

Legal Working Group Meeting Minutes

Wednesday, June 10, 2009

10:10 a.m. to 11:14 a.m.

Attendees: Stephanie Jursek, Bill Mitchin, Nancy Gillette, Derek Brown, Rick Sites, Terri Lynne Smiles, Pete Mihaly

On Phone: Jim Tassie, Mary Crimmins, Sue Yoder, Holly Drake, Karen Smith

WELCOME AND INTRODUCTIONS: Nancy Gillette welcomed the group and attendees introduced themselves.

APPROVAL OF 05/27/09 MINUTES: Minutes from the 05/27/09 meeting were adopted as written.

HISPC UPDATE:

Stephanie Jursek, Nancy Gillette and Bill Mitchin participated in a Collaborative conference call with Keith Scott and Rick Masters from the National Center on Interstate Compacts. The purpose of the call was to review with Rick and Keith the process for stakeholder outreach in creating the interstate compact. Stephanie reported that Keith and Rick noted that the Legal Working Groups' chosen components for development of an interstate compact were appropriate. Additionally, there are compacts already in existence that address the exchange of confidential information. In terms of the governance structure, there was a discussion on the development of a regulatory agency for Health Information Exchange (HIE). It is highly probable that if this type of regulatory mechanism is established by compact, Congressional approval of the compact would be necessary. There was also in-depth dialogue, as to whether a compact should comprise all 50 states or have just a regional focus. At this time it is unknown which approach would be favored.

Stephanie Jursek announced that ONC will be holding a series of WebEx seminars during the month of June. These seminars will showcase the work of the participating states of each of the topical collaboratives. Each seminar is 90 minutes long. More information is available on the website at <http://hispc/events.webex.com>. Please register and participate on these webinars.

COMMITTEE PROGRESS REPORTS:

Stephanie Jursek stated that the work from all of the committees was quite good. LWG leadership only had a few recommended revisions. In that regard, Stephanie pointed out that it would be helpful to have a section of the templates that address implications of these components in relation to HIE. Revised discussion drafts are due to Stephanie by June 17. Additional modifications are noted in the following summaries.

1. The Parties to the Agreement

Jim Tassie commented that each state of the compact will have to address their own inter/intrastate issues. The selection of a mechanism to determine the process for creating the compact was also discussed. The report summarizes two mechanisms. Both offer implementation challenges. Multi-state efforts are usually difficult because it is hard to obtain consensus amongst the participating states. The mechanisms are:

- i. States in collaboration develop the compact
- ii. A particular state takes initiative and develops the compact and other states provide feedback

Stephanie remarked that this committee might want to think about what are more specific implications in relation to the electronic exchange of health information. Bill suggested that the summary should provide more specifics about potential stakeholder groups that would be interested in this area.

2. Certification Mechanism

Holly Drake outlined two approaches and discussed pros and cons of each approach. The first approach would rely on HITECH enhancements of security rules. The second approach would have an interstate committee review existing privacy and security standards and create new privacy standards when necessary. Stephanie Jursek suggested that the committee elaborate on the implications this component would have on HIE.

3. Enforcement

Terri Lynne Smiles stated that the group has not met to review the template analyses. The committee found that there are already mechanisms in place to address enforcement of an interstate compact and were found in several existing compacts. The committee noted the following mechanisms:

- i. Administrative Body
- ii. Mediation/Arbitration
- iii. Appropriate Jurisdictions
- iv. Doing nothing

All of these approaches require having an administrative body to oversee the enforcement process. A few recommended modifications were provided by Nancy Gillette, Stephanie Jursek, and Bill Mitchin. Nancy stated that discussion of the second and fourth mechanisms in the challenge section of the template appeared to be missing. Stephanie also recommended that the committee provide additional narrative on the implications of the enforcement component on electronic exchange of health information. Bill Mitchin requested the committee to clarify the sentence “congressional approval of the compact creates federal law.”

4. Liabilities

Rick Sites reported the committee developed three different approaches that could limit damages and help create resolutions. They are:

- i. Immunity
- ii. Indemnification:
- iii. Insurance Mechanism

Nancy stated that the “Summary of Approaches” sentence “first, liabilities could be...” is confusing and suggested deleting it. She also noted that the reference section needs a few introductory comments, and the committee should discuss the challenge with indemnification clauses when a governmental entity is involved.

NEW BUSINESS:

No other new business.

NEXT MEETING DATE:

The next meeting will take place on June 24, 2009 at 10:00 a.m. in the HPIO conference room.