

**IL HIE Legal Task Force
Liability Meeting
January 25, 2011
Meeting Notes**

In-person Attendees:

Patricia Nowak, Dykema, Gossett
Susan Schwartz, Corboy & Demetrio, PC

Attended by Phone:

John Blum, Loyola University School of Law
Bernadette Broccolo, McDermott Will & Emery, LLP
Ed Clancy, Ungaretti & Harris, LLP
Susan Conner, Cassiday Schade, LLP
Jud DeLoss, DeLoss Health Law
Patricia Foltz, Anderson, Rasor, & Partners, LLP
Mary Kay Furiasse
Alice Kush
Michael McConnell, Resurrection Health Care Corp.
Susan O'Leary, Rush University Medical Center
Michael Simko, Walgreens Co
Barbara Youngberg, Beazley Institute of Health Law &
Policy

Office of Health Information
Technology

Mark Chudzinski
David Kim
Mary McGinnis

Mark Chudzinski, General Counsel of OHIT, opened the meeting at 3:00PM, 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. Mark thanked Pat Foltz and Jud DeLoss for agreeing to co-chair the work group, and also thanked all of the work group members for their participation, on behalf of Laura Zaremba, Director of OHIT.

Mark Chudzinski gave an overview of OHIT and presented the goal of the HIE Legal Task Force as identifying shortcomings in Illinois laws that impede health information exchange, and proposing solutions to such shortcomings. He 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 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.

Patricia Foltz apologized for convening the inaugural meeting of the work group later than initially planned. She proposed that for today's meeting the work group examine the statutes identified for the work group in the IL HIE Legal Task Force "charter" document prepared by OHIT ("Re: Illinois Health Information Exchange Legal Task Force", draft Oct. 21, 2010) and divide the work of examining the statutes between the group members. She proposed that the group look at the ILHIE enabling statute (20 ILCS 3860/40), IL Code of Civil Procedure Physician-Patient privilege (735 ILCS 5/8-802), Confidentiality of Rape Crisis Counselor (735 ILCS 5/8-802.1), Confidentiality of Counseling Victims (735 ILCS 5/8-802.2), Hospital Licensing Act (210 ILCS 85/6.17b,d,i), IL Medical Studies Act (735 ILCS 5/8-2101), and IL Freedom of Information Act (FOIA) (5 ILCS 140/1). She also stated that if a reviewer determined that any of the statutes prevent the sharing of data through a HIE, the reviewer and the work group should consider suggesting what changes should be made to Illinois law.

Jud DeLoss, co-chair, stated the focus of the group should be on liability issues.

Patricia stated that the work of the group should break down the statutes and issues by using the modified worksheet from the Behavioral Workgroup as a framework, which she would review for use by this work group.

The following allocation of work assignments was discussed:

- Medical Studies Act – Patricia Foltz, Patty Nowak, Susan O’Leary, Susan Schwartz.
- Hospital Licensing Act – Mike McConnell, Ed Clancy, Susan Conner
- Physician-Patient privilege/ Confidentiality of Rape Crisis Counselor/Confidentiality of Counseling Victims – Barbara Youngberg, John Blum
- FOIA- Jud DeLoss
- IL HIE enabling statute – to be assigned.

A question was asked as to why FOIA was included. Mark Chudzinski responded that there might be a concern regarding the scope of the FOIA exemption for data in the IL HIE (5 ILCS 140/7.5(t)) provided in the IL HIE enabling legislation (20 ILCS 3860/905). Mark then gave a quick overview of the architecture of the ILHIE. He explained the ILHIE will maintain a database of Master Patient Index, Record Locator Service, and a Directory for routing

information between providers, payers, and public health authorities. The ILHIE will develop a consent management and auditing policy. He stated that there are currently no plans for clinical data to reside in the HIE, but it was a possibility in the future. It is anticipated that public health reporting will also be enabled through the HIE, and “de-identified” information will be collected through the HIE for medical research.

A question was asked if the Hospital Licensing Act prohibited the transmission of data. Another member asked if a more comprehensive description of the HIE was available. Mark stated that Patricia Cunningham, CTO of OHIT, was going to give a seminar about the HIE to the Legal Task Force in the near future, open to all Legal Task Force members.

Patricia Foltz stated that the rest of the sub-subgroup will be filled out when the minutes are circulated to the members who could not attend.

The discussion then turned to the next meeting time. The group decided to meet in two weeks either on February 10th or February 14th.

In response to a question as to whether when examining the statutes the reviewers should the focus on the short term or long term, Mark suggested that initially the group should look at what is needed in the next 24 months to enable the initial development and implementation of the IL HIE.

In regard to the IL HIE providing access to patient data for research purposes, Mark noted that the state-level HIE initially will not store patient clinical data itself, but will facilitate the exchange of information residing in data bases of the IL HIE participants. The IL HIE enabling statute provides that the IL HIE may establish an institutional review board (IRB) to review and approve requests for IL HIE data for research purposes, but initially it is anticipated that the IL HIE will respond to any research requests it receives in consultation with the IRB of the Illinois Department of Public Health. .

There was no public comment offered in response to the chairman’s invitation for public comment.

The Meeting adjourned at 3:40.