

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

The Regional HIE Workgroup (“Workgroup”) of the Board of Directors (the “Board”) of the Illinois Health Information Exchange Authority (“Authority”), pursuant to notice duly given, held a meeting at 2:00 p.m. on April 11, 2012, at the James R. Thompson Center, 100 W. Randolph St., Chicago, Illinois 60601, with a telephone conference call capability.

<p><u>Appointed Workgroup Members Present:</u> 1. Mr. David Holland 2. Dr. Nancy Newby 3. Dr. Cheryl Whitaker</p>	<p><u>OHIT Staff Present:</u> Laura Zaremba; Mark Chudzinski; Dia Cirillo; Diego Estrella; Ivan Handler; Krysta Heaney; Danny Kopelson; Saroni Lasker; Saro Loucks; Melissa Tyler; Cory Verblen</p>
<p><u>Board Members Present:</u> 1. Mr. Mark Neaman 2. Dr. Nicholas Panomitros 3. Dr. Bruce Wellman</p>	
<p><u>Invited Guests Present:</u> Gail Amundson, Quality Quest for Health/CIHIE Joy Duling, CIHIE David Miller, CIHIE Peter Ingram, Sinai Health System/MC HIE Terri Jacobsen, Metro Chicago Healthcare Council (MCHC)/MC HIE Dan Yunker, MCHC/MC HIE Charles Cox, MCHC Christopher Winnick, Microsoft/MCHC Kim Larkin, Washington County Hospital/HIESI Roger Holloway, Northern Illinois University/NIHIE</p>	<p><u>Invited Guests Present by phone:</u> Crystal VanDeventer, LLHIE/ILHEP Dr. Tom Mikkelson, IHEP Prem Urani, MC HIE Pat Schou, ICAHN</p>

Call to Order and Roll Call

Dr. Cheryl Whitaker, the Board Chair, welcomed the appointed members of the Workgroup as well as the invited guests and members of the general public in attendance. Mr. Chudzinski, Secretary to the Board, confirmed the presence of the participants noted above.

HIE Regulatory Update

Mr. Chudzinski provided an information report on several regulatory developments in the last 60 days of direct relevance to the development and implementation of health information exchange in Illinois.

1. Stage 2 Meaningful Use

CMS has issued its proposed rules for the Stage 2 Meaningful Use EHR adoption incentive payment program. Copies of several documents analyzing the new proposed rules were made available to the Workgroup. The proposed Stage 2 rules will require more robust data exchange in the future, but such exchange does not need to be effected through an HIE. Comments can be submitted to CMS until May 7, 2012.

2. ONC PIN-003

On March 23, 2012 the ONC issued a Program Information Notice with respect to HIE policies regarding privacy and security. It sets out 23 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 23 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. Comments from the members of the Workgroup are solicited and welcome. A memo discussing the elements of the PIN will be circulated by next week to members of the Workgroup.

3. IL HIE Registration Rules

On Feb. 28th the Authority Board authorized the Acting Executive Director to develop a rule for the registration with the Authority of organizations providing health information exchange services in the State of IL. It arises from the ongoing implementation of the ILHIE and the need for the Authority to collect accurate information regarding the providers of health information exchange services in the State of Illinois, including the emerging regional HIE initiatives and other service providers such as Health Information Services Providers (HISPs) that facilitate secure messaging using the national Direct protocol, and electronic gateway services providers that facilitate the exchange of e-prescribing pharmaceutical information and the exchange of health information laboratory results.

Pursuant to the Registration Rules, the Authority would collect information from registrants with respect to the following five subject areas: entity structure; security and privacy measures; technical interoperability; service provision; and business operations. An applicant may designate specific information reported as proprietary, for confidential treatment by the Authority in accordance with the provisions of the Illinois Freedom of Information Act.

The Rule also sets forth ancillary administrative procedures. The Acting Executive Director may specify the form and manner of registration, and may with good cause in furtherance of the public interest waive or modify the application of the reporting requirements to specific registrants. The rule will require registrants to submit the reportable information within 90 days of the final text of the rule going into effect.

4. Testimony at ILHIE Authority Board Data Security & Privacy Committee.

On March 29, the ILHIE Authority Board Data Security & Privacy Committee received testimony on behalf of two of the RHIOs. Dr. David Trachtenbarg on behalf of the Central IL HIE, advised the Committee that health care providers would wish to see the harmonization of Illinois law with Federal HIPAA.

Mrs. Marilyn 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.

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.

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.

Connecting ILHIE and Regions

Mr. Ivan Handler provided an update on the implementation of the State-level HIE, with a focus on the connection of the ILHIE to the regional HIE initiatives. Over 2.5 million Medicaid records have now been integrated into the ILHIE Master Patient Index (MPI), a necessary database for the operation of the HIE's Record Locator Service and core services. Further work on the construction of the MPI with the involvement of the regional HIEs is desired; preliminary discussions have already occurred between ILHIE and CIHIE. An onboarding handbook containing further information regarding the technical specifications and operation of the ILHIE MPI will be distributed by the end of April.

ILHIE has recently also begun exploring the creation of a clinical data classification service which would potentially provide all ILHIE participants the ability to identify clinical data for purposes of applying privacy and security laws requiring special handling of certain clinical data.

ILHIE Direct secure messaging was launched by the end of 2011 and now has 300 registered users. Mr. Roger Holloway confirmed that the Regional Extension Centers are working with OHIT to promote the service, and reported that following the Behavioral Health Integration Project launch meeting on March 29, several inquiries were received from behavioral health services providers regarding their potential use of ILHIE Direct. Mr. Danny Kopelson noted how actual usage of ILHIE Direct is currently constrained by the relatively small number of potential message recipients, but that a campaign to encourage current registered users to recruit their regular correspondents to join could significantly boost actual usage of the service.

Business Implications Raised from Technical Discussion

Mrs. Terri Jacobsen suggested that further work is required with respect to the legal agreements that need to be in place between the ILHIE and the member regional HIEs, which in turn is likely to affect the terms and conditions of the agreements between the regional HIEs and their respective end users. Her experience in the preparation of the Participation Agreement being used by MC-HIE suggests that the finalization of appropriate legal documents is quite time consuming, and it may be desirable to establish a timeline for addressing the issue of legal documentation.

Mr. Chudzinski reported that a Test Pilot Agreement had been prepared for initial use with the on boarding of the alpha and beta test partners of ILHIE. This document is based on a national Model Data Sharing Agreement proposed by HHS/ONC for use by health information exchange entities.

With respect to the finalization of a participation agreement among ILHIE and its users, Mr. Chudzinski noted that several key business issues remained to be addressed, among them the fees that would be eventually collected by ILHIE. Mr. Chudzinski noted that the Authority's Business and Finance Committee had been examining business sustainability models, including the determination of appropriate fees, and that relevant meeting minutes have been posted at the Authority's website.

Other outstanding business issues noted by Mrs. Jacobsen, Mr. Peter Ingram, Mr. Dan Yunker and Mrs. Joy Duling included: whether patients are to be provided a choice with respect to the inclusion of their data in the HIE (whether as an "opt-out" or an "opt-in"); the role of payers in the support of the HIE; the securing by the HIEs of cyber-liability insurance coverage. A project plan addressing the open business issues would also be desirable.

In the ensuing discussion, the Workgroup explored the potential role of payers in the HIE, their access to clinical data, public perception of the use by payers of such data, and their potential contributions and benefits from participating in HIE. Mrs. Laura Zaremba noted that while discussions with payers regarding their support of HIEs have been occurring for a number of years, no HIE initiative to her knowledge has yet established a sustainable business model which addresses ongoing payer support of the HIE. As the HIE environment is evolving, payers and other potential HIE participants are still observing and considering the nature and scope of their potential participation.

Mr. Peter Ingram noted the desirability of the Authority and/or the regional HIE initiatives facilitating the expression of a "community standard" with respect to the interpretation of certain Illinois laws that protect special categories of Protected Health Information, such as behavioral health data. Because certain Illinois laws are difficult to interpret and apply, a provider's reliance on an expressed "community standard" as to how a specific law should be interpreted and applied could potentially furnish that provider additional protection in the event the provider is accused of non-compliance.

A next meeting date will be determined after the participants have had the opportunity to review all of the matters now under consideration with their respective stakeholders.

APPROVED 5/31/12

Public Comment

In response to the Chair's invitation, there were no comments offered from the public.

Adjournment

The meeting was adjourned at 4:10 p.m.

Minutes submitted by:

Mark Chudzinski, Secretary