

**Illinois Health Information Exchange
Legal Task Force
Patient Consent Management/Forms Workgroup Meeting
March 14, 2011
Meeting Minutes**

Committee Members Who Attended in Person:

Mark Chudzinski, Office of Health Information Technology
Julie Treumann, Ungaretti & Harris

Committee Members Who Attended by Phone:

Fran Carroll, Joint Commission on Accreditation of Health Organization
Rob Connor, Illinois Department of Human Services
Bruce Lane, Barnes Jewish Christian Healthcare
Anne Mahalik, IL DHS- Division of Mental Health
Marcia Matthias, Southern Illinois Healthcare
Jay McCutcheon, Southern Illinois University
April Schweitzer, Office of Health Information Technology
Marilyn Thomas, Illinois Department of Healthcare and Family Services

Marilyn Thomas, as chair of the Patient Consent Workgroup, welcomed participants to the call at 2:33 p.m., hosted by OHIT at the State of Illinois J.R. Thompson Center in Downtown Chicago with a telephone conference call-in number. 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.

The minutes from both the 1/27/11 and 2/15/11 meetings were approved without objection.

The group was given an update on the Interstate Issues workgroup as well as the Public Health and Research workgroup. The Interstate Issues workgroup is reviewing specific statutes of Illinois and several Upper Midwest States and plans to produce a Common Consent Form to facilitate the exchange of patient health information in the event of a patient treatment emergency. The Public Health and Research workgroup is also in the process of reviewing statutes to see which statutes will need to be updated in order to allow for the HIE to function properly.

This workgroup will need to update the HISPC-IL 2 (2007) model patient consent documents, especially with respect to specific categories of protected health information.

Marilyn Thomas will be participating in an interstate meeting where consent requirements for out-of-state patients who need emergency care will be discussed. Representatives from MN, WI ND, SD, IA and IL will also be participating.

The workgroup then reviewed materials from the California Office of Health Information Integrity, which has promulgated rules utilizing an opt-in approach. Specifically, the group discussed the affirmative consent requirement as well as the emergency and public health reporting exceptions.

The OHIT Advisory Committee has articulated the desire to have the Illinois HIE gather as much information as possible within the appropriate constraints of patient privacy protection. Additionally, OHIT has been charged with investigating the consent policies and workflow costs of opt-in and opt-out models in order to make recommendations for the Illinois HIE. OHIT wishes to verify with empirical data and relevant stakeholder input the assumption that more information is collected with an opt-out consent policy.

The group also discussed issues surrounding whether all states must comply with the California opt-in requirement when treating a patient from California. The central issue is whether a physician in Illinois will be able to access the information of a patient from a state with more restrictive consent requirements than Illinois, given that a patient's medical record transmitted through an HIE is a document and California requires explicit consent before sending such documents. The Interstate Issues workgroup is looking into these issues.

The group was informed about several other updates including the following:

- The Kansas senate passed a bill (SB133) that proposes to harmonize Kansas state medical privacy laws with HIPAA (with some exceptions).
- Wisconsin is also considering a similar approach.
- In Texas a bill (H.B. No. 300) was introduced that raises the civil penalty on a pattern and practice of privacy violations from \$250,000 to \$5 million.
- Governor Quinn has appointed eight of the nine appointees to Board of the IL HIE Authority. Their first meeting will be April 27th in Chicago.

There are several bills currently in the Illinois legislature of interest to the group including the following:

- HB 2917- A comprehensive change to the Controlled Substance Act.
- HB 1338- The Immunization Data Registry Act would change the current opt-in policy to an opt-out policy. Marilyn will circulate an amendment that the Public Health and Research workgroup has drafted.
- SB 1234- The Mental Health and Developmental Disabilities Confidentiality Act presents multiple issues including ambiguities about who is giving the disclosure, the fact that there are multiple points where you could get access, the fact that patients have no way of limiting disclosures and the fact that even the name of the person is considered confidential information. The group then discussed how an emergency exception would work with a mental health records as the amendment stands right now. Ultimately, the group decided that there would

there need to be a specific mental health exception and there would need to be a mirror amendment in the code itself.

Illinois doesn't have a blanket break the glass emergency patient treatment provision.

There was no public comment offered in response to Marilyn's invitation. The meeting adjourned at 3:19pm.