

Legal Working Group Meeting Minutes Wednesday, July 11, 2007

Participants: Nancy Gillette, Stephanie Jursek, Jim Skidmore, Terri-Lynn Smiles, Karen Smith, Jim Lapczynski, Janice Franke, and Bill Mitchin

Phone: Rick Sites, Bethany Ricketts, Jeff Kapp, Pete Mihaly, Suzanne Dulaney, and Sarah Plake

WELCOME & INTRODUCTIONS

Terri-Lynne Smiles welcomed the group, and attendees introduced themselves.

HISPC/OHHIT UPDATE

Stephanie Jursek indicated that Project Management Team representatives, Philip Powers and Bill Mitchin, attended the RTI meeting for the HISPC states in Chicago on June 4-5. At the meeting, Philip and Bill were provided details on the scope of the HISPC Extension Project and the specific requirements, including participation on two national collaboratives. On June 20, the Project Management Team submitted the 6 month proposal for operationalizing a segment of the implementation plan. A key component of the proposal entails the development of a model consent form. Stephanie also noted that Nancy Gillette served as a representative at the National Governors Association Joint Health Information Protection Task Force and HISPC States meeting, which was held on June.

With respect to the OHHIT initiative, Stephanie commented that the executive order, which was prepared by HPIO and the Ohio Department of Health, was submitted to the Governor's office. It is anticipated that it will be signed by the Governor. Additionally, Stephanie reported that on July 12, HPIO was hosting a meeting with health plans and RHIOs to discuss possible collaborative efforts, and Senator Stivers was interested in developing RHIO legislation.

VISION for MODEL CONSENT COLLABORATIVE

Bill Mitchin provided an overview of the expectations and requirements for participating with other states on the Model Consent Collaborative based on the Chicago RTI meeting. Ohio will lead the collaborative, which currently includes Ohio and Kentucky. It is anticipated that Tennessee, Michigan, West Virginia, and Pennsylvania will join the collaborative. The key deliverable will be to develop a consent form with approval from the HISPC Steering Committee or appropriate advisory group by December 31 and have it be applicable to the other states participating in the collaborative. The consent form will need to address both state and federal issues related to the release of patient health information. Bill emphasized that in the development of the form it is important to focus solely on what the current law permits.

NGA JOINT HEALTH INFORMATION PROTECTION TASK FORCE and HISPC STATES MEETING

Nancy Gillette recommended at the outset that the LWG Consent Subgroup representatives review the IT section of the HHS website. It outlines how the various IT initiatives fit together. Additionally, the purpose of the task force meeting was to advise the HISPC states about the focus of its work. The four main areas discussed were consent, technological authentication, alignment of state and federal requirements, and consumer education. With respect to patient

consent, she shared information on the various approaches that will or have been taken by some of the HISPC states. The approaches included:

- limitation of provider liability if a patient failed to submit key information to the provider
- required acceptance of the consent form but not mandated use of it
- having a two part consent form with one section that would pertain to having data stored in a central warehouse and the other section pertaining to release of particular types of data for a specific purposes through a check box

She also commented on the discussion of potential approaches on a national level when data is being exchanged across state lines. They included federal preemption or creating a safe harbor. Minutes from the meeting will be posted on the NGA website.

HISPC COLLABORATIVE REQUIREMENTS

Bill Mitchin noted that each HISPC state was to participate in 2 national collaboratives. Ohio selected the Consent Collaborative, which was listed under the Standard Policies: Interstate Data Exchange Policy Collaborative category and the Authentication and Role Based Access Collaborative, which was noted under the Interoperability Policies category. The Consent Collaborative has a two prong focus that included consent authored from the patient and consent authored from a data source. Within the Consent Collaborative, Ohio would, in conjunction with Kentucky and other selected states, concentrate on the requirements for patient permission for exchange of health information. As such, Bill reviewed with the group the 8 components that should be taken into account, such as feasibility of approval of a model consent form by December 31 and governance issues with the other collaborative states.

WORK PLAN

Terri-Lynne Smiles outlined the key aspects of the work plan with the group representatives and indicated that more details would be provided at the next meeting.

MODEL CONSENT FORMS and LEGAL REQUIREMENTS

Terri-Lynne Smiles and Nancy Gillette requested that representatives explain the legal requirements for consent/authorization for each of their practice areas. The particular requirements and unique aspects, regarding Medicaid, mental health, drug and alcohol, and workers' compensation were discussed coupled with key issues related to advance directives and redisclosure of patient data. Nancy Gillette indicated she would e-mail a fact sheet on HIV/AIDS and Rick Sites commented he would invite some in-house hospital attorneys to participate on the Consent Subgroup. Based on the information that was shared, proactive dialogue ensued. Sample consent/authorization forms and pertinent fact sheets were to be e-mailed to Stephanie Jursek by July 13, so they could be distributed to the group.

NEXT STEPS

Terri-Lynne Smiles noted that at the next meeting additional subgroups would be formed to develop the model consent form, potential consent form options would be discussed, and more details would be provided with respect to the work plan.