

**MINUTES OF THE APRIL 11, 2012, MEETING  
OF THE GOVERNING BOARD OF THE  
ILLINOIS HEALTH INFORMATION EXCHANGE AUTHORITY**

The Board of Directors (the “Board”) of the Illinois Health Information Exchange Authority (“Authority”), pursuant to notice duly given, held a meeting at 10:30 a.m. on April 11, 2012, at the James R. Thompson Center in Chicago, IL, with telephone conference capability.

<p><u>Appointed Members Present:</u>          1. Dr. Bechara Choucair          2. Mr. David Holland          3. Mr. Mark Neaman          4. Dr. Nancy Newby          5. Dr. Nicholas Panomitros          6. Dr. Bruce Wellman          7. Dr. Cheryl Whitaker</p>	<p><u>Appointed Members Absent:</u>          1. Dr. William Kobler</p>
<p><u>Ex-Officio Members Present:</u>          1. DPH – Mr. David Carvalho          2. HFS – Director Julie Hamos          3. DOI – Mrs. Colleen Burns          4. OOG – Mr. Michael Gelder</p>	<p><u>Ex-Officio Members Absent:</u>          1. DHS – Mrs. Susan Locke</p>
<p><u>OHIT Staff Present:</u>          Laura Zaremba; Mark Chudzinski; Dia Cirillo;          Diego Estrella; Krysta Heaney; Danny          Kopelson; Saroni Lasker; Saro Loucks; Mary          McGinnis; Melissa Tyler; Cory Verblen</p>	<p><u>Vacancies:</u> Executive Director</p>
<p><u>Invited Guests Present:</u>          Mr. Roger Holloway, ILHITREC</p>	

*Call to Order and Roll Call*

Dr. Cheryl Whitaker welcomed the appointed and ex-officio members of the Illinois Health Information Exchange Authority, as well as the members of the general public in attendance. Mr. Chudzinski, Secretary to the Board, confirmed the presence of the Members of the Authority Board noted above.

*Approval of Agenda*

There were no proposed revisions to the meeting Agenda, as posted in advance of the meeting in accordance with the Illinois Open Meetings Act.

*Approval of Minutes of Prior Meetings*

On motion duly made and seconded, the minutes of the Meeting of the Board on February 28, 2012, as well as the minutes of the meetings of the Committee of the Whole on February 15 and 28, 2012, were unanimously approved by the voting members of the Board.

*Chair Report*

Dr. Whitaker reflected on the accomplishments of the Authority Board after one year of operation. The Authority has made progress towards fulfilling its mission to promote, develop and sustain health information exchange in Illinois for the benefit of patients. Such progress will not be reversed should the Federal Patient Protection and Affordable Care Act be overturned by the Supreme Court. The move in the healthcare industry towards accountable care organizations has taken hold, and will sustain the demand for health information technologies and health information exchange.

Over the past year the Board has made progress in establishing its governance structure, engaging stakeholders, commencing development of policies and exploring sustainability.

Key issues that the Authority will need to address in the coming year include:

- timely implementation of the ILHIE technical build out;
- promotion of demand for ILHIE services in the context of Meaning Use Stage 1 and 2 requirements;
- development of a policy regarding patient choice regarding use of the HIE (whether in the form of “opt-in” or “opt-out”);
- development in coordination with the ILHIE users and partners of appropriate ILHIE data security policies and procedures;
- attainment of financial sustainability; and
- timely implementation of the on boarding to ILHIE of emerging regional HIE initiatives.

Dr. Whitaker thanked Dr. Bechara Choucair, Mr. Mark Neaman and Dr. Bruce Wellman, whose initial one-year appointments had reached their term, for agreeing to be reappointed by the Governor to serve as members of the Authority for an additional three-year term.

*Acting Executive Director's Report*

Ms. Laura Zaremba, the Authority's Acting Executive Director, reported on the progress of ILHIE and OHIT. She thanked the members of the Board on the one year anniversary of their service to the State of Illinois. The work of the past year has been challenging, and the pace of change and progress has been steadily increasing.

The implementation of the ILHIE network has been progressing. The ILHIE DIRECT secure messaging service currently has 274 registered users, exceeding the 1st Quarter registration goal by 22%. OHIT is now focusing on increasing use of the service by existing registrants. The service is on track to reaching a year end goal of 836 registered users.

Phase Two of the ILHIE network implementation has also been progressing well. Central Illinois Health Information Exchange (CIHIE) has been added as a partner for on boarding during the

alpha test period, along with Northwestern Memorial Hospital and the Alliance of Chicago FQHC, the commencement of which is now scheduled during April and May. Data has been received from the State's Medicaid agency to enable the construction of a State-wide Master Patient Index.

In the past 60 days the new developments in the regulatory environment included the issuance by Federal authorities of the following regulations and guidance: Stage 2 Meaningful Use incentive payment rules, with a deadline for filing comments by May 7; rules for the certification of EHR systems as qualifying for Meaningful Use incentive payments beginning in 2014; program guidance from the ONC to State HIE grantees (PIN-002) regarding the filing by May 8 of an updated Strategic and Operational Plan; and additional program guidance from the ONC to State HIE grantees (PIN-003) regarding recommended privacy and security elements of HIEs.

The proposed rules for Stage 2 Meaningful Use require providers by 2014 to transmit data to an unaffiliated recipient with a different EHR vendor for more than 10% of its transitions of care and referrals. The proposed Meaningful Use rule may somewhat diminish immediate demand in the marketplace for HIE services; the deadline for attainment of this milestone was delayed by one year, and the goal can be obtained with the use of DIRECT messaging rather than through bi-directional robust HIE services. The proposed rules encourage patient access to their own health care data by requiring providers to provide their patients the ability to view online, download and transmit their electronic medical record.

The Illinois EHR adoption incentive payments program for Medicare and Medicaid providers is nearing 10,000 eligible professionals in the State of Illinois, with 2,962 registered under Medicaid, 6,623 under Medicare, and 134 registered hospitals. The total Illinois payments have exceeded \$112 million.

A copy of the National eHealth Collaborative's recent "HIE Roadmap" Report has been provided to the Board. It concludes that there is no "one size fits all" model of health information exchange. Focusing on what is best for the patient above all else appears to be a key to HIE success. Noted was the Federal emphasis on the promotion of the use of the DIRECT messaging service as a replacement for facsimile transmittals. Successful attainment of accountable care, patient centered medical homes, and payment reform not possible without widespread health information exchange.

Upcoming events with OHIT involvement include the meeting of the National Council for Community Behavioral Healthcare, Mental Health and Addictions Conference, April 15th -17th in Chicago, and the ILHIMA-GCCHIMSS Health Information Exchange Advocacy Day, May 2nd in Springfield.

With respect to staffing for the Authority, Ms. Zaremba reported that the appointment by the Governor of an Executive Director was still under review. Additional ILHIE Staff considered by Board at the December meeting can be addressed after the Executive Director is hired. The OHIT CFO position remains vacant.

Ms. Dia Cirillo provided an update on the Behavioral Health Integration Project (BHIP). The first Statewide BHIP Meeting was held on March 29<sup>th</sup> at the Naperville campus of Northern Illinois University with 158 persons in attendance in person and 203 via webinar. Over 70% of attendees were behavioral health services providers. The post-meeting survey of attendees indicated that the meeting was very well received. The top barriers to EHR adoption identified in by the survey participants were the legal confidentiality restrictions on the disclosure of sensitive health information and the cost of purchasing and implementing appropriate EHR technology. Work is now proceeding along three fronts – legal, technical and operational. Provider and consumer focus groups are being organized to address the patient consent concerns which underlie the current legal confidentiality restrictions. A toolkit of legal forms is being developed for behavioral health providers. Two to three 90-day demonstration projects will be funded to test the use of electronic data exchange to foster the integration of behavioral health and physical health care.

Ms. Mary McGinnis provided an update on e-prescribing in Illinois. Changes to the IL Controlled Substances Act became effective on Jan. 1, 2012, consistent with the Federal DEA's Interim Final Rule on e-prescribing, allowing electronic prescribing of Schedule II through V controlled substances. The e-prescribing system must be certified by an approved outside agency. More pharmacy software vendors are expected to become certified. Physician software vendors should be completing more rigorous requirements in 2012. More than 92% of pharmacies in Illinois are now able to receive e-prescriptions.

Mr. Diego Estrella reported on the State HIE Cooperative Agreement Budget. From the total initial grant of \$18.8 million, \$2.6 million has been expended through March 31, 2012, leaving a remaining balance of available funds through Feb. 7, 2014 of \$16,191,615. Estimated future obligations through Feb. 7, 2014 include personnel costs of approximately \$2.3 million, and contractual obligations, principally to the ILHIE technology vendor, of \$13,836,582.

Mr. Chudzinski provided an overview of recent regulatory developments. On March 23, 2012 the ONC issued a Program Information Notice with respect to HIE policies regarding privacy and security. It sets out 24 elements that ONC "recommends" all HIEs "should" have. Implementation of such ONC guidance is "voluntary", but OHIT's past experience with ONC suggests that ONC tends to view its "guidance" as mandatory. PIN-003 reflects a whole new set of obligations upon HIEs in the realm of data privacy and security, in certain respects surpassing current Federal law. OHIT is considering whether and how these privacy and security elements apply to the State-level ILHIE. Implementation of these policies at the State-level ILHIE will likely require ILHIE to seek similar implementation at the regional HIE level.

Under current law, a provider can disclose nearly all patient data without the patient's authorization if the disclosure is for the purpose of Treatment, Payment or health care Operations (known as TPO). A provider could forward patient data to an HIE, for example, without obtaining prior patient consent if the provider had a reasonable assurance that the data was for the purposes of TPO. The ONC guidance would require all HIEs, however, to obtain consent from each patient, either in the form of agreeing to the use of HIE (an opt-in), or choosing not to exercise a withdrawal option (an opt-out). In current actual practice, 22 States already provide (or plan to provide) an opt-out choice, and 10 provide (or plan to provide) an opt-in. Four States

have a mixed option, with certain data requiring affirmative patient opt-in. In 5 States no consent is required, and in 9 States the policy has yet to be determined (including IL).

While a mandatory HIE opt-in or opt-out may not be a radical change to current HIE practices, the manner in which the ONC wants that patient choice to be collected is. Patients must be provided a “meaningful choice”, a concept not present in current HIPAA. Providers currently provide patients written notices of privacy practices and patient rights, as brochures, posted signs and on websites. The ONC instead wants providers to “discuss HIE with their patients”. Furthermore, the “meaningful choice” must be revocable, “periodically renewed” and “granular”, meaning that the patient can select what specific data is disclosed to which particular providers. The providing of “granular” consent options is not the current practice among HIEs. In 31 States the laws provide (or plan to provide) that if the patient is to withhold disclosure of data, all of the patient’s data is sequestered. Only in 10 States do patients enjoy “granular” non-disclosure rights.

Of the approximately 24 elements, preliminarily OHIT thinks it would be reasonable to implement 9 of the elements, it would be challenging to implement 7 of them, and questionable to implement 8 of them. OHIT will consult with the emerging regional HIE initiatives to obtain their reactions, and OHIT will facilitate an examination of the ONC guidance by the Board’s Data Security & Committee to recommend policies for the Board’s consideration. OHIT will be submitting a reply to ONC by May 8, 2012.

In the ensuing Board discussion, concerns were expressed regarding elements of the PIN-003 guidance which if implemented would interfere with existing clinical workflows and affect provider adoption of HIE. Questions were also raised regarding the process by which changes to existing Federal law are being proposed. Also discussed was the potential timeline for adoption by the Board of necessary patient consent policies as well as for the introduction at the Illinois General Assembly of desired statutory amendments. The general consensus of the Board members was to urge OHIT to expedite the necessary policy making processes to enable the potential introduction of desired statutory amendments in time for the Fall 2012 session of the General Assembly.

#### *ILHIE Data Security & Privacy Committee Report*

Dr. Nicholas Panomitros, chair of the ILHIE Data Security & Privacy Committee, reported on three developments in the work of the ILHIE Data Security and Privacy Committee since the last meeting of the Board: 1. the composition of the Committee; 2. the Meeting on March 29; and 3. Upcoming events.

#### 1. Committee Membership

Dr. Panomitros has appointed two new members to the Committee, Mrs. Leah Bartelt of the Illinois Chapter of the ACLU and Mrs. Jennifer Creasy of the Illinois Chapter of AARP, increasing its membership now to 16. He welcomes their service and the viewpoints of the organizations they represent, which recognize the importance of ensuring that patient data in the possession of the Illinois Health Information Exchange will be appropriately protected.

## 2. March 29th Meeting

The Committee convened on Thursday March 29th, in conjunction with the Behavioral Health Integration Project state-wide meeting at the Naperville, IL campus of Northern Illinois University. In advance of the March 29<sup>th</sup> meeting a written report regarding the recommendations of the Behavioral Health and the Substance Abuse Legal Task Force workgroups was provided to the Committee. Both of these legal workgroups, which had presented their findings to the Committee at its inaugural meeting on February 8<sup>th</sup>, shared their findings also on March 29<sup>th</sup> with the attendees of the BHIP state-wide meeting in the morning portion of the program.

In the afternoon portion, the Committee heard invited testimony from the following five individuals:

- On behalf of the Prairie Center Health System, Mr. Eric Foster, Chief Operating Officer of the Illinois Alcohol and Drug Dependence Association;
- On behalf of the Central Illinois Health Information Exchange, Dr. David Trachtenberg, its Chief Medical Informatics Officer and a practicing physician;
- On behalf of the Metro Chicago Health Information Exchange, Mrs. Marilyn Lamar, Legal Counsel;
- On behalf of the Mental Health Centers of Central Illinois, Mrs. Robyn Luke, Administrator; and
- On behalf of GROW in Illinois, Mr. Walter Blumenshine, Fieldworker for GROW and a U.S. Armed Forces veteran.

Each of the presenters brought valuable insights to the Committee's attention regarding data security and privacy concerns. Dr. Panomitros noted one matter which appears to raise a potentially serious problem for the implementation of the State-level HIE.

Mrs. Lamar, on behalf of the Metro Chicago HIE, advised the Committee that the Illinois Mental Health and Developmental Disabilities Confidentiality Act contains patient consent requirements which in practice are difficult to satisfy in order to permit the transfer of certain patient data by a hospital to an HIE. As a consequence, the MC-HIE has requested its participating health care providers to withhold from sending to the MC-HIE the behavioral health data of patients. In practice, the filtering out of behavioral health data from a patient's medical record has proven to be technically very difficult, and often the entire medical record of a patient with any behavioral health data will be sequestered. The net effect is that MC-HIE will not be as robust of a data repository and data exchange service as it otherwise could be, as the data of an entire category of patients with behavioral health issues, many of whom are Medicaid recipients, will be excluded from the MC-HIE, and in turn will not be available through MC-HIE to the State-level ILHIE. Quoting from Mrs. Lamar's testimony:

“this may ultimately result in the exclusion of a significant amount of data as an increasing percentage of the population takes medication for behavioral health problems. ...Unless it is changed, the current law will prevent behavioral health patients from receiving the benefits that an HIE will provide to other patients. Behavioral health patients will wind up on the wrong side of the digital divide.”

A related problem noted by Metro Chicago HIE is that provider participants in the HIE may decide not to make available to the HIE general narrative text documents for any patient, as these documents are the most difficult to electronically screen for the presence of protected behavioral health data. Such documents include care summaries, discharge instructions and discharge summaries. Quoting again from Mrs. Lamar's testimony:

“[this] would create huge gaps in the records of all patients – including those patients who don't have any behavioral health issues. This is a situation in which the [Illinois law] could harm non-behavioral health patients, decreasing the value of HIE for all patients.”

Finally, the exclusion from HIE exchange of narrative text documents could disqualify eligible providers and hospitals in Illinois from receiving their Federal incentive payments for their adoption and Stage 2 meaningful use of electronic health record systems.

The OHIT staff is carefully reviewing these issues, and will be reporting its finding to the Committee.

### 3. Upcoming Events

On Thursday, May 3, the Illinois State chapter of the American Health Information Management Association (ILHIMA) will be holding its Annual Meeting in Bloomington-Normal, IL. ILHIMA has offered OHIT the first plenary session of the Annual Meeting to present an overview of the state of HIE in Illinois, followed by a “town-hall” forum to obtain additional stakeholder comment for the benefit of the Committee on issues of data security and privacy. It is anticipated that those proceedings will be recorded and made available to the general public through the Authority's website.

In the coming weeks Dr. Panomitros will be exploring with the OHIT staff the implications of the recently released privacy and security guidance issued by the Office of National Coordinator for Health Information Technology.

#### *Regional Extension Center Update*

Mr. Roger Holloway, representing the Illinois Health Information Technology Regional Extension Center (ILHITREC), reported that the focus of ILHITREC in the coming year will be upon assisting providers in satisfying their Meaningful Use requirements. ILHITREC currently anticipates that 66% of its registered providers will meet the Meaningful Use goal by the end of 2012 and 100% will have met the goal by September 2013. ILHITREC is also engaged with OHIT in the promotion of the ILHIE DIRECT secure messaging service, as well as in the BHIP project.

In the ensuing discussion, the Chair invited Mrs. Colleen Burns of the Department of Insurance to comment upon the status of the implementation in Illinois of an insurance exchange pursuant to the federal Patient Protection and Affordable Care Act. Necessary legislation is currently pending before the Illinois General Assembly. Ms. Zaremba advised how elements of the ILHIE could be of utility to the insurance exchange.

APPROVED 6/6/12

*Public Comment*

There were no public comments offered in response to the Chair's invitation.

*Adjournment*

The meeting was adjourned at 1:10 p.m.

Minutes submitted by:

Mark Chudzinski, Secretary