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 which 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, representatives from Iowa determined they would be unable to complete the scope of work due to resource issues and discontinued participation in the Consortium. Representatives from Illinois participated in Phase I of the project, but will not participate in Phase II of the project. It should also be noted that Michigan and Ohio are not represented in the UM-HIE Consortium.

Upper Midwest Health Information Exchange Common Consent Form

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 Management (HIM) 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 the UM-HIE Common Consent Form.

Upper Midwest Health Information Exchange Common Consent Form Pilot Project

St. Croix Regional Medical Center, located in St. Croix Falls, Wisconsin, is in the planning phases for a pilot project of the UM-HIE Common Consent form using WISHIN Direct for secure exchange. St. Croix has identified four facilities in Minnesota that they commonly exchange information with and these facilities have been targeted for participation in the pilot project. Wisconsin's State HIT Coordinator is collaborating with the Minnesota's State HIT Coordinator to facilitate this pilot project. WISHIN will leverage lessons learned and best practices from this pilot project in future demonstration projects.

Midwest HIT Coordinators & SDE Executive Directors Conference Call

Wisconsin's State HIT Coordinator, Denise Webb, and WISHIN's CEO, Joe Kachelski, participate in a monthly conference call with State HIT Coordinators and SDE Executive Directors from other states. This group is convened by Illinois and includes participants from Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The purpose of these conference calls is to provide multi-state communication on states' Strategic and Operational Plan (SOP) implementation activities and allow for collaboration on areas that enhance or impact interstate exchange. The calls provide a forum to launch interstate HIE initiatives in support of states' SOPs.

Policy Statement on Interstate Access

A representative from Illinois drafted a "Policy Statement on Interstate Access" document that was presented for analysis and feedback from the WISHIN Interstate Exchange workgroup. The workgroup is in support of a reciprocal state exchange agreement and provided suggestions for improvement, including a stronger supporting statement about the benefits of secure electronic exchange of health information across state borders to patients and providers.

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 of 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 an Authorization to Release Information Form prior to establishing a need for the exchange of health information with the border state. This pre-signing of the Authorization to Release Information form 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 to exchange information from a patient at each encounter. **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, including Wisconsin, 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 the 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

In Illinois, most statutes require consent to be written but do not require witnesses or other procedures. Illinois has adopted the federal consent requirements for the release of alcohol and substance abuse treatment information (42 CFR Part 2, Section 2.3.1).

The Phase II (robust) HIE Request for Proposal (RFP issues by OHIT specifies the vendor must supply a robust patient consent management system that enable appropriate filers to patient-specific clinical data based on specialized considerations and/or patient consent.

Illinois Permissible and Non-Permissible Records

Illinois OHIT intends to filter patient-specific sensitive information from the exchange in compliance with existing Illinois state laws.

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

Representatives from MiHIN continue to research and address inconsistent state laws addressing the disclosure of "sensitive" patient information. Based on findings, MiHIN may filter mental health and substance abuse records from the exchange.

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).

In addition, Minnesota state law requires that a provider obtain the patient's written consent for all releases of patient information; including for treatment, payment, and operations. Patient consent is required each time the provider seeks to access or query the RLS or records through the RLS, expects for emergent situations. Representation of consent (which can occur when the requesting Provider tells the releasing Provider that the patient has given the requesting Provider written consent to obtain his/her patient records from the releasing Provider) is permitted is both Providers are located in Minnesota.

Minnesota Consent Management Approach

Minnesota has a hybrid approach to consent management. For purposes of populating a Record Locator Service (RLS), Minnesota is an Opt-Out state, and by statute requires the operator of the RLS to provide an opportunity for a patient to have his/her patient identifying information excluded from the RLS either through his/her Provider or directly through the RLS. As per Minnesota State Law, the Minnesota e-Health will implement an Opt-Out model to manage consent Minnesota is developing a shared service for consent management; however, requirements and specifications have not been finalized.

Minnesota Permissible and Non-Permissible Records

Minnesota has adopted a market-based approach with state government oversight, which means that there will be multiple health information exchange options in Minnesota as long as they meet certain minimum requirements. Different State-Certified HIE Service Providers will provide health information exchange services for different types of information; therefore, Minnesota is not limiting the types of information allowed for health information exchange, as long as it complies with state and federal law.

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

CliniSync's Privacy and Policy Committee has recommended that, for purposes of HIE, patients be given the choice to opt-in to allow their treating physicians to electronically query their health records from previous treatment episodes. The Committee also recommended that participating entities, such as hospitals and physicians practices, use a standardized CliniSync Consent form to permit them to access a patient's records through CliniSync, which will reassure patients they are in control of who has access to their medical records. This does not mean, nor does the Committee recommend, that a separate patient consent is required for every instance of disclosure of patient information among the patient's treating providers during the course of treatment or for other permitted purposes.

Consent is required on time before a treating physician can query a patient's information on CliniSync. Every entity participating in CliniSync must either obtain a signed HIE Consent form from the patient prior to viewing the patient's medical records or verify that one is on file in the HIE.

Ohio Permissible and Non-Permissible Records

In a September 2011 document, the CliniSync Privacy and Policy Committee published the following information:

"The Code of Federal Regulations (42 CFR Part 2) sets forth limitations on the release of alcohol and drug related health records maintained in connection with any federally assisted alcohol and drug abuse program. This includes the requirement for patient consent for disclosure to include the name/title of the individual-organization to whom/which disclosure is to be made. The Substance Abuse and Mental Health Services Administration (SAMHSA), under HHS, has interpreted this provision as requiring that a patient's consent for inclusion of these records on an HIE list the names of each person or organization to whom disclosures are authorized, as well as the purposes for the disclosure. A similar requirement is included in the Ohio Administrative Code section applicable to release of information by agencies certified to provide mental health services by the Ohio Department of Mental Health (OAC 5122-27-08).

At this point, there is uncertainty as to whether CliniSync will be capable of permitting a selective/granular exchange of records among specific participants in order to comply with the regulatory limitations outlined above. Therefore, the Privacy and Policy Committee has recommended that alcohol, drug, and mental health records not be included in the HIE until further relevant technical, legal and policy considerations are considered. This will take place in the fourth phase of policy development."

Discussion of Health Information Exchange Risks

The following tables list risks identified for interstate exchange of health information in order of importance. 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.

Health Information Exchange Risks: Policy Risks

The following table displays identified policy risks, a description of the risk, and a mitigation strategy.

Priority	Identified Risk	Description	Mitigation Strategy
1	**State Statutes for Consent**	Numerous states, including Iowa, Illinois, Minnesota, Ohio, and Wisconsin, have consent laws that are more restrictive than HIPAA.	Wisconsin should pursue HIPAA Harmonization efforts. If legislation is not passed, Wisconsin should procure a robust consent management module and develop policies and procedures in compliance with existing state and federal statutes.
2	**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.	Wisconsin should pursue HIPAA Harmonization efforts. If legislation is not passed, Wisconsin should implement technology that filters sensitive patient information.
3	**Reciprocal Agreements between States**	Providers (on the border) that see patients from other states would need to sign up for HIE services in multiple states unless coherent reciprocal agreements exist between states.	Wisconsin should support the proposed "Policy Statement Interstate Access" document discussed during the Upper Midwest Stakeholders meeting.

Health Information Exchange Risks: Technical Risks

The following table displays identified technical risks, a description of the risk, and a mitigation strategy.

Priority	Identified Risk	Description	Mitigation Strategy
1	**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.	WISHIN should be cognizant of emerging standards approved by ONC and should create interface control protocols consistent with these standards.
2	**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.	WISHIN should discuss the possibility of creating an interstate exchange identity management system in collaboration with other states.
3	**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.	WISHIN should leverage lessons learned from existing state programs, such as Medicaid and FoodShares, to understand patient (customer) identification mechanisms currently implemented in the state. Additionally, WISHIN should be cognizant of consent laws in other states when designing its Patient Identification system.
4	**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.	WISHIN should closely monitor progress made by the Standards & Interoperability (S&I) Framework Provider Directory workgroup and leverage best practices and standards to the extent practicable.

Priority	Identified Risk	Description	Mitigation Strategy
5	**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.	WISHIN should stay abreast of developments from the ONC related to data standardization.
6	**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.	WISHIN should work closely with ONC to define a central certificate authority, which can certify the sources that exchange data.
7	**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.	Edge servers should be used by WISHIN participants to introduce local caching to reduce download and bandwidth issues from the central server.