

**IL HIE Legal Task Force
Interstate Issues Workgroup
February 18, 2011
Meeting Notes**

<u>In-person Attendees:</u>	<u>Office of Health Information Technology</u>
Marilyn Lamar, Liss & Lamar, P.C.	Mark Chudzinski (by phone)
Anne Murphy, Holland & Knight, LLP	Pamela M. Dones
<u>Attended by Phone:</u>	
Rob Connor, Illinois Department of Health Services	
Anne Mahalik, Illinois Department of Health Services, Division of Mental Health	
Morris Rang, Blessing Health System	
Marilyn Thomas, Illinois Department of Health and Family Services	
Crystal VanDeventer, Lincoln Land HIE Planning Team	
Heather Zimmerman, Walgreen Co.	

Anne Murphy, Co-chair of the workgroup opened the meeting at 1:00 p.m., 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.

Mark Chudzinski, the General Counsel of the State of Illinois Office of Health Information Technology (OHIT), welcomed the meeting participants, thanking Anne Murphy and Marilyn Lamar for agreeing to co-chair the Interstate Issues Workgroup of the IL HIE Legal Task Force, and thanked all of the assembled participants for agreeing to assume a leadership role in this important initiative. The State of Illinois is committed to the development and implementation of a state-wide health information exchange (HIE) in order to: improve health outcomes; achieve better care coordination among providers; reduce medical errors; reduce health disparities; and control health care costs. She welcomes and appreciates the services being volunteered by legal subject matter experts for the benefit of the State of Illinois and its residents to address the legal barriers that may exist for HIE in Illinois.

Mark Chudzinski noted that OHIT is actively seeking the involvement of knowledgeable individuals from the private sector in providing non-binding advice with respect to the challenges presented by Illinois law for the development of health information technology in the State of Illinois. The HIE Legal Task Force will solely provide non-binding advice to OHIT, which will have exclusive authority in its absolute discretion to

adopt, or reject, any such advice. (In turn, any recommendations that may be made by OHIT to the Illinois General Assembly and/or the Illinois Health Information Exchange Authority (currently in formation) (“HIE Authority”) are purely advisory, and may be accepted or rejected by such other bodies in their sole discretion.) All workgroup discussions and work product of the Task Force will be both “vendor-neutral” and “client-neutral”; the Task Force will not assist the State of Illinois, OHIT, the Authority, or any other State of Illinois agency in reviewing, drafting, or preparing a request for proposal or request for information relating to State of Illinois procurements, or in determining whether there is a need for a contract to be entered into by the State of Illinois, OHIT, the Authority, or any other State of Illinois agency. The Task Force will not review or discuss any vendor-specific solutions that may someday be considered for procurement by the State of Illinois, OHIT, the Authority, or any other State of Illinois agency. The Task Force will not participate in the making of any regulatory or licensing decisions of the HIE Authority, or of any other State of Illinois agency.

Anne Murphy and Marilyn Lamar introduced themselves and stated why they decided to join the Interstate Issues Workgroup. The other participants introduced themselves and shared why they were interested in participating in the workgroup.

Marilyn Lamar asked the participants if they thought there is confusion among providers about disclosing patient information and mentioned that in Minnesota the provider has the burden of complying with privacy laws. She also pointed out that confusion arises when a patient crosses state lines because it is not clear which state law will be applicable in case there are privacy issues.

One member who works with multi-state enterprise noted that when facing cross-border PHI issues, the company applies the law from the state where the information was generated.

Afterwards, participants discussed different types of special PHI records that exist, such as: mental health, HIV/AIDS and other communicable diseases, adolescent (including reproductive health), substance abuse, and behavioral records.

Marilyn Thomas, Chair of the Patient Consent Workgroup, mentioned that her workgroup is also analyzing the sensitivity of the information contained in domestic violence, adolescent (including reproductive health), and other types of special records, as suggested in the letter of November 10, 2010 to Secretary Kathleen Sebelius from Dr. Justine Carr of the National Committee on Vital and Health Statistics.

Ms. Thomas provided an overview of the prior HISPC (Health Information Security and Privacy Collaboration), project in which she participated. She noted that HISPC produced three documents (two consent templates and an insert to the Notice of Privacy Practices) which she will distribute before the workgroup’s next meeting.

Ms. Murphy asked participants about their experience sharing information across States. In the ensuing discussion it was noted that:

- it can be difficult to deal with the increasing regulation in some States and that increased regulation has led to the closing of a some health care facilities,
- there can be a significant time lag between the inquiry and the receipt of the health information requested; and
- the methods used by providers to exchange information are not always consistent.

Ms. Lamar suggested that participants use their contacts in other States, (specifically Missouri, Indiana, Kentucky, Arizona, and Florida) to help in the workgroup's efforts. She described the deliberations of the Upper Midwest HIE Consortium (Wisconsin, Minnesota, Iowa, Indiana, South Dakota) and offered to share with the workgroup certain documents prepared by Consortium participants on the disclosure of health information.

The following suggestions were offered as potential work products of the workgroup:

- A comparative analysis of the health information protection afforded in one State compared to the level afforded in another
- A standard or a model of federal/state legislation that specifies the adequate protections for health information
- To create quick reference guidelines for providers on what to do when presented with a health information disclosure issue
- A proposal of legislation to the Illinois General Assembly for a "break the glass" exception for cases of medical emergencies

A participant asked if a provider in Illinois could access another State's DIRECT system. Mark Chudzinski provided a brief overview of the recently-announced Surescripts program created in partnership with the American Academy of Family Physicians, which will allow a provider to exchange information using a secure clinical messaging system.

With respect to the identification of patients across State borders, it was mentioned that HIPAA contains a provision for a national patient identifier, but that Congress has prohibited any expenditure to implement any form of a unique patient identifier.

Participants agreed that they will convene again on Friday, March 18 at 1:00 p.m. at the J.R. Thompson Center or by phone conference.

Marilyn Lamar thanked all the participants for their input and said that she will soon distribute the Upper Midwest HIE Consortium documents of which she had talked about.

There were no comments from the public in response to the co-chairs invitation for comments.

The meeting adjourned at 2:10 p.m.