Wisconsin eHealth Care Quality and Patient Safety Board
Board Meeting, December 4, 2007
Minutes

Members in attendance:

Betsy Abramson, Wisconsin Coalition Against Domestic Violence; Bevan Baker, City of Milwaukee Public Health; Patricia Flatley-Brennan, School of Nursing and College of Engineering; Gary Bezucha, North Central Health Care; Catherine Hansen, St. Croix Regional Medical Center; Kevin Hayden, DHFS; Candice Owley, Wisconsin Federation of Nurses and Health Professionals; Peter Rickman (on behalf of Christopher Alban), EPIC Systems; Peggy Smelser, WEA Trust; Lon Sprecher, Dean Health Insurance; Justin Starren, Marshfield Clinic; David Stella, ETF; Hugh Zettel, GE Healthcare.

Members unable to attend:

Edward Barthell, Wisconsin Health Information Exchange; Ravi Kalla, Symphony Corporation; Lois Murphy, Veterans Administration; Donald Layden, Metavante; Debra Rislow, Gundersen Lutheran; Dan Schooff, DOA; John Toussaint, Theda Care.

Others in attendance:

Peg Algar, DHFS; Erika Brown, WDA; Carolyn Coffey, MetaStar; LeaAnn Cooper, DHFS; Kären Drogsvold, DHFS; Yvonne Eide, DHFS; Donna Friedsam, UW; Jay Gold, MetaStar; Jim Grant, DHFS; Diane Greenley, DRW; David Haight, UW; Stephanie Harrison, WPHCA; John Hartman, WMS; Kathy Johnson, DHFS; Susan Manning; Cheryl McIlquham, DHFS; Mark Miller, Extract Systems; John Moser, WDA; Judith Nugent, DHFS; Katie Plona, DHFS; Maria Reis, Extract Systems; Elise Sampson, Marquette University; Matthew Schwei, DHFS; Greg Simmons, MetaStar; Matthew Stanford, WHA; Bernadette Thomsen, DHFS; Denise Webb, DHFS; Dan Zimmerman, DHFS.

1. Call to Order

Secretary Kevin Hayden, Chairman of the eHealth Care Quality and Patient Safety Board called the meeting to order at approximately 9:40 AM. He welcomed the Board, business partners, and guests and reminded all in attendance that the meeting is webcast live for those unable to attend in person. In his review of the agenda, he indicated that we are in the tactical implementation phase of eHealth in Wisconsin and the agenda covers activities not only in Wisconsin but nationally. In concluding his introduction, Secretary Hayden noted that eHealth remains an important part of Governor Doyle's health care agenda.

2. Minutes September 11, 2007 – motion to approve

The minutes from the previous Board meeting were approved as written by voice vote of the Board members in attendance.

3. Chair's Report:

Wisconsin Health Information Exchange (WHIE) Update

- Very close to naming a new WHIE executive director.
- Currently reviewing responses from multiple HIE vendors as part of an RFI released by WHIE's Planning and Technology Committee.
- Recently completed Mayo Clinic partnership application for surveillance funding.
- Submitted regional ECG grant application to the MCW Healthier Wisconsin Partnership Program.
- Annual meeting scheduled for January 29, 2008. Will include presentations on state-of-the-art Personal Health Records.
- ED Linking updates:
  - Data sharing agreements now signed with the three pilot hospital systems.
  - Production data feeds are turned on for all three pilot systems.
  - Two year backload and production data feeds from Medicaid are live.
  - Parsing of these data feeds into the data storage architecture (separate databases that work logically like a single one) is ongoing.
  - Design of end-user views is ongoing.
  - Validation/Testing to be started soon.
  - Communication and training plans being developed.
  - Expect to "go-live" in three EDs at the beginning of March 2008.
    - Columbia St. Mary's, Aurora Sinai, Wheaton Franciscan St. Francis

Rural Wisconsin Health Cooperative (RWHC) Update

- In September 2007 a subgroup of Rural Wisconsin Health Cooperative (RWHC) members, which has organized as the RWHC Information Technology Network (ITN), received a $1.6 million Health Resource and Services Administration CAHHIT Network award to implement a shared hospital information system for critical access hospitals. Initial ITN Members will include Tomah Memorial Hospital, St. Joseph's Community Health Services, Memorial Hospital of Lafayette County, and Boscobel Area Healthcare. The FCC funds will be used to augment an existing Wide Area Network, and to help support the abovementioned ITN initiative by providing redundant connectivity for ITN Members and between ITN datacenters, as well as higher speeds that will range from 10 to 100 Mbps.

- Recent and upcoming ITN related events include:
  - Received 501(c)3 tax-exempt designation.
  - Selected Healthcare Management Systems (HMS) as its integrated hospital information system vendor. HMS is one of only four vendors that have received full CCHIT certification in the inpatient CCHIT certification process.
  - Hired a Financial Application Coordinator and in the process of hiring a Clinical Application Coordinator, as well as several other positions to support the shared HIS implementation.

- In the process of implementing redundant datacenters and a shared helpdesk for ITN Members.
- Application installations for initial participants are scheduled to start in mid 2008.

eHealth Program Management

A letter from Secretary Hayden to the eHealth board was briefly discussed which provided updates to DHFS eHealth staffing. Staff assignments include: Denise Webb, eHealth Program Manager; Bernadette Thomsen, eHealth Project Manager; Kathleen Farnsworth, eHealth Policy Initiatives Advisor; Matt Schwei, eHealth Budget and Policy Analyst; Kären Drogsvold, eHealth Program Associate.

4. Staff Report:

State-level HIE Services/Infrastructure Planning and Design (RFP) – Denise Webb

The RFP was released on December 3 and responses are due by January 15, 2008. This RFP solicits a vendor with health information technology (HIT) and HIE expertise to assist the State in statewide HIE services planning and design. The contractor will need to understand the various stakeholders' conditions and propose a statewide HIE architecture for Wisconsin that meets regional market needs and conforms to the technical frameworks of the Integrating the Healthcare Enterprise initiative. These statewide services should, where possible, leverage existing state (public and private) assets and resources. The contractor will be required to complete the following tasks:

- Stakeholder assessment and environmental scan.
- Model business use and cases for HIE.
- Organize an HIE vendor fair.
- Inventory statewide technical assets and resources.
- Develop business and technical plans for statewide Wisconsin HIE.

Health Information Security and Privacy Collaboration (HISPC) Final Report /Proposed Privacy Legislation – Denise Webb

The purpose of the HISPC Implementation Workgroups was to provide recommendations on 1) modification of Wisconsin Statute 51.30 to permit exchange of specific information among providers for treatment purposes without consent and 2) modification of Wisconsin Statute 146.82-146.83 to treat re-disclosure like primary disclosure, to remove documentation requirements beyond HIPAA, and to allow disclosure to family and individuals involved with care and treatment with agreement vs. consent in accordance with HIPAA.

51.30 workgroup recommendations include:

- Removing the "in a related health care entity" clause from current law – 51.30(4)(b)8g
- Allowing disclosure, without consent, of the elements currently listed in 51.30(4)(b)8g plus two additional elements from a patient's treatment record to all treating providers with a need to know. The additional elements are:

    - Diagnostics (excluding psychological or neuropsychological testing, e.g., IQ, personality, etc.) and Symptoms.
- Important first step in increasing the amount and kind of information available to treating providers who have a need to know.
- Reduces some barriers to electronic exchange.

The 51.30 workgroup identified several additional items for further discussion:
- Clarification of "Provider."
- Liability and Penalty for Unauthorized Disclosure.
- Provider Education Opportunities.
- Encourage treating providers to participate in anti-stigma training.
- Delaying the effective date of legislation on 51.30 to provide transition time for provider training, etc.

51.30 Board Discussion items

Board members expressed concern about the "other relevant demographic information" element in 51.30(4)(b)8g and that this is too broad and recommended that phrase be modified. The statute (51.30) does not currently define "other relevant demographic information" and that definition will be left up to provider.

The Board also had questions regarding the proposed language such as:
- What is a disclosure and when does it occur?
- Is a "disclosure" made to the HIE?
- What is a provider and are a provider's business associates/partners considered "providers?"
- Who is the provider-of-record and which providers can make disclosure decisions?
- Is the intermediary exchange entity such as an HIE organization a provider?

It was stated that HIPAA may provide some guidance, but these are questions that should be addressed when drafting the statutory language.

A discussion followed regarding how professional judgment is necessary when determining when a disclosure should be allowed and how the phrase "need to know" is not clearly defined. Because a healthcare provider may have the ability to access information, they may not have a need to know. In these circumstances, professional judgment must be exercised and there is and there always will be an inherent reliance on "professional judgment." All in the room seemed very comfortable with the levels of professional judgment exercised in healthcare.

A question was raised as to whether EMR software could be customized to exclude access to certain providers. Board members from industry responded that this is very easy to accomplish and there are such security measures in place in current systems. An example was shared from the Marshfield Clinic where multiple organizations share data and the current system asks 1) who has right to inquire? 2) then the system asks, "do you have a relationship with this patient?" 3) if not, why do you need data? and then 4) the system provides a follow up audit of who has accessed the system. The software is designed to track who has accessed information. These

electronic systems afford more safeguards and actually improve access security over a paper record system.

A Board member who is a hospital/health system privacy officer offered that on the front end, electronic systems offer role-based security measures which prevent certain individuals from accessing certain information, and on backend, these systems provide an audit trail. However role-based security measures exist within a provider system, but do not exist in an exchange environment between provider systems.

It was also was added that because of HIPAA, every healthcare organization has an employee with the assignment to ensure the electronic system complies with privacy law and data is adequately safeguarded.

It was also stated that legislative changes occur to ensure that technology and policy stay on the same pace. In this instance, these legislative changes are needed so policy can catch-up to technology.

A Board member spoke from the perspective of public health where EMR data could be analyzed to safeguard population health and expressed concerns that proposed changes might restrict public health organizations' access to this data. The response was that this proposed legislative change would not negatively impact public health organizations' access to this data because public health entities would receive only de-identified data (containing no personal information).

A concluding remark expressed that clinicians should become more involved in the policy development earlier and that efforts to educate consumers about the benefits of eHealth (improved quality of care, continuity of care, improved public health) be increased.

146.82 workgroup recommendations include:

Workgroup's Recommended Modifications to s. 146.82-146.83 included:

- Documentation.
    - Rewrite to mirror HIPAA to require limited documentation of disclosure.
- Re-disclosure.
    - Rewrite Wis. Stats. to allow full re-disclosure to individuals and organizations that meet the definition of a "covered entity" under HIPAA; limit re-disclosure for those entities that are not "covered entities" under HIPAA to re-disclosures that are: (a) made pursuant to written consent; (b) required per court order; and (c) made for the same purposes (e.g. treatment) as the initial disclosure.
- Verbal disclosure to family and friends involved in the care.
    - Allow oral disclosures to family and friends involved in the care of the patient with patient consent (can be some kind of informal process).
    - Allow a "professional judgment" standard in place if the patient is not physically or cognitively able to consent or agree/disagree.

<u>146.82 Board Discussion items</u>

It was revealed that three of the six patient advocacy stakeholders which participated in the workgroups were ultimately opposed to the workgroup's recommendations (Center for Patient Partnerships, Domestic Abuse Advocates, and Care Wisconsin). The advocacy groups disagreed with the proposed change that would no longer require documentation of every health information exchange. The proposed change would make the statute similar to HIPAA so that certain health information exchanges (ie. those required by law, mandatory child/adult-at-risk abuse, public health reporting, disclosure to law enforcement, research…) would be documented. Disclosures related treatment, payment, healthcare operations and any disclosure made pursuant to a written consent would not have to be documented.

A Board member raised concerns regarding the proposed disclosure policies and how they might impact situations of domestic violence and disclosure of information to an abusive spouse.

A Board member offered that under HIPAA, their hospital documents about 12,000 medical record releases per year and HIPAA allows patients to request data regarding who has accessed their medical records. Over the past 5 years, patients made no inquiries on the approximately 60,000 medical record exchanges that occurred.

One Board member believed these changes would not fundamentally change patients' rights with the exception that providers would no longer need to document every single disclosure. It was also noted that currently there is a large gap between what is in the oral disclosure law and what occurs in a clinical conversation between clinicians attending an ill patient (unrelated to proposed legislative changes).

Secretary Hayden offered that this is only the beginning of the journey, and there will be several opportunities for additional input during the legislative process.

The Board moved to vote separately to adopted the recommended statutory changes on approval of 51.30 and 146.82.

The Board voted unanimously to adopt the workgroup recommendations for amendment of 51.30 (with one abstention).

The Board voted to adopt the workgroup recommendations for amendment of 146.82 (with one abstention and one vote not-in-favor).

Secretary Hayden said the Department will immediately begin the process of drafting this statutory language incorporating the recommendations from the 51.30 and 146.82 workgroups and the eHealth Care Quality and Patient Safety Board.

Proposed Federal Legislation: S. 1693 "Wired for Health Care Quality Act" Bill – Denise Webb

This ACT aims to enhance the adoption of nation-wide, interoperable health information systems and reduce the cost and increase the quality of healthcare in the US.

On November 12, 2007, Gov. Doyle sent a letter to Sen. Kohl in support of S. 1693 "Wired for Health Care Quality Act" which Kohl co-authored. S.1693 will assist Wisconsin's eHealth efforts by:

- Incorporating decision support in the definition of qualified health information technology.
- Establishing the Partnership for Health Care Improvement to recommend specific technical standards, and specifications to achieve nationwide interoperable health information technology infrastructure.
- Directing the development, adoption, and use of quality measures to measure the quality and efficiency of health care patients receive.
- Ensuring privacy of health information through the application of the regulations promulgated under HIPAA to new types of entities that have arisen as a result of new health information technology.
- Developing a Health Information Technology Resource Center to provide technical assistance and develop best practices to support and accelerate States' and health care providers' efforts to adopt, implement, and effectively use health information technology that complies with the standards and quality measurement system adopted by the Federal government.
- Authorizing three grant programs to lower the cost barriers to implementation.

It was stated that the Bill has "stall out" over issues regarding lack of data privacy safeguards and need for more transparency regarding proposed quality measures .

State Legislation Update – Katie Plona

Legislative calendar as it relates to the 51.30 and 146.82 language. The Department is in the process of drafting statutory language and is seeking legislative sponsors. Timing is critical because there is not a lot of time with the remaining few months of the legislative calendar. The Board's approval today is greatly appreciated, and DHFS committed to work with all of the stakeholders to remove the existing barriers to implement secure EMR exchange.

Rep. Wasserman is drafting legislation to require all healthcare providers to have interoperable electronic medical records in place within 5 years and adopt standards for everybody to follow within 3 years.

Sen. Sullivan has drafted a medical cost disclosure bill to require providers including HMOs to report cost and charges for the top procedures.

HFS 144 was recently submitted to the Legislature for final review. This rule would add two vaccines to childhood school requirements (but not HPV). There will also be a HPV education bill from Sen. Taylor and Sen. Wirch.

6. Working Lunch

7. Final 2006-2007 Wisconsin Ambulatory Health Information Technology Survey Report (Prepared by Medical College of Wisconsin and MetaStar, Inc.)

Carolyn Coffey of MetaStar presented the results of the 2006-2007 Wisconsin Ambulatory Health Information Technology Survey prepared by both Medical College of Wisconsin and MetaStar. Brief results included:

- 13% of WI medical practice sites have fully electronic medical records and 41% use combination of electronic and paper records.
- 36% of WI physicians use fully electronic medical records.
- 48% of sites that do not currently use electronic records plan to implement them in the next 3 years (by 2010).
- 40% of sites have no such plans to implement electronic records in the next 3 years.

The full report can be found at http://ehealthboard.dhfs.wisconsin.gov/reports/

8. Announcements

There were no additional announcements from the chair, board or DHFS staff.

The next board meeting is scheduled for March 12, 2008.

The meeting adjourned at approximately 2:15 P.M.