Good morning, Mr. Chairman and members of the Committee.

My name is Kimberly Baldwin-Stried Reich, MBA, MJ, PBCI, RHIA, CPHQ, FAHIMA**,** ILHIMA Board Advisor and Speaker-Elect of the AHIMA House of Delegates.

I am privileged to stand here before you today in a dual capacity as a Health Information Management (HIM) & Electronic Discovery professional and private citizen of the State of Illinois.

First and foremost, I want to thank you for your leadership and the important role each of you has in the design and build in our Statewide HIE. (ILHIE)

In equal measure, I also believe each of us as stakeholders and citizens have also been charged with no greater duty than to work with the ILHIE to "get it right," when it comes to the design and build of our HIE and the establishment of the laws, rules and regulations that will govern the exchange of electronic health information. Our future generations are depending on us.

The 1999 Institute of Medicine (IOM) report, *To Err Is Human and* its 2011 follow-up report, *Health IT and Patient Safety, Building Safer Systems for Better Care* IOM Report, *Improving Health IT and Patient Safety* provide ample support and testament for this belief.

To Err Is Human taught us "***an estimated 44,000-98,000 lives are lost every year due to medical errors in hospitals***,"[i] while *Health IT and Patient Safety* report establishes that, **"*Health IT is contingent on how the technology is designed, implemented, used, and fits into a clinical workflow, requiring the cooperation of both vendors and users***[ii] *"* In essence, each of these reports tells us that we have a **"shared responsibility"** for improving health IT safety and the design and build of our Nationwide Health Information Network (NwHIN) of tomorrow, of which the ILHIE is one important component.

"EHR adoption and the growth of the NwHIN will give rise to a whole new array of healthcare tort claims[iii]." According to the AMA News, "System breaches. Modification allegations. E-discovery demands. These issues are becoming common courtroom themes as physicians transition from paper to electronic health records (EHRs)…. not only are EMRs becoming part of medical negligence lawsuits, they are creating additional liability[iv]"

This year, sales of EHR systems are projected to reach $6.5 billion. Following in close lock-step to EHR advancement is the electronic discovery marketplace. The discovery of electronically stored information is growing and evolving almost as rapidly as our healthcare information infrastructure.[v] The discovery of electronically stored information has become $20 billion industry; [vi] with sales of software products alone are projected to reach $1.2 billion by 2014.[vii]

"Through adoption of EHRs and the establishment of the ILHIE, e-discovery in healthcare will soon become a routine process…with so many new developments taking place it is likely that one day healthcare e-discovery will become its own unique job skill.

The HIM profession is prepared and well qualified to take on these important jobs because they are the persons who can best help legal professionals understand how EHRs are structured and data is coded and exchanged with providers.

We can help the legal profession search, preserve, and identify sources of information that may be relevant to litigation or a regulatory investigation. When inevitable issues arise related to the quality and integrity of coded clinical data arise, HIM coding professionals are the people the court must look to be "expert witnesses" because we, as responsible 'Information Governors,' know, ***"Our digital fingerprints will never fade from the lives we touch."***

We are proud of who we are and what we do to ensure the privacy, security and integrity of protected health information. We understand and are ready for the role and impact we have in helping to advance Health IT and Patient Safety.

With regard to growing reality that electronic discovery in healthcare will soon be routine, there are two recent court cases which are setting the stage for how electronic discovery will be conducted in future. These cases are as follows:

U.S. v. Jones - Under the 4th Amendment, the US Constitution acknowledges that individuals have a "reasonable expectation of privacy" and obviously, HIPAA will preclude any release of any protected health information (PHI), but today's digital age has blurred the line of what is considered reasonable. Justice Sotomayor's opinion highlights the unclear privacy standard of the Stored Communications Act (SCA) surrounding evidence stored by third party providers, which in essence is what a HIE is.

Question: What does Justice Sotomayor's opinion in U.S. v Jones and the SCA mean for the NwHIN and HIEs as third party holders of PHI?

Da Silva Moore v. Publicis Groupe & MSL Group, No. 11 Civ. 1279 (ALC) (AJP) (S.D.N.Y. Feb. 24, 2012) – A highly controversial case involving an opinion by Judge Andrew Peck of the Southern District of New York on the use of a new electronic discovery technique called "predictive coding[1]" which uses artificial intelligence and computer-assisted techniques to cull and assign values to data sets.

This case highlights that the use of artificial intelligence and computer-assisted techniques such as those with are evolving in electronic discovery, are also evolving in healthcare and may one day employed in the coding (such as ICD-9, ICD-10, or ICD-11) and classification of healthcare data.

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[1] Predictive Coding has many definitions (is is also called Technology Assisted Review) for purposes of this testimony it is defined as "a process whereby a definition, made up of various rules, is created. Records in a collection are then evaluated to determine how well they match the definition". http://ediscoveryjournal.com/2012/03/what-is-this-predictive-coding-thing-anyway/

Questions: When it comes to the use of artificial intelligence and computer-assisted review techniques for the ICD-9, ICD-10, CPT and or SNOMED coding & classification of protected health information, how will you ensure that mechanisms and standards put in place to ensure the quality and integrity of the coded data is accurate?

Who do you see as the best persons to take on the role of review of the quality and integrity of our nation's health information data?

Mr. Chairman and members of the Committee, the answers to these important questions can be found within the professional expertise of the persons sitting in this room and those listening remotely today. HIM professionals are well positioned and prepared to assist the Data Privacy and Security Committee in evaluating and addressing the laws, rules and regulations governing the establishment of our evolving nation's health information infrastructure. I wish to thank you for your thoughtful consideration of this testimony.

References: - Kimberly Baldwin-Stried Reich Testimony

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[ii] Institute of Medicine (IOM), November, 2011 "Health IT and Patient Safety: Building Safer Systems for Better Care" http://www.modernhealthcare.com/Assets/pdf/CH76254118.PDF

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[iv] Reich, Kim Baldwin-Stried, May 12, 2012, "Trends in E-Discovery: Four Cases Provide A Glimpse of Healthcare Litigation's Future" JAHIMA

[v] Reich, Kim Baldwin-Stried, May 4, 2012, "Reading the Tea Leaves: What Does the Future Hold for HIM?" ILHIMA Annual Meeting

[vi] Adrogué, Sofia and Baker, February 6, 2012 "The Evolution and Explosion of E-Discovery Will Continue in 2012," LTN http://www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202541317297&slreturn=1

[vii] The Radicati Group, Inc. October 11, 2010 Press Release "E-Discovery Market 2010-2014" Study

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