

MINUTES

Health Information Exchange Legal Work Group Conference Call (HIE LWG)

Meeting Date: January 25, 2019
Time: 10:00 a.m. – 12:00 p.m.
Location: GoToWebinar

Members Present: Lisa Rodriguez, Chair; William Dillon, Gunster; Diane Gaddis, Community Health Centers Alliance, via webinar; Diane Godfrey, , Advent Health/; Jan Gorrie Ballard Partners via webinar; Melanie Brown-Woofter, Florida Council for Community Mental Health; Sam Lewis, Feldman Gale, P.A., via webinar; Marjorie McNeill, Florida Health Information Management Association via webinar; Kimberly Tendrich, Department of Health via webinar; Mary Thomas, Florida Medical Association; and Wences Troncoso, Florida Association of Health Plans via webinar.

Guests Present: Alyn Ford, Collective Medical Technologies; Aaron Parsons, Audacious Inquiry (Ai); and Drew Reeve, Collective Medical Technologies.

Agency Staff Present: Heidi Fox, Nikole Helvey, Carrie Gaudio, and Dana Watson, Chris Wilkey, Michael Hardy, Suzanne Kirayoglu.

Call to Order, Welcome and Roll Call

Chair Lisa Rodriguez, called the meeting of the Health Information Exchange Legal Work Group (LWG) to order at 10:00 a.m., and told the workgroup about a Request for Information (RFI) put out by Centers for Medicare and Medicaid Services (CMS) on Health Insurance Portability and Accountability Act (HIPAA). Ms. Rodriguez directed Dana Watson to conduct the roll call, determining that a quorum was present.

Approval of Minutes

Ms. Rodriguez asked the work group if there were any changes necessary to the December 1, 2017 meeting minutes. There were no requested changes or amendments and the minutes were adopted unanimously.

Florida Health Information Exchange Program Updates

Ms. Heidi Fox gave a brief update on the Florida Encounter Notification Service (ENS). The service is onboarding home health agencies and long-term and post-acute care providers as data sources. Subscribers currently include all of the Medicaid health plans, 23 Accountable Care Organizations, 46 provider groups, and 8 health systems comprised of 57 hospitals. ENS covers 8 million lives across the state of Florida with over one million alerts delivered each month.

Ms. Fox reported that the Florida Health Information Exchange (HIE) also facilitates query-based exchange of electronic clinical data by promoting connections to the eHealth Exchange national network and providing a State Gateway to serve as an onramp to the eHealth Exchange for organizations that cannot directly connect. A Direct Messaging mailbox service is also available for Florida subscribers through an agreement with Inpriva. Inpriva is a DirectTrust Accredited organization.

Next, Ms. Fox reported that the study of the overall HIE environment in Florida, conducted by North Highland in early 2018, provided recommendations that included specific strategic initiatives to achieve greater adoption and to fill identified gaps in exchange. The Agency worked with stakeholders to prioritize these initiatives and is focusing efforts on Florida HIE service enhancements, inter-agency collaboration, and increasing stakeholder awareness of Health Information Technology opportunities.

The Agency partners with the Department of Health (DOH) on several HIE collaborations. In December, the Florida HIE began sending inpatient hospital encounter alerts to DOH to support Syndromic Surveillance activities. The program previously relied only on emergency department data, and the addition of inpatient data greatly enhances the department's ability to conduct thorough surveillance, including identification of issues that may be occurring within a facility.

Ms. Fox provided updates on national HIE activities. The Office of the National Coordinator for Health IT (ONC) will be releasing an updated version of the Trusted Exchange Framework and Common Agreement (TEFCA) that addresses the public comments they received last year.

TEFCA outlines a common set of principles, and minimum terms and conditions for trusted exchange. The framework is designed to bridge the gap between providers' and patients' information systems and enable interoperability across disparate health information networks. Once the updated version of TEFCA is released, the ONC will again be accepting public comment. Based on this schedule it is unlikely the framework will be operationalized in 2019.

The Strategic Health Information Exchange Collaborative (SHIEC) is a national collaborative representing health information exchanges. The Florida HIE has become a member of SHIEC, and this membership provides increased communication with the SHIEC network of HIEs, sharing of best practices, national governance updates, and support during times of emergency, as was seen during Hurricanes Florence and Michael.

SHIEC's initiative, the Patient Centered Data Home (PCDH), intends to establish a scalable method of exchanging patient data among HIEs across state and regional lines starting with the exchange of admit, discharge, and transfer alerts (ADTs). Ms. Fox stated that the idea is to be able to alert the home HIE that their patient has had an encounter at an away HIE. Participation in the PCDH would require the Florida HIE to have legal authority to comply with the obligations in the master agreement and assure that participants comply with applicable requirements. This could be a future addendum to the Participation Agreement.

Ms. Fox noted that eHealth Exchange is becoming a Carequality implementer. The eHealth Exchange network is used by more than 15 electronic health record (EHR) vendors, nearly five dozen HIEs and in place at 75 percent of U.S. hospitals. Government agencies such as CMS, Department of Defense, Department of Veteran Affairs, and the Social Security Administration use it to exchange data with private organizations.

Carequality is a policy framework as well as a technical specification enabled in some EHRs, allowing some 600,000 physicians nationwide to exchange health data. The eHealth Exchange is implementing Carequality which will allow each eHealth Exchange participant to use Carequality connectivity to share information with connected health systems.

The Data Use and Reciprocal Support Agreement for the eHealth Exchange (DURSA) is being updated to support the eHealth Exchange becoming a Carequality Implementer. The DURSA defines participants, permitted purposes, participation requirements, and governance. Participants onboarding to the eHealth Exchange directly or through Carequality sign the DURSA. Participants coming through the State Gateway sign an agreement that has flow down language from the DURSA.

Ms. Kim Streit inquired if the ADT feeds going to Syndromic Surveillance at DOH would meet hospital reporting requirements since they will already be receiving them. Ms. Fox offered to research this question then provide the information to the membership. Ms. Nikole Helvey commented that the emergency department feeds are already being sent by facilities, Ai may be able to automate the reports. Ms. Streit asked if the emergency department data could be routed to DOH as it goes through the Florida HIE. EHRs that are programmed to meet Meaningful Use 3 requirements are capable of being programmed to recognize the reportable conditions and report them to Syndromic Surveillance. The Agency is working with DOH to explore further opportunities for leveraging HIE.

Ms. Kim Tendrich stated that hospitals will need to keep reporting in the traditional way because the only way to change the reporting is through rule or statute. To Ms. Tendrich's knowledge, there is no current legislation dealing with this. Ms. Fox said that the HIE team will review the reporting requirements to determine how HIE initiatives may be able to support hospital reporting requirements.

Florida Health Information Exchange Agreement Revisions

Ms. Fox directed the members to the Agreements in the meeting materials. She explained that all the Florida HIE Agreements were initially multi-party agreements with all participants and the Vendor signing on to the same understanding of requirements and permitted purposes. There was a Subscription Agreement for two services, Patient Look-Up (PLU) and ENS, and an accompanying General Terms and Conditions document.

For Query Exchange, the Florida HIE now offers a State Gateway to the eHealth Exchange for organizations that cannot directly connect. The State Gateway Agreements are not multiparty agreements, and are not tied to the Florida HIE General Terms and Conditions. The State Gateway Agreements are between the Florida HIE Vendor and the State Gateway Participant and the provisions in the eHealth Exchange DURSA flow down to govern this exchange. The Agency approves these Agreements per its contract with Audacious Inquiry (Ai).

The ENS Subscription Agreement (including the Florida HIE General Terms and Conditions) continues to be a multi-party agreement with subscribers, data sources, and the Vendor signing on to the same understanding of requirements and permitted purposes. The Agency is not a party to these agreements. The Agency has executed a no-cost contract with Ai. The Agency governs the Florida HIE by setting policy, approving agreements and pricing, convening stakeholders, providing contractual oversight, engaging Federal partners, and promoting the benefits of health information technology. The Florida HIE ENS Agreement is between the participants and the vendor.

Ms. Diane Godfrey requested clarification of the pricing policy. Ms. Fox stated that the Agency represents the participants and approves pricing for the service, as required in the Agency's agreement with Ai. The prices are can be changed with 90 days' notice. Ms. Fox also clarified that Data Sources do not pay any subscription fees as Data Sources. Ms. Godfrey also requested clarification of the Agency's role in defining participation, and Ms. Fox confirmed that the Agency approve participation definitions and requirements.

Ms. Fox explained that when the contract with the vendor Harris Corporation expired in June 2017, the ENS Subscription Agreements for data sources were assigned by Harris to the new vendor, Ai through an Assignment and Assumption Agreement. The ENS Subscription Agreements for data recipients were re-executed by Ai and the subscribers. Ms. Fox stated that current Agreement versions will continue to remain in effect until a participant executes a revised Agreement.

Ms. Fox went through the ENS Subscription Agreement with the work group and provided the reasons for the proposed changes, while members offered feedback.

Mr. Sam Lewis suggested moving the definition of "Vendor" and "the Agency" to where Ai LLC appears in the first paragraph.

Ms. Fox explained the intent to remove the requirement to transfer audit trail data to other vendor. Ms. Fox explained that the only audit data retained is very high level metadata. For example, the recipient may be able to see how many alerts received over a specific time frame, but not what was in the alerts. Ms. Godfrey asked if in a few years, Ai is not the vendor, could a participant retrieve alerts from the time when Ai was the vendor under contract. Ms. Fox indicated upon the conclusion of the contract the Agency would ask for any data it felt it was necessary to save. Beyond that, Ai will not be under any obligation to store or provide data.

After reviewing the ENS Subscription Agreement, Ms. Fox reviewed the following attachments.

Attachment A: Network Operating Policies and Technical Requirements Specific to the Encounter Notification Service

Ms. Godfrey stated that it is unfortunate to remove the Acknowledgement section, because the intent of the language plans was to reduce the administrative burden on hospitals to notify healthy plans of patient encounters. However, she noted the difficulty of operationalizing this concept. Ms. Streit said this would ease the burden on hospitals. Ms. Fox noted that the health plans don't cover all of their members and that significant gaps would remain. Ms. Streit asked why they health plans have not yet subscribed to all members and Ms. Fox noted that many subscribe a stratified list of their most vulnerable or complex patients. Ms. Godfrey expressed how beneficial it would be for health plans to subscribe all members.

Attachment B: Addresses for Notice

Attachment C: ENS Fee Schedule

Ms. Streit asked about the pricing schedule and the fact that the agreement is between the participant and the vendor. She asked if everyone paid the same amount for the service, which Ms. Fox verified. Ms. Godfrey requested clarification of pricing by subscriber type, and Ms. Fox confirmed that pricing is set for each subscriber type, and all organizations of the same type pay the same fees. Ms. Streit also asked how participants would know that the prices were set by the state, if reference to the Agency regarding pricing approval is removed. Ms. Fox responded that the team would take the comment into consideration.

Ms. Fox directed the workgroup to the General Terms and Conditions document. She said that the program requirements relating to federal grants or contracts were removed; originally included to comply with potential requirements under agreement with the ONC (which ended in 2011).

- **2.a.i.** Removal of requirement to notify participants of new participants prior to connection. This was written with query based exchange in mind, and is not relevant in an alerting service. The participant list is posted online and updated regularly and immediately.
- **2.d.** Removal of specified timeframe for advance notice of new sources of data, and reference to the Agency.
- **2.e.** Removal of language referencing grants or contracts and equipment; inapplicable.
- **3.a.** Removal of notice requirement regarding new services. These Terms and Conditions will only apply to the ENS.
- **3.b.ii.** Removal of requirements related to a federal grants or contracts; no longer applicable.
- **3.f.** Removal of participant requirements related to studies.
- **3.c.v.** Addition of "as its sole remedy" for clarity.
- **7.d.** Mr. Bill Dillon suggested including citation for Code of Federal Regulations (CFR) on breach; as well as s. 501.171 Florida Statutes - Security of confidential personal information, as well as the federal site to clarify to the participants what they need to do.
- **8.a.** Minor edits for clarity.
- **15.b.ii.** Removal of notice of participation termination; inclusion of language requiring re-execution of updated agreements for participants who terminate and then choose to resume services.
- **15.d.iv.** Removal of power of the Agency to terminate agreement and all parties.

Ms. Godfrey questioned why the Agency would not want to keep the power to terminate agreements. Ms. Fox reminded Ms. Godfrey that the agreements are between the vendor and the participants. Ms. Streit inquired if the subscriber and the vendor are allowed to make revisions to their agreement. Ms. Fox responded that input regarding changes to the agreement is welcomed and will be taken into consideration for future revisions. Ms. Streit also asked how participants would know if a large organization had terminated their agreement. Ms. Fox stated that the data sources and subscribers are all posted on the HIE Services webpage and are updated monthly.

Ms. Fox explained that the Agency the agreement that states that the participant may terminate the contract, with or without cause with a notice of 5 business days.

Mr. Wences Troncoso commented that he does not see a circumstances where it would be appropriate for the Agency to impose termination on a contractual relationship between the Participants and the Vendor.

Group members inquired what impact it would have on Participants if the Agency their contract with the vendor. Mr. Troncoso asked if the Agency did terminate their agreement with Ai, would participant obligations in their contracts with the Agency still be relevant. Ms. Fox responded that if the agreement between Ai and the Agency were terminated, related policy levers would be removed.

- **15.e.** Removal of power of the Agency to terminate vendor. We can terminate our agreement with the Vendor and Participants can terminate at any time.
- **15.g.** Removal of language premised on the Agency termination of the agreement. Language revised to reflect removal of termination clause 15.e.
- **16.a.** Removal of the Agency references within insurance. Insurance coverage requirements will be reflected in the Agency's agreement with the Vendor.

Expanding ENS Subscriber Types

Ms. Fox directed the work group to the DRAFT Decision Point document in their packets. The work group members inquired which organization types were allowed to subscribe under current Agency policy. Ms. Fox answered that health plans, Accountable Care Organizations, providers licensed by the Agency, and prescribing practitioners licensed by the Department of Health are eligible to subscribe.

Subscribers are able to designate a third party vendor as the recipient of the subscriber's data and subscribers can copy alerts to other entities, e.g. primary care providers, care managers who have appropriate consent to receive the information.

Ms. Fox reported that the Florida HIE team has been approached by various provider types seeking to subscribe to the ENS service. Those requesting include pharmacists, Emergency Medical Services Providers, and Management Services Organizations. We are considering options for expanding allowable subscriber types. The two options we have identified are:

1. Organizations which are currently unable to subscribe, would need to meet the following criteria:
 - The organization or provider must be state or federally designated (a business license or articles of incorporation is not sufficient);
 - The organization or provider must have a direct and ongoing patient relationship; and
 - The organization or provider must have appropriate patient authorization to access the information.
2. No changes to current policy are needed to expand allowable subscriber types.

Mr. Dillon commented that the second bullet would prohibit Emergency Management Services from subscribing. Ms. Fox replied that the Agency is working with EMS at the Department of Health level on the public health use case. Ms. Godfrey noted that the event notifications do not show if the patient has received quality care. The alerts only list the diagnosis. Ms. Fox stated that the Agency is aware that the policy options offered would remove EMS from being eligible to participate.

Action Items

1. The Agency will review Legal Workgroup member feedback and update revisions as needed, including further consideration of
 - a. Removal of identifying the Agency as an approver of ENS pricing
 - b. Inclusion of citation for federal regulation and state statute regarding breach requirements.
 - c. Moving consumer complaint reporting into Agency's agreement with Vendor
 - d. Moving insurance language into Agency's agreement with Vendor

2. Discuss the feasibility of ENS fulfilling reporting requirements for hospitals and coordinate with Department of Health
3. The Agency will share TEFCA, once released by the ONC.

There being no further business to discuss, the Legal Work Group adjourned at 11:15 a.m.

DRAFT