

## **Legal Working Group Meeting Minutes**

### **Wednesday, November 29, 2007**

*Participants:* Nancy Gillette, Stephanie Jursek, Janice Franke, Socrates Tuch,  
*Phone:* Terri-Lynne Smiles, Jeff Kapp, Sue Yoder, William Mitchin, Rick Sites, Bethanie Ricketts, Tony Shaffer

#### **WELCOME & INTRODUCTIONS**

Socrates welcomed the group, and attendees introduced themselves.

#### **APPROVAL of November 7, 2007 MINUTES**

Approval of the November 7, 2007minutes was unanimous.

#### **HISPC/OHHIT UPDATE**

##### *HISPC*

Stephanie Jursek provided a brief update to the Legal Work Group (LWG). She reported that on November 16 the Option 2 states of the National Consent Collaborative timely submitted the initial HISPC Phase 3 proposal to RTI and the Office of National Coordinator for Health Information Technology (“ONC”) for review. Development of an interstate compact is a key component of the Option 2 proposal. On the December 5 teleconference, the Option 2 states will be proactively promoting to RTI, ONC and some other selected federal agencies the inclusion of the proposal as part of the ONC RFP.

With respect to Phase 3 of the HISPC project, Bill Mitchin reiterated that Ohio would lead in the development of the interstate compact. In that regard, he invited the LWG Co-Chairs, the Consent Subgroup Co-Chairs, and Stephanie Jursek to participate on the December 5 teleconference. Option 2 is comprised of two main components. One area is centered on obtaining consent for intrastate exchange of patient health data. This will be determined by reviewing two use cases and focusing on an opt-in vs. an opt-out approach. The second area is focused on securing consent for interstate exchange. A potential solution is the interstate compact. ONC noted that to receive significant funding with respect to the interstate compact, it would be necessary to conduct a comprehensive review of different legislative approaches in addressing the consent issues for interstate exchange of patient information in 2008. As such, a report will be drafted that defines Uniform Laws, Model Acts, Choice of Laws, and Interstate Compacts, discusses the risk and benefits associated with the different approaches, and recommend the best approach for implementation in 2009. It is anticipated that the interstate compact will be the selected approach. Additionally, Bill remarked that the work of the Legal Work Group has been significant, and the consent segment will be included in the work of 2008. It is anticipated that the ONC RFP will be issued in January, and the entire LWG will begin working in March and April.

Stephanie further commented that the HISPC Steering Committee met on November 19. The Committee recommended some additional revisions that were not substantial in nature. On November 30, the Ohio HISPC report, which outlines the work of the Legal and the Role Based Access Work Groups will be submitted to RTI. Of note, the number of states and territories participating in HISPC has grown. There are 46 states and 4 territories currently involved in the project.

## *OHHIT*

With respect to OHIP, Stephanie indicated that members of the advisory board have not been finalized.

### DRAFT OHIO MODEL PERMISSION FORM REVIEW

Terri-Lynne Smiles reported that an updated draft of the permission form, which included the modifications suggested from the November 7 LWG meeting, was reviewed by the HISPC Steering Committee. The Committee had some recommended changes but they were not substantial. The Committee members responded favorably to the creation of the two-part form. The Committee members requested that on the instruction page, the notification to the patient that some data may be required by law to be released be bolded. Also, that a patient be advised that the definitions for sensitive data i.e. mental health and AIDS, which are on the instruction page, are to be applied to the permission form. Further, a key concern was the inclusion of an e-mail disclaimer on the authorization section of the form. The Committee members recognized that any transfer of data may not be secure. However, the disclaimer was not included on the consent section for treatment, payment, and operations (“TPO”), and this disclaimer may cause a patient to be hesitant to sign the form. Terri-Lynne reminded the LWG that the group was charged to develop a model permission form that reflected provisions that were legally required. Since the inclusion of the e-mail disclaimer was not a legal requirement, Terri-Lynne commented that the disclaimer had been removed and sought approval from the LWG. Good dialogue was exchanged, and the LWG concurred with this deletion. Further, the provision outlining the time frame for revoking the permission to release information was approved.

Nancy Gillette noted another recommended revision that had been suggested following the HISPC Steering Committee. Specifically, it pertained to the removal of a duplicate signature line in the signature section of both the consent for TPO and authorization forms. The LWG concurred with the removal of the duplication. Stephanie Jursek inquired on the current treatment of behavioral health data when this information is requested not to be released particularly for TPO e.g., psychotropic medication. This was a concern of the RHIO representatives especially in discerning when to segregate this for different scenarios once the data is placed in the RHIO. A proactive discussion ensued. It was determined that this was an operational concern not a legal concern. In that regard, this would be a key area for the work in 2008 particularly when a revocation for electronic exchange of the data is requested. Nancy requested information on the next steps regarding the permission form. Stephanie remarked that the permission form with the corrections would be presented to the Steering Committee for approval on December 17. Nancy also confirmed with the LWG that the recommendation to the Steering Committee would be that the use of this form would not be mandated, and that the legislature clarify when patient consent to release information should be required.

### EHEALTH INITIATIVE BLUEPRINT REPORT: PRIVACY, SECURITY AND CONFIDENTIALITY DISCUSSION

Stephanie reviewed with the LWG the Privacy, Security, and Confidentiality section of the eHealth Initiative Blueprint report. She advised that Bill Hayes requested that the working groups determine if the Blueprint report would be applicable to the current and future work of the groups. With that in mind, she suggested the LWG focus on the Privacy, Security, and Confidentiality section. Stephanie indicated that in preparing the consent form much of the principles and key questions to consider were reviewed. In that regard, comments were made that the interstate compact may be the solution to the privacy, security and confidentiality issues listed. Also, the compact may cause some hesitancy at the federal level to proactively move

forward on this proposed solution since with the compact the federal government would not be leading that effort. The states would be providing the direction. The federal government would be only a participant. In terms of the use of the Privacy, Security, and Confidentiality section of the report in future work, it was suggested that this section be used as a checklist in the formation of the interstate compact.

Socrates Tuch, Stephanie Jursek, and Nancy Gillette thanked the LWG representatives for their time, support and significant contributions. If funding is secured for the 2008 work, this could be a pivotal time for the LWG to create a truly integrated compatible system for moving eHealth efforts forward. Ohio has been in the lead at least conceptually on these issues.

#### NEW BUSINESS

There was no additional business addressed in the meeting.

#### NEXT MEETING

The next meeting is anticipated to be scheduled in March or April of 2008.