a data repository
 - Sections describing:
 - Public Health Disclosure:
 - In general, typically no consent required
 - Opt-out
 - Public health and public safety concerns
 - Public health vs. research

- Consent
 - When it is required and when it is not
- The paper will close with a full list of recommendations and conclusions and touch on whatever issues remain.
- Attachments:
 - Model provisions
 - List of statutes the group reviewed

In the ensuing discussion, it was recommended that the other workgroups might benefit from the section of the Public Health Group's white paper describing the HIE. It was agreed that once completed, this section will be circulated to the other groups.

Interstate - Marilyn Lamar, co-chair, gave the following update:

- The group has been continuing to work with the Upper Midwest Group. Illinois has decided not to use the uniform consent form that the Upper Midwest Group created because it doesn't work very well for Illinois providers. For example, Illinois right now does not require consent for treatment, payment, or health care operations (TPO); however, Minnesota requires patient consent for everything except emergencies. Therefore, the Minnesota approach has to be in a common consent form between the states. It would be burdensome and confusing for Illinois providers to use a form that is so different from Illinois law. Additionally, the form did not address research or mental health under Illinois law.
- The next step of the Upper Midwest Group is to create a final report and finalize various forms.
- Marilyn noted that in looking at the Upper Midwest group statutes, many other states have an emergency exception. This may be something that Illinois should look into.

Mark stated that Missouri and Indiana have contacted him to express that they are eager to talk about facilitating state to state contacts. These states were not involved in the Upper Midwest Group. They are interested in coming to a bilateral peer-to-peer agreement about exchange of information between the states.

HIV/AIDS Group – Helen Haynes of the Cook County Department of Public Health has been recruited to work on the HIV/AIDS group. The group discussed how there may be some statutory similarities between genetics and mental health and HIV/AIDS. Therefore, it may be beneficial for those groups to assist the HIV/AIDS group.

Behavioral Health – Laurel Fleming, co chair, reported that her group is working to finalize the draft that will be given to the executive committee.

Consent Group and Clinical Lab groups did not report as the groups' chairpersons were not available.

Mark discussed the timing of the recommendations. He explains that the goal is to have the proposal together by mid-December to get it on the legislative calendar in January.

In the ensuing discussion, the group considered how far it should go in making recommendations on sensitive topics such as HIV/AIDS and mental health. Mark suggested that the group include with its recommendations supporting documents such as testimony, legislation of other states, and legal and medical journal articles on "best practices." He also stated that the group should bring the recommendations before the Illinois HIE Authority. The Authority's next meeting is November 16th in Springfield. He recommended having something ready for the Authority by this meeting.

In the ensuing discussion, it was noted that currently Illinois requires numerous different check boxes on consent forms for all the different sensitive material. Other states simply have one check box. It was noted that the one check box is a lot easier and it follows HIPPA; however, groups lobbied to get special consent requirements for this sensitive material. It will be beneficial to hear from those communities before making recommendations. It was explained, that one way to approach this issue is to make a proposal to the Authority. Then the Authority could convene a public hearing at which stakeholders would have an opportunity to voice their concerns.

The group discussed the ultimate duty of the Legal Task Force. It was agreed upon that their duty was to advise the Authority on what changes may need to be made to Illinois Law to accommodate an HIE and how to make them while letting the Authority and the General Assembly make the policy decisions. The Task Force will provide them with the background and other information necessary to make these policy decisions. The Legal Task Force analysis will include a statement of the current state of things and the issues it anticipates encountering.

Mid-October was set as the goal for wrapping up the recommendations of the workgroups. The goal is to meet in person for a few hours at the end of October. October 25th was suggested as a date for the meeting.

Mark Chudzinski provided a brief Illinois and Federal HIE update:

- Three Outstanding NPRM/ANPRM's came out this summer
 - Audit Trails NPRM, issued at the end of May, revises the rules for providing a patient an accounting of disclosure and grants them a new right to receive an access report.
 - This NPRM was very heavily commented on and criticized for imposing something that is impractical and goes beyond current law.

- An ANPRM was issued August 9th concerning Metadata standards. It imposes on the vendor community new requirements with regard to certified EHRs for stage two meaningful use and requires that they include that capability to include Metadata tags for patient identity and privacy issues.
 - A common rule ANPRM was circulated to the Task Force.
 - Finally, the ONC is expected to issue a new NPRM regarding NHIN governance which will likely contain some privacy and security elements.
- All three Illinois statutes that the Task Force has been following have become law
 - HB 1338 – The Immunization Data Registry Act
 - SB 1234 – Changes the Mental Health and Developmental Disability Confidentiality Act (740 ILCS 110/11)
 - HB 2917 – Revises the Illinois Controlled Substance Act
 - OHIT & Authority
 - Authority has begun discussion with local HIE’s regarding the respective role of state level and local HIE.
 - OHIT has posted a webinar regarding the ILHIE core services. It is available on the HIE website. (hie.illinois.gov)
 - OHIT is finalizing in the next few weeks the selection of the ILHIE core services vendor.

In the ensuing discussion, it was noted that the Secretary issued proposed rules that would require CLIA certified laboratories to disclose laboratory results directly to patients. These rules are in proposed forms. They would change CLIA and a few other things relating to HIPPA.

The group agreed to make mid-October the target for completing its work product.

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

Meeting Closed at 2:20PM.