

MINUTES

Health Information Exchange Legal Work Group Meeting (HIE LWG)

Meeting Date: December 12, 2014

Time: 10:00 a.m. – 1:00 p.m.

Location: Agency for Health Care Administration
Bldg.3, Conference Room A
2727 Mahan Drive
Tallahassee, FL 32308

Members Present: Kathy Pilkenton, Chair; Diane Godfrey, Florida Hospital; Diane Gaddis, Community Health Centers Alliance; Samuel Lewis, Feldman Gale; Kimberly Tendrich, Florida Department of Health; and Holly Miller, Florida Medical Association.

Members Absent: Bill Bell, Florida Hospital Association; Carol Berkowitz; William P. Dillon, Messer, Caparello & Self; Jan Gorrie, Ballard Partners; Gabriel Hartsell, Galloway, Johnson, Tompkins, Burr & Smith PLC; Karen A. Koch, Florida Council for Community Mental Health, Inc.; Colleen McComas, BayCare Health System; and Julie Meadows-Keefe, Grossman, Furlow and Bayó.

Staff Present: Evan Carter, Heidi Fox, Joy Styrcula, Trish Tidwell, Carolyn Turner and Dana Watson

Interested Parties Present: Alexandria Abboud, Florida Dental Association; Steve Grigas, Akerman; Michelle Pinto, Harris Corporation; Mary Thomas, Florida Medical Association.

Meeting Materials: Agenda, Minutes of December 13, 2013 meeting, Proposed 2015 Changes to Subscription Agreements Overview; Patient Look-Up (PLU) Subscription Agreement (redline); Event Notification Service (ENS) Subscription Agreement (redline); General Participation Terms and Conditions (redline); eHealth Exchange Addendum; Gateway Partner Policy - Emergency Treatment; and Gateway Partner Policy – Social Security Administration

Copies of meeting materials are posted at: <http://www.fhin.net/content/committeesAndCouncils/index.shtml>

Call to Order, Welcome and Roll Call Ms. Kathy Pilkenton called the meeting of the Health Information Exchange Legal Work Group (HIE LWG) to order at 10:00 a.m., welcomed members and guests, and conducted the roll call.

Review and Approval of Minutes Ms. Pilkenton asked the committee to review the minutes from the December 13, 2013 meeting. There were no corrections.

Participation Agreement Overview Ms. Carolyn Turner gave a brief overview of the purpose and history in the development of the Florida Health Information Exchange (Florida HIE) subscription agreements. There is a separate agreement for each of the Florida HIE's services. The General Terms and Conditions are attachments to and part of the Agreements. The Agreements were developed in 2010 and first put into use in 2011.

Direct Secure Messaging (DSM) was outsourced in 2014 to Inpriva, and renamed Direct Messaging. The Inpriva service agreement is being used for Direct Messaging. The ENS agreement was originally an addendum to the DSM agreement. The ENS agreement was changed to a separate stand-alone agreement when DSM was outsourced.

Ms. Turner noted the key changes to the PLU agreement in 2014. These included provisions related to hybrid PLU usage, the service price list which was added, PLU privacy managers, participant cooperation in documenting consent, and the eHealth Exchange addendum. She then referred to the summary of proposed changes to the PLU and ENS subscription agreements effective in 2015.

Proposed Changes to Patient Look-Up (PLU) Agreement Ms. Turner reviewed each of the proposed changes to the PLU agreement as follows:

- 1) Add term and termination provision [new 6. Term and Termination]
- 2) Delete “only” regarding vendor role [4. Vendor Responsibilities]
- 3) Remove Office of the National Coordinator for Health Information Technology (ONC) whereas statement
- 4) Remove VMware Player; “unless Vendor provides” [Attachment A 1. Minimum Technical Requirements]
- 5) Remove discount for ENS participation [Exhibit 1 PLU Fee Schedule]
- 6) Change formatting of address for notice; signatory lines and date

Ms. Turner noted that she also recommended removing an unnecessary date of pricing in the cross-reference to the price schedule Exhibit.

There were no comments on items 2-6.

Regarding item 1, Mr. Samuel Lewis suggested removing “in perpetuity” as unnecessary. Ms. Diane Godfrey suggested capitalizing Agreement and adding prior to written notice.

Ms. Diane Gaddis asked about whether email notices are permitted. Ms. Turner responded that email notices had been permitted for the DSM service.

Proposed Changes to the Event Notification Service (ENS) Agreement Ms. Fox reviewed each of the proposed changes to the ENS agreement as follows:

- 1) Add “Whereas” to support coordination of care
- 2) Provision to accept acknowledgement of hospital copies by health plan [new Attachment A 5. Acknowledgement]
- 3) Provides for the optional inclusion of observation visits, urgent care visits, and admissions data [Attachment A 1. Delivery of Encounter Data]
- 4) Requires exclusion of restricted self-pay encounter data or optionally, data source may exclude all self-pay encounter data [Attachment A 1. Delivery of Encounter Data]
- 5) Edit to permitted purposes (health care operations). Add “provided that” [2.b. Health Care Operations]
- 6) Change formatting of Attachment A from bullets to numbers

Ms. Fox noted the same edits to the termination clause would be made, and Ms. Turner noted that the unnecessary date of pricing reference would be removed.

There were no comments on items 2, 3, 5, and 6.

Regarding item 1, Mr. Lewis suggested creating a separate purpose whereas statement and removing the current whereas statement which is similar.

Regarding item 4, Mr. Lewis suggested adding that self-pay data will be filtered if requested. Ms. Fox agreed to clarify by adding that the data source may filter all self-pay data to assure that any patient requests for restriction are not released.

Mr. Lewis indicated that the permitted purposes for treatment provisions may not correctly reflect the operations of the ENS. He suggested review of this section for rewording.

Proposed Changes General Terms and Conditions Ms. Turner explained that the General Terms and Conditions are applicable to both PLU and ENS participants. She reviewed each of the proposed changes to the General Terms and Conditions of the Florida HIE as follows:

- 1) HIPAA Regulations definition, insert “and” [1. Definitions]
- 2) Consumer complaints, remove “impacted” [7. Breach Notification]
- 3) Accurate participant information, remove “by them necessary to discharge their duties” [8.a. Accurate Participant Information]
- 4) QSO applicability, remove extraneous “from” [13. Qualified Service Organization Provisions]

There were no comments on items 1. Regarding item 2, Ms. Turner noted a correction changing “data of referral” to “date of referral.” Ms. Godfrey recommended not making the changes in item 3 as current language limits release of participant information to the minimum necessary. She also recommended not changing item 4 as it clarifies Health Data is transmitted from a 42 CFR Part 2 program.

Florida HIE Policies related to eHealth Exchange Ms. Trish Tidwell reported that the Florida HIE completed onboarding the eHealth Exchange in July 2014. Healthway amended the Data Use and Reciprocal Support Agreement (DURSA) for the eHealth Exchange in September 2014 and the amended DURSA is posted on their website. The amendment provides for more flexibility for handling future changes in the composition of the Coordinating Committee of the eHealth Exchange.

Healthway requires an addendum regarding the acceptance of DURSA flow down responsibilities by participants in the Florida HIE. The eHealth Exchange addendum was developed for this purpose in 2014. PLU participants that elect to participate in the eHealth Exchange through the Florida HIE must sign the addendum. The addendum (updated to reference 2015) is included in Tab G.

Ms. Godfrey asked if signing the addendum remains voluntary and Ms. Turner affirmed that it is.

Ms. Turner explained that to begin operational exchange and encourage node participation, the Agency for Health Care Administration (Agency) has developed proposed policies for two eHealth Exchange participation use cases. These Gateway Partner policies assure that exchange will occur consistent with Florida law regarding consent requirements for sensitive conditions.

The use cases are exchange among emergency departments and exchange with the Social Security Administration (SSA) for disability determination. The use cases will enable incremental development of workflows necessary for privacy controls consistent with Florida law consent requirements for sensitive conditions.

Exchange partners must agree to obtain consent to query and provide the consent if requested by a Florida node. The consent form need not be identical to that of the Florida HIE but it must provide for explicit consent by listing the appropriate types of sensitive conditions and give the name of the physician or hospital that is authorized by the patient to access their records.

For the SSA use case, the Florida HIE will receive the consents and provide to nodes as requested using Direct Messaging. For exchange among emergency departments, consent requests, and documentation will be sent using Direct Messaging. Failure to produce documentation will be cause for cessation of exchange unless the exchange partner comes into compliance.

Ms. Turner noted that exchange partners are not required to sign a separate agreement with the Florida HIE. Exchange partners will have signed the DURSA as has the Florida HIE. A readiness questionnaire will be used to document their understanding of the policies and ability to exchange for the purpose of the use case. Exchange partners will also provide a copy of the consent form that will be used.

Ms. Turner asked for review of the Gateway Partner policies for clarity by the HIE LWG. She indicated that the policies would be posted on the Florida HIE website early next year.

Ms. Godfrey asked where the SSA consents would be stored. Ms. Fox indicated that the Florida HIE has a repository for storing the consents. Ms. Fox indicated SSA exchange would be operational for nodes participating in SSA exchange only.

Ms. Godfrey asked about the reference to “beginning exchange upon mutual agreement” in the policy and suggested clarification of how this would occur operationally. Ms. Turner indicated that she would reword the policy statement to clarify that a separate agreement is not required.

Agency Update Ms. Turner reported on the operational status of the Florida HIE services and goals for 2015. She said that operational metrics are posted on the www.FHIN.net website. The metrics show participants onboarding and in production, transactions, and covered beds as applicable.

Ms. Turner reported that as of December 5, 2014 there were 48 hospitals in production capable of providing alerts to health plans. More than 200 Florida hospitals are expected to be in production by April 2015. In October 2014, the Agency began outreach to health plans for their participation in ENS as paying subscribers. Two health plans have signed subscription agreements are in process to begin receiving alert transactions.

There are currently nine live nodes in PLU. Another five organizations are in the process of onboarding. Transactions are reported monthly. During November 2014, there were 1,985 queries and 77 documents retrieved. As of November 30, 2014, there were 99 organizational accounts in the Direct Messaging service generating 446 transactions.

The Agency has set a goal of reaching 20 PLU organizations on-boarded by the end of the calendar year and steady monthly increases in PLU transactions. For ENS, the Agency has set a goal of having 20 health plans participating in ENS and maintaining hospital data source coverage. The Florida HIE will continue the Direct Messaging service as an adjunct to other services.

Meeting Summary, Next Steps and Adjourn Ms. Fox reviewed the action items for the Agency from the meeting as follows:

- 1) Take comments on the Florida HIE subscription agreements through January 15, 2015.
- 2) Obtain clarification from the HIE vendor on eHealth Exchange operations.
- 3) Take comments on Florida HIE Policies for eHealth Exchange through December 31, 2014.

Adjournment:

There being no further business to discuss, the committee adjourned at 11:05 p.m.