

STATE IMPLEMENTATION PROJECT

Statement of Goals:

This project addresses barriers to health information exchange driven by variation among Wisconsin's state privacy laws as well as variation between Wisconsin statute and federal HIPAA Privacy regulations.¹ Efforts undertaken in the next six months will further the recommendations of the Workgroups convened during the first phase of Wisconsin's HISPC project in relation to:

1. Wisconsin Statute 146, governing general health care information; and
2. Wisconsin Statute 51.30, governing mental health, alcohol and other drug abuse (AODA), and developmental disability health care information, often called sensitive information.

In addition, this project will support the Indiana HISPC project's efforts to clarify 42 CFR Part 2, the federal regulation governing disclosure of AODA information. Each component of this project includes focused efforts to engage and educate consumers, providers, health care professionals, and other stakeholders.

The project's outcomes will increase consistency among Wisconsin privacy laws and between state and federal regulations while assuring patient privacy. This can in turn decrease the time, complexity, and cost required to exchange health information for treatment purposes in both paper and electronic environments. Activities in this arena are a high priority for Wisconsin's eHealth Care Quality and Patient Safety Board (eHealth Board).²

Technical Approach:

This project will consist of three distinct policy areas, led by project staff members. Activities under each policy area will receive support from privacy, communications, and facilitation experts affiliated with Wisconsin's eHealth Initiative, both those participating as volunteers and contracted specifically to support the HISPC project. Moreover, each policy area will utilize the governance and volunteer structure already in place to support Wisconsin's broader eHealth Initiative and its eHealth Board.

Policy Area #1: Wisconsin Statute 146

The Federal Privacy law, HIPAA, creates many of the same privacy protections at the national level that Wisconsin Statute 146 affords Wisconsin citizens, with some variation. In its *Implementation Plan Report*, Wisconsin's Implementation Workgroup (IWG) proposed changes that would standardize current practices in Wisconsin and better align Wisconsin law

¹ For the purposes of this project, a barrier is defined as any policy or practice that hinders the exchange of health information.

² Created by Governor Jim Doyle in November 2005, the eHealth Board is charged with overseeing the implementation of Wisconsin's five-year action plan for the adoption and exchange of interoperable electronic health records. This plan was drafted in December 2006 and is available online at: <http://ehealthboard.dhfs.wisconsin.gov/>.

with HIPAA. Policy area #1 formalizes the case for the necessity of these proposed changes and convenes stakeholder groups to vet and refine each proposed change. Stakeholder groups will be convened through listening sessions, town hall-style meetings, and other venues and will include, but not be limited to, patients, providers, health information management professionals, advocacy groups, and legal professionals. Project staff will refine the IWG's proposed changes to incorporate stakeholder comments and work with local legal and privacy experts to draft statutory language to serve as a template for formal Legislative drafting. A policy statement capturing the intent of this language will be presented to the eHealth Board for review at its December 2007 meeting.

Policy Area #2: Wisconsin Statute 51.30

Under Wisconsin Statute 51.30, information regarding mental health, alcohol and other drug abuse (AODA), and developmental disabilities can be released to providers for treatment purposes only with a patient's written informed consent in most circumstances.³ This is not the case for general health care information. Over the past year, Wisconsin's eHealth Initiative has grappled with s. 51.30 through its Consumer Interests Advisory Group (CIAG) and the HISPC project's Implementation Workgroup (IWG). The CIAG recommended changing s. 51.30 to comport with HIPAA in this area. Noting a lack of consensus and concern from interested parties, the IWG proposed a broad-based approach to developing an agreed-upon set of elements covered under s. 51.30 that can be exchanged among providers for treatment purposes without patient consent.

Policy Area #2 convenes a representative, diverse volunteer workgroup (51.30 Workgroup), weighted towards patients, advocates, and providers, to develop an agreed-upon set of elements covered under s. 51.30 that can be exchanged among providers without consent for treatment purposes. Using the work of the IWG as a starting point, the 51.30 Workgroup will develop proposal(s) for information sharing, work with project staff to vet these proposals among interested parties in listening sessions, town hall-style meetings, and other venues, and build understanding of HIE and HIT among relevant stakeholder groups. As in policy area #1, project staff will refine proposed changes based on stakeholder input and work with local legal and privacy experts to draft statutory language to serve as a template for formal Legislative drafting. A policy statement capturing specific elements that can be exchanged among providers without consent for treatment purposes will be presented to the eHealth Board for review at its December 2007 meeting.

Policy Area #3: 42 CFR Part 2

Wisconsin's Consumer Interests Advisory Group and Implementation Workgroup, in their examination of s. 51.30, noted that changes to s. 51.30 would impact mental health and developmental disability health care information but not AODA information. As the more stringent law, the applicable sections of 42 CFR Part 2 would control AODA record information and informed consent would still be required for provider to provider exchange

³ Per Wis. Stats. 51.30(4)(a)8, exceptions to the consent requirement include a medical emergency and specific elements to health care providers within a related health care entity (patient's name, address, date of birth, name of mental health provider(s), date of service(s), diagnosis, medications, allergies and other relevant demographic information).

for treatment purposes except in medical emergencies. Thus, both groups proposed consideration of 42 CFR Part 2 in conjunction with changes proposed to s. 51.30.

Policy Area #3 works towards clarification and/or modification of 42 CFR Part 2 through a partnership with Indiana's HISPC project. As a supporting partner in this effort, Wisconsin will assist Indiana in its statutory review and serve as a sounding board for consideration of the feasibility of implementing proposed changes, convening stakeholder groups and local experts as needed.

Risks and Risk Mitigation Strategies

Each of the policy areas above aims to build consensus among diverse stakeholder groups with varying backgrounds and potentially conflicting viewpoints. In the case of Policy Area #2, s. 51.30, multiple efforts have already occurred in this arena, necessitating sensitivity to the time, effort, and position of volunteers and advocates involved with previous efforts. Careful planning, communication, and attention to detail will be critical to ensuring success in all three policy areas—particularly s. 51.30. To that end, HISPC project staff have initiated environmental scan conversations with key stakeholders in earlier efforts, sought the feedback of both the eHealth Board and its Consumer Interests Advisory Group, and requested input from Sunergos consultants. These and similar efforts will continue over the next six months.

Each policy area outlined in this proposal also depends on limited staff and volunteer resources to accomplish its goals. Again, careful planning and communication will be vital to best utilize staff *and* volunteer time. In addition, timely execution of contracts with consultants will be critical to the success of this project.

Deliverable Products/Measurable Outcomes:

This project anticipates a measurable outcome in each policy area outlined above. Measurable outcomes include:

1. **Policy Area #1:** eHealth Board approval of policy language amending Wisconsin Statute Chapter 146; policy language submitted as a template for Legislative drafting by the end of the calendar year.
2. **Policy Area #2:** eHealth Board approval of policy language amending Wisconsin Statute Chapter 51.30 to allow exchange of specific elements among providers for treatment purposes without consent; policy language submitted as a template for Legislative drafting by the end of the calendar year.
3. **Policy Area #3:** Clarification of 42 CFR Part 2 as outlined by Indiana.

Steering Committee and Other Stakeholder Involvement

Wisconsin's eHealth Board served as the steering committee for the first phase of the HISPC project, with high level oversight provided by its Consumer Interests Advisory Group. The eHealth Board will continue serving as the project's steering committee in the second phase of the privacy project, seeking input from project staff and Advisory Groups as needed.

Each component of this project includes focused efforts to educate consumers, providers, and other health care professionals and advocates and engage them in decision-making. Many of these stakeholders have already been engaged in Wisconsin's eHealth Initiative through the first phase of the HISPC project, the eHealth Board, or its Advisory groups. This project will expand the breadth and depth of stakeholders engaged through targeted listening sessions and town hall-style meetings, strategic placement of Communication Tools developed by the eHealth Initiative, and increased participation in local stakeholder meetings and events.