WISHIN

Wisconsin Statewide Health Information Network

2011

Interstate Exchange Workgroup Deliverable

CONTENTS

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SCOPE OF INTERSTATE EXCHANGE WORKGROUP

The primary goal of this Workgroup is to explore issues unique to interstate health information exchange by WISHIN and Wisconsin providers, and to provide recommendation to mitigate risks to WISHIN and Wisconsin providers unique to interstate exchange.

The primary deliverable for this Workgroup is the development of an Interstate HIE Plan that should:

- Discuss what Wisconsin border states are doing with regard to HIE and ensure that what is implemented in Wisconsin will mesh.
- Document the extent to which data is currently being shared across state borders and the workflows/policies that support such data sharing.
- Identify key areas that might be a concern, such as how other states are dealing with patient consent, or if other states have restrictions/policies regarding with whom they will connect.
- Include interstate exchange risks that the Workgroup identifies as unique to Wisconsin.
- Outline any potential issues and then include further analysis around the level of risk and any recommendations for how/what WISHIN and Wisconsin should do to mitigate those risks.

The plan's focus should be on things that could impact WISHIN's ability to connect to the HIE in other states or things that could impact our border state providers.

UPPER MIDWEST HEALTH INFORMATION EXCHANGE CONSORTIUM (UM-HIE) PARTICIPATION

The Upper Midwest Health Information Exchange Consortium (UM-HIE) was originally comprised of representatives from six states: Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin. After several week s of participation, Iowa determined it was unable to complete the scope of work due to resource issues and discontinued participation in the consortium. Members of the WISHIN Interstate Exchange Workgroup collaborated with UM-HIE to evaluate and provide recommendations for a Common Consent Form. Informal feedback was solicited from stakeholders in Wisconsin, including providers and Health Information Technology (HIT) professionals, and was submitted to UM-HIE for review and editing.

The WISHIN Interstate Workgroup expressed that the Common Consent Form is a plausible option for health care providers that do not have a pre-established consent form; however, there should be no mandate for the use of this Form.

Discussion of Current Practices for Exchanging Health Information

Currently, patient health information is being exchanged within provider networks, regionally, statewide, and nationally. At a minimum, healthcare organizations must comply with HIPAA law and state-specific statutes related to the exchange patient health information. Health care organizations have developed internal policies and workflows to comply with these regulations. Providers are using postal mail, fax, email, and electronic health information exchanges to transmit patient health information.

Since states have varying statutes that govern the exchange of health information, some of which are more restrictive than Wisconsin state statutes, it is not uncommon for organizations in Wisconsin (especially those on state borders) to have a patient complete a consent form prior to establishing a need for the exchange of health information with the border state. This pre-consent authorization allows health information to be readily exchanged once a need is established.

Organizations that participate in the Epic Care Everywhere exchange in Wisconsin are required to receive consent from a patient each time information is exchanged. Legal experts from some of the largest health care organizations have concluded that although burdensome and not required by HIPAA or Wisconsin law, consent received at every transaction reduces liability concerns for the organization.

Discussion of Current Plans For Statewide Health Information Exchanges

Several states are pursuing HIPAA Harmonization legislation to allow for electronic health information to be exchanged more readily. While many experts agree that HIPAA Harmonization would reduce barriers to the exchange of health information, states are developing Health Information Exchanges (HIE) that are compliant with current state laws since there is no guaranteed timeline for passage of such legislation. For this reason, it is necessary for WISHIN to be aware of state laws that impose additional complexity around the exchange of health information.

The Health Information Security and Privacy Collaboration (HISPC) was established by the United States Department of Health and Human Services (HHS) in June 2006. HISPC compiled comprehensive reports that summarize state-specific laws related to the exchange of health information. The Workgroup utilized HISPC reports in their analysis of state-specific laws that may affect interstate exchange.

Illinois Statewide Health Information Exchange

The Illinois Office of Health Information Technology (OHIT) and the Illinois Health Information Exchange Authority are responsible for implementing the statewide Illinois Health Information Exchange (ILHIE).

Illinois State Laws

Illinois has state laws that provide heightened privacy protection for certain types of health information outlined in the "Mental Health and Developmental Disabilities Confidentiality Act." Illinois, by statute, imposes specific patient consent requirements with respect to the disclosure of health information relating to alcoholism and drug abuse treatment, mental health and developmental disability services, testing for and treatment of HIV/AIDS/sexually-transmissible diseases, genetic information testing, treatment of child abuse or neglect, and treatment of sexual assault and abuse.

Illinois Consent Management Approach

Information regarding ILHIE's approach to consent management is not readily available on the ILHIE website or through other sources.

Illinois Permissible and Non-Permissible Records

Information regarding ILHIE's restrictions on records is not readily available on the ILHIE website or through other sources.

Iowa Statewide Health Information Exchange

Iowa e-Health, formed by the Iowa Department of Public Health, is responsible for the implementation of the Iowa Health Information Network (IHIN).

Iowa State Laws

Healthcare providers exchanging Protected Health Information (PHI) through IHIN must comply with the policies, procedures, and regulations established by HIPAA.

Iowa Consent Management Approach

Iowa has selected an "opt-out" strategy for consent management. This means, patient health information will be available automatically, unless the patient formally requests that health information not be exchanged.

Iowa Permissible and Non-Permissible Records

The IHIN is not a central depository for health information. The HIE facilitates the exchange of information between EHR systems. The HIE will not store data, except for the information necessary to identify a patient and locate a patient's records.

Image transfers are an option for IHIN; however, this type of service will not be offered initially because of the internet bandwidth required to transfer these files.

Michigan Statewide Health Information Exchange

The Michigan Department of Community Health (MDCH) and the Michigan Department of Information Technology (MDIT) are responsible for the Michigan Health Information Network (MiHIN).

Michigan State Laws

Healthcare providers exchanging Protected Health Information (PHI) through MiHIN must comply with the policies, procedures, and regulations established by HIPAA.

Michigan Consent Management Approach

At this point in time, a statewide approach to consent management has not been developed. Consent is delegated to individuals HIEs and/or trading partners.

Michigan Permissible and Non-Permissible Records

Information regarding MiHIN's restrictions on records is not readily available on the MiHIN website or through other sources.

Minnesota Statewide Health Information Exchange

The Minnesota Department of Health coordinates the Minnesota e-Health initiative. The e-Health organization is responsible for the implementation of a statewide HIE.

Minnesota State Laws

Minnesota passed legislation in 2007 as part of the Minnesota Health Records Act (Minnesota Statutes sections 144.291-144.298) that established an Opt-Out requirement for including patient information in a Record Locator Service (RLS) in Minnesota. Record Locator Service is defined under this Act as "an electronic index of patient

identifying information that directs providers in a health information exchange to the location of patient health records held by providers and group purchasers." (Minn. Stat. section 144.291).

Minnesota Consent Management Approach

As per Minnesota State Law, the Minnesota e-Health will implement an Opt-Out model to manage consent.

Minnesota Permissible and Non-Permissible Records

Information regarding e-Health's restrictions on records is not readily available on the e-Health website or through other sources.

Ohio Statewide Health Information Exchange

The Ohio Health Information Partnership ("OHIP") is the state-designated entity responsible for the creation of a statewide HIE. Ohio has been identified as a state that has stringent state laws regarding the confidentiality of health records.

Ohio State Laws

OHIP published the following information in marketing literature for providers with an interest in participating in the statewide HIE, CliniSync:

"A written request signed by the patient, personal representative or authorized person is required for a provider to release medical records Ohio Rev. Code §3701.74. Healthcare providers can be sued and found liable for the unauthorized, unprivileged disclosure to a third party of medical information that a physician learns within a physician patient relationship Biddle v. Warren General Hospital, et al. (1999) 86 Ohio St. 3d 395."

Ohio Consent Management Approach

A physician or healthcare provider needs to get consent the first time a patient's information is exchanged on the HIE. After initial consent, all treating physicians who are connected to CliniSync will have access to that information when and where they need it. Patients do have the option to revoke consent at any time.

Ohio Permissible and Non-Permissible Records

CliniSync allows the exchange of clinical information. Clinical information could be patient care summaries, medical histories, lab results, radiology reports, physicians' orders and consult reports, medications and allergies as well as notes that will help healthcare professionals diagnose and treat a patient.

CliniSync will not exchange sensitive health information at this time. Sensitive health information includes mental health records and alcohol and other drug abuse (AODA) information. The exception is information provided by a patient that is embedded in the general medical records of the patient's primary treating physician.

Discussion of Health Information Exchange Risks

The table below lists risks identified for interstate exchange of health information. Many of the risks identified for the exchange of electronic health information are risks identified in current practices for health information exchange. The risks listed in the table below will be prioritized and assessed as part of the second deliverable for the Interstate Exchange Workgroup.

Identified Risk & Description
State Statutes for Consent • Numerous states, including Iowa, Minnesota, and Ohio, have consent laws that are more restrictive than HIPAA.

Identified Risk & Description
Exchange of Sensitive Health Information • Numerous states, including Wisconsin, Minnesota, Illinois, Michigan, and Ohio, have provisions around the transfer of sensitive health information, such as: Behavioral Health Records, HIV, Alcohol & Other Drug Abuse, Sexually Transmitted Diseases, and Genetics Testing.
Healthcare Providers Circumventing Policies • Healthcare providers disregarding policy to obtain health information about a patient.
Technology Limitations • Statewide HIEs have identified that images cannot be exchanged due to internet bandwidth limitations. This implies healthcare organizations must enforce additional policies around the exchange of this information.
Provider Directories • States will construct provider directories in different manners, such as centralized lookup repositories for provider data. Technology must be developed to share provider information across state lines and map information to the agreed format.
Compatibility/Interoperability of Certificate Authorities for Provider Directories • No federal mandate has been made regarding certificate authority. This impacts interstate exchange as only trusted sources certified by a certificate authority can send information within the exchange.
Reciprocal Agreements between States • Providers (on the border) that see patients in multiple states would need to sign up for HIE services in multiple states unless coherent reciprocal agreements exist between states.
Patient Identification • States may use different probabilistic matching algorithms to identify patients using demographic data. This could be an issue unless some Protected Health Information (PHI) is used to identify patients. The sharing of PHI for this purpose may violate consent laws in other states.
Quality Measures • Different quality measures, (i.e., the detail of information exchanged, service level agreements like transmission time, and atomicity of data exchanged) will be used by states to evaluate quality. The underlying data may not be compatible which could lead to different results, especially in the consolidated repository.
Authentication • Interstate exchange will require authentication from the Provider that is making the query to receive patient health information. Without a common standard for secure token passing, as well as trusted identity, this is a large risk for the exchange. These types of conflicts are what sophisticated hackers will use to penetrate the system.
Technology Standards • Standards, such as HL7 and IHE, do not provide enough rigor in message formats to guarantee that data conforms for interstate exchange. This means a Continuity of Care Record (CCR) or Continuity of Care Document (CCD) may not be cross-border compatible.