

**IL HIE Legal Task Force
Substance Abuse Workgroup
November 18, 2010
Meeting Notes**

In-Person Attendees:

Renée Popovits, Popovits & Robinson
Jay Ready, Healthcare Consortium of Illinois
Harrison White, Gateway Foundation

Attended by Phone:

Allen Sandusky, South Suburban Council on Alcohol and Substance Abuse
Sarah Holland, Illinois Alcohol and Drug Dependency Association
Rachel Dvorken, Sinai Health System

Office of Health Information Technology:

Mark Chudzinski
Amanda Swanson

Renée Popovits, Co-chair, opened the meeting at 10:35 a.m., hosted by OHIT at the State of Illinois J.R. Thompson Center in Downtown Chicago, with a video conference link to the State of Illinois Bloom Building in Springfield, and a telephone conference call-in number. She welcomed all participants and congratulated them on participating in the first workgroup meeting of the IL HIE Legal Task Force.

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 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 of licensing decisions of the HIE Authority, or of any other State of Illinois agency.

Renée thanked all of the individuals and organizations participating in the workgroup. She mentioned her effort to try to identify participants with diverse backgrounds for this initiative. She urged members to continue to solicit participants for the workgroup. Then she and all attendees introduced themselves and provided a description of their background and goals for the workgroup. Mike Simko, Walgreens, Nora Byrne, Resurrection Health Care, and Rick Nance, DHS Division of Alcohol and Substance Abuse, were also identified as participants in the workgroup. It was mentioned that invitations for workgroup participation had already been extended to the Community Behavioral Healthcare Association of Illinois, Mark Mulroe of A Safe Haven, and Maria Pekar of Loyola University Health System.

A list of the contact information for participants was circulated. Everyone was instructed to inform the workgroup of any incorrect information or if anyone would like to provide additional or alternative information for the contact list.

A list of the ten proposed workgroups of the HIE Legal Task Force and their proposed co-chairs was presented. The likelihood of overlap with the Behavioral Health Workgroup was discussed. It was also mentioned that coordination with the Patient Consent Workgroup would also likely be necessary.

It was mentioned that minutes from the October 27 meeting of the Executive Committee Meeting of the Legal Task Force would be circulated to participants. These minutes suggest that each workgroup create a workgroup charter by January 15.

Renée then brought the discussion to current legislative activity which may impact the concerns of the Workgroup.

The introduction of a bill to amend the Controlled Substances Act (720 ILCS 570) was discussed, and it was mentioned that a draft amending bill is planned to be finalized and submitted to the IL General Assembly's Legislative Reference Bureau by mid-December. There is already a working draft of this bill, intended to be submitted for the 2011 Spring Legislative Session.

The introduction of a bill to amend the Illinois Alcoholism and Other Drug Dependency Act (20 ILCS 301) was also discussed. It was mentioned that a draft of an amending bill was already finished, but it is to be cleaned up and updated. It was hoped that this draft would be given to the Legislative Reference Bureau either the week of or the week following Thanksgiving, also with the intent of getting a sponsor and getting this introduced for the 2011 Spring Legislative Session.

It was also mentioned that changes had been proposed since 2007 to the confidentiality provisions of 77 Ill. Adm. Code 2060 (regulations for Alcoholism

and Drug Abuse Treatment and Intervention Licenses), but we presently have no further information on its status.

Next, 42 CFR Part 2 was identified as the primary regulation regarding the protection of substance abuse information. It was mentioned that there has been some discussion by the Patient Protection Coalition to enable the sharing of a limited amount of information without patient consent, but this was met with much resistance by the Substance Abuse and Mental Health Services Administration (SAMHSA) and the Office of the National Coordinator (ONC). As a result of the issues raised, SAMHSA came out with a Frequently Asked Questions addressing health information exchange. This FAQ was issued in June, and on August 4 a public forum was held to address the FAQ. This FAQ will be distributed to the Workgroup. Renée had prepared a specific comment to the FAQ identifying as a key issue a lack of electronic consent for disclosure of this information. SAMHSA has said that additional FAQs will be issued.

Renée then brought the discussion to the Legal Task Force Charter that had been prepared by OHIT, and the specific laws and regulations already identified within the charter as possibly being relevant to the exchange of patient information regarding substance abuse. It was explained that Federal Statutes and Regulations govern patient information on substance abuse, and that these Federal laws will preempt any State law that is less stringent.

It was suggested that a subgroup of the Workgroup be formed of representatives of Hospitals, and that this subgroup will consider the implications of 77 Ill. Adm. Code 250.2860(f) on the exchange of patient substance abuse information.

It was also suggested that 77 Ill. Adm. Code 2060, the Medical Emergency Exception, be considered and expanded upon from a Hospital perspective as well since this issue is of great interest to Emergency Departments. It was encouraged that Workgroup participants get feedback on these issues from ER doctors if possible.

Next, the Consent by Minors to Medical Procedures Act (410 ILCS 210) was considered. It was explained that the CFR gives deference to State law on this issue, and parent consent for substance abuse treatment is not required under IL law. Additionally, the minor has a right to consent to disclosure, and it was explained that this is different from the requirements for minors receiving mental health treatment. Renée mentioned that she has a chart which details the law regarding personal representation for minors, and suggested that this would be a useful place to start and will distribute this chart to participants of the Workgroup.

Next the Firearm Owners Identification Card Act (430 ILCS 65) was discussed, which excludes persons “addicted to narcotics” from eligibility for the identification card. Questions were raised as to how this provision is put into practice and enforced, and it was decided that this enforcement issue will be looked at more deeply.

The Illinois Controlled Substances Act (720 ILCS 570) was again brought up. It was stated that the proposed changes to this Act will be distributed to the Workgroup. This issue was designated as being of high-priority for the Workgroup, and it was decided that a follow up call discussing this should be scheduled shortly. It was also decided that Elizabeth Kerwin, Legislative Liaison IL DHS, would be contacted to determine the schedule regarding the proposed changes to this Act.

The discussion was then opened up to any other laws, regulations, or issues that participants believed the Workgroup should consider and/or address.

The issue was raised that when there is a disclosure pursuant to the Medical Emergency Exception there can be re-disclosure within the hospital, but a healthcare provider cannot re-disclose pursuant to consent. This was identified as raising practical implementation questions, and problems from a patient safety and continuity of care standpoint. A suggestion was made for including within the consent form the ability to re-disclose. The Workgroup was instructed to consider specific language expressly allowing this. Questions were also raised regarding the enforceability of the confidentiality provisions and regulations after re-disclosure (action under 42 CFR? Breach of privacy under common law?). It was also mentioned that the paper patient record may be protected, but provider notes are not, the Workgroup should consider the practical effects of this.

It was suggested that the Workgroup may want to consider the Medical Studies Act (735 ILCS 5/8-2101), which does not cover addiction treatment providers. It was mentioned that a broadening of the applicability of this act may prove to be a political hot button, and therefore it was suggested that this issue should be raised with the Liability Workgroup and their input solicited.

It was also suggested that the Workgroup consider DUI statutes. It was explained that there is a lot of activity for hospitals with this regard when a police officer may demand a blood test but the patient refuses to give consent. Questions were posed: If the patient refuses the test, should the ER be required to test? Are privacy issues raised by this?

The Driver's License Medical Review Act (625 ILCS 5/Art. IX) was also mentioned, under which medical providers can call the Secretary of State without liability to report a reasonable concern about a patient's ability to drive.

The Workgroup also considered whether any laws governing impaired professionals needs to be considered. It was asked whether there are any exceptions to reporting which could have greater implications when information regarding a professional's substance abuse will be so readily available electronically. Are additional protections needed? Additional restrictions? It was pointed out that from a policy standpoint, those organizations providing care to

the public have a duty to protect the public and therefore need to have a way to evaluate a professional's fitness for duty. However, the fear is whether a rigorous fitness for duty analysis would impact the information on that professional available to be shared; whether this would result in a temptation to access information when consent is required (not not obtained) simply because the information is so readily available. How far reaching is the exchange of this type of information? Controlling the disclosure of this information will be a challenge.

The possibility was also suggested that a patient's information may be retrieved for a valid medical purpose, but in retrieving relevant patient information a provider would be exposed to irrelevant information regarding the patient's substance abuse. The Workgroup asked whether there might be an IT way to manage this risk, and discussed the effectiveness of imposing more stringent penalties on misuse of patient information.

Renée informed participants that if any other statute or issue comes to mind which may have an impact on the sharing of information, the type of information, or the use of information, that it be brought up to the Workgroup for consideration.

Renée then explained the deliverables the Legal Task Force expects of the Workgroup are a whitepaper, which is tentatively due March 15th. She also mentioned that the Workgroup will need to respond to the pending legislation.

It was mentioned that recommendations are tentatively suggested to be made to the Legal Task Force by May 15th, with a period for solicitation for comment spanning from May through August.

It was repeated that draft minutes from the October 27th Executive Committee Meeting will be circulated to the Workgroup.

To summarize, Renée repeated the Task List that had been decided by the Workgroup during the course of the meeting:

- 1) Identification of other statutes needing consideration.
- 2) Distributing the SAMHSA June 2010 FAQs and Renée's comments to the FAQs to the Workgroup.
- 3) All participants will take a look at the proposed amendments to the Controlled Substances Act. A time-frame for these considerations will be determined.
- 4) Medical Emergency Exception issues will be considered from the hospital perspective. It was also suggested that special consideration be given for EMTALA (42 U.S.C. 1395dd) and women in active labor.
- 5) A chart will be distributed to the Workgroup regarding the Consent of Minors to Medical Procedures Act. Participants will look at the chart and consider updates that can be incorporated.
- 6) The Driver's License Medical Review Act will be considered.

- 7) All Workgroup participants will consider issues regarding re-disclosure and the specific language to consider for incorporating re-disclosure into the consent form.
- 8) The Workgroup will confer with the Liability Workgroup on the peer review issues.
- 9) The issues surrounding impaired professionals will be considered from a hospital perspective and any concerns will be identified.

Opportunity for public comment was given, but no members of the public were in attendance.

The next meeting of the Workgroup was scheduled for Thursday December 2 from 1:30 to 3 p.m. It was noted that the Behavioral Health Workgroup is meeting on December 2 at 3 p.m.

It was repeated that the issues of highest priority for the Workgroup are the proposed changes to the Controlled Substances Act and the Illinois Alcohol and Other Drug Dependency Act, as well as the re-disclosure issues.

The meeting adjourned at 12:10 p.m.