

# NC HIE Council Policy Development Committee

NCHICA  
Research Triangle Park, NC  
July 23, 2008

## AGENDA

| <u>Start</u> | <u>Topic</u>   | <u>Discussion Leader</u>                             |
|--------------|--|--|
| 11:00        | Welcome and Introductions  | Andrew Weniger                                       |
| 11:10        | Approve June 25 Minutes  | Andrew Weniger                                       |
| 11:15        | Review Online Policy Discussions   | Andrew Weniger<br>Lakshmi Iyer                       |
| 11:30        | HISPC Project <ul style="list-style-type: none"> <li>• Consent Collaborative</li> <li>• Interorganizational Agreement &amp; DURSA</li> </ul> | Patricia Markus &<br>Linda Attarian<br><br>Roy Wyman |
| 12:15        | Working Lunch  | All  |
| 12:45        | Open Discussion  | All  |
| 1:00         | Adjourn  |  |

## Online Policy Development

- Policy Development Committee utilized UNC-Greensboro online groupware/collaboration space
  - <http://baefacil.uncg.edu> to help prepare for the HISPC IOA meeting July 14/15
- Approach
  - Free form commentary
- Anticipated benefit
  - Serve as an electronic archive for the discussion of ideas and priority as it relates to NC HIE initiatives
  - Synthesis and reporting of discussions before meeting
    - This may aid in focusing the discussions on priority items during scheduled meeting times

# HISPC

## Health Information Security and Privacy Collaboration

### Consent Policy Options Collaborative

NC HIE Council

Policy Development Committee

Wednesday, July 23, 2008

## Health Information Security and Privacy Collaborative

- Established in 2006 by RTI International
- Funded by Health and Human Services
- Phases 1 and 2 of HISPC comprised 34 states and territories
- Phase 3 of HISPC began April 2008 and comprises 42 states and territories

## HISPC Phase 3

| Collaborative                     | Participating States and Territories |  |
|-----------------------------------|--------------------------------------|--|
|                                   | N                                    | Abbreviations                              |
| Consent 1 – Data Elements         | 11                                   | IN, ME, MA, MN, NH, NY, OK, RI, UT, VT, WI |
| Consent 2 – Policy Options        | 4                                    | CA, IL, NC, OH                             |
| Harmonizing Privacy Law           | 7                                    | FL, KY, KS, MI, MO, NM, TX                 |
| Consumer Education and Engagement | 8                                    | CO, GA, KS, MA, NY, OR, WA, WV             |
| Provider Education                | 8                                    | FL, KY, LA, MI, MO, MS, TN, WY             |
| Adoption of Standard Policies     | 10                                   | AZ, CO, CT, MD, NE, OH, OK, UT, VA, WA     |
| Interorganizational Agreements    | 7                                    | AK, GU, IA, NJ, NC, PR, SD                 |

## Consent Policy Options Collaborative: Purpose

To analyze the consumer role in permitting use and disclosure of their health information: currently, what is this role, and what should it be?

## Consent Policy Issues that will be Explored

- How much flexibility should consumers have in permitting the sharing of their health information by entities that hold their information?
  - What level of specificity or “granularity” should be permitted? Should consumers be allowed to authorize release of lab results to one physician but not another, or some labs to one physician but all to another?
  - What about highly sensitive information?

## Consent Policy Issues that will be Explored

- Should providers be allowed to place an individual's health information into an eHIO without the individual's knowledge or permission, where doing so will enable the patient to receive improved and necessary care?
  - How might this affect consumers' trust of health care providers?
  - What if sharing such information without the patient's consent violates state or federal law?

## Collaborative Deliverables

- Systematic process or roadmap for states to use in addressing intrastate and interstate consent issues
- Central Library of Consent Documents/Forms
- Matrix of international and national consent approaches
- Summary of risks and benefits associated with mandatory and voluntary consent approaches for each intrastate HIE scenario evaluated
- Recommended best legal mechanism to address conflicting state consent laws to facilitate interstate HIE

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## Privacy Principles to Guide our Evaluation of Intrastate Consent Issues:

1. Openness
2. Health Information Quality
3. Individual Participation
4. Collection Limitation
5. Use Limitation
6. Purpose Limitation
7. Security Safeguards
8. Accountability

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## Intrastate Consent Policy Options: NC's Work Plan

- Define the continuum of consent approaches for sharing health information in an intrastate HIE:
  - No permission (consent is mandatory)
  - Opt In (assumes refusal of consent; consumer has choice to consent)
  - Opt In w/Restrictions (assumes refusal of consent; consumer has choice to consent for some but not all exchanges)
  - Opt Out (assumes consent; consumer has choice to refuse consent)
  - Opt Out w/Exceptions (assumes consent; consumer has choice refuse consent for some but not all exchanges)

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## Intrastate Consent Policy Options: NC's Work Plan, cont.

The consent approaches will be evaluated through application to the following use cases:

- Ambulatory Care
- Patient record locator service

## Interstate Consent Policy Options: NC Work Plan

- Explore statutory options to resolve conflicts between state privacy laws:
- What law would apply to health information created in state A, stored or accessed electronically by a HIO in state B, and disclosed to an entity in state C?
- Options include: Model Act, Uniform Law, Interstate Compact, Conflict of Law

## QUESTIONS??

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## IOA Collaborative

- Goals:
  - Develop model cross-state inter-organizational agreements that permit the participating states and providers within those states to conduct interoperable HIEs
  - Once model IOAs are developed, demonstrate their value in pilot HIEs
  - Collaborate in NHIN, including a pilot with the NHIN project in North Carolina

## Current List of Barriers and Policy Items

| Barriers (from HISPC work)                                      | Policy   |
|---|--|
| 1-Misinterpretation and/or Misapplication of Laws or Regulation | 1- Data Delivery from Health-Related Enterprises     |
| 3-Lack of Policy Standardization across Entities                | 2- PHI Holder Data Confidence                        |
| 4-Lack of Security Standardization across Entities              | 3- Timely Correction of Shared PHI                   |
| 7-Conflicting or Outdated Federal or State Laws or Regulations  | 4- Privacy Protection Measures                       |
| 8a-Lack of Consumer Understanding or Awareness of the Benefits  | 5- Integration of PHRs and EMRs                      |
| 8b-Lack of Definition of Consumer Empowerment                   | 6- Encouraging Early Community HIE                   |
|   | 7 - Opt-out impact on persistency of data            |
|   | 8 - Authorization, Authentication, Access & Auditing |

## The Core Topics, Encore

- IOA activities focused upon:
  - Recipient Requirements
  - Provider Requirements
  - Privacy
  - Security
  - Liability
  - Indemnification
- Next Steps

## NHIN Specific Policies

### Consumer Empowerment Use Cases - DRAFT

- Consumer Exclusions
  - How to display?
    - Hidden
    - Notated but hidden
- Consumer Provider Designations
  - Automatic
  - Manual

## NHIN Specific Policies

### DURSA Topics - DRAFT

- Allocation of Risk and Liability
- Specific Duties of Requesting and Responding Participants
- Permitted Future Uses
- Consent / Authorization
  - “Each Participating HIE is responsible for obtaining an individual’s consent or authorization as required by Applicable Law, its policies or agreements between the Participant and its Users before making that data available to the NHIN for exchange for treatment purposes. Participants transmitting a query based on an authorization must transmit a copy of the authorization with the query”

## Upcoming Meetings

- **August 27 11:00 a.m. NCHICA Offices**
- **September 24 11:00 a.m. NCHICA Offices**
- **October 22 11:00 a.m. NCHICA Offices**
- **November 26? 11:00 a.m. NCHICA Offices**