



# Reports from the State Alliance for e-Health HIT and Privacy

Part III of a three part series on the State Alliance for E-Health



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*turning knowledge into practice*

Privacy and Security Solutions for Interoperable  
Health Information Exchange Nationwide  
Summary  
(HISPC)  
Presentation to NCSL

*Linda Dimitropoulos, PhD*

*RTI International*

*August 30, 2007*

# Overview of the Project

- September 2005 – Prime Contract Awarded
- June 2006 - Awarded 34 Subcontracts (33 states and 1 territory)
- June 2006 – April 2007
  - Conducted the assessment of variation
  - Developed feasible solutions
  - Drafted plans to implement solutions
  - Final 34 individual state reports received
- July 2007 – Final summary reports released
  - [www.rti.org/hispc](http://www.rti.org/hispc)
  - <http://healthit.ahrq.gov>

# Methodology

- Community-based research model where state teams identify and “own” the issues and outcomes
- Engaged broad range of stakeholders to identify challenges to privacy and security and develop solutions
- Followed a “core” methodology that framed discussions in terms of purposes for the exchange, type of health information being exchanged within 9 domains of privacy and security

# Stakeholder Participation in Assessment of Variation

|   |              |            |
|---|--------------|------------|
| <b>Total Participants</b>                   | <b>3,811</b> | <b>112</b> |
| Stakeholder Group                           | N            | AVG        |
| Providers                                   | 1,630        | 48         |
| Technology and Health Information Experts   | 582          | 17         |
| Consumers                                   | 458          | 13         |
| Other Government                            | 243          | 7          |
| Public Health Agencies/Departments          | 213          | 6          |
| Employers                                   | 198          | 6          |
| Legal Counsel/Attorneys                     | 181          | 5          |
| Medical & Public Health Schools/Research    | 140          | 4          |
| Payers                                      | 122          | 4          |
| Law Enforcement and Correctional Facilities | 37           | 1          |
| Foundations/Other Policy Consultants        | 4            | <1         |

# Challenges/Solutions

## **Challenge: Lack of awareness among stakeholders**

Stakeholders lack sufficient knowledge of HIT/HIE to understand implications for privacy and security; Consumers are unaware of legal protections under state law; Providers frequently do not understand state law requirements

## **Solution: 14 states are developing model outreach and education programs**

- Consumer and provider outreach and education
- State and multistate privacy and security summits
- Consumer advisory councils/committees
- Toolkits for educating stakeholders

# Challenges/Solutions (continued)

## **Challenge: Variation created by state privacy and security laws**

State law governing privacy and security is scattered, fragmented, sometimes inconsistent or contradictory within a state, and frequently does not apply sensibly to electronic exchange.

## **Solution: 9 states implementing solutions related to state law**

- Producing a catalog of existing relevant statutes and administrative regulations
- Developing a road map of current P&S laws/statutes
- Developing model legislation to harmonize on multistate issues such as consent
- Completing a legal analysis to determine what changes need to be made to ensure privacy and security
- Reforming state privacy laws to address electronic HIE
- Drafting legislation for 2008 session

# Challenges/Solutions (continued)

## **Challenge: Obtaining and Managing Patient Consent**

Broad variation in the requirements for obtaining and managing patient consent and authorization for information disclosures

## **Solution: 8 states are working on reducing variation related to consent management**

- Standardize patient consent process
- Harmonize consent language that addresses opt-in/opt-out issues across the state
- Implement consent management process; develop use cases that drive HIE transactions
- Create guiding principles for consent that can be used to update state law
- Model consent forms

# Challenges/Solutions (continued)

## **Challenge: Variation in Methods of Implementing 4 A's**

Need for consensus on standards for authentication, authorization, access controls and information audits to reduce mistrust between entities

## **Solution: 4 states are working on issues related to the 4A's**

- Defining minimum standards for authentication acceptable to individuals or entities participating in an HIE
- Defining P&S requirements for providers' role-based access and authentication
- Developing “solutions building block” i.e., trusted digital identities for authentication, authorization, access control, data integrity, and digital signatures

# Challenges/Solutions (continued)

## **Challenge: Privacy and Security Oversight**

Lack of state-level authoritative governing bodies to oversee the development, adoption and enforcement of common privacy policies and security practices for HIE

## **Solution:** 6 states working on governance and oversight

- Establish Governor's eHealth taskforce on Privacy and Security
- Create a Privacy and Security Advisory Board
- Establish formal work group to formulate and review P&S policy
- Create an umbrella organization to operationalize P&S strategies and interact with Governor's HIE Commission and the state Health Policy Authority.

# Moving Forward

- State team subcontracts have been extended through December 2007 to implement a foundational component of their plan
- Moving toward multistate and regional coordination and collaboration
  - HISPC state project leaders have met with the State Alliance for eHealth Health Information Protection Taskforce
  - Forming multistate and regional collaborative work groups that will continue the work beyond the end of this contract
  - Representatives from all 56 states and territories have been invited to participate in those work groups
- The state teams will come together for a National Meeting in November 2007

# What can legislators do?

- Learn about the privacy and security issues related to HIE
- Contact the project team in your state to find out more about what their needs are for legislation
- Work with the stakeholders to understand current environment, federal landscape, and clarify what makes sense for your state

# Thank You

- <http://Healthit.ahrq.gov/privacyandsecurity>
- [www.rti.org/hispc](http://www.rti.org/hispc)



# National Governors Association State Alliance for e-Health Taskforce

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## Presentation to NCSL: Summary of Activities

Presenters:

JoAnn Lamphere, DrPH

Alison Rein, MS

August 30, 2007



# State e-Health Alliance

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## ■ Purpose

- Address barriers to health information exchange and adoption of health IT, while preserving privacy, security, and consumer protections
- Develop standards and/or guidance for modifying variations in state policies, regulations, or laws

## ■ Three Task Forces

- Health Information Communication and Data Exchange
- Health Care Practice
- Health Information Protection



# Health Information Protection Taskforce Charge

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- Support the State Alliance for e-Health on issues regarding the protection of consumer health information that ensures appropriate interoperable, electronic health information exchange (HIE) within states and across states
- Develop and advance actionable policy statements, resolutions, and recommendations for referral to the State Alliance on these issues



# Process for Taskforce Issue Exploration

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- Beginning in February 2007, the taskforce conducted hearings and testimony for four consecutive months hearing from a variety of expert witnesses, including state and federal government representatives, privacy experts, providers, public health officials, and consumer groups
- Work product analysis underway to see how states handle the exchange of categories of data that have higher protections, such as mental health, HIV/AIDS, disability, substance abuse, and genetics (findings to be presented in January 2008)
- Preliminary analysis of findings from the Health Information Security and Privacy Collaboration (HISPC)
- Findings and recommendations presented to the State Alliance for e-Health in August 2007; adoption process ongoing



# Health Information Protection

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## Task Force Findings

- State law consent requirements for the disclosure of health information vary within and across states, which may interfere with eHIE.
- Health care entities use inconsistent security protocols for health data protection, which interferes with electronic exchange of health information.
- Some federal privacy requirements (e.g. HIPAA) pose implementation challenges for eHIE.



# Health Information Protection

## Task Force Policy Statements

- States need a framework to help guide their individual efforts and facilitate a coordinated approach to privacy and security challenges related to eHIE.
- As states develop networks for exchange of health information, privacy and security policies must be developed in concert with the technical architecture of the eHIE.
- Consumers should be informed and engaged in discussions about the extent to which their health information is protected in an exchange environment. They also should be informed about the potential benefits of, and their roles and responsibilities in, an eHIE environment.



# Report Recommendations

## Technical Security

- **Recommendation 1.0:** The State Alliance should encourage states to recognize the certification of newly acquired electronic health record (EHR) applications and network components by the Certification Commission for Health Information Technology (CCHIT) or other certification body designated by the Secretary of the U.S. Department of Health and Human Services. One method states could consider is to require, that as part of participation in publicly funded programs, any provider that engages in electronic health information exchange when using newly acquired products or network components, should use a product or network that meets the certification process recognized above.
- **Recommendation 1.1:** The State Alliance should encourage the President to call on the Secretary of the U.S. Department of Health and Human Services to designate a single, national certification body (such as CCHIT) for use by all relevant federal agencies, and require product and network certification for participants in all federally funded programs, grants, and contracts for newly acquired products or network components.
- **Recommendation 1.2:** The State Alliance should encourage states to become engaged and provide input into the certification process by supporting the participation of State Chief Information Officers (CIOs), public program CIOs and state health IT coordinators (or equivalent-level personnel) in the CCHIT, HITSP, or similar federally-endorsed activities in order to ensure that the state perspective is incorporated, and to ensure applicability of the requirements in the state environment.



# Report Recommendations

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## Alignment of State and Federal Privacy Environments

- **Recommendation 2.0:** The State Alliance should encourage states to continue to (1) educate leaders of the executive and legislative branches on the importance of interstate alignment of privacy protections and (2) sustain efforts through financial and political support or other means, to reduce the variability of state privacy requirements within and across states, in a manner that ensures appropriate consumer protections are in place.
- **Recommendation 2.1:** The State Alliance should call on the Executive Branch of the federal government to work with the Alliance to identify challenges in current federal statutory and regulatory requirements (such as HIPAA, FERPA, 42 CFR Part 2, Federal Medicaid regulations, CLIA, etc.) and create mutually acceptable solutions that would allow for alignment of these as they relate to the privacy and security of health information and health information exchange.



# Task Force Next Steps

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- Identify consent content and process options
- Develop safe harbor language for providers in eHIE
- Develop consumer awareness and communication tools



# Contact Information

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# Any Questions

- Among the Panelists?
- From the audience?
- You can either
  - Unmute and ask as part of the call or
  - Use Q and A option in your web-assisted audioconference.
- After the call, email questions and suggestions for future web-conferences to:
  - [Health.hitch@ncsl.org](mailto:Health.hitch@ncsl.org)

# To follow up

- Feel free to contact us for more information at [Health.hitch@ncsl.org](mailto:Health.hitch@ncsl.org)
- For more program information and related links, and to see past programs: <http://www.ncsl.org/programs/health/webcast2.htm>
- This program was recorded and will be made available on line.

# Speakers' resources

- **National Governors Association Center for Best Practices State Alliance for eHealth:**  
[www.nga.org/center/ehealth](http://www.nga.org/center/ehealth)
- **Health Information Protection Taskforce report to the State Alliance for e-Health**  
<http://www.nga.org/Files/pdf/0708EHEALTHREPORT.PDF>
- **Final HISPC reports**  
[www.rti.org/hispc](http://www.rti.org/hispc)

# Other Resources

- Georgetown privacy project <http://www.healthprivacy.org/>
- ***HEALTH INFORMATION TECHNOLOGY: Early Efforts Initiated but Comprehensive Privacy Approach Needed for National Strategy***  
January 2007, GAO.  
<http://www.gao.gov/new.items/d07238.pdf>
- *Privacy, Security, and the Regional Health Information Organization.*  
Rosenfeld, Koss and Siler, Avalere Health LLC  
June 2007, California Healthcare Foundation  
<http://www.chcf.org/documents/chronicdisease/RHIOPrivacySecurity.pdf>

# Resources from NCSL

## Related NCSL Projects

- **Health Information Technology Champions (HITCh)**

The HITCh partnership serves state legislators interested in health information technology (HIT) and health information exchange (HIE).

<http://www.hitchampions.org/>



## Other NCSL Resources

- **State Health Notes articles on Health Information Technology**

<http://www.ncsl.org/programs/health/shn/hit.htm>

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